

# TITLE 13

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## **Zoning**

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# TITLE 13 • CHAPTER 1

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## Zoning Code

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## **Article A: Introduction**

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### **Sec. 13-1-1 Authority.**

This Chapter is adopted under the authority granted by Sections 62.23(7) and 87.30 of the Wisconsin Statutes and amendments thereto.

*State Law Reference: Sec. 62.23(7), Wis. Stats.*

### **Sec. 13-1-2 Title.**

This Chapter shall be known as, referred to and cited as the "Zoning Code, Village of Fall River, Columbia County, Wisconsin" and is hereinafter referred to as the "Code" or "Chapter. "

### **Sec. 13-1-3 General Purpose.**

The purpose of this Chapter is to promote the comfort, health, safety, morals, prosperity, aesthetics and general welfare of the people of the Village of Fall River, Wisconsin.

### **Sec. 13-1-4 Intent and Purposes in View.**

The general intent and purposes in view of this Chapter are to regulate and restrict the use of all structures, lands and waters and to:

- (a) **Promote and protect the comfort, public health,** safety, morals, prosperity, aesthetics and general welfare of the people;
- (b) **Divide the Village of Fall River into zones or districts** restricting and regulating therein the location, erection, construction, reconstruction, alteration and use of buildings, structures and land for residence, business and manufacturing and other specified uses;
- (c) **Protect the character and the stability** of the residential, business, manufacturing and other districts within the Village and to promote the orderly and beneficial development thereof;
- (d) **Regulate lot coverage,** the intensity of use of lot areas and the size and location of all structures so as to prevent overcrowding and to provide adequate sunlight, air, sanitation and drainage;
- (e) **Regulate population density** and distribution so as to avoid sprawl or undue concentration and to facilitate the provision of adequate public services, utilities and other public requirements;
- (f) **Regulate parking,** loading and access so as to lessen congestion in and promote the safety and efficiency of streets and highways;
- (g) **Enhance public safety** from fire, panic, flooding, pollution, contamination and other dangers;
- (h) **Stabilize and protect existing and potential property values** and encourage the most

- appropriate use of land throughout the Village of Fall River;
- (i) **Preserve and protect the beauty** of the Village of Fall River;
  - (j) **Prohibit uses, buildings or structures incompatible** with the character of development or intended uses within specified zoning districts;
  - (k) **Provide for the elimination of nonconforming uses** of land, buildings and structures which are adversely affecting the character and value of desirable development in each district;
  - (l) **Prevent and control erosion**, sedimentation and other pollution of the surface and subsurface waters;
  - (m) **Further the maintenance** of safe and healthful water conditions;
  - (n) **Prevent flood damage** to persons and property and minimize expenditures for flood relief and flood control projects;
  - (o) **Provide for and protect** a variety of suitable commercial and industrial sites;
  - (p) **Protect the traffic-carrying capacity** of existing and proposed arterial streets and highways;
  - (q) **Implement municipal, county, watershed and regional** comprehensive plans or components of such plans adopted by, or in effect in, the Village of Fall River;
  - (r) **Provide for the administration and enforcement** of this Chapter; and to provide penalties for the violation of this Chapter.

### **Sec. 13-1-5 Abrogation and Greater Restrictions.**

It is not intended by this Chapter to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations or permits previously adopted or issued pursuant to law. However, whenever this Chapter imposes greater restrictions, the provisions of this Chapter shall govern.

### **Sec. 13-1-6 Interpretation; Standard Industrial Classifications.**

- (a) In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be construed to be a limitation or repeal of any other power now possessed by the Village of Fall River.
- (b) Uses allowed in Commercial and Industrial Districts may be cross-referenced with the Standard Industrial Classification when appropriate. The SIC number is shown in [ ].

### **Sec. 13-1-7 Severability and Non-Liability.**

- (a) If any section, clause, provision or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.
- (b) If any application of this Chapter to a particular structure, land or water is adjudged

unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not be applicable to any other structure, land or water not specifically included in said judgment.

- (c) The Village of Fall River does not guarantee, warrant or represent that only those areas designated as floodlands will be subject to periodic inundation and hereby asserts that there is no liability on the part of the Village Board, its agencies or employees for any flood damages, or structural damages that may occur as a result of reliance upon and conformance with this Chapter.

### **Sec. 13-1-8            Repeal and Effective Date.**

All other ordinances or parts of ordinances of the Village of Fall River inconsistent or conflicting with this Chapter, to the extent of the inconsistency or conflict only, are hereby repealed or amended by virtue of the adoption of this chapter.

### **Sec. 13-1-9 through 13-1-19    Reserved for Future Use**

## **Article B: General Provisions**

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### **Sec. 13-1-20 Jurisdiction and General Provisions.**

- (a) **Jurisdiction.** The jurisdiction of this Chapter shall apply to all structures, lands, water and air within the corporate Jurisdiction limits of the Village of Fall River. The provisions of this Chapter shall be held to be the minimum requirements for carrying out the intent and purpose of this Chapter.
- (b) **Compliance.** No new structure, new use of land, water or air or change in the use of land, water or air shall hereafter be permitted and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a zoning permit and without full compliance with the provisions of this Chapter and all other applicable local, county and state regulations.
- (c) **District Regulations to be Complied With.** Except as otherwise provided, the use and height of buildings hereafter erected, converted, moved, enlarged or structurally altered and the use of any land shall be in compliance with the regulations established herein for the district in which such building or land is located.
- (d) **Relationship with Other Laws.** Where the conditions imposed by any part of this Chapter upon the use of land or buildings or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of this Chapter or any other laws, ordinances, resolutions, rules or regulations of any kind, the regulations which are more restrictive (or impose higher standards or requirements) shall be enforced.
- (e) **Legal Remedies.** No provision of this Chapter shall be construed to bar an action to enjoin or abate the use or occupancy of any land, buildings or other structures as a nuisance under the appropriate state laws.

### **Sec. 13-1-21 Use Regulations.**

The following uses and their essential services may be allowed in any zoning district:

- (a) **Permitted Uses.** Permitted uses, being the principal uses, specified for a district.
- (b) **Accessory Uses.** Accessory uses and structures as specified under this Chapter are permitted but not until their principal structure is present or under construction.
- (c) **Conditional Uses.**
  - (1) **Approved Procedures.** Conditional uses and their accessory conditional uses are considered as special uses requiring, for their authorization, review, public hearing and approval in accordance with Article E of this Chapter excepting those existent at time of original adoption of the Zoning Code.
  - (2) **Permitted Use Terminates Conditional Use.** Conditional use(s), when replaced by permitted use(s), shall terminate. In such case(s), the reestablishment of any previous conditional use(s), or establishment of new conditional use(s) shall require review, public hearing and approval in accordance with Article E of this Chapter.
  - (3) **Limits on Conditional Use Duration.** Conditional uses authorized by the Village Board may be established for a period of time to a time certain or until a future happening or

- event at which the same shall terminate, such as a change of ownership or occupancy.
- (4) **Substitution.** Conditional uses authorized by the Village Board shall not be subject to substitution with other conditional uses, either regular or limited, whether similar type or not, without Village Board approval and the procedures required in Article E of this Chapter.
  - (5) **Pre-Existing Conditional Uses.** Those existing uses which are classified as "conditional uses" for the district(s) in which they are located at the time of original adoption of this Chapter require no action by the Village Board for them to continue as valid conditional uses, and the same shall be deemed to be "regular" conditional uses.
- (d) **Classification of Unlisted Uses.** Any use not specifically listed as a permitted use or a conditional use in the districts established in Article C shall be considered to be prohibited except as may be otherwise specifically provided hereinafter. In case of a question as to the classification of an unlisted use, the question shall be submitted to the Village Board for determination, following a recommendation from the Zoning Administrator and Plan Commission, in accordance with the following procedure:
- (1) **Application.** Application for determination for classification of an unlisted use shall be made in writing to the Zoning Administrator and shall include a detailed description of the proposed use and such other information as may be required by the Village Board to facilitate the determination.
  - (2) **Investigation.** The Village Board shall make or have made such investigations as it deems necessary in order to compare the nature and characteristics of the proposed use with those of the uses specifically listed in the Chapter and to recommend its classification.
  - (3) **Determination.** The determination of the Village Board shall be rendered in writing within sixty (60) days from the application and shall include findings supporting the conclusion. The Village Board shall determine if the classification of the unlisted use is a permitted use, conditional use or prohibited use in one (1) or more of the districts established in Article C.
  - (4) **Effective Date of Determination.** At the time of this determination of the classification of the unlisted use by the Village Board, the classification of the unlisted use shall become effective.
  - (5) **Appeals.** The classification determination by the Village Board under this Subsection may be appealed to the Zoning Board of Appeals pursuant to Sections 13-1-260 through 13-1-262.

## **Sec. 13-1-22      Site Regulations.**

- (a) **Minimum Street Frontage.** All lots shall abut upon a public street or other officially approved means of access, and each lot shall have a minimum frontage of thirty (30) feet at the front setback line; however, to be buildable, the lot shall comply with the frontage requirements of the zoning district in which it is located.
- (b) **Principal Structures.**
  - (1) **One Principal Structure Per Lot.** All residential principal structures shall be located on

a legal lot. Except in the case of planned unit developments, not more than one principal building or use and accessory structures permitted by this Chapter, including a private garage, may be located on a lot in any residential district.

- (2) **Special Exception.** The Village Board may permit as a conditional use pursuant to Article E or a planned unit development under Article D more than one (1) principal structure per lot in any district where unique characteristics exist and more than one such structure is needed for the orderly development of the parcel. Such approval shall not be based upon personal convenience or financial gain alone. Where additional structures are permitted, the Village Board may impose additional yard requirements, landscaping requirements or parking requirements, or require a minimum separation distance between principal structures.
- (c) **Dedicated Street.** All lots shall abut a public street or Village-approved private road or way which is constructed to applicable Village standards. No zoning permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that side thereof from which the required dedication has not been secured.
- (d) **Site Suitability.** No land shall be used or structure erected where the land is held unsuitable for such use or structure by the Village Board, upon the recommendation of the Plan Commission, by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility or any other feature likely to be harmful to the health, safety, prosperity, aesthetics and general welfare of this community. The Plan Commission, in applying the provisions of the Section, shall, in writing, recite the particular facts upon which it bases its recommendation that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he/she so desires. Thereafter, the Plan Commission may affirm, modify or withdraw its recommended determination of unsuitability when making its recommendation to the Village Board.
- (e) **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 one and one-half (1-1/2) horizontal to one (1) vertical, within a distance of twenty (20) feet from the property line, except with the written consent of the owner of the abutting property and with the approval of the Village Board, upon the recommendation 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.
- (f) **Setbacks - Decks, Porches, Handicapped Ramps, and Fireplace Chases.** For purposes of this Chapter, handicapped ramps, decks, porches and fireplace chases shall be considered a part of a building or structure for determining setback compliance.
- (g) **Vacated Streets.** Whenever any street, alley, easement or public way is vacated by official action, the zoning district abutting the centerline of the said vacated area shall not be affected by such proceeding.
- (h) **Obstruction of Unplatted Lands.** All buildings hereafter erected upon unplatted land shall be

so placed that they will not obstruct proper street extensions or other features of proper subdivision and land platting.

(i) **Prohibited Dwelling Units (Accessory Buildings, Recreational Vehicles, Tents, etc.)**

(1) Except as provided in Subsection (i)(2) below, no cellar, basement or unfinished home, garage, tent, recreational vehicle, camper, recreational trailer or accessory building shall, at any time, be used as a dwelling unit. Basements shall not be used as dwelling units, except where specifically designed for such use through proper damp-proofing, fire-protecting walls and other requirements as may be imposed by the building and housing codes.

(2) A recreational vehicle, camper or tent on private property not zoned for campground purposes may be occupied as living quarters for no more than seven (7) days on parcels with no principal structure present or twenty-one (21) days on parcels with a principal structure present within a ninety (90) day period. Such occupancy is permissible only with the written permission of the property owner.

(j) **Temporary Uses.** Temporary uses such as real estate sales field offices or shelters for materials and equipment being used in the construction of a permanent structure, may be permitted by the Zoning Administrator. The Zoning Administrator may impose conditions on such temporary uses.

(k) **Screening Regulations.** Any use required by this Chapter to be screened shall meet applicable buffer yard and screening requirements, specifically Section 13-1-25.

(l) **Yard Reduction or Joint Use.**

(1) **Required Area.** No lot, yard, parking area, building area or other space shall be reduced in area or dimension so as not to meet the provisions of this Chapter. No part of any lot, yard, parking area or other space required for a structure or use shall be used for any other structure or use.

(2) **Joint Use.** No part of any lot, parking area, yard or other space required for a structure or use shall be used for any other structure or use. No part of a yard or other open space provided about any building for the purpose of complying with the provisions of this Chapter shall be included as part of a yard or open space required for another building.

(m) **Lots Abutting More Restrictive District.** The street yard setbacks in the less restrictive district shall be modified for a distance of not less than thirty (30) feet from the more restrictive district boundary line so such street yard setbacks shall be no less than the average of the street yards required in both districts.

(n) **Double-Frontage Lots.** Buildings on through lots and extending from street to street may have waived the requirements for a rear yard by furnishing an equivalent open space on the same lot in lieu of the required rear yard, provided that the setback requirements on both streets be complied with.

(o) **Area Required for Rubbish Containers.** On all premises on which there will be constructed after the effective date of this Chapter a new structure which will house eight (8) or more dwelling units, any existing building converted to eight (8) or more dwelling units after such date, any rooming house or other residential structure having eight (8) or more occupants, or a new commercial or industrial building, there shall be provided a sufficient area as determined by the Zoning Administrator for screened refuse/recycling collection containers.

Such areas shall not be located in the front or street side yard and shall be accessible by motorized vehicles or other motorized refuse collection equipment. Such areas shall not be located in a required off-street parking area and shall be shown on the plot plan submitted at the time of application for a zoning or occupancy permit.

- (p) **Lakeshore Setbacks.** All principal buildings constructed on parcels of land which abut on Lazy Lake shall conform to the following standards in regard to the setback distance from the shoreline of the lake. The term "Shoreline", as used herein, shall be interpreted to mean the normal high water line. The term "Building", as used herein, shall be interpreted to mean a principal building. No new building shall be constructed on a lakeshore lot in such a way that any portion thereof will be closer to the shoreline of the lake than seventy-five (75) feet; an existing building can be reconstructed provided the building footprint is not exceeded.

### **Sec. 13-1-23      Modifications; Height, Area and Setback Exceptions.**

- (a) **Height.** The district height limitations stipulated elsewhere in this Chapter may be exceeded, but such modification shall be in accord with the following:
- (1) **Architectural Structures.** Agricultural structures, such as barns, silos and windmills, shall not exceed in height twice their distance from the nearest lot line.
  - (2) **Special Structures,** such as elevator penthouses, gas tanks, grain elevators, scenery lots, radio and television receiving antennas, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations and smoke stacks, are exempt from the height limitations of this Chapter.
  - (3) **Essential Services,** utilities, water towers, electric power and communication transmission lines are exempt from the height limitations of this Chapter.
  - (4) **Communication Structures,** such as radio and television transmission and relay towers, aerials and observation towers, shall not exceed in height three (3) times their distance from the nearest lot line.
  - (5) **Public or Semipublic Facilities.** Public or semipublic facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries, government offices and stations, may be erected to a height of sixty (60) feet, provided all required yards are increased not less than one (1) foot for each foot the structure exceeds the district's maximum height requirement.
- (b) **Yards.** The yard requirements stipulated elsewhere in this Chapter may be modified as follows:
- (1) **Architectural Projections.** Chimneys, flues, sills, eaves, belt courses, ornaments, etc., may project into any required yard, but such projection shall not exceed two (2) feet.
  - (2) **Essential Services,** utilities, electric power and communication transmission lines are exempt from the yard and distance requirements of this Chapter.
  - (3) **Landscaping and Vegetation** are exempt from the yard requirements of this Chapter.
- (c) **Average Building Setbacks.** In Residential and Business Districts, except for corner lots, required setbacks shall be modified in the following cases:
- (1) **Average Front Yards.** The required front yards may be decreased in any residential or

business district to the average of the existing street yards of the abutting principal structures on each side. Where fifty percent (50%) or more of the frontage on a block is occupied by principal structures having setbacks less than that required by this Chapter, setback on each remaining lot shall be determined in accordance with the following rule. The front building line of a proposed structure shall be no nearer the front lot line than a line joining adjacent front corners of the nearest principal structures which are in the same block frontage on either side of the proposed structure. If, on a block frontage, no principal structure exists to one side of a proposed structure, a structure may be assumed to exist on the corner lot which conforms to the minimum setback and side yard width requirements of this Chapter.

- (2) **Additions.** Additions in the front yard of existing structures shall not project beyond the average of the existing front yards on the abutting lots or parcels.
- (d) **Corner Side Yards.** The required side yard on the street side of corner lots shall be at least twenty-five (25) feet on each side

### **Sec. 13-1-24      Parcels Not Served by Public Sewer or Water.**

In any location where the Village Board determines that public water service or public sewage service is not in the public interest due to unique factors such as, but not limited to, excessive cost, terrain, etc., the lot shall have adequate soils for the construction and operation of private individual sewage treatment and private individual water systems, and sufficient area for at least one (1) replacement private sewage treatment system according to Ch. SPS 383, Wis. Adm. Code. Such determination shall be made by the Village Board based on whether unique circumstances exist and the overall well-being of best interests of serving the citizenry with public sewer/water facilities.

### **Sec. 13-1-25      Screens and Buffers.**

- (a) **Required Screens and Buffers.** Where screens or buffers are required by this Chapter or the Village Board to reduce the impact of existing or proposed uses on adjacent properties, the following standards in Subsections (b) and (c) shall be followed. Buffer yards and screens may be required jointly or separately.
- (b) **Buffer Yards.** Buffer yards are horizontal separations along lot lines that are intended to increase the physical separation between incompatible uses. The width of the required buffer yard shall be determined by the Village Board, upon the recommendation of the Zoning Administrator. The minimum width shall be ten (10) feet.
- (c) **Screens.** Screens are barriers located in a limited space [ten (10) feet or less] intended to perform a buffering effect, particularly for noise reduction or visual screening. Screens may consist of existing or planted vegetation, fences, walls, earth berms or similar techniques. Plant screens shall be sufficient to provide a year-round screen within three (3) years of installation. Walls or earth berms shall be required where noise reduction is necessary. Screen plantings shall be permanently maintained by the owner of the property, and any plant materials which do not live shall be replaced within six (6) months. The design of all screens

shall be approved by the Zoning Administrator.

## **Sec. 13-1-26 Establishment of Building Grades.**

- (a) **Establishment of Building Grade Required.** No person, corporation, or entity shall establish a grade for a building being erected, structurally altered, or relocated under this Section without prior approval of the Building Inspector or Zoning Administrator. This provision applies to all applications for zoning permits, including those for residential zoning districts.
- (b) **Building Grades.**
  - (1) Elevations for buildings shall be established as based on an average building-to-street height relationship, which shall be a minimum of two (2) feet with a front yard/driveway slope of between one percent (1%) and ten percent (10%). The Building Inspector or Zoning Administrator shall review the information provided regarding the building-to-street height relationship in the information submitted at the time of the zoning permit request.
  - (2) If the building-to-street height relationship is not provided at the time of the zoning permit request or if verification is necessary, the Building Inspector or Zoning Administrator may require the permit applicant to provide necessary elevations on a plan drawing, prepared by a qualified contractor, land surveyor, or Wisconsin-licensed engineer prior to permit issuance.
- (c) **Building-to-Height Measurement.**
  - (1) The building-to-height relationship shall be referenced from the curb grade as defined in Article P of this Chapter or the street centerline grade where no curb is present. For streets with significant slope, the average elevation shall be used and is considered to be the mean of two (2) street elevations taken at the straight projection on the frontage street of the side building lines. Additional information may be required in the cases of non-uniform lot dimensions, non-uniform building lines or reversed corner lots, as determined by the Building Inspector or Zoning Administrator.
  - (2) The building-to-street height relationship may be dictated as based on existing utility services, such as Village sanitary sewer service. In the case of a conflict between sanitary sewer and street grades, the most restrictive condition shall apply.
  - (3) The building elevation shall be taken on the finished top of the concrete foundation wall, or the finished garage slab, of the existing or planned building. The Building Inspector or Zoning Administrator shall determine the building-to-street height relationship based on this information and identify the controlling building level where surface stormwater drainage above that elevation would adversely affect exterior or interior building appurtenances. Buildings with walkout designs and partial exposure amenities are considered special conditions which may require more information for review prior to a determination on the application.
- (d) **Permit Issuance.**
  - (1) If the Building Inspector or Zoning Administrator, upon the review of the application information, determines a potential problem in the site grading or drainage in regard to a neighboring property, the Building Inspector or Zoning Administrator shall notify the

applicant and the Director of Public Works. No building permit shall be issued until zoning permit requirements under this Section have been satisfactorily addressed in the plan.

- (2) The Village may require the written consent of neighboring property owners regarding the proposed grade-related activity prior to issuance of any permits. The Village does not warranty or assume any liability regarding any grading or drainage problems following the issuance of a permit.
- (e) **Accessory Building Grades.** For any new accessory building, establishment of grade shall be determined per the provisions of this Section, and/or existing or new driveway permit conditions, and/or referenced off the existing principal structure, whichever is more restrictive. While the Village does not enforce restrictive covenants or deed restrictions, these may be reviewed and considered under the permit review process.
- (f) **Variances.** An applicant may request a variance from the requirements of this Section due to unusual or unique circumstances with the property. Such variance requests shall be made prior to the issuance of any applicable permits, and shall be reviewed pursuant to the procedures in Section 13-1-263. The Building Inspector, Zoning Administrator and/or Director of Public Works may make recommendations to the Zoning Board of Appeals regarding the variance request.
- (g) **Nonconforming Structures.** Buildings which are classified as nonconforming structures shall also be subject to the provisions of Article F of this Chapter.

## **Sec. 13-1-27      Annexation of Territory.**

- (a) **Definitions.** In this Section, the following definitions shall be applicable unless the context clearly requires otherwise:
  - (1) **Assessed Value.** The value for general tax purposes as shown on the tax roll for the year next preceding the filing of any petition for annexation.
  - (2) **Legal Description.** A complete description of land to be annexed without internal references to any other internal references to any other document, and shall be described in one of the following ways:
    - a. By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:
      1. By government lot.
      2. By recorded private claim.
      3. By quarter section, section, township and range.
    - b. If the land is located in a recorded subdivision or in an area subject to a certified survey map, by reference as described in Sections 236.28 or 236.34(3), Wis. Stats.
  - (3) **Owner.** The holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his or her interest.

- (4) **Petition.** Includes the original petition and any counterpart thereof.
  - (5) **Real Property.** Land and the improvement thereon.
  - (6) **Scale Map.** A map that accurately reflects the legal description of the property to be annexed and the boundary of the annexing city or village, and that includes a graphic scale on the face of the map.
- (b) **Methods of Annexation.** This Section explains annexation procedures by municipalities pursuant to the Wisconsin Statutes. Subject to Section 66.0307, Wis. Stats., territory contiguous to any city or village may be annexed thereto in the following ways:
- (1) **Direct Annexation.** A petition for direct annexation may be filed with the Village Clerk-Treasurer if it has been signed by either of the following:
    - a. A number of qualified elector(s) residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:
      1. The owners of one-half of the land in area within the territory.
      2. The owners of one-half of the real property in assessed value within the territory.
    - b. If no electors reside in the territory subject to the proposed annexation, by either of the following:
      1. The owners of one-half of the land in area within the territory.
      2. The owners of one-half of the real property in assessed value within the territory.
  - (2) **Annexation By Referendum.** A petition for a referendum on the question of annexation may be filed with the city or village clerk signed by a number of qualified electors residing in the territory equal to at least twenty percent (20%) of the votes cast for governor in the territory at the last gubernatorial election, and the owners of at least fifty percent (50%) of the real property either in area or assessed value. The petition shall conform to the requirements of Section 8.40, Wis. Stats.
  - (3) **Elector Determination.** Whenever a number of electors cannot be determined on the basis of reported election statistics, the number shall be determined in accordance with the Wisconsin Statutes.
- (c) **Notice.**
- (1) **Notice Publication.** The annexation shall be initiated by publishing in the territory proposed for annexation a Class I notice, under Ch. 985, Wis. Stats., of intention to circulate an annexation petition. The notice shall contain:
    - a. A statement of intention to circulate an annexation petition.
    - b. A legal description of the territory proposed to be annexed and a copy of a scale map.
    - c. The name of the city or village to which the annexation is proposed.
    - d. The name of the town or towns from which the territory is proposed to be detached.
    - e. The name and post-office address of the person causing the notice to be published who shall be an elector or owner in the area proposed to be annexed.
  - (2) **Service of Notices.** The person who caused the notice to be published shall serve a copy of the notice, within five (5) days after its publication, upon the clerk of each

municipality affected, upon the clerk of each school district affected and upon each owner of land in a town if that land will be in a city or village annexation. Such service may be either by personal service or by registered mail with return receipt requested.

(d) **Petition.**

- (1) **Petition Contents.** The petition shall state the purpose of the petition, contain a legal description of the territory proposed to be annexed and have attached thereto a scale map. The petition shall also specify the population, as defined in Section 66.0201(2), Wis. Stats., of the territory.
- (2) **Finality of Signatures.** No person who has signed a petition shall be permitted to withdraw his or her name therefrom. No additional signatures shall be added after a petition is filed.
- (3) **Circulation Timing.** The circulation of the petition shall commence not less than ten (10) days or more than twenty (20) days after the date of publication of the notice of intention to circulate. The annexation petition shall be void unless filed within six (6) months of the date of publication of the notice.

(e) **Referendum.**

(1) **Notice.**

- a. Within sixty (60) days after the filing of the petition, the common council or village board may accept or reject the petition and, if rejected, no further action shall be taken thereon. Acceptance may consist of adoption of an annexation ordinance.
- b. Failure to reject the petition shall obligate the city or village to pay the cost of any referendum favorable to annexation. If the petition is not rejected, the clerk of the city or village with whom the annexation petition is filed shall give written notice thereof by personal service or registered mail with return receipt requested to the clerk of any town from which territory is proposed to be detached and shall give like notice to any person who files a written request therefore with the clerk. Such notice shall indicate whether the petition is for direct annexation or whether it requests a referendum on the question of annexation.
- c. If the notice indicates that the petition is for a referendum on the question of annexation, the town clerk shall give notice as provided in Subsection (c) above of a referendum of the electors residing in the area proposed for annexation to be held within thirty (30) days after the date of personal service or mailing of the notice required under this paragraph.
- d. If the notice indicates that the petition is for direct annexation, no referendum shall be held unless within thirty (30) days after the date of personal service or mailing of the notice required under this paragraph, a petition conforming to the requirements of Section 8.40, Wis. Stats., requesting a referendum is filed with the town clerk signed by at least twenty percent (20%) of the electors residing in the area proposed to be annexed. If such a petition is filed, the clerk shall give notice as provided in Subsection (c) above of a referendum of the electors residing in the area proposed for annexation to be held within thirty (30) days of the receipt of the petition and shall mail a copy of such notice to the clerk of the city or village to which the annexation is proposed.

- e. Any referendum shall be held at a convenient place within the town to be specified in the notice.
- (2) **Clerk To Act.** If more than one town is involved, the city or village clerk shall determine as nearly as is practicable which town contains the most electors in the area proposed to be annexed and shall indicate in the notice required under Subsection (e)(1) such determination. The clerk of the town so designated shall perform the duties required hereunder and the election shall be conducted in such town, as are other elections and conducted therein.
- (3) **Publication of Notice.** The notice shall be published in a newspaper of general circulation in the area proposed to be annexed on the publication day next preceding the referendum election and one week prior to such publication.
- (4) **How Conducted.** The referendum shall be conducted by the town election officials but the town board may reduce the number of such officials for that election. The ballots shall contain the words "For Annexation" and "Against Annexation" and shall otherwise conform to the provisions of Section 5.64(2), Wis. Stats. The election shall be conducted, as are other town elections in accordance with Chs. 6 and 7, Wis. Stats., insofar as applicable.
- (5) **Canvass; Statement To Be Filed.** The election inspectors shall make a statement of the holding of the election showing the whole number of votes cast, and the number cast for and against annexation, attach thereto their affidavit and immediately file it in the office of the town clerk. They shall file a certified statement of the results in the office of the clerk of each other municipality affected.
- (6) **Costs.** If the referendum is against annexation, the costs of the election shall be borne by the towns involved in the proportion that the number of electors of each town within the territory proposed to be annexed, voting in the referendum, bears to the total number of electors in such territory, voting in the referendum.
- (7) **Effect.** If the result of the referendum is against annexation, all previous proceedings shall be nullified. If the result of the referendum is annexation, failure of any town official to perform literally any duty required by this Section shall not invalidate the annexation.
- (f) **Qualifications.** Qualifications as to electors and owners shall be determined as of the date of filing any petition, except that all qualified electors residing in the territory proposed for annexation on the day of the conduct of a referendum election shall be entitled to vote therein. Residence and ownership must be bonafide and not acquired for the purpose of defeating or invalidating the annexation proceedings.
- (g) **Annexation Ordinance.**
  - (1) **Enactment.** An ordinance for the annexation of the territory describing in the annexation petition may be enacted by a two-thirds vote of the elected member of the governing body not less than twenty (20) days after the publication of the notice of intention to circulate the petition and not later than one hundred twenty (120) days after the date of filing with the city or village clerk of the petition for annexation or of the referendum election if favorable to the annexation. If the annexation is subject to Subsection (k), the governing body shall first review the reasons given by the Wisconsin

Department of Administration that the proposed annexation is against the public interest. Subject to Section 59.692(7), Wis. Stats., such an ordinance may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in Section 62.23(7)(d), Wis. Stats. Before introduction of an ordinance containing such temporary classification, the proposed classification shall be referred to and recommended by the Plan Commission. The authority to make such temporary classification shall not be effective when the county ordinance prevails during litigation as provided in Section 59.69(7), Wis. Stats.

- (2) **Wards.** The ordinance may annex the territory to an existing ward or may create an additional ward.
  - (3) **Effective Date of Annexation.** The annexation shall be effective upon enactment of the annexation ordinance. The board of school directors in any city of first class shall not be required to administer the schools in any territory annexed to any such city until July 1 following such annexation.
- (h) **Filing Requirements; Surveys.**
- (1) **Recordings.** The clerk of a city or village which has annexed territory shall file immediately with the secretary of state a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that provides any utility service in the area that is annexed. The clerk shall also record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district. Failure to file, record or send shall not invalidate the annexation and the duty to file, record or send shall be a continuing one. The ordinance that is filed, recorded or sent shall describe the annexed territory and the associated population. The information filed with the Secretary of State shall be utilized in making recommendations for adjustments to entitlements under the federal revenue sharing program and distribution of funds under Ch. 79, Wis. Stats. The clerk shall certify annually to the Secretary of State and record with the Register of Deeds a legal description of the total boundaries of the municipality, as those boundaries existed on December 1, unless there has been no change in the twelve (12) months proceeding.
  - (2) **State Agency Review.** Within ten (10) days of receipt of the annexation ordinance, certificate and plat, the Secretary of State shall forward two (2) copies of the ordinance, certificate and plat to the Wisconsin Department of Transportation, one (1) copy to the Wisconsin Department of Administration, one (1) copy to the Wisconsin Department of Revenue, one (1) copy to the Wisconsin Department of Public Instruction, one (1) copy to the Wisconsin Department of Administration, one (1) copy to the Wisconsin Department of Natural Resources, and one (1) copy to the Wisconsin Department of Agriculture, Trade and Consumer Protection, and two (2) copies to the clerk of the municipality from which the territory was annexed.
  - (3) **Special Survey.** Any city or village may direct a survey of its present boundaries to be made, and when properly attested, the survey and plat may be filed in the Office of the Register of Deeds in the county in which the city or village is located, whereupon the survey and plat shall be prima facie evidence of the facts therein set forth.
- (i) **Validity of Plats.** Where any annexation is declared invalid but prior to such declaration and

subsequent to such annexation a plat has been submitted and has been approved as required in Section 236.10(1)(a), Wis. Stats., such plat shall be deemed validly approved despite the invalidity of the annexation.

(j) **Action Contesting Validity of Annexation.**

- (1) **Time of Commencement.** An action on any grounds whatsoever, whether denominated procedural or jurisdictional, to contest the validity of an annexation shall be commenced within the time after adoption of the annexation ordinance provided by Section 893.73(2), Wis. Stats.
- (2) **Preference in Circuit Court.** An action contesting an annexation shall be given preference in circuit court.

(k) **Review of Annexations.**

- (1) **Annexations Within Populous Counties.** No annexation proceeding within a county having a population of fifty thousand (50,000) or more shall be valid unless the person causing a notice of annexation is published under Subsection (c) shall within five (5) days of the publication mail a copy of the notice, legal description and a scale map of the proposed annexation to the clerk of each municipality affected and the Wisconsin Department of Administration (Department). The Department may within twenty (20) days after the receipt of the notice mail to the clerk of the town within which the territory lies and to the clerk of the proposed annexing village or city a notice that in its opinion the annexation is against the public interest. No later than ten (10) days after mailing the notice, the Department shall advise the clerk of the town in which the territory is located and the clerk of the village or city to which the annexation is proposed of the reasons the annexation is against the public interest as defined in Subsection (k)(2) below. The annexing municipality shall review the advice before final action is taken.

- (2) **Definition of Public Interest.** For purposes of this Subsection, "public interest" is determined by the Wisconsin Department of Administration after consideration of the following:

- a. Whether the government services, including zoning, to be supplied to the territory could clearly be better supplied by the town or some other village or city whose boundaries are contiguous to the territory proposed for annexation which files with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory upon receiving an otherwise valid petition for the annexation of the territory.
- b. The shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city.

- (1) **Unanimous Approval Annexations.** If a petition for direct annexation signed by all of the electors residing in the territory and the owner of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village without compliance with the notice requirements of Subsection (c) above. In such annexations,

subject to Subsection (k), the person filing the copy of the scale map and a legal description of the territory to be annexed to the Wisconsin Department of Administration and the governing body shall review the advice of the Department, if any, before enacting the annexation ordinance.

- (m) **Review Requirements.** The provisions of Subsection (1) do not eliminate the necessity for review as required by Subsection (k).
- (n) **Annexation of Town Islands.** Upon its own motion, a city or village by a two-thirds vote of the entire membership of its governing body may enact an ordinance annexing territory which comprises a portion of a town or towns and which was completely surrounded by territory of the village or city on December 2, 1973. The ordinance shall include all surrounded town areas except those exempt by mutual agreement of all of the governing bodies involved. The annexation ordinance shall contain a legal description of the territory and the name of the town or towns from which the territory is detached. Upon enactment of the ordinance, the city or village clerk immediately shall file six (6) certified copies of the ordinance in the office of the Wisconsin Secretary of State, together with six (6) copies of the scale map. The Secretary of State shall forward two (2) copies of the ordinance and scale map to the Wisconsin Department of Transportation, one (1) copy to the Wisconsin Department of Natural Resources, one (1) copy to the Wisconsin Department of Revenue, and one (1) copy to the Wisconsin Department of Administration. This subsection does not apply if the town island was created only by the annexation of a railroad right-of-way or drainage ditch. This Subsection does not apply to land owned by a town government which has existing town government buildings located thereon. No town island may be annexed under this Subsection if the island consists of over sixty-five (65) acres or contains over one hundred (100) residents. After December 2, 1973, no city or village may, by annexation, create a town island, which is completely surrounded by the city or village.
- (o) **Effective Date of Annexations.** Because the creation of congressional, legislative, supervisory and aldermanic districts of equal population is a matter of statewide concern, any annexation action that affects a tract of land that is the subject of an ordinance enacted or resolution adopted by any city during the period from January 1, 1990 to April 1, 1991, or any later date, expressing an intent to not exercise the city's authority to annex territory before April 1, 1991, or the specified later date, taken by a municipality during the period beginning on April 1 of the year commencing after each federal decennial census of population and ending on June 30 of the year commencing after that census, is effective on July 1 of the year commencing after that census or at such later date as may be specified in the annexation ordinance. This Subsection first applies to annexations effective after March 31, 1991.
- (p) **Annexation of Municipal-Owned Territory.** In addition to other methods provided by law and subject to Sections 59.692(7), 66.0223 and 66.0307, Wis. Stats., territory owned by and lying near but not necessarily contiguous to a village or city may be annexed to a village or city by ordinance enacted by the board of trustees of the village or the common council of the city, provided that in the case of noncontiguous territory the use of the territory by the village or city is not contrary to any town or county zoning regulation. The ordinance shall contain the exact description of the territory annexed and the names of the towns from which detached and shall operate to attach the territory to the village or city upon the filing of six (6) copies

of a plat showing the boundaries of the territory attached. Two (2) copies of the ordinance and plat shall be forwarded by the Wisconsin Secretary of State to the Wisconsin Department of Transportation, one (1) copy to the Wisconsin Department of Natural Resources, one (1) copy to Wisconsin Department of Revenue, and one (1) copy to the Wisconsin Department of Public Instruction.

### **Sec. 13-1-28      Extension of Utilities Outside Corporate limits.**

Village public utilities will only be extended into and provided to those areas which are within the corporate limits of the Village of Fall River at the time of the utility extension unless provided otherwise by intergovernmental or other agreement.

### **Sec. 13-1-29 through Sec. 13-1-39   Reserved for Future Use.**

## **Article C:            Zoning Districts**

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### **Sec. 13-1-40   Zoning Districts Designated.**

- (a) For the purpose of this Chapter, the Village of Fall River is hereby divided into the following thirteen (13) zoning districts:
- (1) R-1 Single-Family Residential District
  - (2) R-2 Two-Family Residential District
  - (3) R-2Z Two-Family Residential District (Zero-Lot Line)
  - (4) R-3 Multiple-Family Residential District R-MH Mobile Home District
  - (5) C-1 Conservancy District
  - (6) B-1 Central Business District
  - (7) B-2 Highway Commercial District
  - (8) B-3 Business Park District
  - (9) I-1 Industrial District
  - (10) A-1 Agricultural District (Non-Livestock)
  - (11) WHP Wellhead Protection Overlay District
  - (12) AEO Adult Entertainment Overlay District

### **Sec. 13-1-41      Zoning Map; District Boundaries.**

- (a) **Zoning Map.** The boundaries of the districts enumerated in Section 13-1-40 above are hereby established as shown on a map entitled "Zoning Map, Village of Fall River, Wisconsin", as amended, which is adopted by reference and made a part hereof. The map shall bear upon its face the attestation of the Village President and the Village Clerk- Treasurer and shall be available to the public in the office of the Village Clerk-Treasurer.
- (b) **Boundary Lines.** The boundaries shall be construed to follow corporate limits; U.S. Public Land Survey lines; lot or property lines; center lines of streets, highways, alleys, easements

and railroad rights-of-way; or such lines extended unless otherwise noted on the Zoning Map. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be lot lines and where the designations on the Zoning Map are approximately bounded by lot lines, such lot line shall be construed to be the boundary of the district.

- (c) **Vacation of Streets.** Vacation of public streets and alleys shall cause the land vacated to be automatically placed in the same district as the abutting side to which the vacated land reverts.
- (d) **Annexations and Consolidations.** Annexations to or consolidations with the Village of Fall River subsequent to the effective date of this Chapter shall be placed in the R-1 Residential District unless the annexation ordinance temporarily placed the land in another district.
- (e) **Rules for Interpretation of Zoning District Boundaries.**
  - (1) **Generally.** Where uncertainty exists as to the boundaries of districts as shown on the Zoning Map, the following rules shall apply:
    - a. Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.
    - b. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
    - c. Where district boundaries are so depicted that they approximately follow section lines, quarter section lines or other government survey lines; or that they approximately follow political subdivision lines such as county lines, town lines or corporate limits; such government survey lines or political subdivision lines shall be construed to be said boundaries.
    - d. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
    - e. Boundaries indicated as following shorelines shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines.
    - f. Boundaries indicated as parallel to or extensions of features indicated in the preceding shall be so construed. Distances not specifically indicated on the zoning map shall be determined by the scale of the map.
    - g. Where a district boundary line, as appearing on the zoning map, divided a lot in single ownership at the time of original enactment of this Zoning Code, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extension shall not include any part of such lot more than thirty-five (35) feet beyond the district boundary lines.
  - (2) **Exceptions.** As an exception to the District Boundary interpretation, in Subsection (e) above, the A-1 Exclusive Agricultural District shall include all lands within the corporate limits of the Village that are not otherwise assigned to a specific zoning district or dedicated as the right-of-way of a public road, street or alley. Also where not defined by the above interpretation of district boundary lines and limits, the extent of the C-1 Conservancy District may be construed to be the Floodplain or Shoreland of a

navigable body of water, or a thirty (30) foot wide strip of land along either side of the centerline of a natural, non-navigable waterway or drainageway.

## **Sec. 13-1-42 R-1 Single-Family Residential District.**

- (a) **Purpose.** The purpose of the R-1 District is to provide the opportunity for construction and maintenance of primarily single-family detached dwelling units on individual lots.
- (b) **Permitted Uses.** The following are permitted uses in the R-1 District:
  - (1) Single-family detached dwellings, excluding all mobile homes, and their permitted accessory structures; for purposes of this Chapter manufactured homes are included in the definition of single-family dwelling.
  - (2) Manufactured homes complying with all of the following requirements and limitations:
    - a. The home shall be a double wide of at least twenty-four (24) feet in width and thirty-six (36) feet in length.
    - b. The home shall be installed on an approved Uniform Dwelling Code (UDC) foundation system in conformity with the uniform building code. The wheels and axles must be removed. The enclosed foundation system shall be approved by the Building Inspector and/or Village Engineer; the Building Inspector may require a plan to be certified by a registered architect or engineer to ensure proper support for the home.
    - c. The home shall be equipped with foundation siding which in design, color and texture appears to be an integral part of the adjacent exterior wall of the manufactured home.
    - d. The home shall be covered by a roof pitched at a minimum slope of three (3) inches in twelve (12) inches, which is permanently covered with non-reflective material.
    - e. The home shall have a pitched roof, overhanging eaves and such other design features required of all new single-family dwellings located within the Village of Fall River.
  - (3) One (1) private detached garage per Section 13-1-200; such garage shall not be used in the conduct of any business, and no garage or other structure not designed for human habitation shall be used for living quarters.
  - (4) Gardening, storage sheds, and other accessory buildings incidental to the residential use and meeting the requirements of Section 13-1-200.
  - (5) Public parks and recreation areas.
  - (6) Community living arrangements and day care centers which have a capacity for eight (8) or fewer persons.
  - (7) Home occupations and professional home offices per Section 13-1-93.
  - (8) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
  - (9) Uses customarily incidental to any of the above uses, provided that no such use generates traffic or noise that would create public or private nuisance.
- (c) **Conditional Uses.** The following are conditional uses within the R-1 District:
  - (1) Community living arrangements and day care centers which have a capacity for nine (9)

or more persons.

- (2) Planned residential developments (PUD).
  - (3) Bed and breakfast inns [7011].
  - (4) Churches and public buildings, except public buildings housing uses incompatible with the characteristics of the District, such as sewage systems, incinerators and shops.
  - (5) Public utility structures, except those incompatible with the characteristics of the district, including water storage and sewage disposal facilities.
  - (6) Agricultural and gardening uses, except those incompatible with the characteristics of the district, such as the raising of livestock.
  - (7) Multi-dog kennels per Village ordinances.
  - (8) Golf courses and private clubs.
  - (9) Preschool or daycare centers serving not more than six (6) children.
  - (10) Public parks, playgrounds and community facilities or buildings.
  - (11) Public and parochial schools.
  - (12) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
  - (13) Uses customarily incident to any of the above uses, provided that no such use generates traffic or noise that would create a public or private nuisance.
- (d) **Area, Height and Yard Requirements.**
- (1) **Lot.**
    - a. Area: Minimum nine thousand (9,000) square feet.
    - b. Width: Minimum ninety (90) feet. Cul-de-sac lots shall have a minimum of forty (40) feet of frontage.
  - (2) **Building.**
    - a. Maximum height: Thirty-five (35) feet.
    - b. Minimum floor area: One thousand one hundred fifty (1,150) square feet (residential) per family.
  - (3) **Yards.**
    - a. Minimum street yard: Twenty-five (25) feet. (Note: More restrictive standards may be imposed by state regulations in certain circumstances; for example, on lots fronting on certain classes of State Highways.)
    - b. Minimum Rear Yard:
      1. Twenty-five (25) feet for principal buildings.
      2. Five (5) feet from an accessory building.
    - c. Minimum Side Yard:
      1. For structures existing at the time of adoption of this Code of Ordinances, the sum of the widths of the required side yards shall be not less than fifteen (15) feet and no single side yard shall be less than six (6) feet in width.
      2. For structures constructed after adoption of this Code of Ordinances, the sum of the widths of the required side yards shall not be less than twenty (20) feet and no single side yard shall be less than ten (10) feet in width.
      3. There shall be a setback of not less than twenty-five (25) feet on any corner

lot on the street side. On corner lots, the side yard setback for detached accessory buildings shall be that required on the said adjoining interior lot.

(e) **Other Requirements.**

- (1) A two-stall garage is required for each dwelling unit.
- (2) Two (2) additional off-street surface parking stalls are required for each dwelling unit.

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## **Sec. 13-1-43 R-2 Two-Family Residential District.**

- (a) **Purpose.** The purpose of the R-2 District is to provide the opportunity for construction and maintenance of primarily two-family dwelling units, particularly in new subdivisions and growth areas.
- (b) **Permitted Uses.** The following are permitted uses in the R-2 District:
  - (1) Single-family dwellings.
  - (2) Two-family dwellings (duplex).
  - (3) Community living arrangements and day care centers which have a capacity for eight (8) or fewer persons.
  - (4) Manufactured homes complying with all of the following requirements and limitations:
    - a. The home shall be a double wide of at least twenty-four (24) feet in width and thirty-six (36) feet in length.
    - b. The home shall be installed on an approved Uniform Dwelling Code (UDC) foundation system in conformity with the uniform building code. The wheels and axles must be removed. The enclosed foundation system shall be approved by the Building Inspector and/or Village Engineer; the Building Inspector may require a plan to be certified by a registered architect or engineer to ensure proper support for the home.
    - c. The home shall be equipped with foundation siding which in design, color and texture appears to be an integral part of the adjacent exterior wall of the manufactured home.
    - d. The home shall be covered by a roof pitched at a minimum slope of three (3) inches in twelve (12) inches, which is permanently covered with non-reflective material.
    - e. The home shall have a pitched roof, overhanging eaves and such other design features required of all new single-family dwellings located within the Village of Fall River.
  - (5) Home occupations and professional home offices per Section 13-1-93.
  - (6) Two (2) private garages with not more than one thousand five hundred (1,500) square feet in aggregate for each residential parcel per Section 13-1-200, provided that one (1) garage is attached; such garage shall not be used in the conduct of any business, and no garage or other structure not designed for human habitation shall be used for living quarters.
  - (7) Gardening, storage sheds and other accessory buildings meeting the requirements of Section 13-1-200 incidental to the residential use.

- (8) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
- (9) Uses customarily incident to any of the above uses, provided that no such use generates traffic or noise that would create public or private nuisance.
- (c) **Conditional Uses.** The following are conditional uses in the R-2 District:
  - (1) Conditional uses allowed in the R-1 District.
  - (2) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- (d) **Area, Height and Yard Requirements.**

	One-Family Dwelling	Two-Family Dwelling
(1) <b>Lot Size.</b>		
a. Minimum Width	90 feet	90 feet
b. Minimum Area	10,000 sq. ft.	10,000 sq. ft.
(2) <b>Building.</b>		
a. Maximum Height	35 feet	35 feet
b. Minimum Floor Area	1,150 sq. ft. per family	1,000 sq. ft. per family
(3) <b>Yards.</b> Front, side and rear yard setbacks shall be the same as for the R-1 District.		
- (e) **Other Requirements.**
  - (1) A two-stall garage is required for each dwelling unit.
  - (2) Two (2) additional off-street surface parking stalls are required for each dwelling unit.

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## **Sec. 13-1-44      R-2Z Two-Family Residential District (Zero-Lot Line).**

- (a) **Purpose.** The purpose of the R-2Z District is to provide the opportunity for construction and maintenance of primarily zero-lot line attached two-family dwelling units, particularly in new subdivisions and growth areas.
- (b) **Permitted Uses.** The following are permitted uses in the R-2Z District:
  - (1) Single-family dwellings.
  - (2) Two-family dwellings (duplex).
  - (3) Zero-lot line two-family dwellings (duplex).
  - (4) Community living arrangements and day care centers which have a capacity for eight (8) or fewer persons.
  - (5) Home occupations and professional home offices per Section 13-1-93 .
  - (6) Two (2) private garages with not more than one thousand five hundred (1,500) square feet in aggregate for each residential parcel per Section 13-1-200, provided that one (1) garage is attached; such garage shall not be used in the conduct of any business, and no garage or other structure not designed for human habitation shall be used for living quarters.
  - (7) Gardening, storage sheds and other accessory buildings meeting the requirements of

Section 13-1-200 incidental to the residential use.

- (8) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
  - (9) Uses customarily incident to any of the above uses, provided that no such use generates traffic or noise that would create public or private nuisance.
- (c) **Conditional Uses.** The following are conditional uses in the R-4 District:
- (1) Conditional uses allowed in the R-2 District.
  - (2) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.

(d) **Area, Height and Yard Requirements - Principal Structures.**

	One-Family Dwelling	Two-Family Dwelling
(1) <b>Lot Size.</b>		
a. Minimum Width	90 feet	90 feet
b. Minimum Area	10,000 sq. ft.	10,000 sq. ft.
(2) <b>Building.</b>		
a. Maximum Height	35 feet	35 feet
b. Minimum Floor Area	800 sq. ft. per family	800 sq. ft. per family

(3) **Yards.** Front, side and rear yard setbacks shall be the same as for the R-1 District.

(e) **Zero-Lot Line Duplex Standards.** Zero-lot line duplexes in the R-2Z Two-Family Residential District shall meet the following conditions:

- (1) **Lot Area; Width.** Every building hereafter erected, moved, or structurally altered shall provide a lot area of not less than five thousand (5,000) square feet with one dwelling unit per lot, and no such lot shall be less than forty-five (45) feet in width of street frontage for a non-cul-de-sac lot. Cul-de-sac lots shall have a minimum street frontage width of twenty (20) feet and a minimum width of forty (40) feet at the setback line.
- (2) **Setbacks.** Minimum front yard: twenty-five (25) feet with a corner lot having a minimum setback of twenty-five (25) feet for both streets; minimum side yard: zero (0) feet on the side where a common wall is shared with an adjacent lot and minimum ten (10) feet on the other side; minimum rear yard: twenty-five (25) feet.
- (3) **Utility and Storm Water Management Easements.** Minimum front and rear yard easements: twelve (12) feet; minimum side yard easements: six (6) feet except on the side where a common wall is shared with an adjacent lot.
- (4) **Bulk Standards.** The lot owner(s) shall provide a list of protective covenants and/or signed agreement between both parties that is to be recorded with the zero line CSM that addresses common elements between the units such as maintenance, repairs, etc. of common walls, driveways, siding, roof replacement, and/or common elements for a condominium plat.
- (5) **Common Dividing Wall.** The common wall dividing the zero-lot line duplex shall be centered on the dividing line between the two (2) halves of the lot, and shall be a minimum of one (1) hour fire wall construction per State Building Code standards. The common fire wall shall be constructed from the lowest floor level, including the basement, to the underside of the roof sheathing. Such common wall shall be masonry

in the basement area.

- (6) **Separate Utilities Required.** Each lot/unit shall have separate water laterals and shut-off valves, separate sewer laterals, separate water meters, and separate electrical service meters. Each unit shall be equipped with its own forced-air furnace heating system. When zero-lot line duplex dwelling units are created, the plans, specifications, and construction of such building shall require that the installation and the construction of sewer, water and other utility services be done in such a manner so as to provide separate systems to each dwelling unit.
- (7) **Joint Maintenance Agreement.** When zero-lot line duplex dwelling units are created, a joint maintenance agreement shall be entered into by the owners of both zero-lot line units to ensure that equal and reasonable maintenance and repairs are performed for both single-family attached residential units. Prior to the issuance of a building or zoning permit for the construction or conversion of a zero-lot line duplex, or occupancy of either unit, the property owner(s) shall cause the fully executed joint maintenance agreement to be recorded with the County Register of Deeds so that the terms and conditions of the agreement will be a covenant running with each of the lots and binding upon all owners of each of the lots on which the zero-lot line duplex is located. A copy of the recorded joint maintenance agreement, showing the recording information, shall be filed with the Village at the time of issuance of a building, zoning or occupancy permit, or prior to occupancy of a unit. The joint maintenance agreement deed restriction shall include the following provisions, but not be limited to:
  - a. Each side of the building shall be constructed at the same time and in such a manner as to be harmonious with the other side so that the overall effect is aesthetically pleasing. The agreement shall address the provision of common siding, roofing, and driveway materials.
  - b. The duplex structure shall be painted, stained, or sided one (1) color scheme and any subsequent repainting, staining, or siding shall be of one (1) color scheme, or according to the plan established by the covenants. The agreement shall include provisions on the allocation of costs and method of determining if repairs or replacement are necessary.
  - c. Each side of the zero-lot line duplex shall be provided with a minimum of two (2) trees and foundation plantings covering two-thirds (2/3) of the street side of the unit. Lots shall be maintained equally with respect to lawn care, pruning of shrubs and trees.
  - d. No fences shall be permitted along the zero-lot line in the front or rear yards.
  - e. Each unit shall have an attached garage for at least two (2) vehicles.
  - f. Each unit shall have two (2) off-street surface parking stalls.
  - g. A basement shall be provided across zero lot lines as necessary for water, sewer, and other utilities services.
  - h. A twelve (12) foot maintenance easement [six (6) feet on each side of the zero-lot line side property line] to allow for normal maintenance of each single-family residential unit shall be recorded with the County Register of Deeds and a recorded copy filed with the Village. This easement shall also be provided on the Certified

- Survey Map (CSM) or plat dividing the property.
- i. A provision against the construction of a detached single-family residence on either lot in the event either or both sides of the zero-lot line duplex are destroyed.
  - j. A dispute resolution system shall be provided for in the agreement.
  - k. Violation of these covenants contained in the agreement shall be addressed by the signing parties to the agreement; the Village shall not be held responsible for the same. The Village, however, reserves the right to enforce violations of the requirements of a conditional use permit.
  - l. The written agreement shall provide that it may not be terminated, amended, or otherwise altered without the approval of the Village. Changes to the agreement, covenants or deed restrictions shall require an amendment to the conditional use permit required by the Zoning Code.
- (8) **Zero Lot Line CSM and Rezoning.** Lot owner(s) shall follow the procedures for rezoning outlined in Sections 13-1-240 through 13-1-245 which requires a petition to be filed, publication of a Class 2 notice, and a public hearing in front of the Village Board. The lot owner(s) shall also have a Registered Land Surveyor (RLS) in the State of Wisconsin produce a draft zero lot line CSM that will need to be conditionally approved by the Village Board at the same time as the rezoning approval. After conditional approval of the CSM, the lot owner(s) will need to obtain an early start building permit to install the footings and foundations. After the concrete foundation has been poured, the RLS shall have the lot stakes installed and prepare a final zero lot line CSM. The final zero lot line CSM, which shall show the existing foundation location and proposed driveway location, shall be reviewed by the Village Engineer. If approved by the Village Engineer, the Village will sign the final zero lot line CSM and a building permit will be issued upon payment of the Engineer's review fees. Occupancy of the zero line building shall only be granted when both sides of the building are completed and satisfy the requirements of the Village's adopted building code and a copy of the recorded zero lot line CSM is provided to the Village.

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## **Sec. 13-1-45 R-3 Multiple-Family Residential District.**

- (a) **Purpose.** The purpose of the R-3 District is to provide the opportunity for construction and maintenance of multiple-family dwelling units and to delineate areas where more compact residential development, including condominiums and rental apartments, has occurred or will likely occur in accordance with the Village Comprehensive Plan.
- (b) **Permitted Uses.** The following are permitted uses in the R-3 District:
  - (1) Single-family and two-family dwellings (duplex).
  - (2) Multiple-family dwellings up to and including twelve (12) units.
  - (3) Accessory structures occupying not more than twenty percent (20%) of the rear yard.
  - (4) Preschool and daycare facilities serving not more than sixteen (16) children.
  - (5) Charitable institutions, rest homes, convalescent homes, nursing homes, homes for the

care of children, homes for the care of the aged, homes for the care of the indigent, and similar institutions.

- (6) Neighborhood parks and playgrounds.
  - (7) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
  - (8) Uses customarily incident to any of the above uses, provided that no such use generates traffic or noise that would create public or private nuisance.
- (c) **Conditional Uses.** The following are conditional uses in the R-3 District:
- (1) Multi-family buildings providing more than twelve (12) dwelling units.
  - (2) Professional home offices or home occupations.
  - (3) Planned unit residential developments, including condominium clusters.
  - (4) Schools and churches.
  - (5) Government, cultural, and public uses such as fire and police stations, community centers, libraries, public emergency shelters and museums.
  - (6) Retirement homes.
  - (7) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- (d) **Area, Height and Yard Requirements.**
- (1) **Lot.**
    - a. Minimum Width: Ninety (90) feet.
    - b. Minimum Area: Five thousand (5,000) square feet per residential unit.
  - (2) **Building.**
    - a. Maximum Height: Forty-five (45) feet.
  - (3) **Yards.**
    - a. Street: Minimum twenty-five (25) feet.
    - b. Rear: Minimum twenty-five (25) feet; minimum five (5) feet from accessory buildings and detached garages.
    - c. Side: Minimum either side yard: eight (8) feet, with an aggregate of both side yards of twenty (20) feet.
- (e) **Other Requirements.**
- (1) A two-stall garage is required for each dwelling unit.
  - (2) Two (2) additional off-street surface parking stalls are required for each dwelling unit.

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## **Sec. 13-1-46 R-MH Mobile Home District.**

The requirements for property in the R-MH Mobile Home District shall be as provided in Article O of this Chapter.

## **Sec. 13-1-47 C-1 Conservancy District.**

- (a) **Purpose.** The purpose of the C-1 Conservancy District is to preserve, protect, and maintain

the natural environment and character of areas exhibiting significant natural resource features which contribute to the productive, recreational, or aesthetic value of the community.

(b) **Permitted Uses.** The following are permitted uses in the C-1 District:

- (1) Preservation and/or controlled use of existing: trees, shrubs and plants; prairie grasses; wildlife habitat and nesting areas; wetlands and drainage ways; floodplains and shorelands.
- (2) Forest and game management.
- (3) Hunting, fishing and hiking.
- (4) Utilities.
- (5) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
- (6) Non-residential buildings used solely in conjunction with the raising of water, fowl or fish.
- (7) Recreation related structures not requiring basements.
- (8) Harvesting of wild crops such as: marsh hay, ferns, moss, watercress, wild rice, berries, fruits; seeds; sustained yield forestry; or raising of wildlife.
- (9) Preservation of areas of scenic, historic or scientific value.
- (10) Soil and water conservation programs,
- (11) Public and semi-public open space uses such as: parks, hiking trails, ski trails, bridle paths, fishing ponds, picnic areas, greenways, and wildlife preserves.

(c) **Conditional Uses.** The following are conditional uses in the C-1 District:

- (1) Dams, flowages, ponds, and water storage and water pumping facilities.
- (2) Power plants deriving their power from the flow of water, and transmission lines and other facilities accessory thereto.
- (3) Utilities such as, but not restricted to telephone, telegraph, power, or other transmission lines.
- (4) Cranberry bogs.
- (5) Land restoration, flowage, ponds.
- (6) Golf courses and clubs.
- (7) Yacht clubs and marinas.
- (8) Recreation camps.
- (9) Public and private campgrounds.
- (10) Riding stables.
- (11) Sewage disposal plants.
- (12) Nonhabitable governmental, cultural and public buildings or uses.
- (13) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- (14) Hunting and fishing clubs.
- (15) Farm structures.
- (16) Any building construction incidental to a permitted use.
- (17) Any filling, dredging, stream channel modification, or earthmoving involving more than one thousand (1,000) square yards in area.

- (18) Agricultural cropping, and grazing with confining fences.
- (d) **Area, Height and yard Requirements.**
- (1) **Lot.**
    - a. Area: Minimum one (1) acre.
    - b. Width: Minimum one hundred fifty (150) feet.
  - (2) **Building Height.** Maximum thirty-five (35) feet.
  - (3) **Other Structures Height.** Maximum one-half (1/2) the distance from the structures nearest lot line.
  - (4) **Yards.**
    - a. Street: Minimum forty (40) feet.
    - b. Rear: Minimum twenty (20) feet.
    - c. Side: Minimum twenty (20) feet except structures used for the housing of shelters of animals must be one hundred (100) feet from lot lines.

## **Sec. 13-1-48 B-1 Central Business District.**

- (a) **Purpose.** The B-1 Central Business District is intended to provide an area for the business, financial, professional, and commercial needs of the community, especially those which can be most suitably located in compact and centrally located business districts. The B-1 District is intended to:
- (1) Provide for present and future commercial activities within traditional business area of the Village;
  - (2) Accommodate community service functions, public and quasi-public land-use needs, at a central location;
  - (3) Permit residential units above established businesses in accordance with Village building codes and zoning requirements;
  - (4) Protect the commercial character of the District by prohibiting the incursion of incompatible land use.
- (b) **Permitted Uses.** The following are permitted uses in the B-1 District:
- (1) Paint, glass and wallpaper stores. [523]
  - (2) Hardware stores. [525]
  - (3) Department stores, variety stores, general merchandise stores. [53]
  - (4) General grocery stores, supermarkets, fruit and vegetable stores, delicatessens, meat and fish stores and miscellaneous food stores. [54]
  - (5) Candy, nut or confectionery stores. [544]
  - (6) Dairy products stores, including ice cream stores. [545]
  - (7) Retail bakeries, including those which produce some or all of the products sold on the premises, but not including establishments which manufacture bakery products primarily for sale through outlets located elsewhere or through home service delivery. [546]
  - (8) Clothing and shoe stores. [56]
  - (9) Furniture, home furnishings, floor covering and upholstery shops/stores. [57]
  - (10) Restaurants, lunch rooms and other eating places, except drive-in type establishments.

- [5812]
- (11) Taverns, bars and other drinking places with permit by Village Board. [5813]
  - (12) Drug stores and pharmacies. [591]
  - (13) Liquor stores. [592]
  - (14) Antique stores and secondhand stores. [593]
  - (15) Sporting goods stores and bicycle shops. [5941]
  - (16) Bookstores, not including adult books. [5942]
  - (17) Stationery stores. [5943]
  - (18) Jewelry and clock stores. [5944]
  - (19) Camera and photographic supply stores. [5946]
  - (20) Gift, novelty and souvenir shops. [5947]
  - (21) Florist shops. [5992]
  - (22) Mini-warehouses. [5993]
  - (23) News dealers and newsstands. [5994]
  - (24) Wholesale merchandise establishments, only for retail items listed above; e.g., #19 would allow wholesale camera sales.
  - (25) Banks and other financial institutions. [60-62]
  - (26) Offices of insurance companies, agents, brokers and service representatives. [63-64]
  - (27) Offices of real estate agents, brokers, managers and title companies. [65-67]
  - (28) Miscellaneous business offices.
  - (29) Heating, electrical, and plumbing supplies (provided all material storage is inside a building).
  - (30) Retail laundry and dry cleaning outlets, including coin-operated laundries and dry cleaning establishments, commonly called laundromats and laundrettes. Tailor shops, dressmakers' shops, and garment repair shops, but not garment pressing establishments, hand laundries, or hat cleaning and blocking establishments. [721]
  - (31) Photographic studios and commercial photography establishments. [722]
  - (32) Barbershops, beauty shops and hairdressers. [723-4]
  - (33) Shoe repair shops and shoe shine parlors. [725]
  - (34) Trade and contractor's offices (office only).
  - (35) Advertising agencies, consumer credit reporting, news agencies, employment agencies. [731-2, 735-6]
  - (36) Duplicating, blueprinting, photocopying, addressing, mailing, mailing list and stenographic services; small print shops. [733]
  - (37) Computer services. [737]
  - (38) Commercial parking lots, parking garages, parking structures. [752]
  - (39) Watch, clock and jewelry repair services. [763]
  - (40) Motion picture theaters, not including drive-in theaters. [7832]
  - (41) Miscellaneous retail stores. [5999]
  - (42) Offices/clinics of physicians and surgeons, dentists and dental surgeons, osteopathic physicians, optometrists, massage therapists, counselors and chiropractors, but not veterinarian's offices. [801-4]
  - (43) Law offices. [811]

- (44) The offices, meeting places, churches, and premises of professional membership associations; civic, social, and fraternal associations; business associations, labor unions and similar labor organizations; political organizations; religious organizations; charitable organizations; or other non-profit membership organizations. [86]
  - (45) Engineering and architectural firms or consultants. [891-3]
  - (46) Accounting, auditing and bookkeeping firms or services. [8721]
  - (47) Professional, scientific, or educational firms, agencies, offices, or services, but not research laboratories or manufacturing operations. [899]
  - (48) The offices of governmental agencies and post offices. [91-92, 431]
  - (49) Public transportation passenger stations, taxicab company offices, taxicab stands, but not vehicle storage lots or garages. [411-14]
  - (50) Telephone and internet service providers. [481-2]
  - (51) Day care centers; public and private schools. [481-2]
  - (52) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
  - (53) Bowling alleys.
  - (54) Existing residential developments, including dwelling units above established businesses, provided they comply with the Village Building Codes and the basic provisions of the R-2 Residential Zoning District as set forth herein.
- (c) **Conditional Uses.** The following are permitted as conditional uses in the B-1 District; provided that no nuisance shall be afforded to the public through noise, the discharge of exhaust gases from motor-driven equipment, unpleasant odors, smoke, steam, harmful vapors, obnoxious materials, unsightly conditions, obstruction of passage on the public street or sidewalk, or other conditions generally regarded as nuisances; and provided that where operations necessary or incident to the proper performance of these services or occupations would tend to afford such nuisances, areas, facilities, barriers, or other devices shall be provided in such a manner that the public is effectively protected from any and all such nuisances. These uses shall be subject to the consideration of the Village Board with regard to such matters.
- (1) Miscellaneous repair shops and related services. [769]
  - (2) Garment pressing establishments, hand laundries, hat cleaning and blocking shops and coin-operated dry cleaning establishments. [721]
  - (3) Establishments engaged in the publishing and printing of newspapers, periodicals or books. [2711]
  - (4) Dwelling units as a secondary use, provided that no dwelling shall be permitted below the second floor and business uses are not permitted on any floor above the ground floor, except in those buildings or structures where dwelling units are not established.
  - (5) Farm supplies, wholesale trade. [5191]
  - (6) Establishments engaged in the retail sale of automobiles, trailers, mobile homes, or campers. [551-2, 556]
  - (7) Stores for the sale and installation of tires, batteries, mufflers or other automotive accessories. [553]
  - (8) Gasoline service stations; provided, further, that all gasoline pumps, storage tanks and

accessory equipment must be located at least thirty (30) feet from any existing or officially proposed street line. [5541]

- (9) Establishments engaged in the daily or extended-term rental or leasing of house trailers, mobile homes or campers. [703]
  - (10) Establishments engaged in daily or extended-term rental or leasing of passenger automobiles, limousines or trucks, without drivers, or of truck trailers or utility trailers. [751]
  - (11) Establishments for the washing, cleaning or polishing of automobiles, including self-service car washes. [754]
  - (12) Hotels, motor hotels, motels, tourist courts, tourist rooms, etc. [70]
  - (13) Farm implement sales.
  - (14) Mini-warehouses.
  - (15) Outdoor sports facilities or beer gardens at licensed premises (see Section 7-2-9).
  - (16) Animal hospitals; pet shops (excluding kennels).
  - (17) Undertaking establishments.
  - (18) Public facilities and uses including governmental, cultural, public buildings or uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums.
  - (19) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- (d) **Lot, Yard and Building Requirements.**
- (1) **Lot Width.** Minimum sixty (60) feet, or building width plus required side yards.
  - (2) **Lot Area.** No minimum size requirement for exclusively business/commercial uses. Every building, or part of a building, hereafter erected or structurally altered exclusively for residential purposes shall provide a lot width and area as required by the regulations for the R-2 Two-Family Residential District.
  - (3) **Principal Building.**
    - a. **Front Yard:** Minimum - none.
    - b. **Side Yard:** Minimum ten (10) feet if sideyard is necessary to be compatible with neighborhood; otherwise none.
    - c. **Rear Yard:** Minimum twenty-five (25) feet if rear yard is necessary to be compatible with neighborhood; otherwise none.
- NOTE:** Pre-existing structures may be nonconforming. In blocks in the business districts which are already developed, the dimensional requirements of this Chapter can be modified if in the opinion of the Zoning Board of Appeals, such action would be in keeping with the purpose of this Code where a practical difficulty or hardship would result from a literal enforcement of the requirements.
- (4) **Building Height.** Maximum fifty (50) feet or three (3) stories.
  - (5) **Minimum Floor Area.** As required to serve business needs.
  - (6) **Alley Setback.** Minimum fifteen (15) feet.
- (e) **Other Development Regulations.** For new structures in the B-1 District:
- (1) A site development plan, prepared in accordance with Section 13-1-224, shall be submitted before a permit can be granted for any expanded or all new use in this District.

- (2) No outdoor storage of any material shall be permitted in this District except within enclosed containers or properly screened, as determined by the Village Board.
- (3) No lighting shall be permitted which would excessively glare from this District onto any street right-of-way or onto any adjacent property.

## **Sec. 13-1-49      B-2 Highway Commercial District.**

- (a) **Purpose.** The B-2 Highway Commercial District is intended to provide for the orderly and attractive grouping at appropriate locations along principal highway routes, of those businesses and customer services which are logically related to and dependent upon highway traffic, or which are specifically designated to serve the needs of such traffic.
- (b) **Permitted Uses.** The following are permitted uses in the B-2 District:
  - (1) Retirement and nursing homes.
  - (2) Lodges and fraternal uses.
  - (3) Governmental, cultural, and public buildings or uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums.
  - (4) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
  - (5) Restaurants, lunch rooms and other dining places, not including drive-in establishments.
  - (6) Retail shops and stores.
  - (7) General grocery stores.
  - (8) Candy, nut and confectionery stores/sales.
  - (9) Nursery and garden centers.
  - (10) Open space uses such as: agricultural crops and grazing, parks, parking lots, recreational facilities, greenways and similar such open space uses.
- (c) **Conditional Uses.** The following are conditional uses in the B-2 District:
  - (1) Amusement activities.
  - (2) Automobile and truck retail services.
  - (3) Automobile repair, tire and fuel services.
  - (4) Bars and taverns.
  - (5) Gasoline service stations.
  - (6) Gift, novelty and souvenir sales.
  - (7) Hotels, motels and tourist courts.
  - (8) Night clubs, dance halls and taverns.
  - (9) Restaurants.
  - (10) Sales, service and installation of tires, batteries and accessories.
  - (11) Residential dwelling units.
  - (12) Animal hospital, shelters and kennels.
  - (13) Clinics.
  - (14) Public assembly uses.
  - (15) Commercial recreation facilities.
  - (16) Off-season storage facilities.

- (17) Lodges and fraternal buildings.
  - (18) Nursing homes.
  - (19) Nursery and day care centers.
  - (20) Retirement homes.
  - (21) Drive-in food and beverage establishments.
  - (22) Drive-banks.
  - (23) Drive-in theaters.
  - (24) Vehicle sales and service.
  - (25) Public parking lots.
  - (26) Sewage disposal plants.
  - (27) Utilities; siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
  - (28) Mobile home sales.
  - (29) Log stacks are a conditional accessory use in the B-2 District, provided that they are located a minimum of sixty (60) from the center of adjacent public road rights-of-way.
  - (30) Farm implement sales.
  - (31) Other uses listed as conditional uses in the B-1 District.
  - (32) Gasoline service stations, provided that all gasoline pumps, storage tanks, and accessory equipment shall be located a minimum of thirty (30) feet from any existing or officially proposed street line, or as required by the Wisconsin Administrative Code, whichever is more restrictive.
  - (33) Government, cultural, and public buildings or uses, such as fire, ambulance or emergency medical services stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums.
  - (34) Schools and churches.
  - (35) Mobile home sales.
  - (36) Seasonal roadside stands for the sale of farm produce only.
  - (37) Establishments or facilities for the sale, rental, service, repair, testing, demonstration or other use of motorcycles, motorized bicycles, snowmobiles, all-terrain vehicles, motorboats, other watercraft, or any other motorized vehicles and components.
  - (38) Wholesale merchandise establishments.
  - (39) Warehouses.
  - (40) Motor carrier facilities.
  - (41) Commercial establishments selling used, secondhand, or reconditioned merchandise (Gunk yards excluded).
  - (42) Commercial sales and services requiring outdoor storage yards; truck terminals; and transshipment depots.
  - (43) Other uses similar to or customarily incidental to any of the above uses.
- (d) **Area, Height and Yard Requirements.**
- (1) **Lot.**
    - a. Building Area: Twenty thousand (20,000) square feet.
    - b. Width: Minimum seventy-five (75) feet.

- (2) **Building Height.** Maximum thirty-five (35) feet.
- (3) **Yards.**
  - a. Street: Minimum sixty (60) feet (may include parking).
  - b. Rear: Minimum fifty (50) feet.
  - c. Side: Minimum ten (10) feet each side.

## **Sec. 13-1-50 B-3 Business Park District.**

- (a) **Purpose.** The B-3 Business Park District is established to provide an aesthetically attractive working environment exclusively for and conducive to the development and protection of offices, non-nuisance type manufacturing operations and research and development institutions. The essential purpose of this District, is to achieve development, which is an asset to the owners, neighbors and the Village, and to promote and maintain desirable economic development in a dedicated business park setting.
- (b) **Permitted Uses.** The following are permitted uses in the B-3 District:
  - (1) State-classified manufacturing operations. [20, 23-28, 30, 32-39]
  - (2) Warehousing or distribution operations, not including predominantly retail sales to customers on site. [50-51]
  - (3) Offices of construction firms, shops, display rooms and enclosed storage. [15-17]
  - (4) Laboratories, research, development and testing, and manufacturing and fabrication in conjunction with such research and development and operations. [8071, 8731-34]
  - (5) Service uses, including computer and data processing services, miscellaneous business services, offices (business and professional) and communication services. [73]
  - (6) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182. [48]
- (c) **Conditional Uses.** The following are conditional uses in the B-3 District:
  - (1) Public utilities and public services. [49]
  - (2) Conference centers and hotel facilities. [701]
  - (3) Ancillary retail sales and service operations that serve employees within the business park.
  - (4) Wind energy systems per Sec. 13-1-181.
  - (5) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- (d) **Lot, Yard and Building Requirements.**
  - (1) **Lot Frontage.** Minimum one hundred (100) feet.
  - (2) **Lot Area.** Minimum twenty-one thousand seven hundred eighty (21,780) square feet.
  - (3) **Front Yard.** Minimum twenty-five (25) feet.
  - (4) **Side Yard.** Minimum fifteen (15) feet.
  - (5) **Rear Yard.** Minimum thirty (30) feet.
  - (6) **Building Height.** Maximum thirty-five (35) feet.

\* Requirements may be modified by conditional use permit.
- (e) **Other Requirements.** Uses permitted and conditional in the B-3 District are subject to the

following requirements:

- (1) No building or improvement shall be erected, placed or altered on any lands in the B-3 District until the plans for such building or improvement including site, landscaping and building plan and specifications, have been approved by the Village Board. The Village Board shall review and approve, approve conditionally or disapprove such plans with respect to conformity with deed restrictions and protective covenants placed on the land in the B-3 District. The deed restriction and protective covenants must be approved by the Village Board. The approved deed restriction and protective covenants must be recorded on the land prior to rezoning to the B-3 District.
- (2) Design standards in the B-3 District shall include as a minimum the following standards:
  - a. All uses shall comply with Village performance standards for air pollution, fire and explosive hazards, glare and heat, liquid or solid wastes, noise and vibration, odors, radioactivity and electrical disturbances and refuse.
  - b. All business, servicing or processing, except off-street parking and loading and outside storage areas regulated by restrictive covenants, shall be conducted within completely enclosed buildings.
  - c. The building coverage on any zoning lot shall not exceed fifty-five percent (55%), nor be less than twenty-five percent (25%).
  - d. All areas not covered by buildings or parking lots shall be landscaped subject to detail requirements of restrictive covenants.
  - e. All zoning lots abutting residentially zoned districts shall be screened.

## **Sec. 13-1-51 I-1 Industrial District.**

- (a) **Purpose.** The I-1 District is intended to provide an area for manufacturing, marketing, and industrial and heavy agribusiness activities not located in a planned B-3 business park setting. It is also intended to provide an area for a variety of uses which require relatively large installations, facilities or land areas, or which would create or tend to create conditions of public or private nuisance, hazard, or other undesirable conditions, or which for these or other reasons may require special safeguards, equipment, processes, barriers, or other forms of protection, including spatial distance, in order to reduce, eliminate, or shield the public from such conditions.
- (b) **Permitted Uses.** The following uses are permitted uses in the I-1 District:
  - (1) Building construction contractors. [15-17]
  - (2) Food locker plants.
  - (3) Offices.
  - (4) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
  - (5) Packaging, processing, production, warehousing or wholesaling of products, without open storage from: agricultural crops and produce, furs and leathers, glass, metals, paper, plastic, textiles, wood and related materials of local origin.
  - (6) Manufacture, packaging or warehousing, without open storage of products, such as: appliances, confections, cosmetics, electronic devices, instruments, jewelry, toiletries

or pharmaceuticals.

- (7) Service industries without open storage, such as:
  - a. Bakeries.
  - b. Breweries.
  - c. Bottling of beverages.
  - d. Commercial cleaners.
  - e. Greenhouses.
  - f. Laboratories.
  - g. Machine shops.
  - h. Painting.
  - i. Printing and publishing.
  - j. Storage and sale of lumber and related construction materials.
- (8) Open space uses, such as:
  - a. Agricultural crops and grazing.
  - b. Parks.
  - c. Parking lots.
  - d. Recreational facilities.
  - e. Greenways and open space uses.

(c) **Conditional Uses.** The following are conditional uses pursuant to Article E within the I-1 District. Such use shall be subject to the consideration of the Village Board and Plan Commission with regard to such matters as the creation of nuisance conditions for the public or for the users of nearby areas, the creation of traffic hazards, the creation of health hazards, or other factors:

- (1) Manufacturing establishments, usually described as factories, mills or plants, in which raw materials are transformed into finished products, and establishments engaged in assembling component parts of manufactured products. [20, 23-28, 30, 32-39]
- (2) Other industrial or commercial activities which possess the special problem characteristics described above relating to the creation of hazards or nuisance conditions.
- (3) The outdoor storage of industrial products, machinery, equipment, or other materials associated with a permitted or conditional use, provided that such storage be enclosed by a Village-approved suitable fence or other manner of screening. Includes outdoor storage and manufacturing areas such as recycling facilities, scrap yards, salvage yards, wrecking or demolition yards; [50, 51]
- (4) Railroads, including rights-of-way, railroad yards, and structures normally incident to the operation of railroads, including station houses, platforms, and signal towers, but not including warehouses owned by companies other than railroad companies or road terminal companies.
- (5) Wholesale establishments and warehouses. [50-51]
- (6) Highway passenger and motor freight transportation. [41-42]
- (7) Commercial service facilities such as: fueling stations, garages, automotive repair shops, truck terminals, transshipment depots, provided such services are related to the industrial district users and/or employees.

- (8) Light Industry and Service Uses.
  - a. Automotive servicing and body repair.
  - b. Automotive upholstery.
  - c. Cleaning, pressing, dyeing.
  - d. Commercial bakeries.
  - e. Commercial greenhouses.
  - f. Distributors.
  - g. Printing and publishing.
  - h. Trade and contractor's facilities.
  - i. Painting services.
  - j. Retail sales and service facilities such as retail and surplus outlet stores, and restaurants and food service facilities when established in conjunction with a permitted manufacturing or processing facility.
  - k. Recreation vehicle, boat and miscellaneous storage.
- (9) Public Facilities and Uses.
  - a. Governmental, cultural and public buildings or uses, such as fire and police stations, community centers, libraries, public emergency shelters, sewage plants, pumping stations, public utilities facilities, parks, playgrounds and museums.
  - b. Schools and churches.
  - c. Airports, airstrips and landing fields.
- (10) Agriculture Related Industry and Service Uses.
  - a. Production of natural and processed cheese.
  - b. Production of shortening, table oils, margarine and other edible fats and oils.
  - c. Production of condensed and evaporated milk.
  - d. Wet milling of corn.
  - e. Production of creamery butter.
  - f. Drying and dehydrating fruits and vegetables.
  - g. Preparation of feeds for animal and fowl.
  - h. Creameries and dairies.
  - i. Production of flour and other grain mill products; blending and preparing of flour.
  - j. Fluid milk processing.
  - k. Production of frozen fruits, fruit juices, vegetables and other specialties.
  - l. Fruit and vegetable sauces and seasoning, and salad dressing preparation.
  - m. Poultry and small game dressing and packing providing that all operations be conducted within an enclosed building.
  - n. Production of sausages and other meat products providing that all
  - o. Corn shelling, hay baling and threshing services.
  - p. Grist mill services.
  - q. Horticultural services.
  - r. Canning of fruits, vegetables, preserves, jams and jellies.
  - s. Canning of specialty foods.
  - t. Grain elevators and bulk storage of feed grains.
  - u. Fertilizer production, sales, storage, mixing and blending.

- v. Sales or maintenance of farm implements and related equipment.
  - w. Animal hospitals, shelters and kennels.
  - x. Veterinarian services.
  - y. Sawmills.
- (11) Wind energy systems per Sec. 13-1-181.
- (12) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- (13) Adult entertainment establishments under an AEO Adult Entertainment Overlay District classification per the requirements of Section 13-1-56 and also meeting the standards of Title 11, Chapter 7, whichever is most restrictive.
- (d) **Prohibited Uses.** The following are prohibited uses in the I-1 District:
- (1) Specifically excluded from this designation and expressly prohibited is any use or business which is dangerous or which would create a public nuisance.
  - (2) All residential uses are expressly prohibited.
  - (3) Also specifically excluded and expressly prohibited is any use or business involving garbage removal or the slaughter of animals or poultry.
- (e) **Lot, Yard and Building Requirements.**
- (1) **Lot Size.**
    - a. Minimum Width: One hundred (100) feet.
    - b. Minimum Area: Fifty thousand (50,000) sq. ft.
  - (2) **Building.**
    - a. Maximum Height: Sixty (60) feet.
    - b. Minimum Floor Area: As required.
  - (3) **Yards.**
    - a. Minimum Street Yard: Forty (40) feet.
    - b. Minimum Side Yard: Twenty (20) feet.
    - c. Minimum Rear Yard: Forty (40) feet.
  - (4) **Required Buffer Strips in Industrial Districts.** Where an Industrial District abuts a Residential District, there shall be provided along any rear, side or front line, coincidental with any industrial-residential boundary, a Village-approved buffer strip not less than forty (40) feet in width as measured at right angles to said lot line. Plant materials at least six (6) feet in height of such variety and growth habits as to provide a year-round, effective visual screen when viewed from the Residential District shall be planted in the exterior twenty-five (25) feet abutting the Residential District. If the required planting screen is set back from the industrial-residential boundary, the portion of the buffer strip facing the Residential District shall be attractively maintained. Fencing may be used in lieu of planting materials to provide said screening. The Village-approved fencing shall be not less than four (4) nor more than eight (8) feet in height, and shall be of such materials as to effectively screen the industrial area. The exterior twenty-five (25) feet of the buffer strip shall not be devoted to the parking of vehicles or storage of any material or accessory uses. The interior fifteen (15) feet may be devoted to parking of vehicles.

## **Sec. 13-1-52      A-1 Agricultural District (Limited Livestock) .**

- (a) **Purpose.** The A-1 Agricultural District is intended to provide for the continuation of general non-livestock or limited livestock farming and related uses in those areas of the Village of Fall River that are not yet committed to urban development. It is further intended for this District to protect lands contained therein from urban development until their orderly transition into urban-oriented districts is required.
- (b) **Permitted Uses.** The following are permitted uses in the A-1 District:
- (1) General non-livestock farming, including crop-raising agriculture, floriculture, forestry, grazing, hay, orchards, truck farming and viticulture (grape growing).
  - (2) General livestock farming with one hundred (100) or fewer livestock units.
  - (3) Forestry, grazing, nurseries, orchards, and truck farming.
  - (4) Harvesting of wild crops and management of wildlife including nonresidential buildings used solely in conjunction with such activity.
  - (5) In-season roadside stands for the sale of farm products produced on the premises, and up to two (2) unlighted signs not larger than eight (8) square feet each advertising such sale.
  - (6) One (1) and two (2) family farm residences and a single mobile home, but only when occupied by owners and/or persons engaged in farming activities on the farm on which it is located.
  - (7) Woodlots and tree farms.
  - (8) Production of forest crops, including tree plantations.
  - (9) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.
- (c) **Permitted Accessory Uses.** The following are permitted accessory uses in the A-1 District:
- (1) Attached or detached private garages and carports accessory to permitted or permitted accessory uses.
  - (2) General farm buildings including barns, silos, sheds, storage bins and including not more than one (1) roadside stand for the sale of farm products produced on the premises. Any such stand shall conform to the setback, sign and other provisions of this Chapter.
  - (3) One (1) farm dwelling. The only residences allowed as permitted uses on newly established parcels are those to be occupied by a person who or a family at least one member of which earns a substantial part of his or her livelihood from farm operations on the parcel or is related to the operator of the larger farm parcel from which the new parcel is taken. Preexisting residences located in areas subject to zoning under this Section which do not conform to this paragraph may be continued in residential use. The minimum parcel size to establish a residence or a farm operation is thirty-five (35) acres. No structure or improvement may be built on the land unless consistent with agricultural uses.
  - (4) Signs as regulated by the Village.
  - (5) Buildings temporarily located for purposes of constructing on the premises for a period not to exceed time necessary for such constructing.
  - (6) Gardening and other horticultural uses where no sale of products is conducted on the

premises.

- (d) **Conditional Uses.** The following are conditional uses in the A-1 District:
- (1) Airports, airstrips and landing fields provided that the site is not less than twenty (20) acres.
  - (2) Housing for farm laborers and seasonal or migratory farm workers.
  - (3) Transmitting towers, receiving towers, relay and microwave towers without broadcast facilities or studios; siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
  - (4) Utilities.
  - (5) Veterinary clinics, provided that no structure or animal enclosure shall be located closer than one hundred fifty (150) feet to a property boundary. [074, 075]
  - (6) Golf courses, country clubs, tennis clubs or public swimming pools serving more than one (1) family. The principal structure for any of the above listed uses shall be one hundred (100) feet or more from any abutting lot in a Residential District, and accessory structures shall be a minimum of fifty (50) feet from any lot line.
  - (7) Essential service structures, including but not limited to buildings such as telephone exchange stations, booster or pressure-regulating stations, wells, pumping stations, elevated tanks, lift stations and electrical power substations, provided no building shall be located within ten (10) feet from any lot line of an abutting lot in a Residential District. Prior to granting such permit, it shall be found that the architectural design of service structures is compatible to the neighborhood in which it is to be located and thus will promote the general welfare.
  - (8) Cemeteries.
  - (9) Kennels, greenhouses and other agricultural uses that may cause noxious odors or noise, or create health or sanitation hazards.
- (e) **Lot, Yard and Building Requirements.**
- (1) **Lot Frontage.** Minimum two hundred (200) feet.
  - (2) **Lot Area.** Minimum two (2) acres.
  - (3) **Principal Building.**
    - a. Front Yard: Minimum eighty (80) feet.
    - b. Side Yards: Minimum fifty (50) feet.
    - c. Rear Yard: Minimum fifty (50) feet.
  - (4) **Accessory Building.**
    - a. Front Yard: Minimum eighty (80) feet.
    - b. Side Yards: Minimum forty-five (45) feet.
    - c. Rear Yard: Minimum forty-five (45) feet.
    - d. Building Height: Maximum fifty (50) feet.

## **Sec. 13-1-53      WHP Wellhead Protection Overlay District.**

- (a) **Title.** This overlay district shall be known, cited and referred to as the "Wellhead Protection Ordinance" (hereinafter referred to as "WHP District").

(b) **Purpose, Authority and Application.**

- (1) **Intent.** Residents in the Village of Fall River depend exclusively on groundwater for a safe drinking water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of this WHP District is to institute land use regulations and restrictions to protect the Village's municipal water supply and well fields, and to promote the health, safety and general welfare of the residents of the Village of Fall River.
- (2) **Statutory Authority.** The Wisconsin Legislature authorizes villages to enact these regulations pursuant to Secs. 62.23(7)(a) and (c), and 61.35, Wis. Stats. Under these statutes, the Village has the authority to enact this Section, effective in the incorporated areas of the Village, to encourage the protection of groundwater resources.
- (3) **Applicability.** The regulations specified in this WHP District shall apply within the Village's corporate limits.

(c) **Definitions.** As applicable in this Section:

- (1) **Aquifer.** A saturated, permeable, geologic formation that contains, and will yield, significant quantities of water.
- (2) **Existing Facilities.** Current facilities, practices and activities which may cause or threaten to cause environmental pollution within that portion of the Village's wellhead protection area that lies within the corporate limits of the Village. Existing facilities include, but are not limited to, the type listed in the Wisconsin Department of Natural Resources' Form 3300-215, Public Water Supply Potential Contaminant Use Inventory Form, which is incorporated herein as if fully set forth.
- (3) **Wellhead Protection Management Area.** The land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater toward the well. This area extends beyond the corporate limits of the Village of Fall River. This area is indicated as the combined area of Zones 1, 2 and 3 on the map attached as Exhibit A, on file with the Village Clerk-Treasurer, and incorporated herein by reference.
- (4) **Groundwater Protection Overlay District.** That portion of the recharge area for the Village wells that lies within the Village limits as of the date of passage of this Section. As of the date of passage, this area is indicated as the combined Zones 1 and 2 on the map attached hereto as Exhibit A, on file with the Village Clerk- Treasurer, and incorporated herein by reference. This area may be expanded as additional property is annexed into the Village of Fall River.
- (5) **Well Field.** A piece of land used primarily for the purpose of supplying a location for construction of wells to supply a municipal water system.
- (6) **Regulated Substance.** Chemicals and chemical mixtures that are health hazards. Health hazards for chemicals and chemical mixtures are typically identified on Material Safety Data Sheets (MSDS) available from the substance manufacturer or supplier. Substances packaged for consumption for humans or animals are not considered regulated substances. "Regulated substances" include, but are not limited to:
  - a. Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure including carcinogens, toxic and highly toxic agents, irritants, corrosives, sensitizers, hepatotoxins, agents that act on the hematopoietic

system, reproductive toxins, and agents which damage the lungs, skin, eyes, or mucous membranes as defined in 29 CFR 1910.1200, Appendix A, "Health Hazard Definitions (Mandatory)".

- b. Mixtures of chemicals which have been tested as a whole and have been determined to be a health hazard.
  - c. Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and comprises one (1.0) percent or greater of the composition on weight per unit weight basis.
  - d. Mixtures of chemicals which include a carcinogen if the concentration of the carcinogen in the mixture is one-tenth of one percent (0.1%) or greater of the composition on a weight per unit weight basis.
  - e. Ingredients of mixtures prepared within the Groundwater Protection Overlay District in cases where such ingredients are health hazards but comprise more than one-tenth of one percent (0.1%) of the mixture on a weight per unit weight basis if carcinogenic, or more than one percent (1.0%) of the mixture on a weight per unit weight basis if non-carcinogenic,
  - f. Petroleum and non-solid petroleum derivatives (except non-PCB dielectric fluids used in equipment or for transmission of electric power to homes and businesses).
- (d) **Groundwater Protection Zone Separation Distances.** The following minimum separation distances as specified in NR 811.16(4)(d), Wis. Adm. Code, shall be maintained within the Groundwater Protection Overlay District:
- (1) A separation distance of five hundred (500) feet as documented in the current Wellhead Protection Plan shall be maintained around all wells.
  - (2) Fifty (50) feet between a well and stormwater sewer main.
  - (3) Two hundred (200) feet between a well and any sanitary sewer main, lift station or single-family residential fuel oil tank. A lesser separation distance may be allowed for sanitary sewer mains where the sanitary sewer main is constructed of water main materials and joints and pressure tested in place to meet current American Waterworks Association (AWWA) 600 specifications. In no case may the separation distance between a well and sanitary sewer main be less than fifty (50) feet.
  - (4) Four hundred (400) feet between a well and a septic tank or soil absorption unit receiving less than eight thousand (8,000) gallons per day, a cemetery or a stormwater drainage pond.
  - (5) Six hundred (600) feet between a well and any gasoline or fuel oil storage tank installation that has received written approval from the Wisconsin Department of Safety and Professional Services or its designated agent under SPS 10.10, Wis. Adm. Code.
  - (6) One thousand (1,000) feet between a well and land application of municipal, commercial or industrial, commercial or municipal waste; industrial, commercial or municipal wastewater lagoons or storage structures; manure stacks or storage structures; and septic tanks or soil absorption units receiving eight thousand (8,000) gallons per day or more.
  - (7) Twelve hundred (1,200) feet between a well and any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time

disposal or small demolition facility; sanitary landfill; coal storage area; salt or deicing material storage area; gasoline or fuel oil storage tanks that have not received written approval from the Wisconsin Department of Safety and Professional Services or its designated agent under SPS 10.10, Wis. Adm. Code; bulk fuel storage facilities; and pesticide or fertilizer handling or storage facilities.

(e) **Overlay District Zones.** The Overlay District is hereby into Zones 1, 2 and 3:

(1) **Zone 1.** Identified as the primary source of water for the municipal well aquifer and as the area most likely to transmit groundwater contamination to the municipal wells. Zone 1 is comprised of a circle with a diameter of two thousand four hundred (2,400) feet with the municipal well at its center. Zone 1 is more restrictive than Zones 2 or 3:

a. **Permitted Uses - Zone 1.** The following uses are permitted uses within the Groundwater Protection Zone 1:

1. Parks, provided there is no on-site waste disposal or fuel storage tank facilities associated with this use.
2. Playgrounds.
3. Wildlife areas.
4. Non-motorized trails, such as bike, skiing, nature and fitness trails.
5. Residential property which is municipally sewered, and free of Regulated Substances, above ground or underground storage tanks (USTs).
6. Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.

b. **Prohibited Uses - Zone 1.** The following uses are prohibited uses within the Groundwater Protection Zone 1. These uses are prohibited based on the high probability that activities routinely associated with these uses (storage, use and handling of potential pollutants) will cause groundwater contamination. Uses not listed shall not be considered permitted uses:

1. Underground storage tanks of any size.
2. Septage and/or sludge spreading.
3. Animal waste landspreading.
4. Animal confinement facilities.
5. Gas stations.
6. Vehicle repair establishments, including auto body repair.
7. Printing and duplicating businesses.
8. Any manufacturing or industrial businesses.
9. Bus or truck terminals.
10. Repair shops.
11. Landfills or waste disposal facilities.
12. Wastewater treatment facilities.
13. Spray wastewater facilities.
14. Junk yards or auto salvage yards.
15. Bulk fertilizer and/or pesticide facilities.
16. Asphalt products manufacturing.
17. Dry cleaning businesses.

18. Salt storage.
  19. Electroplating facilities.
  20. Exterminating businesses.
  21. Paint and coating manufacturing.
  22. Hazardous and/or toxic materials storage.
  23. Hazardous and/or toxic waste facilities.
  24. Radioactive waste facilities.
  25. Recycling facilities.
  26. Cemeteries.
- c. **Pre-Existing Prohibited Uses - Zone 1.** Where any of the uses listed above exist within Groundwater Protection Zone 1 on the original effective date of this Section, owners of these facilities will be allowed to upgrade the facilities to facilitate or enhance groundwater protection. Plans for the proposed upgrade must be approved by the Plan Commission and Village Board, and an appropriate permit must be issued by the Village Clerk-Treasurer prior to beginning any work. Expansion of the prohibited use will not be allowed.
- (2) **Zone 2.** Identified as a secondary source of water for the municipal wells because of its location in the Wellhead Protection Management Area and its location in the area identified as the five-year-time-of-travel area – meaning that area within which contamination would reach the Village well within a period of five (5) years. Zone 2 is less restrictive than Zone 1, but more restrictive than Zone 3:
- a. **Permitted Uses - Zone 2.** The following uses are permitted uses within the Groundwater Protection Zone 2.
1. All uses listed as permitted uses in Zone 1.
  2. Modified agricultural activities, including any crop free of pesticides and/or synthetic fertilizers.
  3. Above-ground petroleum product storage tanks less than six hundred sixty (660) gallons. All new or replaced tanks shall be installed in compliance with SPS 10, Wis. Adm. Code.
  4. Residential, commercial and industrial property which is municipally sewered.
  5. Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.
- b. **Prohibited Uses - Zone 2.** The following uses are prohibited uses within Groundwater Protection Zone 2. These uses are prohibited based on the high probability that activities routinely associated with these uses (storage, use, and handling of potential pollutants) will cause groundwater contamination. Uses not listed shall not be considered permitted uses unless specifically listed above under "Permitted Uses."
1. Underground storage tanks of any size.
  2. Unsewered commercial and/or industrial development.
  3. Septage and/or sludge spreading.

4. Animal waste facilities.
  5. Animal confinement facilities (except veterinary hospitals and clinics).
  6. Gas stations and oil change businesses.
  7. Printing and duplicating businesses which use hazardous chemicals as defined by the EPA in their printing process.
  8. Bus or truck terminals.
  9. Landfills.
  10. Wastewater treatment facilities.
  11. Spray wastewater facilities.
  12. Auto salvage yards.
  13. Bulk fertilizer and/or pesticide facilities.
  14. Asphalt products manufacturing.
  15. Dry cleaning facilities.
  16. Electroplating facilities.
  17. Exterminating shops.
  18. Paint and coating manufacturing.
  19. Hazardous and/or toxic materials storage.
  20. Hazardous and/or toxic waste facilities.
  21. Radioactive waste facilities.
- c. **Pre-Existing Prohibited Uses - Zone 2.** Where any of the uses listed above exist within Groundwater Protection Zone 2 on the original effective date of this Section, owners of these facilities will be allowed to upgrade the facilities to facilitate or enhance groundwater protection. Plans for the proposed upgrade must be approved by the Plan Commission and Village Board, and appropriate permit issued by the Village Clerk-Treasurer prior to beginning any work. Expansion of the prohibited use will not be allowed.
- (3) **Zone 3.** Identified as that portion of the Wellhead Protection Management Area which excludes those areas within Zone 1 and Zone 2:
- a. **Permitted Uses - Zone 3.** All uses listed as permitted in Zone 1 and Zone 2. Individuals and/or facilities may make a request to the Village Board to permit additional land uses in Zone 3.
- (4) **Mapping.** The location and boundaries of the zoning districts established by this Chapter are set forth on the attached Exhibit "A", on file with the Village Clerk-Treasurer, which is incorporated herein and hereby made a part of this Chapter by reference. This map, together with everything shown thereon and all amendments thereto, shall be as much a part of this Chapter as though fully set forth and described herein.
- (f) **Review of Permit Application.**
- (1) **Review of Applications.** The Village of Fall River Plan Commission shall review all requests for approval of permits for land uses in the Groundwater Protection Overlay District and make recommendations thereon to the Village Board. All determinations shall be made by the Village Board within sixty (60) days of any request for approval, provided however, that this sixty (60) day period of limitation may be extended by the

Village Board for "good cause", as determined in its sole and absolute discretion.

- (2) **Review Factors.** Upon reviewing all requests for approval, the Plan Commission and Village Board shall consider all of the following factors:
  - a. The Village's responsibility, as a public water supplier, to protect and preserve the health, safety and welfare of its citizens.
  - b. The degree to which the proposed land use practice, activity or facility may seriously threaten or degrade groundwater quality in the Village of Fall River or the Village's recharge area.
  - c. The economic hardship which may be faced by the landowner if the application is denied.
  - d. The availability of alternative options to the applicant, and the cost, effect and extent of availability of such alternative options.
  - e. The proximity of the applicant's property to other potential sources of contamination.
  - f. The then-existing condition of the Village's groundwater public water wells and well fields, and the vulnerability to further contamination.
  - g. The direction of flow of groundwater and other factors in the area of the applicant's property which may affect the speed of the groundwater flow, including topography, depth of soil, extent of aquifer, depth to water table and location of private wells.
  - h. Any other hydrogeological data or information which is available from any public or private agency or organization.
  - i. The potential benefit, both economic and social, from the approval of the applicant's request for a permit.
- (3) **Exemptions; Conditional Use Requirement.** Any exemptions granted will require a conditional use permit which may include environmental and/or safety monitoring which indicates whether the facility may be emitting any releases or harmful contaminants to the surrounding environment. The facility will be held financially responsible for all environmental cleanup costs. The Village Board may require that a bond be posted for future monitoring and cleanup costs if deemed necessary at the time of granting an exemption.
- (4) **Applicant's Responsibility for Costs.** The applicant shall be solely and exclusively responsible for any and all costs associated with the application, including all of the following:
  - a. The cost of an environmental impact study if so required by the Village of Fall River or its designee.
  - b. The cost of groundwater monitoring or groundwater wells if required by the Village of Fall River or its designee.
  - c. The costs of an appraisal for the property or other property evaluation expense if required by the Village of Fall River or its designee.
  - d. The costs of Village employee's time associated in any way with the application based on the hourly rate paid to the employee multiplied by a factor, determined by the Village, representing the Village's costs for expenses, benefits, insurance,

sick leave, holidays, overtime, vacation and other similar benefits.

e. The cost of Village equipment employed.

f. The cost of mileage reimbursed to the Village employees.

(g) Requirements for Existing Facilities and Land Uses.

- (1) **Certifications.** Existing facilities shall provide additional environmental or safety monitoring as deemed necessary by the Village of Fall River.
- (2) **Monitoring.** Existing facilities shall provide additional environmental or safety monitoring as deemed necessary by the Village of Fall River, specifically including the production of any and all environmental statements detailing the extent of chemical use and storage on the property.
- (3) **Equipment Replacement.** Existing facilities shall replace equipment or expand in a manner that improves the existing environmental and safety technologies already in existence.
- (4) **Emergency Contingency Plans.** Existing facilities shall have the responsibility of devising and/or filing with the Village of Fall River, a contingency plan satisfactory to the Village Board for the immediate notification of the appropriate Village of Fall River for the immediate notification of the appropriate Village of Fall River officers in the event of an emergency.
- (5) **Existing Agricultural Uses.** Property owners with an existing agricultural use shall be exempt from requirements of this Section as they relate to restrictions on agricultural uses, provided, however, that such exemption shall only apply to the property owners in existence at the time of original passage of the Section and this exemption shall not constitute a covenant running with the land.

(h) **Enforcement and Penalties.**

- (1) **Cease and Desist; Cleanup.** In the event an individual and/or facility causes the release of any contaminants which endanger the Groundwater Protection Overlay District, the individual/facility causing such release shall immediately cease and desist, and provide cleanup satisfactory to the Village of Fall River.
- (2) **Cleanup Costs.** The individual/facility shall be responsible for all costs of cleanup and any Village of Fall River consultant fees at the invoice amount plus administrative costs for oversight, review and documentation, including all of the following:
  - a. The cost of Village employee's time associated in any way with the cleanup based on the hourly rate paid to the employee multiplied by a factor determined by the Village, representing the Village's cost for expenses, benefits insurance, sick leave, holidays, overtime, vacation, and similar benefits.
  - b. The cost of Village equipment employed.
  - c. The cost of mileage reimbursed to the Village employees attributed to the cleanup.
  - d. Village consultant fees at invoice, plus administrative costs for oversight, reviews and recommendations.
- (3) **Additional Monitoring.** Following any such discharge, the Village may require additional test monitoring or other requirements as outlined in Subsection (g) herein.
- (4) **Violations.** It shall be unlawful to construct or use any structure, land or water in violation of this Section. Any person who is specifically damaged by such violations

may institute appropriate action or proceeding to enjoin a violation of this Section.

- (5) **Penalties.** Any person, firm or corporation who fails to comply with the provisions of this Section shall, upon conviction thereof, be subject to the enforcement and penalties provisions of Section 1-1-6.

## **Sec. 13-1-54      AEO Adult Entertainment Overlay District.**

### **(a) Authority.**

- (1) The Village Board has authority, to be liberally construed in favor of the Village, under its general police powers set forth in Ch. 61, Wis. Stats., to act for the good order of the municipality and for the health, morals, safety and welfare of the public; and may carry out its powers by regulation and suppression; and
- (2) The Village Board recognizes it lacks authority to regulate obscenity under Sec. 66.0107(3), Wis. Stats., and does not intend by adopting this Section to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and
- (3) Adult establishments in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities; and such secondary effects are detrimental to the public health, safety and general welfare of citizens; and
- (4) The Village Board recognizes the U.S. Supreme Court has held that material with adult content is within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights; and
- (5) However, the Village Board is aware, based on the experiences of other communities, that adult establishments may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the Village of Fall River; and
- (6) Among these secondary effects are:
  - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
  - b. The potential depreciation of property values in neighborhoods where adult establishments featuring nude dancing exist;
  - c. Health risks associated with the spread of sexually transmitted diseases; and
  - d. The potential for infiltration by organized crime for the purpose of unlawful conduct; and
- (7) The Village Board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the Village of Fall River; protect the citizens from increased crime; preserve the quality of life;

preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

- (8) The Village Board has determined that the enactment of a zoning ordinance provision allowing adult establishments viable areas in which to exist within the Village while keeping those adult establishments separated from each other, residential areas, schools, churches, day care centers, or bars or taverns, promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such adult establishments.
- (b) **Purpose.** The purpose of the AEO Adult Entertainment Overlay District is to create an overlay zoning district whereby adult establishments are sufficiently separated from each other and conflicting uses so as to ameliorate the negative secondary effects of adult uses while providing adult establishments sufficient area and opportunity to operate within the Village so as not to suppress their existence.
- (c) **Definitions.** For purposes of this District, the following definitions shall be applicable:
  - (1) **Adult Establishments.** Includes adult-oriented bookstores, motion picture theaters, mini-motion picture theaters, adult bath houses, massage parlors, modeling studios, body painting studios, cabarets, and video stores and more specifically defined as:
    - a. **Adult Bookstore.** An establishment as described in this Section.
    - b. **Adult Motion Picture Theater.** An enclosed building or outdoor theater as described in this Section.
    - c. **Adult Mini-Motion Picture Theater.** An enclosed building with a capacity for less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.
    - d. **Adult Bath Houses.** An establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities" as defined in this Section.
    - e. **Adult Massage Parlors.** An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in "specified sexual activities" as defined in this Section.
    - f. **Adult Modeling Studios.** An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise.
    - g. **Adult Body Painting Studio.** An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially

nude. For purposes of this Section, the adult body painting studio shall not be deemed to include a tattoo parlor.

- h. **Adult Cabaret.** An establishment or business which features male and/or female topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, burlesque shows, male or female impersonators, or similar entertainers.
  - i. **Adult Novelty Shop.** An establishment or business having as a substantial or significant portion of its stock-in-trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for "specified sexual activities" as defined herein or stimulating such activity.
  - j. **Adult Video Store.** An establishment having as a substantial or significant portion of its stock and trade in videotapes, CDs, DVDs or similar such electronic media for sale or rent which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale, display or rental of such material.
- (2) **Adult Bookstore.** An establishment which as its substantial course of conduct, presents adult entertainment for observation by patrons therein, or which, as part of its substantial course of conduct, offers for sale, rent, trade, lease, inspection or viewing books, films, videocassettes, magazines or other such media, which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities.
  - (3) **Adult Entertainment.** Any exhibition of any motion picture, live performance, display or dance of any type which has as a significant or substantial portion of such performance, or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas.
  - (4) **Adult Motion Picture Theater.** Any establishment for the presentation of motion pictures that as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to specified sexual activities, or specified anatomical areas for observations by patrons therein.
  - (5) **Adult Novelty Store.** Any establishment which as its substantial course of conduct offers for sale, rent, trade, lease, inspection or viewing any adult novelty items, sex toys, sexual gratification appliances, or other similar products, excluding contraceptives or similar products of medical value, that are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities.
  - (6) **Specified Anatomical Areas.** Means either:
    - a. Less than completely and opaquely covered human genitals pubic region.
    - b. Human male genitals in a discernible turgid state, even if opaquely covered.
    - c. Less than completely and opaquely covered nipples or areolas of the human female breast.
  - (7) **Specified Sexual Activities.** Means simulated or actual:
    - a. Showing of human genitals in a state of sexual stimulation or arousal;

- b. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
  - c. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts;
  - d. Flagellation or torture in the context of a sexual relationship;
  - e. Masochism, erotic or sexually oriented torture, beating or the infliction of pain ;
  - f. Erotic touching, fondling or other such contact with an animal by a human being; or
  - g. Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in Subsections (c)(7)a-f above.
- (8) **Substantial.** Forty percent (40%) or more of business stock in trade, display space, floor space or retail sales in any one month. Upon reasonable belief that an entity is in excess of the forty percent (40%) threshold, that entity shall provide all necessary records, receipts and documentation to the Village upon request. Failure to do so shall result in a presumption that the entity is operating in excess of the threshold.
- (d) **Permitted Uses.** No principal uses shall be permitted as a matter of right in the AEO Adult Entertainment Overlay District. All uses shall be conditional uses.
- (e) **Conditional Uses.** The following are conditional uses in the AEO Overlay District:
- (1) Adult bath houses.
  - (2) Adult body painting studios.
  - (3) Adult bookstores.
  - (4) Adult cabarets.
  - (5) Adult entertainment centers.
  - (6) Adult massage parlors.
  - (7) Adult mini-motion picture studios.
  - (8) Adult modeling studios.
  - (9) Adult motion picture theaters.
  - (10) Adult novelty shops.
  - (11) Adult video stores.
- (f) **Underlying District Standards.** Lot area and width, building height and area, yard and sanitary sewer system requirements in the underlying district shall be complied with in the AEO Adult Entertainment Overlay District.
- (g) **Procedures for Establishing Adult Entertainment District.**
- (1) A petition to amend the Zoning Code to establish an AEO Adult Entertainment Overlay District and an application for a conditional use permit regarding adult entertainment-type use shall be filed with the Zoning Administrator. The rezoning request shall proceed per Article M procedures. The Zoning Administrator shall refer each petition and application to the Plan Commission for its review and recommendation per Article E, followed by referral and action by the Village Board. The requirements set forth in Article E regarding the conditional use application, review and approval, conditional approval or disapproval of conditional use permits shall be followed. No Adult Entertainment Overlay District shall be created which does not substantially comply with the standards set forth in this Section.

- (2) A petition to amend the Zoning Code to establish an Adult Entertainment Overlay District and for a conditional use permit must be accompanied by three (3) copies of the proposed site plan prepared by a certified land surveyor or planner in addition to any other information required under this Section or by the Zoning Administrator.
- (3) The Zoning Administrator shall make a recommendation to the Plan Commission and Village Board. Such recommendation may approve, disapprove or approve, subject to conditions or modifications, the zoning and conditional use permit petition, and shall include a written statement of the Zoning Administrator's findings. No petition for an AEO Adult Entertainment Overlay District shall be subject to approval by the Village Board unless the following findings have been made:
  - a. That all standards and requirements of this Section and other applicable Village ordinances can be met by the proposed use.
  - b. That the proposed use will not be detrimental to the public welfare.
  - c. That the proposed zoning is consistent with the general intent of the Comprehensive Plan.
  - d. That existing streets and utility services are adequate for the proposed use.
  - e. That the proposed use will in no substantial way contribute to the deterioration of the surrounding neighborhood.
  - f. That the presence of the proposed use will not have a harmful influence on children residing in or frequenting the area.
  - g. That there will be full compliance with other Village ordinance requirements, including, but not limited to, Title 11, Chapter 7 of this Code of Ordinances. In the case of a conflict in regulatory requirements, the stricter provisions shall be complied with.
- (h) **Standards for Adult Entertainment Uses.** In addition to all other applicable requirements in this Zoning Code, all adult entertainment uses shall meet the following standards:
  - (1) The AEO Adult Entertainment Overlay District shall only be established for parcels for which the underlying district is an Industrial District.
  - (2) No more than one (1) of the adult entertainment uses defined herein may be established on any one (1) parcel and any of the adult entertainment uses defined herein shall be at least one thousand (1,000) feet from any other adult entertainment use. No adult entertainment use shall be permitted within five hundred (500) feet of any establishment serving alcohol beverages, within one thousand (1,000) feet of property zoned Residential, within one thousand five hundred (1,500) feet of any property zoned Agricultural, or within two thousand (2,000) feet of any school, library, church, park, playground, or daycare facility.
  - (3) There shall be no sale of intoxicating or fermented malt beverages in the AEO Adult Entertainment Overlay District.
  - (4) Signs advertising any of the adult entertainment uses defined herein shall conform with Article H of this Chapter with the exception, however, that no tower-mounted signs, portable signs or billboards shall be permitted on the premises, and with the further exception that signs will not depict or describe "specified anatomical areas" or "specified sexual activities", and providing further that there shall be no flashing or

- traveling lights located outside the building.
- (5) Adequate parking shall be provided in a lighted area; all such lighting shall be properly shielded.
  - (6) There shall be no display windows on the premises.
  - (7) The owner and/or operator of the adult entertainment establishment shall comply with all federal, state and local laws and ordinances, including obscenity, liquor, fermented malt beverage and cabaret laws, and shall further ensure that minors are not permitted on the premises. Solicitation for purposes of prostitution shall be strictly prohibited.
  - (8) In the case of adult cabarets, the hours of operation for such establishments shall be limited to the same hours of operation for bars and taverns within the Village.
  - (9) Prior to the establishment of an AEO Adult Entertainment Overlay District, an inventory of the surrounding area and population shall be made along with a study of the proposed project and plans for the general area so as to enable the Village Board to make appropriate findings relative to the effect of the establishment of an AEO District in that area.
  - (10) The owner of the parcel upon which the adult entertainment use is to be established and the operator of the establishment and the owner of the establishment shall appear in person before the Plan Commission and Village Board.
  - (11) In the event of noncompliance with any conditions imposed on the adult entertainment use, the zoning permit may be revoked, the AEO Adult Entertainment Overlay District may be abolished by Village Board action, and the parcel shall revert to its underlying zoning classification.

**Sec. 13-1-55 through 13-1-69 Reserved for Future Use.**

## **Article D:           Planned Unit Development (PUD) Overlay District Procedures**

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### **Sec. 13-1-70           PUD Planned Unit Development Overlay District - Intent.**

- (a) **Purpose.** The PUD Planned Unit Development Overlay District is intended to:
  - (1) Permit developments that will, over a period of time, be enhanced by coordinated area site planning, diversified location of structures and/or mixing of compatible uses;
  - (2) Provide a safe and efficient system for pedestrian and vehicle traffic;
  - (3) Provide attractive recreation and open spaces as integral parts of the developments;
  - (4) Enable economic design in the location of public and private utilities and community facilities;
  - (5) Ensure adequate standards of construction and planning;
  - (6) Allow for flexibility of overall development design with benefits from such design flexibility intended to be derived by both the developer and the community, while, at the same time, maintaining insofar as possible, the land use density and other standards or use requirements as set forth in the underlying basic zoning district; and
  - (7) Accommodate areas of integrated mixed land uses, innovative lot sizes and physical design, and strong commitments to commonly held open space.
- (b) **Overlay District Approach; Application To Existing Use Districts.**
  - (1) The PUD Planned Unit Development Overlay District shall operate as an overlay zone and as an alternative to the permitted uses and regulations applicable to existing districts. The PUD Planned Unit Development Overlay District is a supplemental zoning classification applied "over" an underlying zoning district or districts to provide an opportunity to develop land in a manner that does not fit the configuration or standards of the underlying districts.
  - (2) The PUD Planned Unit Development Overlay District shall be applicable only to those lands which may hereafter be zoned PUD Planned Unit Development Overlay District by the Village Board, at its discretion.
  - (3) Basic underlying zoning requirements for lands overlay zoned as a PUD Planned Unit Development Overlay District shall continue in full force and effect, and shall be solely applicable until such time as the Village Board grants final approval to the PUD under the procedures hereinafter provided in this Article.
- (c) **Applicability To Parcels With Single Ownership.** The unified and planned development of a site in a single, partnership or corporate ownership or control or in common ownership under the Unit Ownership Act set forth in Chapter 703 of the Wisconsin Statutes (condominiums) may be permitted by the Village of Fall River upon specific petition under Section 13-1-77 of this Chapter and after public hearing, with such development encompassing one (1) or more principal uses or structures and related accessory uses or structures when all regulations and standards as set forth in this Chapter have been met.
- (d) **Conformance With Laws and Regulations.**
  - (1) A PUD Planned Unit Development Overlay District, authorized and approved as herein

provided, shall be carried out in conformity with all federal, state, and municipal laws and regulations. However, in the interpretation and application of this Article, the regulations contained in this Article shall be controlling in the event of a conflict between the provisions of this Article and other local zoning or subdivision regulations.

- (2) A PUD Planned Unit Development Overlay District project shall be consistent in all respects to the expressed intent of this Article and to the intent and spirit of this Zoning Code and its underlying districts; it shall be in conformity with the adopted Village Comprehensive Plan (Master Plan or Smart Growth Plan) or any component thereof and shall not be contrary to the general welfare and economic prosperity of the community.

## **Sec. 13-1-71 Definitions.**

In addition to the general Zoning Code definitions contained in Section 13-1-300, the following definitions shall be applicable in this Article:

- (a) **Basic Zoning Regulations/Districts.** Such zoning regulations as are applicable to the use district other than the regulations set forth in this Article.
- (b) **Building Site.** A tract of land not divided by public streets or into lots, excepting for single-family dwelling purposes and which will not be so subdivided, or where the tract of land, if so divided, is in single ownership or is owned by a condominium group. The site must be located on a public street or have direct access over a private right-of-way.
- (c) **Comprehensive Plan.** The official guide for the physical, social, and economic growth of the Village of Fall River properly enacted or adopted according to Section 62.23, Wis. Stats., which is now or may hereafter be in effect. May also be referred to as a "Master Plan" or "Smart Growth Plan" .
- (d) **Cluster.** The grouping together of a number of structures which have similar use or intended purpose.
- (e) **Density.** The number of dwelling units permitted per square foot of land area or number of dwelling units permitted per acre of land area.
- (f) **Development Plan, General.** The proposal for development of a PUD Planned Unit Development Overlay District, consisting of a general concept plan for the entire area.
- (g) **Open Space.** A parcel or parcels of land or an area of water or a combination thereof with the site designated for a PUD Planned Unit Development Overlay District, and designated and intended for the use or enjoyment of residents of the planned development.
- (h) **Pedestrian Way.** A right-of-way designed for the purpose of providing pedestrian access.
- (i) **Planned Development District (PUD).** An area of land controlled by a single owner, corporation, or other legal entity which is to be developed as a single unit and is referred to herein as a PUD.
- (j) **Precise/Specific Implementation Plan.** The proposal for development of a part of or the whole of the General Development Plan.

## **Sec. 13-1-72 Types of Planned Unit Developments; Permitted Uses.**

- (a) **Types.** This Article contemplates that there may be a Residential, Commercial, Industrial Planned Unit Developments and Mixed Compatible Use Developments as PUD Planned Unit Development Overlay Districts.
- (b) **Permitted Uses.**
  - (1) **Basic Underlying Permitted Uses.** All uses permitted under the basic zoning regulations applicable to the underlying zoning district in which the particular property is located are allowed.
  - (2) **Permitted Accessory Uses.** Any accessory use permitted in the underlying zoning district(s) is permitted in the PUD Planned Unit Development Overlay District
  - (3) **Conditional Uses.** Any conditional use permitted in the underlying zoning district(s) may be applied for in the PUD Planned Unit Development Overlay District. The review of conditional uses proposed to be located within the planned unit development would be conducted as part of the overall review of the PUD Planned Unit Development Overlay District application.
  - (4) **Schools, Parks, and Recreation Facilities.** The developer in the preparation of his/her PUD proposal shall consult with and receive the approval of the Village as to the reservation of suitable sites for adequate area for future schools, parks, playgrounds, drainageways, and other public uses if so designated on the Comprehensive Plan, Official Map, or component area development plan, if any, or as required by the Village of Fall River.
  - (5) **Non-Residential Uses.** Nonresidential uses are limited to those uses specifically approved by the Plan Commission and Village Board are permitted in a PUD Planned Unit Development Overlay District, based, in part, on the following criteria:
    - a. Nonresidential development shall be integrated into the total design of the PUD project.
    - b. The Village, at its option, may require that the areas and types of nonresidential facilities to be allowed in a PUD Planned Unit Development Overlay District project be based on a market analysis. The market analysis shall demonstrate that the amount of land proposed is needed and can realistically be supported by area residents and consumers. For these purposes, such analysis should contain the following determinations:
      - 1. Determination of the expected trade area of the proposed commercial facilities.
      - 2. Determination of the trade area population, present and prospective.
      - 3. Determination of the expected effective buying power in such trade area.
      - 4. Determination of net potential customer buying power for stores in the proposed PUD and, on such basis, the recommended store types and floor area.
    - c. Offices shall be permitted in residential PUD Planned Unit Development Overlay Districts only when use specifically for the marketing of such development or as allowable professional home offices per Section 13-1-93.

## **Sec. 13-1-73      General Design Standards for Planned Unit Developments.**

- (a) **General Considerations.**
- (1) **Adequacy of Design.** Design standards and requirements outlined in this Section shall be utilized by the Village in determining the adequacy of all plans for proposed planned unit developments.
  - (2) **Consideration of Comprehensive Plans.** Consideration shall be given to applicable provisions of the Village Comprehensive Plan, Official Map and other adopted plans as they pertain to future school sites, recreation sites, water supply, sewage treatment systems, highway and street alignments, environmental integrity, and other public facilities where appropriate.
  - (3) **Consideration of Existing Adjacent Development.** The development of the proposed PUD shall take into consideration relevant features of adjacent existing development.
  - (4) **Unsafe or Hazardous Conditions.** Land with unsafe or hazardous conditions, such as open quarries, unconsolidated fill, floodplains or steep slopes, shall not be developed unless the PUD provides for adequate safeguards which are approved by the Village Board.
- (b) **Location of Structures.** Specific lot size, building location, height, size, floor area, and other such requirements shall be based upon determination by the Village Board, following advisory recommendations from the Plan Commission, as to their appropriateness to the proposed uses and structures as they relate to the total environmental concept of the planned development, consistent with the criteria set forth in this Article, and, as near as practicable, consistent with standards established in applicable existing basic zoning districts and regulations, and with those generally accepted basic standards necessary to insure the protection of the public health, safety and general welfare of that area of the community.
- (c) **Minimum Area Requirements.** Areas designated as planned unit developments shall contain a minimum development area as follows:

<b>Principal Uses</b>	<b>Minimum Area of PUD</b>
Residential PUD	3 acres
Commercial PUD	5 acres
Industrial PUD	5 acres
Mixed Compatible Use	5 acres

- (d) **Allowable Residential Densities**
- (1) **General Lot Area, Density, Width and Setback/Yard Requirements.**
    - a. In a PUD Planned Unit Development Overlay District, area and width requirements of the basic use district may be modified; however, in no case shall the average density in a residential district exceed the number of dwelling units by more than five percent (5%) that would have been permitted if the planned unit development regulations had not been utilized.
    - b. Setbacks required by the underlying base use district may be modified in PUD

Planned Unit Development Overlay Districts; however, no setback shall be less than twenty-five (25) feet from any street right-of-way.

- c. No principal structures in planned unit developments shall be located closer than thirty (30) feet to another structure.
- d. Structures in residential PUD Planned Unit Development Overlay Districts shall have a rear yard of not less than twenty-five (25) feet.

(2) **Minimum Lot Area Requirements.** Provided the overall number of dwelling units per acre (density) is not increased by more than five percent (5%) beyond the number of dwelling units that would have been permitted if the PUD District had not been utilized, and provided adequate open space is maintained, the planned unit development may include lot areas per dwelling unit smaller than those normally required in the underlying zoning district. However, no lot shall be less than the minimum lot areas indicated below:

<b>Use</b>	<b>Minimum Lot Area per Dwelling Unit (square feet)</b>
Single-family	6,000
Two-family	4,000
Multiple-family (1 story)	3,000
Multiple-family (2 story)	3,000
Multiple-family (3 story)	2,000

(3) **Residential Permitted Densities Standards; Common Open Space Requirements.**

In the case of residential uses, the allowable density shall be based on the following consideration

- a. That there will result an appropriate relationship between the number of dwelling units and the facilities required and available to service them, such as sewer, water, schools, streets, and other appropriate municipal services.
- b. That there will be an appropriate provision of common open space to compensate for clustering or other concentration of dwelling units, consistent with the goal of creating a desirable living environment. Except as provided below, no plan for a planned unit development shall be approved unless such plan provides for permanent open space equivalent to twenty percent (20%) of the total area in single-family residential planned unit developments, twenty-five percent (25%) in multi-family residential planned unit developments, and five percent (5%) in commercial/industrial planned unit developments. Such open space may be in any of the following forms, provided they contribute realistically and specifically to the enhancement of the environmental character of the development for benefit of the residents thereof and the general community:
  - 1. Natural areas such as woods, unique meadows, marshes, lakes, wetlands, streams and ponds, providing either an environmental amenity or serving a

- useful ecological purpose.
  - 2. Agricultural areas, including prime crop land, pasture, orchards, and tree nurseries, contributing to the preservation of the agricultural land resource or significantly contributing to the environmental character of the area.
  - 3. Recreational areas, such as parks, parkways, greenbelts, playfields, and golf courses.
- c. That there will result an appropriate relationship between the character of existing developments or likely to result from the zoning of property thereto.
- (e) **Building Height and Area Requirements.**
- (1) Buildings in a planned unit development shall not exceed the height permitted in the basic use district.
  - (2) Buildings in a planned unit development shall have a minimum area that is equal to or greater than that required in the basic use district.
- (f) **Single Parcel, Lot or Tract.** At the time of filing, the land proposed for a PUD Planned Unit Development Overlay District shall be considered as one (1) tract, lot or parcel, and the legal description must define said PUD as a single parcel, lot or tract.

## **Sec. 13-1-74      Planned Unit Development Site Design Standards.**

- (a) **Natural Features.** Physical layout and form of all structures shall be designed with regard to the topography and natural features of the site.
- (b) **Visual Aspects.** The overall design shall provide for the appearance of external unity throughout the planned unit development project. Variations of building elevations and materials used therein shall be encouraged insofar as they reinforce rather than hamper the design harmony. Housing and other facilities near the periphery of the planned unit development shall be designed so as to be harmonious with neighboring areas.
- (c) **Landscaping.**
- (1) **Topographic Features Preservation.** Where natural or existing topographic features contribute to the beauty and utility of a development, consideration shall be given to this preservation. Modifications to topography features should only occur where it contributes to good appearance.
  - (2) **Plant Types.** Plant material shall be selected for interest in its structure, texture, color, and for its ultimate growth. Further, it is recommended that native materials be employed for their ability to tolerate prevailing weather and natural conditions.
  - (3) **Plant Guards.** In locations where plant materials will be susceptible to injury by pedestrians and/or motor vehicles, appropriate curbs, tree guards, or other protective devices shall be employed.
- (d) **Street Design Standards.** All streets within a PUD Planned Unit Development Overlay District dedicated to the public shall be so indicated on the General Development Plan and shall be constructed in accordance with Village standards (see Title 14), or as modified under this Subsection. Standards of design and construction of roadways within the PUD may be modified as is deemed appropriate by the Village Board; however, in considering such

modifications, the Village Board shall consider the impact on traffic/pedestrian safety, snowplowing, and law enforcement/firefighting/emergency medical services responses. Right-of-way widths and street pavement widths may be reduced where it is found that the General Development Plan provides for the separation of motorized traffic from bicycle/pedestrian circulation patterns. The use of private roadways and streets is discouraged.

(e) **Accommodation of Pedestrian Traffic.**

- (1) **Sidewalks; Walkways.** Sidewalks and/or other walkways and bicycle paths shall be provided where necessary for the safety and convenience of pedestrian and cyclist traffic within project boundaries. Special attention shall be given to connections accommodating pedestrian movement between the dwelling units' common open space, recreation facilities, schools, commercial establishments, and parking facilities.
- (2) **Design Considerations.** Walkway widths and surface treatment of all walkways shall be designed with regard to their function and the anticipated manner of usage. The natural features of the area traversed in the walkway system and suitable lighting in scale with the project shall also be considered. Utilization of pedestrian ramps as required by law and necessary to either resolve conflicts with vehicular traffic or facilitate the movement of senior citizens and/or children.

(f) **Parking and Loading.**

- (1) **Required Number of Parking Spaces.** Accessible off-street parking and loading facilities shall be provided as required and specified in Article G of this Chapter.
- (2) **Landscaping of Parking Areas.** Parking areas shall be planned to provide a desirable transition from the streetscape and to provide for adequate landscaping, pedestrian movement, and parking areas. In keeping with this purpose, the following design standards shall be followed for projects in a PUD Planned Unit Development Overlay District; in the event of conflict between these standards and those prescribed in Article G, the following standards shall be applicable:
  - a. Parking areas shall be arranged so as to prevent or limit thru traffic to other parking areas.
  - b. Parking areas shall be screened from residential structures and streets with hedges, dense plantings, earth berms, changes in grade and/or walls, or a combination thereof, except where parking areas are designed as an integral part of the street.
  - c. No more than fifteen (15) parking spaces shall be permitted in a continuous row without being interrupted by landscaping unless otherwise approved by the Plan Commission.
  - d. All off-street loading and unloading areas shall be paved and according to the standards in Sec. 13-1-121, the design thereof approved by the Plan Commission.
  - e. All parking areas shall be adequately lighted. All such lighting shall be so arranged as to direct the light away from adjoining residences and shall be of a downward-directed design.
  - f. All parking areas and off-street loading and unloading areas shall be graded and drained so as to dispose of all surface water without erosion and flooding.

(g) **Common Open Space Standards.**

- (1) **Common Open Space Covenant/Easement.**
  - a. All common open space shall be protected by a "common open space covenant" and "open space easement", approved by the Village Board, following review by the Village Attorney, and sufficient to its maintenance and preservation.
  - b. Such common open space covenant or open space easement shall specify:
    1. Ownership of any common open space;
    2. Property rights of owners to such common open space;
    3. Method of maintenance;
    4. Responsibility for maintenance;
    5. Maintenance assessments/obligations and provisions for insurance;
    6. Enforcement of non-payment of assessments/obligations;
    7. Enforcement of negligent maintenance;
    8. An agreement that noncompliance with said covenant enables the Village to assess the property owners of the common open space, to cover the cost of assuming maintenance or improvements;
    9. A warranty that any change in such covenant will not be made without the consent of the Village Board; and
    10. Any other specifications deemed necessary by the Village Board.
  - c. Said covenant shall obligate the stated responsible parties to adequately maintain any common open space and complete any necessary improvements to any common open space.
- (2) **Recording of the Common Open Space Covenant.** Such covenant shall be written so as to run with the land and the covenant shall become part of the deed to each lot or parcel within the development.
- (3) **Enforcement of the Common Open Space Covenant.**
  - a. Noncompliance with the above standards governing common open space empowers the Village, as well as other owners in the development, to enforce the common open space covenant.
  - b. If the Village determines that the responsible party is not in compliance with any provisions of the covenant and is not satisfactorily maintaining the common open space, or has not made the necessary improvements to the common open space, the Village of Fall River may, at its own discretion, intervene to maintain the common open space, or complete the necessary improvements to the common open space, and may specifically assess by special charge the property owners within the development which have a right of enjoyment of the common open space, an amount of money sufficient to cover any costs incurred by the Village.
  - c. Such charges shall be paid by the owners of said properties within thirty (30) days after receipt of a statement therefor and, if not paid, such charges shall be placed on the property tax roll as a special assessment or charge.
- (4) **Condominium Open Space.** Any common open space held under condominium ownership shall meet the minimum requirements of Chapter 703, Wis. Stats., governing condominiums, and shall provide a common open space covenant as part of the required condominium declaration.

## **Sec. 13-1-75      General Requirements as to Public Services and Facilities.**

- (a) **Drainage.** The development site shall be provided with adequate drainage facilities for surface and storm waters. All applicable stormwater management requirements shall be fully complied with.
- (b) **Public Road Accessibility.** The site will be accessible from public roads that are adequate to carry the traffic that can be expected to be generated by the development.
- (c) **Undue Burden on Public Services.** No undue constraint or burden shall be imposed on public services and facilities, such as fire and police protection, street maintenance, water, sanitary sewer and storm drainage, and maintenance of public areas by the developments.
- (d) **Public Utilities.** Public water and sewer facilities shall be provided.

## **Sec. 13-1-76      Subsequent Land Division.**

The division of any land or lands within a PUD Planned Unit Development Overlay District for the purpose of change or conveyance of ownership may be accomplished pursuant to the land division/subdivision regulations of the Village (Title 14) when such division is contemplated.

## **Sec. 13-1-77      Procedural Requirements–Intent.**

Sections 13-1-70 through 13-1-76 set forth the basic philosophy and intent in providing for PUD Planned Unit Development Overlay Districts, the kinds thereof, the general requirements, physical requirements and requirements as to public services and facilities. The following sections are intended to set forth the procedures and considerations involved leading to possible approval of such developments.

## **Sec. 13-1-78      Procedural Requirements for Planned Unit Developments.**

- (a) **General Zoning Procedures.** The procedure for zoning to a PUD Planned Unit Development Overlay District shall be the same as required for any other rezoning application, except that an application for zoning to a PUD Planned Unit Development Overlay District may be considered only in conjunction with a General Development Plan as hereinafter defined and shall be subject to the following additional requirements below.
- (b) **Pre-Application Conference.** Prior to the official submission of the petition for the approval of a PUD Planned Unit Development Overlay District, the applicant (owner or his/her agent) shall meet with the Plan Commission, Village zoning staff and/or appropriate technical professionals advisory to the Village for a preliminary discussion as to the scope and nature of the proposed development, and to discuss possible alternative approaches to the development of the specific area.
- (c) **Petition for Review and Approval; General Development Plan.** Following the pre-application conference, the owner or his/her agent may file a petition with the Village

Clerk-Treasurer for an amendment to the Village's Zoning Map designating and adding a PUD Planned Unit Development Overlay District, thereby permitting the application of the provisions of this Article to the designated area. Such petition shall be accompanied by a review fee as prescribed by Section 1-3-1, as well as incorporate the following information:

- (1) **General Informational Statement.** A statement which sets forth the relationship of the proposed PUD Planned Unit Development Overlay District to the Village's adopted Comprehensive Plan, Neighborhood Plan, or any adopted component thereof, and the general character of and the uses to be included in the proposed PUD Planned Unit Development Overlay District, including the following information:
  - a. Total area to be included in the PUD Planned Unit Development Overlay District, area of open space, residential density computations, proposed number of dwelling units, population analysis, availability of or requirements for municipal services and other similar data pertinent to a comprehensive evaluation of the proposed development.
  - b. A general summary of the estimated value of structures and site improvement costs, including landscaping and special features.
  - c. A general outline of the organizational structure of a property owner's or management's association, which may be proposed to be established for the purpose of providing any necessary private services.
  - d. Any proposed departures from the standards of development as set forth in the Village zoning regulations, land division/subdivision ordinance, other Village regulations or administrative rules, or other universal guidelines.
  - e. The expected date of commencement of physical development as set forth in the proposal and also an outline of any development staging which is planned.
- (2) **General Development Plan.** The General Development Plan consists of a general concept plan for the entire area covered by the proposed PUD Planned Unit Development Overlay District, and shall be submitted concurrently with the petition for rezoning of the area to a PUD Planned Unit Development Overlay District. In addition to any other site plan or architectural review requirements in this Chapter, the General Development Plan shall provide the following in sufficient detail to make possible an evaluation under the criteria prescribed in Sec. 13-1-79:
  - a. A legal description of the boundaries of the subject property included in the proposed PUD and a general location map showing the relationship of the proposed development site to surrounding properties. The boundaries of the proposed planned unit development shall be dimensioned and drawn at a scale no smaller than 1" = 200', identifying the use(s) of all abutting properties.
  - b. The topography of the site showing contours at an interval of no more than five (5) feet and showing all significant natural terrain features such as wooded areas, marshes, drainageways, and water bodies.
  - c. The location of actual and proposed public and private roads, driveways, sidewalks and parking facilities.
  - d. The size, arrangement, location and use of any proposed individual building sites and building groups on each individual site, and the type, size and location of all

structures. Specifically addressed shall be the proposed density of residential development.

- e. General architectural plans, elevations and perspective drawings and sketches illustrating the design and character of proposed structures.
  - f. The location of institutional, recreational and open space areas and areas reserved or dedicated for public uses, including schools, parks and drainageways. Specifically addressed shall be the character of recreational and open space areas, including designation of any such areas to be classified as "common open space".
  - g. General landscape treatment.
  - h. The existing and proposed location of public sanitary sewer, water supply facilities and stormwater drainage facilities.
  - i. The existing and proposed location of all private utilities or other easements.
  - j. Anticipated uses of adjoining lands in regard to roads, surface water drainage and compatibility with existing adjacent land uses.
  - k. If the development is to be staged, a staging plan.
  - l. A plan showing how the entire development can be further subdivided in the future.
  - m. Appropriate statistical data relative to the proposed development.
  - n. A general outline of intended organizational structure related to property owners' associations, deed restrictions, etc.
  - o. A general summary of the total estimated value of the completed development including structures, site improvement costs, landscaping and special features.
  - p. The expected date of the commencement of the physical development of the site, which shall include a statement outlining the amount of construction which shall constitute "commencement of the physical development of the site". As a condition of processing, this date and statement shall be mutually agreed upon by the petitioner and the Village.
  - q. A written construction schedule mutually agreed upon by the petitioner and the Village, which details the amount of completed construction which will be equivalent to seventy-five percent (75%) of the projected cost of the development. For purposes of this Article, such figure shall be referred to as the amount of development construction which has been "substantially completed."
  - r. A subdivision plat of all subdivided lands in the same form and meeting all the requirements of a normal subdivision plat, if subdivided lands are included in the planned unit development. (Note: The submission of one (1) or more of the above documents and plans, or a portion(s) of any one of the above documents and plans may be waived by the Village when such are not applicable for the review of a particular type of development).
  - s. Any other information deemed appropriate and necessary by the Plan Commission, Village Board or Village zoning officials.
- (d) **Referral to Plan Commission.** Upon submittal to the Village Clerk-Treasurer, the petition for a PUD Planned Unit Development Overlay District shall be referred to the Plan Commission for its review and consideration. The Plan Commission shall, within sixty (60)

days after referral, forward the petition to the Village Board with a recommendation that the zoning and related General Development Plan be approved as submitted, approved with modifications, or disapproved. The Plan Commission may add any additional conditions or restrictions which it may deem necessary or appropriate to recommend to promote the spirit and intent of this Zoning Code and the purpose of this Article guiding planned unit developments.

- (e) **Public Hearing.** Upon receipt of the Plan Commission's recommendations, the Village Board shall, before determining the disposition of the petition, hold a public hearing on the petition for a PUD Planned Unit Development Overlay District in the manner provided in Sections 13-1-84 through 13-1-85 for Conditional Uses. Notice of such hearing shall include reference to the development plans filed in conjunction with the requested zoning change.
- (f) **Village Board Approval.** The Village Board, following a recommendation from the Plan Commission and public hearing thereon and after due consideration, shall either deny the petition, approve the petition as submitted, or approve the petition subject to any additional conditions, restrictions and/or modifications the Village Board may impose. Approval of the proposed zoning to a PUD Planned Unit Development Overlay District shall constitute approval of the related General Development Plan, which shall be made part of the zoning record as an integral component of the right of use for the area in conformity with such plan.
- (g) **Detailed Implementation Plan; Submittal and Approval.**
  - (1) **Submittal Requirement; Timeframe.** Within eighteen (18) months following the approval of the General Development Plan and PUD Planned Unit Development Overlay District, unless the time is extended by the Village Board, a Detailed Implementation Plan for the entire area, or a portion/phase thereof, shall be submitted to the Village Clerk-Treasurer.
  - (2) **Contents.** The Detailed Implementation Plan shall include the following:
    - a. A written statement describing the area of the proposed development and its relationship to the General Development Plan, along with a description of any proposed variations.
    - b. A plat of survey as required by Chapter 236, Wis. Stats., of the areas of the Detailed Implementation Plan showing all existing utilities and recorded easements.
    - c. The topography of the area of the Detailed Implementation Plan showing contours at an interval of no more than five (5) feet.
    - d. A detailed site development plan showing at a scale no smaller than 1" = 200' the specific designation of proposed land utilization, including the pattern of public and private roads, driveways, walkways, and parking facilities; detailed lot layout, and the arrangements of building groups other than single family residences; the use intended for any non-residential buildings; and the specific treatment of open spaces.
    - e. A proposed grading plan for the area of the Detailed Implementation Plan.
    - f. Specific landscape plans for all common open space, amenities or housing groups other than private single-family lots, including fences, walls, signs and lighting.
    - g. Architectural plans for any non-residential buildings, multi-family structures or building clusters other than conventional single-family homes on individual lots in

sufficient detail to indicate the floor area, bulk, and visual character of such buildings.

- h. Detailed storm drainage, sanitary sewage disposal, and water system plans approved by the Village Engineer.
  - i. Proposed engineering standards for all roads, parking areas, and walkways.
  - j. Agreements, bylaws, covenants, and other documents providing for permanent preservation and maintenance of common open space areas and amenities.
  - k. A schedule and map as to the intended phasing of development if more than one phase is intended.
  - l. Any other information deemed appropriate and necessary by the Village Board, Plan Commission or Village zoning officials.
- (3) **Review and Approval.** Upon submittal, the Village Clerk-Treasurer shall refer the Detailed Implementation Plan and related documents to the Plan Commission. The Plan Commission shall, within sixty (60) days of referral, forward its recommendation to the Village Board that the Detailed Implementation Plan be approved as submitted, approved with modifications, or disapproved. The Village Board shall then take whatever action it deems appropriate on such Detailed Implementation Plan. Before plans submitted for a Detailed Implementation Plan will be approved, the developer shall give satisfactory proof that he/she has contracted to install all necessary improvements or file a performance bond, letter of credit or cash deposit, approved as to form by the Village Attorney, that such improvements will be installed within the time required by the Village Board. A Detailed Implementation Plan which is in conformity with an approved General Development Plan shall be entitled to approval, subject only to approval of the details of the Detailed Implementation Plan.
- (4) **Variations.** Consistent with the basic goal of limited flexibility, minor variations may subsequently be permitted in details of the approved plans, subject to approval of the Plan Commission. If, in the opinion of the Plan Commission, any requested variation constitutes a substantial alteration of the original General Development and Detailed Implementation Plans as approved, the matter shall be referred to the Village Board for a hearing and action thereof. The introduction of any new category of use or increase of more than two percent (2%) from the approved density shall automatically constitute a substantial variation.
- (h) **Development Implementation.**
- (1) **Conformity With Approved Plans.** No specific use or building permit shall be issued for any part of such approved General Development Plan except for an area covered by an approved Detailed Implementation Plan and in conformity with such Plan.
  - (2) **Official Record.** Detailed building and landscape plans, as well as all other commitments and contractual agreements with the Village related to a Detailed Implementation Plan, shall be made a part of the official record and shall be considered supplementary components of the PUD Planned Unit Development Overlay District.
- (i) **Phasing Time Schedule; Extensions.**
- (1) **Phasing Schedule.** Each Detailed Implementation Plan shall be accompanied by a phasing schedule showing the times within which each phase or segment of the Detailed

Implementation Plan will be completed. Approval of any Detailed Implementation Plan by the Village Board shall carry with it approval of the time schedule for completion of each phase or segment thereof, including any changes or amendments required by the Village Board.

- (2) **Time Extensions.** In the event that any portion of such time schedule is not met, the Village Board, upon written request of the developer for an extension of time, delivered to the Village Board at least twenty-five (25) days prior to the expiration of the completion date for which such extension is requested, may, for good cause shown, extend said completion date for such length of time as the Village Board, at its sole discretion, deems justified by the circumstances. There shall be no limit upon the number of time extensions which may be requested.
  - (3) **Failure to Meet Phasing Schedule.** Upon failure of the developer to satisfactorily meet any phase or segment of the completion or phasing schedule, as determined by the Zoning Administrator or Building Inspector, within thirty (30) days of the expiration date thereof or within thirty (30) days of denial by the Village Board for extension thereof, all permits and approvals shall be void or suspended on other segments of the Detailed Implementation Plan until such time as the developer is able to be in conformance with the completion schedule phasing.
- (j) **Rescinding An Approval.** Failure to comply with the conditions, commitments, guarantees, or the conditions established in the approval of such planned unit development project shall be cause for rescinding the approval of the same. Upon notice given by the Zoning Administrator or Building Inspector, the developer shall then be required to appear before the Village Board at a public meeting to explain any such failure to comply. The Village Board at such hearing shall determine whether or not the developer shall have failed to comply and if there has been such a failure, may either:
- (1) **Rescind Its Approval.** The Village Board may rescind its earlier approval, whereupon such rescision and the cessation of all rights and privileges of the developer and owner, including the right to complete construction or to construct any building or other structure or improvements, shall become effective on the 31st day following mailing, by certified mail, to the developer at his/her last known address of a written notice of such rescision; or
  - (2) **Compliance Extension.** The Village Board, in the alternative to rescision, may adjourn such hearing for a period not to exceed sixty (60) days to enable the developer to comply; whereupon, if the developer is then in substantial compliance and has then established to the reasonable satisfaction of the Village Board that there will be compliance in the future, the rights and privileges of the developer and owner shall continue for such period of time that there shall be such compliance. If the developer is not then in substantial compliance or does not establish to the reasonable satisfaction of the Village Board that there will be compliance in the future, the Village Board will proceed in accordance with Subsection (j)(1) above for rescision.
- (k) **Revocation; Abandonment of Plan; Revocation to Basic Zoning Regulations and Uses.**
- (1) **Revocation Upon Failure to Submit Precise Implementation Plan.** In the event the developer shall fail to submit a Detailed Implementation Plan as revoked herein, the

General Development Plan shall also be deemed revoked.

- (2) **Developer Abandonment of Project.** In the event the developer shall elect to abandon the General Development Plan, after the same is approved and the area zoned to PUD Planned Unit Development Overlay District, the developer shall immediately notify the Village Board, in writing, and, upon receipt of such notice of abandonment, the General Development Plan shall be deemed revoked.
  - (3) **Reclassification to Basic Underlying Zoning District.** When recessions occur pursuant to the above, the area involved shall automatically revert to its underlying zoning and its applicable zoning regulations and uses.
- (1) **Major Changes.**
    - (1) **Major Changes Defined.** Subsequent changes which alter the concept or intent of the planned unit development shall be defined as a "major change" and include, but are not limited to, the following:
      - a. Any change in the boundaries of the PUD District.
      - b. Any change in the permitted use to a less restrictive use.
      - c. Any construction of an accessory building or structure that is greater in dimensions than permitted by Section 13-1-200.
      - d. Any increase in the number of dwelling units over limits allowed by this Article.
      - e. Any change in the lot area or width requirements which were established at the time of approval.
      - f. Any change in the yard requirements which were established at the time of approval.
      - g. Any change in the amount or maintenance responsibility of common open space.
      - h. Any change in street locations or alignment.
      - i. Any change in the drainage plan.
      - j. Any subsequent land division.
      - k. Any change in the final governing agreements, provisions or covenants, agreed upon at the time of approval.
      - l. Any other change which is determined by the Zoning Administrator to constitute a major change.
    - (2) **Action on Major Changes.** The Zoning Administrator shall forward any major change to the Village Board for approval. Notice of the proposed change shall be given to all current property owners within the planned unit development area, at the expense of the petitioner, and shall be forwarded to any established association, pursuant to the procedures of the submitted association bylaws. Such major change shall be submitted as a new amendment to the PUD Planned Unit Development Overlay District and association general development plan and detailed implementation plan, and shall follow the procedures in this Article for new applications.
  - (m) **Subsequent Land Division.** Any division of land or lands within a PUD Planned Unit Development Overlay District shall be accomplished pursuant to the land divisions regulations contained in Title 14 of the Village of Fall River Code of Ordinances. If such division is contemplated at the time of application for PUD District treatment, a preliminary plat of the lands proposed to be divided should also be filed with the Village at that time.

## **Sec. 13-1-79      Criteria for Approval of the Petition for Planned Unit Development.**

- (a) **General Requirements.** The approval of a project encompassed in a PUD Planned Unit Development Overlay District shall be within the discretion of the Village Board. The Village Board, at its discretion, may determine that consideration of a project as a PUD Planned Unit Development Overlay District is not appropriate, and that conventional consideration and review under the standard requirements of this Zoning Code is appropriate and in the best interests of the Village and its citizens. The Plan Commission, in making a recommendation, and the Village Board, in making a determination approving a petition for a PUD Planned Unit Development Overlay District, shall base determinations on compliance with the following criteria:
- (1) **Compliance With Intent of Zoning Code.** That the proposed development is consistent with the specific requirements of this Article governing planned unit developments and with the spirit and intent of this Zoning Code.
  - (2) **Professionally-Prepared Plans.** That the proposed development plan has been prepared with competent professional advice and guidance, and produces significant benefits in terms of improved environmental design sufficient to justify the application of the planned unit development concept instead of conventional zoning regulations.
  - (3) **Consideration of Physical Nature of the Site.** That the site development plan reflects sensitive consideration of the physical nature of the site with particular concern for conservation of natural features, preservation of open space, and careful shaping of terrain to ensure proper drainage and preservation of natural features wherever appropriate.
  - (4) **Compatibility With Other Developments.** That the general character and density of use of the planned unit development produces an attractive environment appropriate to the uses proposed and which is compatible with existing developments in the surrounding area and with general community development plans and policies.
  - (5) **Municipal Services.** That the development can be provided with appropriate municipal services.
  - (6) **Functional Design.** That proposed design standards provide adequately for practical operation and maintenance based on actual functional need in terms of circulation, parking, emergency services, delivery services, snow plowing, and garbage and refuse collection.
  - (7) **Provisions for Common Open Space.** That adequate provision has been made to ensure proper maintenance and preservation of "common open space" which has been provided within the development for the recreational and aesthetic enhancement of the development, or to preserve or protect natural environmental or ecological resources. Such provisions may be made by dedication to the public or by retention in private ownership with appropriate covenants. Private ownership may be in common or individual ownership subject to the following:
    - a. The "common open space" shall be protected against future development by conveying to the Village and to each property owner within the planned unit

development intended to be benefitted, as part of the conditions for development plan approval, a perpetual "open space easement" or "common open space covenant" running with the land and over such areas restricting them against future building development or use, except as is consistent with the use as designated on the approved plan for recreational or aesthetic purposes, or for the preservation of conservancy, natural environmental or ecologic resources.

- b. The care and maintenance of such "common open space" shall be ensured by adequate covenants and deed restrictions, approved by the Village Attorney, running to the Village as well as to each property, assuring such maintenance. Where such maintenance is not carried out to the satisfaction of the Village, the Village shall be empowered and authorized to treat such area as a special service district and to provide the necessary maintenance service and to levy the cost thereof as a special charge on all properties within such service area.
  - c. In the case of roadways and other rights-of-way which are not dedicated to the public as part of the conditions for project approval, there shall be granted to the Village such easements over the same as may be necessary to enable the Village to provide suitable and adequate fire protection, sanitary and storm sewer, water, and other required municipal services of the project area.
  - d. Ownership and tax responsibility of private open space areas and rights-of-way shall be established in a manner acceptable to the Village and made part of the condition of the plan.
  - e. Areas established for public use shall be dedicated to the Village on preliminary and final subdivision plats consistent with the approved development plan.
- (8) **Other Factors.** Any other factors which in the discretion of the Village Board are necessary to protect the public health, safety, and welfare of the area of the community.
- (b) **Proposed Construction Schedule.** The Plan Commission and Village Board, in making their respective recommendations and determinations, shall consider the reasonableness of the proposed construction schedule and any staging plan for the physical development of the proposed PUD Planned Unit Development Overlay District, commencement of the physical development within one (1) year of approval being deemed reasonable. The petitioners for the proposed PUD Planned Unit Development Overlay District shall indicate when they intend to commence development and that the development will be carried out according to the written construction schedule as outlined in Subsection (c)(2)p-q. The construction schedule shall be a binding legal agreement between the developer and the Village, requiring signatures of the authorized agent of the planned unit development project and of the Village. Failure of the developer to commence the physical development of the planned unit development within the specified time period, or failure of the developer to complete the development as agreed under the construction schedule, empowers the Village to take the necessary actions specified in Section 13-1-79(j)-(k).
- (c) **Residential PUD Considerations.** The Plan Commission and Village Board, in making their respective recommendation and determination as to a proposed residential planned unit development, shall further consider whether:
- (1) Such development will create an attractive residential environment of sustained

desirability and economic stability, including structures in relation to terrain, consideration of safe pedestrian flow, ready access to recreation space and coordination with overall plans for the community.

- (2) The total net residential density within the planned unit development will be compatible with the Village Comprehensive Plan (Master Plan and Official Map), Neighborhood Plan, or components thereof, and shall be compatible with the density of the district wherein located.
  - (3) Structure types will be generally compatible with other structural types permitted in the underlying basic use district. To this end, structure type shall be limited as follows:
    - a. Planned residential developments in the residential districts shall not exceed sixteen (16) dwelling units per structure.
  - (4) Provision has been made for the installation of adequate public facilities and the continuing maintenance and operation of such facilities if privately owned.
  - (5) Provision has been made for adequate, continuing fire and police protection.
  - (6) The population density of the development will or will not have an adverse effect upon the community's capacity to provide needed school or other municipal service facilities.
  - (7) Adequate guarantee is provided for permanent preservation of open space areas as shown on the general development plan as approved either by private reservation and maintenance or by dedication to the public.
- (d) **Commercial PUD Considerations.** The Plan Commission and Village Board, in making their respective recommendation and determination as to a proposed commercial planned unit development, shall further consider whether:
- (1) The economic practicality of the proposed development can be justified.
  - (2) The proposed development will be served by off-street parking and truck service facilities in accordance with this Chapter.
  - (3) The proposed development shall be adequately provided with, and shall not impose any undue burden on, public services and facilities such as fire and police protection, street maintenance, water, sanitary sewer and storm water drainage and maintenance of public areas.
  - (4) The locations of entrances and exits have been designated to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets and that the development will not create any adverse effect upon the general traffic pattern of the surrounding neighborhood.
  - (5) The architectural design, landscaping, control of lighting and general site development will result in an attractive and harmonious service area compatible with and not adversely affecting the property values of the surrounding neighborhood.
- (e) **Industrial PUD, Considerations.** The Plan Commission and Village Board, in making their respective recommendations and determination as to a proposed industrial planned unit development, shall further consider whether:
- (1) The operational character and physical plant arrangement of buildings will be compatible with the latest in performance standards and industrial development design and will not result in an adverse effect upon the property values of the surrounding neighborhood.

- (2) The proposed development shall be adequately provided with and shall not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance, water sanitary sewer and storm water drainage and maintenance of public areas.
  - (3) The proposed development will include provision for off-street parking and truck service areas in accordance with this Chapter and will be adequately served by easy-access rail and/or arterial highway facilities.
  - (4) The proposed development is properly related to the total transportation system of the community and will not result in an adverse effect on the safety and efficiency of the public streets.
- (f) **Mixed Use PUD, Considerations.** The Plan Commission and Village Board, in making their respective recommendation and determination as to a proposed mixed use planned unit development, shall further consider whether:
- (1) The proposed mixture of uses procedures a unified composite which is compatible with the zoning district and which, as a total development entity, is compatible with the surrounding neighborhood.
  - (2) The various types of uses conform to the general requirements as hereinbefore set forth, applicable to projects of such use and character.
  - (3) The proposed development shall be adequately provided with and shall not impose any undue burden on public services and facilities, such as fire and police protection, street maintenance, water, sanitary sewer and storm water drainage and maintenance of public areas.

## **Article E: Conditional Uses**

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### **Sec. 13-1-80 Statement of Purpose–Conditional Uses.**

The purpose of a Conditional Use is to provide a reasonable degree of discretion in determining the suitability of certain uses of a special nature, so as to make impractical their predetermination as a principal use in a district. The development and execution of this Article is based upon the division of the Village of Fall River into districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use of a particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses. Such uses are classified as conditional uses. Such uses are classified as conditional uses, and are those uses specifically designated as conditional uses by the zoning district or which are classified as a conditional use under the review procedures in this Article.

### **Sec. 13-1-81 Authority of the Plan Commission and Village Board; Requirements.**

- (a) **Authority; Intent.** The Village Board may authorize the Zoning Administrator to issue a conditional use permit after review, public hearing, and approval from the Plan Commission and Village Board, provided that such conditional use and involved structure(s) are found to be in accordance with the purpose and intent of this Zoning Code and are further found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or the community. Such Village Board action, and the resulting conditional use permit, when, shall specify the period of time for which effective, if specified, the name of the permittee, the location and legal description of the affected premises. Prior to the granting of a conditional use, the Village Board shall make findings based upon the evidence presented that the standards herein prescribed are being complied with.
- (b) **Conditional Uses Adjacent to Freeways.** Any development within five hundred (500) feet of the existing or proposed rights-of-way of freeways, expressways and within one-half (1/2) mile of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the traffic way. The Plan Commission and/or Village Board shall request such review and await the highway agency's recommendation for a period not to exceed twenty (20) days before taking final action.
- (c) **General Authority to Require Conditions.** Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operation control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards or parking

requirements may be required by the Plan Commission and Village Board upon their finding that these are necessary to fulfill the purpose and intent of this Chapter.

- (d) **Compliance With Other Zoning Conditions.** Compliance with all other provisions of this Chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards shall be required of all conditional uses.

## **Sec. 13-1-82      Initiation of Conditional Use.**

Any person, firm, corporation or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest, or an exclusive possessory interest, and which is specifically enforceable in the land for which a conditional use is sought may file an application to use such land for one (1) or more of the conditional uses provided for in this Article in the zoning district in which such land is located.

## **Sec. 13-1-83      Application for Conditional Use.**

- (a) **Application Filing Requirements.** An application for a conditional use shall be filed on a form prescribed by the Village Board, along with any fees required by Section 1-3-1. Such applications shall be forwarded to the Plan Commission upon receipt by the Zoning Administrator.
- (b) **Required Plans/Information.** The plans/information required for review of all conditional use permit applications shall generally consist of any or all of the following, as required by the Zoning Administrator:
  - (1) **Site Development Plan.** A site development plan, which shall include and address:
    - a. Location of all buildings on lots, including both existing and proposed structures.
    - b. Location and number of existing and proposed parking spaces.
    - c. Vehicular circulation.
  - (2) **Dimension Plan.** A dimension plan, which shall include and address:
    - a. Lot dimensions and area.
    - b. Dimensions of proposed and existing structures.
    - c. Setbacks of all buildings located on property in question.
    - d. Architectural elevations.
  - (3) **Grading Plan.** A grading plan, which shall include and address:
    - a. Existing contour.
    - b. Proposed changes in contour.
    - c. Drainage configuration.
  - (4) **Landscape Plan.** A landscape plan, which shall include and address:
    - a. Location of all existing major trees, and which trees are proposed to be removed.
- (c) **Additional Information.** In order to secure information upon which to base its determination, the Zoning Administrator may require the applicant to furnish, in addition to the information required for a building permit, the following information:
  - (1) **Contours; Soil Types.** A plan of the area showing contours, soil types, high water mark, ground water conditions, bedrock, slope and vegetation cover.

- (2) **Location of Buildings; Parking Areas.** Location of buildings, parking areas, traffic access, driveways, walkways, open spaces, landscaping and lighting.
- (3) **Building and Utilities Plans.** Plans for buildings, sewage disposal facilities, water supply systems, and arrangements of operations.
- (4) **Filling/Grading Plan.** Specifications for areas of proposed filling, grading, lagooning or dredging.
- (5) **Other Information.** Other pertinent information necessary to determine if the proposed use meets the requirements of this Chapter.

### **Sec. 13-1-84      Hearing on Application.**

Upon receipt of the application and the information required by Section 13-1-83, the request for a conditional use permit shall be placed on the agenda of the first possible Plan Commission meeting occurring after ten (10) days from the date of submission. The request shall be considered as being officially submitted when all the information requirements, including the payment of all applicable fees, are complied with. A hearing shall be conducted and a record of the proceedings shall be kept in such a manner and according to such procedures as the Plan Commission shall prescribe from time to time. The Village Board and/or Plan Commission can, on their own motion, apply conditional uses when applications for rezonings come before their bodies.

### **Sec. 13-1-85      Notice of Hearing on Application.**

- (a) Notice of the time, place and purpose of such hearing shall be given by publication of a Class 2 Notice as prescribed by the Wisconsin Statutes at least ten (10) days prior to the public hearing in the official Village newspaper. Notice of the time, place and purpose of such public hearing shall also be sent to the applicant, the Zoning Administrator, members of the Village Board and Plan Commission, and the owners of record as listed in the office of the Village Assessor who are owners of property in whole or in part situated within one hundred (100) feet of the boundaries of the properties affected, said notice to be sent at least ten (10) days prior to the date of such public hearing, except that in the case of livestock facility siting conditional use hearings, such notice shall be sent to owners of property within three hundred (300) feet, per Section 13-1-95.
- (b) Failure to fully comply with the notice to adjacent property owners shall not, however, invalidate any previous or subsequent action on the application.

### **Sec. 13-1-86      Standards-Conditional Uses.**

- (a) **Standards; Substantial Evidence Requirement for Conditional Use Applications and Permits.** No application for a conditional use shall be recommended for approval by the Plan Commission, or approved by the Village Board, unless the following conditions are present:
  - (1) That the applicant has demonstrated that the application and all requirements and conditions established by the Village relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. Per Sec.

62.23(7)(de)b., Wis. Stats., "substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

- (2) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
  - (3) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
  - (4) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
  - (5) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
  - (6) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
  - (7) That the conditional use shall conform to all applicable regulations of the district in which it is located.
  - (8) That the proposed use does not violate flood plain regulations governing the site.
  - (9) That adequate measures have been or will be taken to prevent and control water pollution, including sedimentation, erosion and runoff.
- (b) **Application of Standards.** When applying the above standards to any new construction of a building or an addition to an existing building, the Village Board and Plan Commission shall bear in mind the statement of purpose for the zoning district such that the proposed building or addition at its location does not defeat the purposes and objective of the zoning district and the Village Comprehensive Plan.
- (c) **Additional Considerations Based on Substantial Evidence.** In addition, in passing upon a Conditional Use Permit application, the Plan Commission shall also evaluate the effect of the proposed use upon:
- (1) The maintenance of safe and healthful conditions.
  - (2) The prevention and control of water pollution including sedimentation.
  - (3) Existing topographic and drainage features and vegetative cover on the site.
  - (4) The location of the site with respect to floodplains and floodways of rivers and streams.
  - (5) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
  - (6) The location of the site with respect to existing or future access roads.
  - (7) The need of the proposed use for a shoreland location.
  - (8) Its compatibility with uses on adjacent land.
  - (9) The amount of liquid wastes to be generated and the adequacy of the proposed disposal systems.

## **Sec. 13-1-87 Denial of Application for Conditional Use Permit.**

When an advisory recommendation of denial of a conditional use application is made by the Plan Commission or an actual denial by the Village Board, the Plan Commission and/or Village Board shall furnish the applicant, in writing when so requested, those standards that are not met and enumerate reasons the Plan Commission and/or Village Board has used in determining that each standard was not met. Such findings may be in the form of meeting minutes. Such decision by the Plan Commission or Village Board shall be based on substantial evidence as defined in Section 13-1-86(a)(1).

## **Sec. 13-1-88 Conditions and Guarantees Applicable to All Conditional Uses.**

The following conditions shall apply to all conditional uses:

(a) **Conditions Imposed Based on Substantial Evidence.**

- (1) Prior to the granting of any conditional use, the Plan Commission may recommend and the Village Board may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in Section 13-1-86 above. Any condition imposed must be related to the purpose of the Zoning Code and be based on substantial evidence which is measurable, which shall be documented in the record.
- (2) Per Sec. 62.23(7)(de)2.b., Wis. Stats., any conditions imposed by the Village under this Article shall be supported by substantial evidence, be reasonable, and to the extent practicable, be measurable, and may include conditions regarding the conditional use permit's duration, transfer, or renewal.

(b) **Types of Conditions.** In all cases in which conditional uses are granted, the Plan Commission may recommend and the Village Board shall require such evidence and guarantees as deemed necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such conditions may include specifications for, without limitation because of specific enumeration:

- (1) Landscaping;
- (2) Type of construction;
- (3) Construction commencement and completion dates;
- (4) Sureties;
- (5) Lighting;
- (6) Fencing;
- (7) Operational control;
- (8) Hours of operation;
- (9) Traffic circulation;
- (10) Deed restrictions;
- (11) Access restrictions;

- (12) Setbacks and yards;
  - (13) Type of shore cover;
  - (14) Specified sewage disposal and water supply systems;
  - (15) Planting screens;
  - (16) Piers and docks;
  - (17) Increased parking; or
  - (18) Any other requirements necessary to fulfill the purpose and intent of this Chapter.
- (c) **Site Review.** In reviewing each application and making its recommendation, the Plan Commission shall evaluate each application and may request assistance from any source which can provide technical assistance. The Plan Commission may review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation/use.
  - (d) **Signage; Evidence of Use.** One (1) sign having an area of not more than four (4) square feet shall be permitted, except that bed and breakfast establishments, shall be governed by Section 13-1-93.
  - (e) **Extent of Use.** At no time shall the proposed conditional use utilize more than thirty-five percent (35%) of the gross floor area of the conforming use.
  - (f) **Alteration of Conditional Use.** No alteration of a conditional use shall be permitted unless approved by the Village Board.
  - (g) **Architectural Treatment.** Proposed architectural treatment will be in general harmony with surrounding uses and the landscape. To this end, the Village Board may require the use of certain general types of exterior construction materials and/or architectural treatment.
  - (h) **Sloped Sites; Unsuitable Soils.** Where slopes exceed six percent (6%) and/or where a use is proposed to be located on areas indicated as having soils that are unsuitable or marginal for development, on-site soil tests and/or construction plans shall be provided that clearly indicate that the soil conditions are adequate to accommodate the development contemplated and/or that any inherent soil condition or slope problems will be overcome by special construction techniques. Such special construction might include, among other techniques, terracing, retaining walls, oversized foundations and footings, drain tile, etc.
  - (i) **Conditional Uses to Comply with Other Requirements.** Conditional uses shall comply with all other provisions of this Zoning Code such as lot width and area, yards, height, parking and loading. No conditional use permit shall be granted where the proposed use is deemed to be inconsistent or conflicting with neighboring uses for reasons of smoke, dust, odors, noise, vibration, lighting, health hazards or significant potential of accidents.

## **Sec. 13-1-89      Plan Commission Recommendation; Board Action.**

- (a) **Plan Commission Advisory Recommendation.**
  - (1) Following referral of conditional use permit applications, the Plan Commission may recommend that the Village Board authorize the Zoning Administrator to issue a conditional use permit for conditional uses specified in this Chapter after review and a

public hearing, provided such uses are in accordance with the purpose and intent of this Chapter, and, more specifically, the standards for conditional uses established in this Article.

- (2) The Plan Commission shall make findings of fact and recommend such actions or conditions relating to the request as the Commission deems necessary to carry out the intent and purpose of this Chapter. Such determinations shall be supported in the record by substantial evidence which is measurable.

(b) **Village Board Action.**

- (1) Upon receiving the recommendation of the Plan Commission, the Village Board shall place such recommendation(s) on the agenda for the next subsequent Board regular meeting. Such recommendations, including findings of standards not met as required by Section 13-1-87, shall be entered in and made part of the permanent written record of the Village Board.

- (2) If, upon receiving the recommendations of the Plan Commission, the Village Board finds that specific inconsistencies exist in the review process or significant new facts have now been made available and thus the final determination of the Village Board will differ from the advisory recommendation of the Plan Commission, the Village Board shall, before taking final action, refer the matter back to the Plan Commission with the written record or separate statement/report explaining the specific reasons for referral. This referral action shall only be permitted one (1) time with each conditional use permit application.

- (3) At the Village Board's discretion, the Board shall have the option to set and hold a public hearing at the next regular Village Board meeting. Such hearing shall be noticed and conducted as prescribed in this Chapter in compliance with the requirements of this Chapter and the Wisconsin Statutes. The Village Board shall make, and record in the minutes of the Board or in a separate statement/report, findings of fact and may impose and require any conditions the Village Board considers necessary to protect the public health, safety and welfare when approving and issuing a conditional use permit. The Village Board's decision to approve or deny the conditional use permit shall be supported by substantial evidence.

- (c) **Reapplication.** No application for a conditional use permit which has been denied in whole or in part by the Village Board shall be resubmitted for a period of one (1) year from the date of such denial, except on the grounds that substantial new evidence or proof of changes that would result in compliance with applicable conditions is included in the resubmitted application.

## **Sec. 13-1-90      Validity of Conditional Use Permit.**

- (a) Where the Village Board has approved or conditionally approved an application for a conditional use permit, such approval shall become null and void within twelve (12) months of the date of the approval unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six (6) months of the date of issuance and which shall not be renewed unless

construction has commenced and is being diligently prosecuted. Approximately forty-five (45) days prior to the automatic revocation of such permit, the Zoning Administrator shall notify the holder by certified mail of such revocation.

- (b) A conditional use permit shall also terminate and automatically be revoked when the permitted conditional use activity has a change of ownership.
- (c) The Village Board may extend such permit for a period of ninety (90) days for justifiable cause, if application is made to the Village Board at least thirty (30) days before the expiration of said permit.

### **Sec. 13-1-91      Complaints Regarding Conditional Uses; Revocation of Permit.**

- (a) **Continuing Jurisdiction.** The Village Board shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. Such authority shall be in addition to the enforcement authority of the Zoning Administrator to order the removal or discontinuance of any unauthorized alterations of an approved conditional use, and the elimination, removal or discontinuance of any violation of a condition imposed prior to or after approval or violation of any other provision of this Zoning Code.
- (b) **Complaints.** Upon written complaint by any citizen or Village official, the Village Board shall initially determine whether said complaint indicates a reasonable probability that the subject conditional use is in violation of either one (1) or more of the standards set forth in Section 13-1-86 above or a condition of approval or other requirement imposed hereunder.
- (c) **Hearing.** Upon staff confirmation of possible non-compliance, a hearing shall be held following notice as provided in Section 13-1-85 above. Any person may appear at such hearing and testify in person or represented by an agent or attorney.
- (d) **Board Modification of Conditions.** The Village Board may, in order to bring the subject conditional use into compliance with the standards set forth in Section 13-1-86 or conditions previously imposed by the Village Board, modify existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use.
- (e) **Revocation.** In the event that no reasonable modification of such conditional use can be made in order to assure that standards (a) and (b) in Section 13-1-86 will be met, the Village Board may revoke the subject conditional use permit and direct the Zoning Administrator and the Village Attorney to seek elimination of the subject use. Following any such hearing, the decision of the Village Board shall be furnished to the current owner of the conditional use in writing stating the reasons therefor.

### **Sec. 13-1-92      Bed and Breakfast Establishments.**

- (a) **Bed and Breakfast Establishments as Conditional Use.** Bed and breakfast establishments shall be considered conditional uses and may be permitted in residential districts pursuant to the requirements of this Article governing conditional uses.
- (b) **Definitions.** As used in this Section:

- (1) **Bed and Breakfast Establishment.** Any place of lodging that:
    - a. Provides ten (10) or fewer rooms for rent for more than ten (10) nights in a twelve (12) month period;
    - b. Is the owner's personal residence;
    - c. Is occupied by the owner or the owner's agent at the time of room rental; and
    - d. In which the only meal served to guests is breakfast.
  - (2) **Agent.** The person designated by the property owner as the person in charge of such establishment and whose identity is filed, in writing, with the Zoning Administrator upon issuance of the conditional use permit, and is updated five (5) days prior to a designated agent, or different agent, taking over responsibilities for the bed and breakfast establishment.
- (c) **Bed and Breakfast Establishment Regulations.**
- (1) **Location.**
    - a. All bed and breakfast rooms/units shall be located within a principal structure only.
    - b. A bed and breakfast establishment may be located in an officially-designated local, state or national historical structure with a living space area of not less than one thousand (1,000) square feet.
    - c. A bed and breakfast establishment may be located in an existing single-family dwelling with a living space area of not less than one thousand (1,000) square feet; a new single-family dwelling shall not be constructed for the purpose of establishing a bed and breakfast operation.
  - (2) **Number of Rental Units.** A maximum of ten (10) bed and breakfast units may be established in a structure.
  - (3) **Domicile Requirement.** The bed and breakfast structure shall be the domicile for the establishment's owner or manager.
  - (4) **Employee Restriction.** The bed and breakfast establishment shall employ not more than the equivalent of two (2) full-time persons who are not domiciled in the principal structure.
  - (5) **Dining and Other Facilities.** Dining and other facilities shall not be open to the public, but shall be used exclusively by the registered guests and residents, unless allowed by a separate permit.
  - (6) **Compliance With State Standards.** All bed and breakfast establishments and licensees shall be subject to and comply with Ch. HSS 197, Wis. Adm. Code, relating to bed and breakfast establishments and to any applicable provisions of Ch. HSS 195, Wis. Adm. Code, relating to hotels, motels and tourist rooming houses.
  - (7) **Guest Registry.** Each bed and breakfast establishment shall provide a register and require all guests to register their legal names and addresses before being assigned quarters. The complete guest registry shall be maintained and be available for inspection by Village representatives for a minimum period of one (1) year after a guest's registration.
- (d) **Bed and Breakfast Establishment Conditional Use Permit Required.**
- (1) **Permit Required.** In addition to any permits required by Chapters HSS 195 or 197, Wis. Adm. Code, every bed and breakfast establishment, before commencing business,

shall first obtain a conditional use permit from the Village of Fall River.

- (2) **Application Requirements.** In addition to the standard conditional use permit application requirements prescribed in this Article, applicants for a bed and breakfast conditional use permit shall also file the following information with the Village:
  - a. Site plan showing the location and size of buildings, parking areas and proposed signage.
  - b. Number, surfacing type and size of off-street parking stalls.
  - c. Proposed number, size, design and lighting of signs.
  - d. General description of the proposed operation, including number and configuration of rooms to be let to guests.
- (3) **Display of Permit.** Following issuance by the Village, the conditional use permit shall be conspicuously displayed in the bed and breakfast establishment.
- (e) **Off-Street Parking Requirement.** Conditional use permits for bed and breakfast establishments shall only be issued to those establishments that provide a minimum of one improved off-street parking space for each room offered for occupancy. The design, location and setbacks for such proposed parking areas is subject to approval and possible conditions from the Village Board. Establishments otherwise qualifying under this Section regulating bed and breakfast shall not be subject to other requirements of this Zoning Code with respect to parking.
- (f) **On-site Signs.** Total signage for bed and breakfast establishments shall be limited to a total of twelve (12) square feet, and may only be lighted in such a manner and nature as to not significantly alter or detract from the nature of the surrounding neighborhood. Establishments otherwise qualifying under this Section regulating bed and breakfast establishment shall not be subject to the requirements of this Zoning Code with respect to signs.
- (g) **Termination of Permit.**
  - (1) **Permit Void Upon Sale.** A bed and breakfast establishment conditional use permit shall be void upon the sale or transfer of the property's ownership. The Village Board shall review and conditionally approve or disapprove an application submitted by a person anticipating the purchase of premises for such use.
  - (2) **Voiding of Permit Upon Violation(s).** A permit issued in accordance with this Section shall be valid until terminated by action of the Zoning Administrator for violation of the provisions of this Section, permit conditions imposed pursuant to this Article, or applicable State of Wisconsin regulations as set forth in Chapters HSS 195 or 197, Wis. Adm. Code.

*State Law Reference: Chs. HSS 195 and HSS 197, Wis. Adm. Code.*

## **Sec. 13-1-93 Home Occupations/Professional Home Offices.**

- (a) **Intent.**
  - (1) **Intent.** The intent of this Section is to provide a means to accommodate a small home-based family or professional business home office without the necessity of rezoning from a residential to a commercial district. A home occupation or professional home

office exceeding the standards for a permitted home occupation/professional home office use under this Section may possibly be maintained pursuant to Subsection (e) below as a conditional use under Article E.

- (2) **Cumulative Scope of Activity.** The total number of home occupations or professions conducted within a dwelling unit is not limited, except that the cumulative impact of all home occupations or professions conducted within the dwelling unit or on the premises thereof shall not be greater than the impact of one (1) home occupation.
  - (3) **Purpose.** The regulations of this Section dealing with home occupations and professional home offices are designed to protect and maintain the residential character of established neighborhoods while recognizing that certain professional and limited business activities may be carried on in the home. This Section recognizes that, when properly limited and regulated, such activities can take place in a residential structure without changing the character of either the neighborhood or the structure.
- (b) **Definitions.** The following definitions are applicable in this Section:
- (1) **Home Occupation.** A business or trade conducted within a structure primarily zoned or used for a residential purpose, conducted primarily by a resident of the premises. Common features of a residential home occupation (or professional home office) are whether business-related materials or stock-in-trade are stored on the residential premises, vehicles with a business or delivery purpose are regularly parked on or make deliveries at the residence, the home is advertised as a place of business, and/or there is a business deduction taken for tax purposes for the residential premises.
  - (2) **Professional Home Office.** Residences of telemarketers, computer programmers, typists, clergy, architects, engineers, land surveyors, lawyers, artists, teachers, tradesmen, authors, accountants, musicians or other recognized professions used to conduct their professions; also included are professions listed in Subsection (d) below. Tradesmen are limited to maintaining a business office and small convenience shop as part of their residential premises. "Tradesmen" are defined as a person or persons who hold themselves out to the public as offering a particular skill including, but not limited to, carpenters, masons, plumbers, electricians, roofers, and others involved in the building trades.
- (c) **Home Occupations/Professional Home Office limited Permitted Use; Restrictions.** Except as provided in Subsection (c) below, home occupations and professional home offices are a limited permitted use in all Residential Districts, provided the requirements of the District in which the use is located and the following are complied with:
- (1) **Location; Size.** The occupation or profession shall be carried on wholly within the enclosed areas of the principal building or an attached garage, but it shall utilize no more than thirty percent (30%) of the gross floor area of the dwelling.
  - (2) **Exterior Alterations.** There shall be no exterior alterations which change the character thereof as a dwelling and/or exterior evidence of the home occupation other than those signs permitted in the district.
  - (3) **Storage.** No storage or display of materials, goods, supplies or equipment related to the operation of the home occupation/profession shall be visible outside any structure located on the premises. There shall not be outside storage of any kind related to the

home occupation/profession. The area in which products, materials and goods are kept shall be considered to be part of the thirty percent (30%) of the gross combined floor area permitted for a home occupation.

- (4) **Nuisances.** No home occupation use shall create smoke, odor, glare, noise, dust, vibration, fire hazard, small electrical interference or any other nuisance not normally associated with the average residential use in the district. A home occupation shall not be detrimental to the health, safety, welfare, peace and quiet or enjoyment of the surrounding property or neighborhood.
- (5) **Signage.** Only one (1) sign may be used to indicate the type of occupation or business. Such sign shall not be illuminated and shall not exceed four (4) square feet.
- (6) **Commercial Vehicles.** The home occupation shall not involve the use of commercial vehicles, other than those owned by the applicant for delivery of products or materials to and from the premises. This shall not be interpreted to include delivery and/or pickup services such as United Parcel Service, DHL, Federal Express, etc., in the conduct of their normal operations.
- (7) **Off-Site Delivery of Goods.** To the extent that there is any sale of any item related to a home occupation, delivery of that item to the buyer should occur off the premises.
- (8) **Traffic.** No traffic shall be generated by such home occupation/profession in greater volumes than would normally be associated with a residential neighborhood use.
- (9) **Parking.** There shall be no demand for parking beyond that which is normal to the neighborhood. In no case shall the home occupation cause more than two (2) additional vehicles to be parked on or near the premises.
- (10) **Types of Businesses.** Home occupations are restricted to service-oriented, professional or clerical business or office uses; the manufacturing of items or products or the retail sale of items or products on the premises is prohibited.
- (11) **Equipment Limits.** The types and number of equipment used on the premises may be restricted by the Village Board.
- (12) **Non-Resident Employees.**
  - a. No more than one (1) non-resident employee may work on the premises. The home occupation is to be conducted only by members of the family residing in the dwelling unit, plus no more than one (1) nonresident assistant or employee employed on the premises at any one time.
  - b. Persons engaged in building trades, similar fields and other activities using their dwelling units or residential premises as an office for business activities carried on off the premises may have more employees than the limitations set forth herein if they are not employed on the premises. The home office location shall not be used as a place for employees/workers to regularly come to receive off- premises work assignments.
- (13) **Hours of Operation.** Home occupations may only operate on the premises between 7:00 a.m. and 9:00 p.m.
- (14) **Retail Sales.** Retail sales on premises shall be prohibited including the retail sales of merchandise, products, supplies or goods not produced or fabricated on the premises, provided that minor incidental retail sales may be made in connection with the permitted

home occupation. (Example: a dressmaker would be permitted to sell only clothing produced or fabricated onsite and would not be allowed to purchase stocks of dresses for sale to the general public onsite.) The residence shall not be modified to accommodate retail sales activities (example: addition of a display window) and any retail activity shall be a minor use secondary to the primary occupation).

- (15) **Prohibited Home Occupations.** Mechanical repair for hire (including automobile, boat, recreational vehicle, small engine and body shop repair/work), equipment rental businesses, and businesses that involve the storage of heavy equipment on the premises (such as excavating or landscaping businesses) are not permitted as home occupations.
  - (16) **Inspections.** Any party maintaining a permitted home occupation or professional home office business under this Section may be subject to a compliance inspection(s) by a Village Building Inspector, Zoning Administrator, law enforcement officer, or health official if there is a reason to suspect that violations or improper activity may exist.
- (d) **Permitted Home Occupations/Professions Described.** Permitted home occupations/professions consistent with Subsection (c) not requiring a conditional use permit include, but are not necessarily limited to, the following examples:
- (1) Artists, sculptors, authors or composers.
  - (2) Home crafts such as model making, and rug weaving.
  - (3) Office facility of a minister, rabbi, or priest.
  - (4) Office facility of an attorney, architect, professional engineer, surveyor, author, interior decorator, photographer, income tax preparer, accountant, landscape architect, insurance agent or real estate agent, or similar profession which serves several clients onsite per day.
  - (5) Private tutoring limited to two (2) pupils at any one time.
  - (6) Musical instruction limited to two (2) pupils at a time; this requirement limiting class size shall not be construed to prohibit occasional exceptions for events such as recitals, demonstrations and other similar gatherings.
  - (7) Dressmaking and millinery work.
  - (8) Computer-oriented support services, such as consulting, clerical services, claims processing, internet-related businesses, etc.
  - (9) Day care of not more than eight (8) nonresident children.
  - (10) Office for sales representative or manufacturer's agent when no retail or wholesale goods transactions occur on the premises.
  - (11) Telemarketing and telephone answering service.
- (e) **Conditional Use Home Occupations/Professional Home Offices.**
- (1) **Conditional Use Permit Requirement.** A home occupation or professional home office exceeding the standards prescribed in Subsections (c) and (d) above for a limited permitted home occupation/professional home office use may apply for a standard conditional use permit under Article E of this Chapter. Village approval of an expansion of a home occupation or professional home office as a conditional use is not automatic.
  - (2) **Application Procedures.**
    - a. The Village Board, upon the recommendation of the Plan Commission, may approve home occupations or professional home offices in residential districts

- which do not meet the standards in Subsection (c) above as conditional uses.
- b. The procedures for conditional use permits prescribed in this Article shall be followed, and the standards in Sections 13-1-86 and 13-1-88 shall be applicable.
  - c. The Village Board may place conditions on the continuation or expansion of such home occupations/professional home offices, or the Village Board may require the relocation of the business to an area that is appropriately zoned.
  - d. Conditional use permits issued for home occupations/professional home offices under this Subsection are valid for a term of three (3) years. Upon the expiration of such term, the conditional use permit must be reapplied for.
- (3) **Sale of Property.** Sale, transfer of the property, expansion of the use beyond permitted levels, or other significant changes shall cause the conditional use permit for the home occupation/professional home office to be void. A new owner may apply for a new conditional use permit under the procedures of this Article.
  - (4) **In-Home Day Care.** In-home day care for children exceeding eight (8) non-resident children and community-based residential facilities (adult residential day care) exceeding more than eight (8) residents shall be required to obtain a conditional use permit under the requirements of this Subsection.
- (f) **Home Occupations/Professions Permitted With Conditional Use Permit.** The following uses, by the nature of the investment or operation, have a pronounced tendency once started to rapidly increase beyond the limits permitted for home occupations/ professions and thereby impair the use and value of a residentially zoned area for residence purposes. Therefore, home occupations are permitted only after issuance of a conditional use permit, and such occupations include, but are not necessarily limited to, the following:
- (1) Barber shops, beauty salons or hair stylist, nail salon or other cosmetology business.
  - (2) Antique shops.
  - (3) Stables and kennels.
  - (4) Medical offices, including, but not necessarily limited to, physicians, surgeons, dentists, chiropractors, acupuncturists, massage therapists, psychiatrists, psychologists, psychotherapists, or optometrists for the general practice of the profession, except for consultation or emergency treatment.
  - (5) Bakeries.
  - (6) Taxidermy shops.
  - (7) Uses that involves primarily catalog sales or order processing and which does not involve volumes of stock or merchandise being distributed at the site may be deemed a home occupation, subject to the provisions hereof, provided that such use meets the intent of all standards set forth herein.
  - (8) Cabinet-making or woodworking for profit (conducted inside a building only).

## **Sec. 13-1-94 Appeals Of Actions On Conditional Use Permit Requests.**

Any action of the Village Board in granting or denying a conditional use permit request may be appealed to the Zoning Board of Appeals by filing a written request for an appeal within ten (10)

business days after the date of the Village Board's action in granting or denying the permit. Such request for appeal shall be filed and reviewed pursuant to the procedures in Article N of this Chapter.

**Sec. 13-1-95      Comprehensive Plan Consistency Requirements  
and Conditional Use Permits.**

Pursuant to Sec. 66.1001(2m)(b), a conditional use permit that may be issued by the Village of Fall River does not need to be consistent with the Village Comprehensive Plan.

*State Law Reference: Sec. 66.1001(2m)(b), Wis. Stats.*

**Sec. 13-1-95 through Sec. 13-1-99   Reserved for future Use.**

## **Article F: Nonconforming Uses, Structures and Lots**

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### **Sec. 13-1-100 Intent – Nonconforming Uses, Lots and Structures.**

- (a) **Intent; Interpretation.**
- (1) Within the zoning districts established by this Zoning Code or amendment thereof, there may exist lots, structures and uses of land which were lawful before this Zoning Code was enacted or amended, but which would be prohibited in the future under the terms of this Zoning Code or amendment thereto.
  - (2) It is the intent of the Village of Fall River to permit nonconforming uses, lots and structures to remain and continue in accordance with the provisions hereinafter set forth until they are removed due to economic forces, public health or safety grounds, or otherwise. It is not the intent of this Zoning Code to perpetuate and/or encourage the long-term continuance of nonconformities because they are inconsistent with the requirements and character of the districts involved, or to permit nonconformities to be generally enlarged upon, expanded, or extended except as provided for herein. Existing nonconformities shall not be used to justify adding structures or uses prohibited in the zoning district.
- (b) **Classification of Nonconformities.** Zoning nonconformities are classified into three (3) categories as follows:
- (1) Nonconforming uses.
  - (2) Nonconforming lots.
  - (3) Nonconforming structures.
- (c) **General Guidelines.** It is the intention of the Village of Fall River that standards be set forth for the purpose of determining:
- (1) That the nonconforming use, lot or structure existed prior to the effective date of this Chapter or amendment thereto;
  - (2) The ways in which the right of the nonconforming use, lot or structure to remain can be preserved and the ways in which the right to continue nonconforming use, lot or structure can be lost;
  - (3) The extent of permissible variation in the nonconforming use, lot or structure; and
  - (4) The devices available for eliminating such nonconforming uses, lots or structures, where appropriate.
- (d) **Burden of Proof Regarding Nonconforming Uses.** Any property owner asserting as a defense to a charge of violating this Chapter because his/her property is a valid nonconforming use has the burden of demonstrating to reasonable certainty by the greater weight of credible evidence that:
- (1) The nonconforming use was legally in existence at the time the zoning ordinance provision that now prohibits that use was adopted. The use must be lawful under then existing zoning regulations and cannot contravene such zoning requirements.
  - (2) That the use of the property prior to the nonconformity came into being was so active and actual that the property owner can properly assert that the property owner has

acquired a vested interest in its continuance. Such use cannot be occasional or sporadic. For purposes of this Chapter, a property owner shall be deemed to have a vested right in the use of his/her property where that use at the time the nonconformity came into being is both actual and active and a substantial degree of activity or expense had been undertaken prior to the effective date the zoning provision that caused the nonconformity to come into being. Such use must be more than incidental or accessory to the principal use of the property.

- (3) That the use is substantially the same use that existed prior to the enactment of the ordinance or amendment thereto that caused the nonconformity.

### **Sec. 13-1-101 Article Definitions.**

In addition to the definitions contained in Section 13-1-300(a) of this Chapter, the following definitions shall be applicable in Article; in the event of conflict, the more specific definition shall be applicable:

- (a) **Assessed Value (Lot).** The full market value placed upon the lot by the Village Assessor as of the date that the nonconformity came into being. Such valuation by the Assessor shall be prima facie evidence of an assessed value of the lot.
- (b) **Nonconforming Lot.** [See definition in Sec. 13-1-300(a)].
- (c) **Nonconforming Structure.** [See definition in Sec. 13-1-300(a)].
- (d) **Nonconforming Use.** [See definition in Sec. 13-1-300(a)].

### **Sec. 13-1-102 Common Ownership of Abutting Nonconforming Lots.**

Nonconforming lots of record owned by the same individual or other legal entity shall be combined prior to the issuance of a zoning permit.

### **Sec. 13-1-103 Existing Nonconforming Structures.**

- (a) **Continuation of Nonconforming Structures.**
  - (1) The use of a structure existing on the date that the nonconformity came into being may be continued although the structure's size or location does not conform with the development regulations, parking, loading, or access provisions of this Chapter.
  - (2) Any lawful nonconforming structure may be extended, enlarged, reconstructed, or structurally altered, provided that said extension, enlargement, reconstruction, movement or alteration complies with the setback and building requirements of the specific zoning district. However, the nonconforming feature of said structure shall not be allowed to become more nonconforming by being extended, enlarged, reconstructed, moved, or structurally altered except under one (1) or more of the following fact situations:
    - a. As when required to do so by law, or order.
    - b. To comply with the provisions of this Chapter.

- c. With the approval of a conditional use permit under the procedures of Article E of this Chapter for the purpose of making required alterations to maintain the structural integrity of the building.
  - d. With the approval of a variance by the Zoning Board of Appeals.
- (b) **Yard Encroachments by Nonconforming Structures.** Nonconforming structures which encroach upon the yard (setback) requirements of this Chapter, but which met yard requirements at the time the nonconformity came into being at the time of construction, may be structurally enlarged or expanded if the existing structure is located at a minimum of at least fifty percent (50%) of the minimum setback requirement(s) and further provided that the alteration does not create a greater degree of encroachment on yard, height, parking, loading, or access requirements. Placement of a new foundation or basement under an existing nonconforming structure shall be allowed as long as no further encroachment is permitted. The setbacks of the zoning district in which the structure is located shall be met if the lot size and existing location of the structure permits the setbacks to be met.
- (c) **Unsafe Nonconforming Structures.** Nothing in this Chapter shall preclude the Building Inspector or any other Village of Fall River official from initiating remedial or enforcement actions when a lawful nonconforming structure is declared unsafe or presents a danger to the public health, safety, or welfare, constitutes a public nuisance, or is in violation of a licensing regulation.
- (d) **Maintenance, Repair and Remodeling of Nonconforming Structures.** This Chapter does not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.
- (e) **Restoration of Certain Damaged Nonconforming Structures.**
  - (1) In the case of damaged or destroyed nonconforming structures, the restoration of a nonconforming structure is permitted if the structure will be restored to the size, subject to Subsection (e)(2) below, location and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
    - a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
    - b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
    - c. Where the criteria under Subsection (e)(1) above exist for a nonconforming structure to be restored, the size of the structure may be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable federal or state requirements.
- (f) **Shoreland Nonconforming Structures.** Nonconforming structures in shoreland areas damaged or destroyed by violent wind, fire, flood, or vandalism may be reconstructed or repaired, as provided by state law, to the size, location, and use it had immediately before the damage occurred if the landowner can establish that the damage was not due to deliberate act by the landowner or his/her agent, or due to general deterioration or dilapidated condition.
- (g) **Relocation of Nonconforming Structures.** A nonconforming structure shall not be moved or relocated to any other location on the lot unless such structure is made to conform to all regulations of the zoning district in which it is located.

## **Sec. 13-1-104 Existing Nonconforming Uses.**

Pursuant to Section 62.23(7)(h), Wis. Stats., a nonconforming use may not be extended. The total structural repairs and alterations in such a nonconforming use's building, premises, structure, or fixtures shall not during its life exceed fifty percent (50%) of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. The nonconforming use of a structure, land, or water existing on the date that the nonconformity came into being may be continued although the use does not conform with the provisions of this Chapter, except that:

- (a) **Change to More Restrictive Use Category.** The nonconforming use of a structure may be changed to a use of the same or more restricted classification, but where the nonconforming use of a structure is hereafter changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of a less restricted classification.
- (b) **Discontinuation of Nonconforming Use.** If a nonconforming use is discontinued or terminated for a period of twelve (12) months, any future use of the structure, land or water shall conform to the provisions of this Chapter.
- (c) **Maintenance of Nonconforming Use Parcels.** Parcels containing a nonconforming use of land or water may be maintained or repaired including grading, paving, and surfacing, or the repair and replacement of bumper or wheel stops, fences, screening and drainage ways, provided that the amount of land, water or storage (i.e. vehicles, equipment and/or materials) devoted to such nonconforming use as it existed prior to the date that the nonconformity came into being is not extended, enlarged or moved.

## **Sec. 13-1-105 Changes and Substitutions.**

Once a nonconforming use or structure has been changed or altered so as to comply with the pertinent district provisions of this Chapter, it shall not revert back to a nonconforming use or structure. Once the Zoning Board of Appeals has permitted the substitution of a more or equally restrictive nonconforming use for an existing nonconforming use pursuant to the provisions of Article N, the existing use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Zoning Board of Appeals and pertinent zoning district. Substitution of new equipment may be permitted by the Zoning Board of Appeals if such equipment will reduce the incompatibility of the nonconforming use with the neighboring uses.

## **Sec. 13-1-106 Floodplain and Shoreland-Wetland Nonconforming Uses and Structures.**

- (a) **Nonconformities in Floodplain Zoning Areas.** Nonconformities in Floodplain Zoning areas shall be governed by the provisions of the Village of Fall River Code of Ordinances regulating floodplain zoning (if adopted by the Village), and pertinent sections of the Wisconsin Statutes and Wisconsin Administrative Code.
- (b) **Nonconformities in Shoreland-Wetland Zoning Areas.** Nonconformities in Shoreland-Wetland Zoning areas shall be governed by the provisions of the Village of Fall River Code

of Ordinances regulating shoreland-wetland zoning (if adopted by the Village), and pertinent sections of the Wisconsin Statutes and Wisconsin Administrative Code.

*State Law References: Sec. 87.303, Wis. Stats., and NR 116.15, Wis. Adm. Code*

### **Sec. 13-1-107 Nonconforming Performance Standards.**

The use of any lot or parcel failing to comply with the performance standards set forth in this Chapter at the time of the adoption of this Chapter shall not be expanded unless the expansion conforms with the performance standards set forth in this Chapter.

### **Sec. 13-1-108 Additions to Pre-Existing Nonconforming Uses and Mobile Homes.**

- (a) **Additions.** No additions to nonconforming structures shall be erected unless a variance is granted by the Zoning Board of Appeals.
- (b) **Change of Use to Different Nonconforming Use.** Nonconforming uses may be changed to distinctly different nonconforming uses only with conditional use approval. Conditional use review shall be based on compatibility of the proposed use with prevailing uses in the area.
- (c) **Replacement of Pre-Existing Mobile Homes.** Replacement of pre-existing nonconforming mobile homes may be allowed only in residential districts and shall be subject to the following provisions:
  - (1) The pre-existing nonconforming mobile home may be replaced only if it is occupied as a residence at the time of original passage of this Chapter. Replacement of vacated pre-existing nonconforming mobile homes shall not be permitted.
  - (2) All lot sizes, setbacks, and dimensional standards for residential district zoning shall be met.
  - (3) The replacement mobile home shall:
    - a. Not be previously titled, not more than two (2) years old, not have a value of less than Fifteen Thousand Dollars (\$15,000.00), excluding furnishings;
    - b. Be at least fourteen (14) feet by sixty (60) feet in size;
    - c. Have a shingled, pitched roof or non-reflective metal roof;
    - d. Have non-metallic siding;
    - e. Have wheels removed and be placed on pier footings forty-eight (48) inches; and
    - f. Be anchored and skirted.

### **Sec. 13-1-110 through Sec. 13-1-119 Reserved for Future Use.**

## **Article G: Traffic Visibility, Loading, Parking and Access**

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### **Sec. 13-1-120 Traffic Visibility Triangle.**

(a) **Vision Setback at Intersections of Public Streets.**

- (1) Where two (2) public streets intersect at grade level, the intersection shall be day-lighted by excluding all buildings, structures and other obstructions to view; including shrubbery and trees (except highway and street signs) from the triangles adjacent to the intersection described as follows:

Bounded on two (2) sides by the near boundaries of the intersecting streets and on the third side by a line drawn so as to intersect the street boundaries at points thirty-five (35) feet distant from the point of intersection of the street boundaries at the corner.

- (2) In situations where trees of large diameter, large numbers of trees, or some combination of these are present, this provision shall be construed to mean that a sufficient number of trees shall be removed so as to render an object such as a motor vehicle clearly visible across the vision clearance triangle from one street or road to another, the intent being to provide for the public safety; but it shall not necessarily be construed to mean that every tree in the vision clearance triangle must be removed.

- (b) **Exception.** In the case of arterial streets intersecting with other arterial streets or railways, the corner cutoff distances establishing the triangular vision clearance space shall be increased to fifty (50) feet.

### **Sec. 13-1-121 Loading Requirements.**

- (a) Loading Space Requirements. On every lot on which a new business, commercial or industrial use is hereafter established, off-street loading space with access to a public street or alley shall be provided as indicated below for the loading and unloading of vehicles off the public right-of-way:

<b>Uses</b>	<b>Square Feet of Gross Floor Area</b>	<b>Required Off-Street Loading Spaces</b>
Schools		1
Clinics, places of assembly	Under 10,000	1
	From 10,000 – 30,000	1
	For each additional 30,000 or major fraction thereof	1 additional
Funeral home		1

Office, hotel, retail, service,	Under 10,000	1
wholesale, warehouse,	From 10,000 – 25,000	1
manufacturing, processing	From 25,001 – 40,000	2
or repairing uses	From 40,001 – 60,000	3
	From 60,001 – 100,000	4
	For each additional 50,000	
	or major fraction thereof	1 additional

- (b) **Multiple or Mixed Uses.** Where a building is devoted to more than one (1) use or for different uses and where the floor area for each use is below the minimum required for a loading space but the aggregate floor area of such uses is above such a minimum, then off- street loading space shall be provided as if the entire building were devoted to that use in the building for which the most loading spaces are required.
- (c) **Location.** All loading areas shall be off-street and shall be located on the same lot as the building or use to be served. A loading area shall not be located less than twenty-five (25) feet from any street right of way; nor less than fifty (50) feet from a residential district unless within a building. Loading areas shall not occupy more than one-half (1/2) the required front yard setback. No loading space shall be located within thirty (30) feet of the nearest point of intersection of two (2) streets or require any vehicle to back into a public street.
- (d) **Design Standards.** Each off-street loading space shall have a width of at least twelve (12) feet, a length of at least forty-five (45) feet, and a vertical clearance of at least fourteen (14) feet. Dimensions for loading spaces in connection with funeral homes shall be reduced to ten (10) feet in width, twenty-five (25) feet in length, and eight (8) feet in vertical clearance. Every loading space shall be sufficiently screened in the form of a solid fence or shrubbery to protect neighboring residences.
- (e) **Surfacing.** All open off-street loading berths shall be improved with a compacted gravel base, not less than six (6) inches thick, surfaced with not less than two (2) inches of asphalt or treated with some comparable all-weather dustless material.
- (f) **Utilization.** Space allocated to any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements for any off-street parking facilities or portions thereof.
- (g) **Central Loading.** Central loading facilities may be substituted for loading berths on the individual zoning lots provided the following conditions are fulfilled:
  - (1) Each zoning lot served shall have direct access to the Central Loading Area without crossing streets or alleys at grade.
  - (2) Total berths provided shall meet the requirements based on the sum of the several types of uses served. (Areas of types of uses may be totaled before computing number of loading berths.)
  - (3) No zoning lot served shall be more than three hundred (300) feet removed from the Central Loading Area.
  - (4) The tunnel or ramp connecting the Central Loading Area with the zoning lot served shall be not less than seven (7) feet in width and have a clearance of not less than seven (7) feet.

- (h) **Unlawful Truck Use.** No more than four (4) trucks or semi-trailers, or part thereof, in the B-2, B-4, or I-1 Districts shall be used for the purpose of regular storage of goods or material, or for advertising purposes within the Village of Fall River. Use for a period in excess of two (2) weeks for the purpose of storage or advertising shall, for the purpose of construction of this Zoning Code, be deemed a regular use in violation of this Chapter.

## **Sec. 13-1-122     Parking Requirements.**

The off-street parking provisions of this Chapter shall apply to all buildings and structures erected after the effective date of this Chapter, accessory parking shall be according to the provisions of this Article; where an intensity of the use of any building structure or premises shall be increased, additional parking to match the increased intensity of use shall be provided; or wherever an existing building or structure is converted to a new use, parking shall be provided according to the requirements of the new use. All new nonresidential parking lots and all alterations of existing lots shall be subject to the approval of the Zoning Administrator. Requests for said parking lots shall be accompanied with detailed plans on landscaping, parking layout, drainage provisions and driveway locations. In all districts, there shall be provided at the time any use or building is erected, enlarged, extended, or increased off-street parking stalls for all vehicles in accordance with the following:

- (a) **Access.** Each off-street parking space shall open directly upon an aisle or driveway designed to provide safe and efficient means of vehicular access to such parking space. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement.
- (b) **Design Standards.** Each parking space shall not be less than one hundred sixty-two (162) square feet in area, eighteen (18) feet in length and nine (9) feet in width, exclusive of aisles and access drives. No parking area of more than two (2) spaces shall be designed as to require any vehicle to back into a public street. Any parking area of more than five spaces shall be sufficiently screened in the form of a solid fence or shrubbery to protect adjacent residential uses. Large expanses of unchanneled parking areas shall be avoided by interior landscaping and safety islands.
- (c) **Location.**
  - (1) All parking spaces required herein shall be located on the same lot with the building or use served, or may be located not to exceed five hundred (500) feet from the principal use. Off-street parking is permitted in all yards of all districts except in the nondriveway front yards of single-family and two-family residence districts but shall not be closer than five (5) feet to a nonresidential side lot line or rear lot line or closer than fifteen (15) feet to a right-of-way. No parking space or driveway, except in residential districts, shall be closer than fifteen (15) feet to a residential district lot line. Off-street parking in residential areas shall comply with Section 13-1-124.
  - (2) Off-street parking in the single-family and two-family residence districts is permitted in the front yard in the driveway, even though closer than five (5) feet to a side lot line providing the driveway conforms to the requirements in Sections 6-3-1 and 6-3-2 of this Code of Ordinances.

- (d) **Surfacing.** All new off-street parking areas, except parking spaces accessory to a single-family or two (2) family dwelling, shall be surfaced with a dustless all-weather material capable of carrying a wheel load of four thousand (4,000) pounds (normally, a two (2) inch lift of blacktop on a four (4) inch base or five (5) inches of Portland cement will meet this requirement). Any parking area for more than twelve (12) vehicles shall have the aisles and spaces clearly marked. Compacted stone or gravel may be used only with the approval of the Village Board. All parking lots three thousand (3,000) square feet or larger shall be internally drained with catch basins connected to a municipal storm sewer.
- (e) **Landscaping.**
- (1) **Accessory Landscape Area.** All public and private off-street parking areas which serve four (4) vehicles or more, are located within five (5) feet of any lot line or public right-of-way and are created subsequent to the adoption of this Code are recommended to be provided with accessory landscape areas totaling not less than ten percent (10%) of the surfaced area.
  - (2) **Location.** Location of landscape areas, plant materials and protection afforded the plantings, including curbing and provision for maintenance by the property owner, shall be subject to approval by the Zoning Administrator.
  - (3) **Plans.** All plans for such proposed parking areas, at the discretion of the Zoning Administrator, shall include a topographic survey or grading plan which shows existing and proposed grades and location of improvements. The preservation of existing trees, shrubs and other natural vegetation in the parking area may be included in the calculation of the required minimum landscape area.
  - (4) **Special Residential Requirements.** Those parking areas for five (5) or more vehicles if adjoining a residential use shall be screened from such use by a solid wall, fence, evergreen planting of equivalent visual density or other effective means, built and maintained at a minimum height of four (4) feet. Where a solidly constructed decorative fence is provided along the interior lot line, the minimum setback for the parking area shall be two (2) feet from said lot line. Said fence shall be located a minimum of one (1) foot from the said lot line.
  - (5) **Repair and Service.** No motor vehicle repair work or service of any kind shall be permitted in association with parking facilities provided in Residence Districts.
  - (6) **Lighting.** Any lighting used to illuminate off-street parking areas shall be directed away from adjacent properties and public streets in such a way as not to create a nuisance. However, in no case shall such lighting exceed three (3) footcandles measured at the lot line.
  - (7) **Street Setback Area.** No parking shall be permitted between the street right-of-way line and the building setback line prevailing in the zone in which the proposed parking area is to be located. The resulting open area shall be planted in grass or otherwise landscaped to create a permanent green area; the Village Board may grant an exception to this green area requirement in instances where it is not feasible to have such an open green space.
- (f) **Curbs or Barriers.** Curbs or barriers shall be installed a minimum of four (4) feet from a property line so as to prevent the parked vehicles from extending over any lot lines.
- (g) **Number of Stalls.** Number of parking or garage stalls required with new projects are shown

in the following table:

<b>Use</b>	<b>Minimum Parking Required</b>
Single-family dwellings, duplexes	2 garage and 2 surface parking stalls for each dwelling unit
Mobile homes	2 stalls for each dwelling unit
Multi-family dwellings	2 garage and 2 surface parking stalls for each dwelling unit
Housing for the elderly	0.75 space for each dwelling with one-half of these spaces to be built before occupancy and the balance of which spaces shall be reserved until such time as the Village Board may order them installed
Hotels, motels	1 stall for each guest room, plus 1 stall for each 3 employees
Hospitals, clubs, lodges, lodging and boardinghouses	1 stall for each 2 beds, plus 1 stall for each 3 employees
Sanitariums, institutions, rest and nursing homes	1 stall for each 5 beds, plus 1 stall for each 3 employees
Medical and dental clinics	8 stalls for each practitioner on the staff
Churches, theaters, auditoriums, community centers, vocational and night schools and other places of public assembly	1 stall for each 5 seats
Secondary and elementary schools	1 stall for each employee, plus 1 stall for each 5 students of 16 years of age or more.
Restaurants, bars, places of entertainment and clubs	1 stall for each 150 sq. ft. of floor area
Manufacturing and processing plants, laboratories and warehouses	1 stall for each 3 employees, plus sufficient stalls to accommodate all trucks and other vehicles used in connection with the business
Financial institutions; governmental and professional offices	1 stall for each 300 square feet of floor area
Funeral homes	1 stall for each 5 seats
Bowling centers	3 stalls for each lane
Bed and breakfast establishments	1 off-street stall for each guest room

Retail stores and repair service shops	1 stall for each 150 square feet of floor area
Shopping centers	1 stall for each 100 square feet of floor area

- (h) **Employee Parking.** In addition to the requirements in Subsection (g), in all districts except industrial there shall be employee off-street parking provided at the ratio of one off- street parking space for each full-time employee. A full-time employee shall be one working forty (40) hours per week. Required parking spaces for part-time employees shall be arrived at by finding the equivalent hours of number of parking spaces needed for full- time employees based on hours worked. The number of employee parking spaces shall be based on employment at the time the building is erected, enlarged, structurally altered or changed to a higher classification use.
- (i) **Uses Not Listed.** In the case of structures or uses not mentioned, the provision for a use which is similar shall apply, as determined by the Plan Commission.
- (j) **Computing Requirements.** In computing the number of spaces required, the following rules shall govern:
  - (1) Floor space shall mean the gross floor area of the specific use.
  - (2) For structures containing more than one (1) use, the required number of spaces shall be computed by adding the space required for each use.
  - (3) Where parking spaces are calculated according to the use of the parcel.
- (k) **Combined Uses.** Combinations of any of the above uses shall provide the total of the number of stalls required for each individual use. Two (2) or more uses may provide required off- street parking spaces in a common parking facility less than the sum of the spaces required for each use individually, provided such uses are not operated during the same hours. The following conditions must be met for any joint use:
  - (1) The proposed joint parking space is within four hundred (400) feet of the use it will serve.
  - (2) The applicant shall show that there is no substantial conflict in the principal operating hours of the two (2) buildings or uses for which joint use of off-street parking facilities is proposed.
  - (3) A properly drawn legal instrument approved by the Village Board, executed by the parties concerned, for joint use of off-street parking facilities shall be filed with the Village Clerk-Treasurer. Said instrument may be a three (3) party agreement, including the Village and all private parties involved. Such instrument shall first be approved by the Village Attorney.
- (l) **Handicapped Parking Requirements.**
  - (1) **State Code Requirements.** In addition to any other requirements relating to parking spaces contained in these Ordinances, the provisions contained in Sections 101.13, 346.503 and 346.56, Wis. Stats., and any Wisconsin Administrative Code sections adopted pursuant thereto are hereby adopted by reference and made applicable to all parking facilities whenever constructed. In case of conflict, the most restrictive provision shall be applicable.
- (m) **Americans With Disabilities Act (ADA) Requirements for Parking Spaces.**

(1) **Accessible Parking Space Requirements.**

- a. In any self-park facility, a certain number of spaces must be set aside for wheelchair access as summarized in the following table:

<b>Total Spaces</b>	<b>Minimum Accessible Spaces</b>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 & over	20 plus 1 per 100 over 1000 spaces

- b. Exceptions:
1. Outpatient units at medical care facilities - 10% of total spaces for that facility.
  2. Medical care facilities specifically for treatment of the mobility impaired - 20% of the total spaces for that unit.

(2) **Accessible Parking Space Dimensions.**

- a. Standard Accessible Spaces. Accessible spaces shall consist of a sixteen (16) foot wide parking stall adjacent to an eight (8) foot wide access aisle.
- b. Vertical Clearance. Along at least one (1) aisle to and from each accessible space, a minimum clearance of eight feet two inches (8'2") [ninety-eight (98) inches] is required.

(3) **Location of Accessible Spaces.**

- a. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel to an accessible entrance.
- b. Accessible parking spaces need not be provided in each parking structure provided the different location has equivalent or greater accessibility in terms of distance from an accessible entrance.

(4) **Accessible Route.**

- a. At least one (1) accessible route with a continuous minimum clearance of thirty-six (36) inches must be provided from accessible parking spaces to the nearest accessible pedestrian entrance.
- b. If an accessible route has less than sixty (60) inches clear width then passing spaces at least sixty (60) inches by sixty (60) inches must be located at reasonable intervals not to exceed every two hundred (200) feet.
- c. The floor slope along an accessible route shall not exceed one in twelve (1:12) with a maximum rise of thirty (30) inches for any run.

- d. A level landing shall be provided at the bottom of each ramp and top of each ramp run. The width of the landing shall be at least as wide as the ramp run and at least sixty (60) inches long. At changes in direction a sixty (60) inch by sixty (60) inch landing shall be provided.
  - e. The cross slope of ramps shall not exceed one in fifty (1:50).
  - f. The floor slope at loading zones shall not exceed one in fifty (1:50).
  - g. It is preferable to provide the accessible route at the front of the stalls. Also, the accessible route shall avoid crossing lanes of vehicular travel. When crossing vehicular travel lanes is necessary, the route of travel shall be designated and marked by a crosswalk.
- (n) **Changes in Buildings or Use.** Whenever a building or use is changed, structurally altered or enlarged to create a need for an increase of twenty-five percent (25%) or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Whenever a building or use is enlarged to the extent of fifty percent (50%) or more in the floor area, said building or use shall then comply with the parking requirements set forth in the district in which it is located.
- (o) **Off-Lot Parking.**
- (1) Required off-street parking spaces shall be located on the same lot with the principal use, or such parking spaces may be located off-lot provided the parking spaces are located in the same district and not over four hundred (400) feet from the principal use. In cases where off-street parking facilities are permitted on land other than the same lot as the principal use, such facilities shall be in the same possession as the lot occupied by the use to which the parking facilities are necessary or in the possession of the controller of the principal use to which the parking facilities are accessory. Such possession shall be by deed whereby the owner of the land on which the parking facilities are to be located shall be bound by a covenant filed and recorded in the Office of the County Register of Deeds requiring such owner, his/her heirs or assigns to maintain the required facilities for the duration of the use served.
  - (2) Off-lot parking spaces for residential uses shall be within two hundred fifty (250) feet of the principal entrance or the entrance for the individual occupants for whom the spaces are reserved while the farthest portions of a parking lot for all other uses shall be within four hundred (400) feet of the entrance of the establishment.
  - (3) Accessory parking may be located in residential districts provided that said lots or property are immediately adjacent to a commercial, business or industrial zoning district.
  - (4) All off-street parking lots adjoining lots zoned for residential use shall have a minimum setback of ten (10) feet from any interior lot line, except if the adjoining lot is used for legally conforming parking purposes.
- (p) **Signs.** Signs located in parking areas necessary for orderly operation of traffic movement shall be permitted in addition to others permitted in this Chapter.
- (q) **Reduction of Parking Areas.** Off-street parking spaces shall not be reduced in number unless said number exceeds the requirement set forth herein.

### **Sec. 13-1-123 Highway Access.**

- (a) **Highway Access.** No direct private access shall be permitted to the existing or proposed rights-of-way of expressways, nor to any controlled access arterial street without permission of the highway agency that has access control jurisdiction. No direct public or private access shall be permitted to the existing or proposed rights-of-way of freeways, interstate highways and their interchanges or turning lanes nor to intersecting or interchanging streets within 1,500 feet of the most remote end of the taper of the turning lanes (such as exit and entrance ramps). No driveway openings shall be permitted within one hundred (100) feet of the intersection of an arterial street right-of-way line.
- (b) **Access Barriers.** Access barriers, such as curbing, fencing, ditching, landscaping or other topographic barriers shall be erected to prevent unauthorized vehicular ingress or egress to the above specified streets or highways.
- (c) **Temporary Access.** Temporary access to the above rights-of-way may be granted by the Zoning Administrator after review and recommendation by the highway agencies having jurisdiction. Such access permit shall be temporary, revocable and subject to any conditions required and shall be issued for a period not to exceed twelve (12) months.

### **Sec. 13-1-124 Off-Street Parking Restrictions in Residential Areas.**

- (a) **Where Permitted.** Unless the district regulations provide otherwise, off-street vehicle parking is permitted in the following yards of property in a residentially zoned district:
  - (1) A rear yard.
  - (2) A side yard not adjoining a street.
  - (3) A front yard, but only on one (1) paved or graveled driveway not exceeding twenty-four (24) feet in width and for not more than three (3) vehicles parked not nearer than five (5) feet to a front property line or three (3) feet to a side lot line.
- (b) **Additional Permitted Areas.** Regardless of the provisions of Subsection (a) above, the Village Board may permit off-street vehicle parking in any yard of a residential development where the overall housing plan and design for such development, in the judgment of the Village Board, is substantially improved thereby, as compared to where off-street parking is limited by Subsection (a) above, and where sole access from such development is to local and collector streets. In this Subsection, "substantially improved" means a substantial increase in the value of the property. Such permission shall be granted only after a conditional use proceeding under Article E of this Code of Ordinances. No such permission shall be granted for any residential development which is adjacent to either a public right-of-way or other residences unless sufficient and suitable screening is provided so as to prevent, to as great a degree as practicable, direct view of such off-street parking areas from such adjacent areas.
- (c) **Vehicle limitations.**
  - (1) In a residential district, accessory off-street parking facilities provided for uses listed

herein shall be solely for the parking of passenger automobiles of patrons, occupants or employees and not more than two (2) trucks limited to one (1) ton capacity.

- (2) Only two (2) vehicles licensed as trucks may be parked on a residential lot. Such vehicles are limited in size to a maximum of one (1) ton capacity.
- (3) All vehicles parked on a residential lot shall be in condition for safe and effective performance of the function for which they are designed.
- (4) All motor vehicles parked on a residential lot shall display current license plates.

**Sec. 13-1-125 through Sec. 13-1-139      Reserved for future Use.**

## **Article H: Signs, Canopies, Awnings and Billboards**

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### **Sec. 13-1-140 Purpose of Sign, Canopy and Awning Regulations.**

The purpose of this Article is to establish minimum standards to safeguard life and property and promote public welfare and community aesthetics by regulating the appearance, construction, location and maintenance of all signs, awnings, canopies and billboards. The provisions herein contained shall be binding alike upon every owner of a building, every tenant and every person in charge or responsible for or who causes the construction, repair, relocation or alteration of any outdoor sign and other advertising structures in the Village of Fall River; painting, posting and general maintenance are excepted.

### **Sec. 13-1-141 Signs, Canopies, Awnings and Billboards—Definitions.**

- (a) The following definitions are used in this Article (Note: Not all types of signs defined herein are permitted under this Article):
- (1) **Abandoned Sign.** A sign which no longer correctly advertises a bona fide business, owner, landlord/tenant, product or activity conducted, or product available on the premises where the sign is displayed or elsewhere.
  - (2) **Animated Sign.** Any sign or part of a sign which changes physical position by movement or rotation, or gives the illusion of such change of physical position.
  - (3) **Area of Copy.** The entire area within a single continuous perimeter composed of squares or rectangles which encloses the extreme limits of an advertising message, announcement, or decoration.
  - (4) **Area of Sign.** The area is the perimeter which forms the outside shape, but excluding the necessary supports or uprights on which the sign may be placed unless they are designed as part of the sign. If the sign consists of more than one section or module, all areas will be totaled. The area of an irregularly shaped sign shall be computed using the actual sign face surface. The area of the irregularly shaped sign shall be the entire area within a single continuous rectilinear perimeter of not more than eight (8) straight lines.
  - (5) **Awning.** A movable hood or cover which projects from the wall of the building, which can be retracted, folded or collapsed against the face of a supporting structure. For purposes of this Article, an "awning sign" is any awning. Decorative awnings without lettering or imagery are not considered signs.
  - (6) **Banner.** A banner sign is generally constructed of a flexible non-rigid material (i.e. canvas, cloth, plastic, etc.) upon which goods, events or advertising has been placed, mounted to a pole or a building by a permanent frame at one or more edges. National flags, state or municipal flags, or the official flag of any institution or business shall not be considered banners.
  - (7) **Billboard.** A flat surface, as of a panel, wall or fence on which signs are posted advertising goods, products, facilities, or services not necessarily on the premises where

the sign is located or directs persons to a different location from where the sign is located.

- (8) **Blanketing.** The unreasonable obstruction of view of a sign caused by the placement of another sign.
- (9) **Building Front.** The horizontal, linear dimension of that side of a building which faces a street, a parking area, a mall, or other circulation area open to the general public; and having either a main window display of the enterprise or a public entrance to the building. (In industrial districts a building side with an entrance open to industrial employees also shall qualify as a building front.)
- (10) **Bulletin Board.** A sign used for the purpose of notification to the public of an event or occurrence of public interest, such as a church service, political rally, civic meeting or other similar event.
- (11) **Canopy.** Any structure of canvas, other fabric, plastic, metal or wood or other material, which is permanently attached to any exterior building wall in any manner, intended to shield any wall, window, door, sidewalk or roadway from sun, rain or any other element, and which is not retractable such as an awning.
- (12) **Canopy Sign.** Any sign attached to or constructed in, on or under a canopy for the purpose of this Article, canopy signs shall be controlled by the rules governing projecting signs.
- (13) **Changeable Message Sign.** A sign such as a manual, electronic or electric controlled time and temperature sign message center, or reader board, whether electronic or manual, where copy changes. Any sign may be, or include as part of it, a changeable message sign.
- (14) **Copy Area.** The geometric area in square feet that encloses the actual copy message of the sign.
- (15) **Directional Sign.** Any sign that directs the movement or placement of pedestrian or vehicular traffic on a lot and does not contain any advertising copy.
- (16) **Directly Illuminated Sign.** Any sign designed to give any artificial light directly through any transparent or translucent material from a source of light originating within or on such sign.
- (17) **Directory Sign.** Any sign on which the names and locations of occupants or the use of a building is given. This shall include offices and church directories. Directory signs shall be encouraged for use with advertising of multiple-occupied commercial and industrial buildings.
- (18) **Display Surface or Face.** The display surface is the area made available by the sign structure for the purpose of displaying the advertising message, or which is intended to draw attention to the advertising message.
- (19) **Distance of Sign Projection.** The distance from the exterior wall surface of the building to the outer extremity of a sign attached to a building.
- (20) **Electric Sign.** Any sign containing internal electrical wiring which is attached, or intended to be attached, to an electrical energy source.
- (21) **Electronic Message Unit Sign.** Any sign whose message may be changed by electronic process, including such messages as copy, art, graphics, time, date, temperature,

weather or information concerning civic, charitable or the advertising of products or services for sale on the premises. This also includes traveling or segmented message displays.

- (22) **Flashing Sign.** Any directly or indirectly illuminated sign on which artificial light is not maintained stationary and constant in intensity and color at all times when in use.
- (23) **Flat Sign/Flush Mounted.** See definition for "Wall Signs."
- (24) **Freestanding (Ground and/or Pylon Sign).** Any sign which is supported by structures or supports in or upon the ground and independent of support from any building.
- (25) **Grade.** The elevation or level of the sidewalk closest to the sign to which reference is made. If no sidewalk is present, then grade shall be defined as the elevation or level of the street at the same point, measured at the street's centerline.
- (26) **Gross Area.** The area of a sign determined by using the outside perimeter dimensions of the sign. If the sign consists of more than one module or section, their areas will be totaled. If the modules are formed in the shape of letters or symbols, the rules for Area of Copy apply.
- (27) **Ground Sign.** A sign supported by poles, uprights or braces extending from the ground or an object on the ground but not attached to any part of any building. Also known as a "freestanding sign. "
- (28) **Height of Sign.** The vertical distance measured from the mean centerline street grade to the highest point of the sign. If sign and sidewalk are not in essentially parallel planes, then measured vertically at the horizontal midpoint of the sign.
- (29) **Identification Sign.** Any sign which carries only the name of the firm, major enterprise, institution or principal products offered for sale on the premises or combination of these.
- (30) **Illuminated Awning.** An internally illuminated awning fabricated from a translucent material, or one which is backlighted as to appear to illuminate the awning sign. An illuminated awning may be used for an awning sign when other requirements are met.
- (31) **Illuminated Canopy.** An internally illuminated canopy, or one which is backlighted as to appear to illuminate the canopy sign.
- (32) **Illuminated Sign.** A sign lighted by or exposed to artificial lighting either by lights on or in the sign or directed toward the sign.
- (33) **Indirectly Illuminated Sign.** A sign that is illuminated from a source outside of the actual sign.
- (34) **Joint Identification Sign.** A sign which serves a common or collective identification for two (2) or more businesses or industrial uses on the same lot. Such sign may contain a directory to said uses as an integral part thereof.
- (35) **Legal Non-Conforming Sign.** Any sign which was already in existence and displayed on the effective date of this Article, which met code requirements when originally installed, but not meeting the requirements and limitations of this Article.
- (36) **Marquee.** A permanent roof-like structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against weather.
- (37) **Marquee Sign.** Any sign attached to or constructed in a marquee.
- (38) **Nonconforming Sign.** Any sign which does not conform to the regulations of this

Article.

- (39) **Off-Premises Third Party Sign.** Any sign, device or display which advertises goods other than that commonly available or services other than that commonly performed on the premises on which the sign is located.
- (40) **On-Premises Sign.** A sign identifying or advertising a business, person, activity, goods, products or services located on a premises where the sign is installed and maintained.
- (41) **Painted Wall Signs.** Signs painted directly onto a building wall.
- (42) **Political Sign.** Any sign displaying a candidate for an election, or a current referendum's or election's subject matter.
- (43) **Portable Sign/Message Boards.** Any sign not permanently attached to the ground or a building which is designed to be easily moved from one location to another.
- (44) **Projecting Sign.** A sign other than a wall sign extending more than eighteen (18) inches, but less than four (4) feet from the face of a wall or building; such sign may not extend more than three (3) feet into the right-of-way. (See "Wall Sign".)
- (45) **Pylon Sign.** Any freestanding sign mounted on a pole or other pylon. Also called a "pole sign."
- (46) **Real Estate Sign.** Any sign which is used to offer for sale, lease or rent the property upon which the sign is placed.
- (47) **Roof Line.** The highest point on any building where an exterior wall encloses usable floor area including roof area provided for housing mechanical equipment.
- (48) **Roof Sign.** A sign erected upon or above the roof line or parapet of the building or structure.
- (49) **Sandwich Sign.** A hinged or unhinged A-frame portable sign which is generally temporary in nature and placed near the roadway.
- (50) **Sign.** Any object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means including words, letters, figures, designs, symbols, fixtures, colors, motion, illumination or projected images.
- (51) **Sign Contractor.** Any person, partnership or corporation engaged in whole or in part, in the business of erection or maintenance of signs, excluding the business which the sign advertises.
- (52) **Sign Inspector.** That person charged with the responsibility to see that signage in the community is installed and maintained in compliance with this Article. In the Village of Fall River, the Sign Inspector will be the Zoning Administrator or Building Inspector.
- (53) **Sign Permit.** A building permit issued for the erection, construction, enlargement, alteration, moving, improvement, removal, conversion or demolition of any sign, issued pursuant to this Article and the Building Code of the Village of Fall River.
- (54) **Sign Structure.** Any supports, uprights, braces and framework of the sign which does not include any portion of the sign message.
- (55) **Subdivision Identification Sign.** A sign identifying a subdivision wherein only the name of the subdivision is specified.
- (56) **Swinging Sign.** A sign installed on an arm or mast or spar that is not, in addition,

permanently fastened to an adjacent wall or upright pole to limit or prevent free swinging.

- (57) **Temporary Sign.** Any sign which is erected or displayed for a limited period of time not to exceed thirty (30) consecutive days or which is displayed only during regular business hours and removed for storage at other times. A temporary sign shall not exceed thirty-two (32) square feet in area. Examples of temporary signs include banners and decorative-type displays. For purposes of this Article, a portable sign is not a temporary sign.
- (58) **Time and Temperature Sign.** An electrically controlled sign displaying time and temperature for public service information and may be incorporated into a business identification sign.
- (59) **Third Party Sign.** Any sign which advertises or directs attention to a business, commodity, service or activity conducted, sold or offered elsewhere than on the lot on which said sign is located.
- (60) **Wall Sign.** Any sign attached parallel to, erected on or painted on the wall of a building or structure and projecting not more than sixteen (16) inches from such wall.
- (61) **Window Sign.** Any sign located completely within an enclosed building and visible from a public way. For purposes of this Article a window sign shall not include any sign permanently attached in the window or directly painted on the glass.

## **Sec. 13-1-142 Required Permits for Signs, Canopies, Awnings and Billboards.**

### **(a) Permit Required; Payment of Sign Permit Fee.**

- (1) Except those specified in Section 13-1-143, no sign, billboard, awning or canopy, as defined in this Article, shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a sign permit and without being in conformity with the provisions of this Article. A sign permit is not required for a change of sign copy when no change in business name is involved.
- (2) Signs also shall meet all other structural requirements of other applicable codes and ordinances of the Village of Fall River including, as necessary and without limitation by enumeration, building permit and inspection requirements, site plan approval requirements and all applicable yard setback requirements. If the sign will affect the structural strength of a building, is large enough to require structural supports and bracing, or is to have electrical wiring, a building permit from the Building Inspector shall also be required.
- (3) Signs shall not be erected or altered until a permit has been issued by the Zoning Administrator. "Altered" shall be defined as any modification in the size, height, dimensions, location or mounting of a sign other than routine maintenance.
- (4) The required sign permit fee shall accompany each sign application and shall be required for all new signs and any modifications of any existing sign face or sign structure. A fee shall not be charged for putting an existing sign in conformity with this Article, or for a copy change when no change in business name is involved.

- (5) Any sign permit granted hereunder may not be assigned or transferred to any other sign or modified sign face or sign structure.
- (b) **Application for a Sign Permit.** Any person, firm, corporation or organization desiring to place, erect, alter or relocate a sign, as herein defined, except an exempt sign, shall make application to the Zoning Administrator and shall provide in writing the following information:
- (1) The name, address, telephone number (land line, cellphone and fax), and email address of the applicant.
  - (2) The name, address, telephone number (land line, cellphone and fax), and email address of the owner or owners of the premises upon which the sign is to be attached or erected, including written proof of consent from the property owner upon which the sign(s) are to be erected and maintained.
  - (3) The name, address, telephone number (land line, cellphone and fax), and email address of the owner of the sign if he/she is neither the applicant nor the owner of the premises on which the sign is to be attached or erected.
  - (4) The street number and street name or tax parcel number of the land upon which the sign is to be attached or erected.
  - (5) A legible scaled drawing with description and dimensions of the sign(s) to be erected or maintained under that permit and the sign's proposed location on the building or site.
  - (6) The basic materials to be used in the construction of the sign.
  - (7) A description of all electrical equipment if the sign is to be lighted or illuminated.
  - (8) Information about the sign: dimensions, including display surface; materials; illumination; wiring; height above grade; and distance from lot lines.
  - (9) Proof of payment of the appropriate sign permit fee, when required.
  - (10) Any other item of information that may be reasonably required by the Zoning Administrator or other Village officials for the purpose of application evaluation.
- (c) **Application Review.**
- (1) If the application is complete and the sign conforms to the basic requirements of this Article, the Zoning Administrator may issue a permit.
  - (2) The Zoning Administrator shall review all applications within ten (10) days of submittal. The Zoning Administrator shall review the applications and apply the established Sign Design Review Guidelines prescribed in Subsections (d) and (e).
- (d) **Basis for Granting.** In reviewing a sign permit application, the Zoning Administrator may consider the following factors in deciding whether or not to grant the issuance of a sign permit (see also Subsection (e) below):
- (1) Whether the sign is designed, installed, and maintained to promote the surrounding environment desired by the general public, pursuant to the objectives of proper design and zoning criteria.
  - (2) Whether the sign is designed, constructed, installed, or maintained in such a manner that it does not endanger public safety or traffic safety.
  - (3) Whether the sign is legible, readable, and visible in the circumstances in which it is to be used.
  - (4) Whether the sign, including size, height, illumination and location, is respectful of reasonable rights of other advertisers whose messages are displayed in the area.

- (5) Whether the sign is in compliance with the provisions of this Article.
  - (6) Whether the sign is in compliance with the provisions of this Code of Ordinances relating to traffic safety, traffic visibility setbacks, historic preservation and zoning.
- (e) **Sign Design Review Guidelines.** In addition to the criteria established in Subsection (d) above, the following Sign Review Guidelines shall be used by the Village Board in acting on sign permit applications and by the Zoning Board of Appeals in acting on appeals or variance requests:
- (1) Any signage affixed to a building should be dimensioned and located in such a manner that it fits the building's architectural features and proportions.
  - (2) All signs should be designed to fit the zoning and status character of the surrounding area. Special consideration should be made where proposed signage is located on or adjacent to locally identified historic structures or publicly owned recreation and conservancy areas. Signage in special planning areas, such as the downtown, or historic preservation areas, will be required to conform to the planned dominant architectural theme of the area. Signage in or abutting residential properties should be designed and located so as not to create a residential nuisance.
  - (3) As a general guidelines and where feasible, ground mounted, free standing signs larger than six (6) square feet shall be located at least one hundred (100) feet apart.
  - (4) Signs illuminated by floodlight or spotlights must be positioned in such a manner that none of the light spills over onto an adjoining property or glares or shines into the eyes of motorists or pedestrians, and may not exceed three (3) footcandles at the lot line.
  - (5) As a general guideline, the number of colors and materials should be kept to a minimum.
  - (6) Landscape features will be encouraged as part of all ground mounted signs. Landscape plantings or other landscape materials will not be counted as part of the allowable signage area.
- (f) **Permit Issuance/Denial.**
- (1) All sign permit applications shall be reviewed by the Zoning Administrator who shall deny or grant such applications or refer the application to the Village Board, within ten (10) business days of receipt of the complete application and payment of fee. If the sign meets the requirements of this Article and all other ordinances of the Village of Fall River, the Zoning Administrator shall issue a permit therefor.
  - (2) If the sign permit is denied by the Zoning Administrator, within five (5) days, a written notice of the denial shall be provided to the applicant, together with a brief written statement of the reasons for the denial.
  - (3) No permit for a sign issued hereunder shall be deemed to constitute permission or authorization to maintain an unlawful sign, nor shall any permit issued hereunder constitute a defense in an action to abate an unlawful sign.
- (g) **Appeal of Denial of Sign Permit.**
- (1) Any decision of the Zoning Administrator under this Article may be appealed to the Zoning Board of Appeals. A request for an appeals hearing shall be made in writing to the Zoning Administrator within thirty (30) days of the date of permit denial.
  - (2) A majority vote of the Zoning Board of Appeals is required to modify the earlier determination of the Zoning Administrator.

- (h) **Permit Revocation; Appeal.**
  - (1) A sign permit may be revoked by the Zoning Administrator in the event that the applicant has failed to comply with the provisions of these regulations or any conditions that may have accompanied the permit at the time of granting.
  - (2) The holder of a revoked sign permit may appeal such revocation action to the Zoning Board of Appeals. A request for an appeals hearing shall be made in writing to the Zoning Administrator within thirty (30) days of the date of the original permit revocation.
  - (3) Upon any permit revocation or failure to prevail before the Zoning Board of Appeals, the sign(s) subject to such revoked permits shall be removed by the licensee within thirty (30) days of such revocation.
  - (4) Revocation shall not give cause to a right of total or partial reimbursement of license fees paid.
- (i) **Standards for Zoning Board of Appeals in Reviewing Appeals.** The Zoning Board of Appeals may authorize upon appeal, in specific cases, issuance of a sign permit when such decision will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Article will result in unnecessary hardship and so that the spirit of this Article shall be observed and substantial justice done. No Zoning Board of Appeals' appellate decision shall have the effect of allowing in any district uses prohibited in that district or permit standards significantly lower than those required by state law or this Article.
- (j) **Stay of Proceedings During Appeals.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his/her opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.
- (k) **Signs in Historic Districts.** In addition to these sign regulations, all signs within any historic district shall be subject to the provisions of the Village's Historic Preservation Code.
- (l) **Insurance.** Any person, firm or corporation engaged in the business of erecting, repairing, maintaining or relocating any sign shall maintain in effect at all times a policy of liability insurance with limits of One Hundred Thousand Dollars (\$100,000.00) for bodily injury and Two Hundred Thousand Dollars (\$200,000.00) aggregate and One Hundred Thousand Dollars (\$100,000.00) property damage. Proof of insurance shall be presented to the Zoning Administrator before the sign permit is granted.
- (m) **Inspection.** The applicant shall, upon completion of the installation, relocation or alteration of the sign, notify the Zoning Administrator who may inspect the premises to inspect whether the sign complies with the regulations of this Article.
- (n) **Permit Validity.** Any sign permit issued by the Zoning Administrator shall be null and void and automatically revoked in the event that construction, installation, or manufacture of the sign has not been commenced within one hundred eighty (180) days from the date of the issuance of such permit. If work authorized by such permit is suspended or abandoned for a

period of ninety (90) days any time after the work is commenced, the original permit shall become null and void. A new permit shall first be obtained to complete the work, and a new permit fee shall be required.

*Cross-Reference: Section 13-1-263, Variances.*

## **Sec. 13-1-143 Signs Not Requiring a Permit.**

The following signs may be erected and maintained in all zoning districts, provided the sign is not located over a public water or right-of-way, except where noted, without a permit and without being deducted from gross sign surface area permitted.

- (a) **Bulletin Boards.** One bulletin board per premises per street frontage, and not over thirty-five (35) square feet in area, for public, charitable or religious institutions located on site.
- (b) **Government Signs.** Government signs for control of traffic, parking and other regulatory purposes, danger signs, railroad crossing signs, and signs of public utilities indicating danger, and aids to service or safety which are erected by or on the order of a public officer in the performance of his/her public duty. This includes legal notices, identification or directional signs erected by governmental bodies. Included within this definition are off-premises institutional signs.
- (c) **Interior Signs.** Signs located within the interior of any building or structure which are not visible from the public right-of-way.
- (d) **Memorial Signs.** Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface, or inlaid so as to be part of the building.
- (e) **Occupant Signs.** Signs limited in content to name of occupant and address of premises. Occupant signs shall be a maximum of one (1) per street front and no more than (4) square feet in sign area.
- (f) **Governmental Notices.** Official governmental notices and notices posted by governmental officers in the performance of their duties ; informational notices; or for other informational or regulatory purposes, to identify streets or to warn of danger.
- (g) **Temporary Construction Safety Signs.** Temporary or permanent signs erected by public utility companies or construction companies to warn of dangerous or hazardous conditions.
- (h) **Traffic and Service Signs on Private Premises.** Traffic and parking signs and devices privately-owned and on private premises, and containing messages such as "exit only", "restricted for \_\_\_\_\_", and the like, the sole purpose of which is to direct and control traffic on the premises and which does not exceed seven (7) feet above the curb line, nor contain more than ten (10) square feet per face. Signs designating entrances, exits, service areas, parking areas, restrooms and other such signs relating to functional operation of the building or premises shall be permitted without permit under this exception.
- (i) **Signs Required by Law.** Signs required by law, statute or ordinance, constructed and maintained according to the law, statute or ordinance under which the sign was erected.
- (j) **Real Estate Signs.** One (1) "For Sale" or "For Rent" sign per street frontage may be placed on the offered property and shall not be more than ten (10) square feet in size for residential property and not more than thirty-two (32) square feet in area for non-residential property.

No such sign shall be closer than twelve (12) feet to a lot line. The sign may only advertise the sale, rental or lease of the premises upon which it is located and contain the name and/or logo of the real estate company, or individuals and their respective addresses and telephone numbers, posting the sign. No such sign shall project higher than one (1) story or fifteen (15) feet above curb level, whichever is lower, when attached to a building; detached or freestanding signs shall not be more than four (4) feet in height, measured from the soil grade to the top of the sign post. Such signs shall be removed within thirty (30) days after sale, rental or lease of the property.

- (k) **Signs in Display Windows.** Signs in the display window of a business which relate to services or products offered therein. This display sign exception is only permitted for properties in the following zoning districts: B-1 Central Business District and B-2 Highway Commercial District. The window sign must direct attention to a business or profession conducted on the premises or to a product, service or entertainment sold or offered on said premises. Window signs shall be placed only on the inside of commercial buildings and shall not exceed thirty-five percent (35%) of the glass area of the pane upon which the sign is displayed.
- (l) **On-Premises Symbols or Insignia.** Religious symbols, commemorative plaques of recognized historic agencies, or identification emblems of religious orders or historical agencies.
- (m) **On-Premises Temporary and Portable Signs in Residential Districts.** Temporary or portable signs under twenty (20) square feet for the purpose of an on-site open house, model home demonstration, special event such as a birthday or anniversary, and for five (5) days thereafter, but may not exceed a total period of thirty (30) days per twelve (12) month period.
- (n) **Civic Event Temporary Signs.** Temporary off-premises signs not exceeding four (4) square feet in residential or public lands districts, or thirty-two (32) square feet in the B-1, B-2, B-3, B-4 and I-1 Districts, pertaining to drives or events of civic, philanthropic, educational, religious, or non-profit organizations, provided such signs are posted not more than thirty (30) days before said event and removed within seven (7) days after the event.
- (o) **Political Signs.** Political message, public election or referenda signs during an election campaign shall comply with Sec. 12.04(1), Wis. Stats. Political signs may be posted ninety (90) days before an election and must be removed within ten (10) days after said election. Said sign shall be a maximum of thirty-two (32) square feet.
- (p) **Rummage/Garage Sale Signs.** Rummage or garage sale signs not to exceed eight (8) square feet in area, but use of this type of sign shall be limited to seventy-two (72) hours per sale. Rummage or garage sale signs may only be located on the day of the garage sale within street right-of-way lines between the private property line and the pavement edge with the permission of the adjoining private property owner or renter in a location which does not create a visibility or traffic hazard (as determined by the Zoning Administrator or a law enforcement officer).
- (q) **Open/Close Signs.** Illuminated and non-illuminated signs not exceeding ten (10) square feet in area announcing that a business is open or closed.
- (r) **Decorative Features.** Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights

## **Sec. 13-1-144 Residential Signs Requiring a Permit.**

In addition to those permitted signs not requiring a permit pursuant to Section 13-1-143, the following nonflashing, nonilluminated signs (except as otherwise provided) are permitted under the conditions specified in all residential districts and planned unit developments (residential) established by the Village's Zoning Code.

(a) **Temporary Signs Accessory to Subdivision Developments or Other Permitted Improvements in Residential Districts. Subject to the following:**

- (1) **Content.** The signs shall be only for the purpose of identification of homes for sale or rent in the subdivision under construction, of lots for sale, or for the identification of other nonresidential uses under construction.
- (2) **Area, Number and Setback.** Such signs shall not exceed two (2) in number for each subdivision nor fifty (50) square feet each in area. They shall observe the front yard requirement of the principal use and shall be located at least fifty (50) feet from all other boundaries of the site.
- (3) **Height.** No sign shall project higher than eight (8) feet above curb level.
- (4) **Time Limitations.** The sign or signs shall be removed by the applicant or property owner within two (2) years of the date of the issuance of a sign permit or when the parcels being advertised are sold, whichever occurs first.

(b) **Permanent Subdivision Identification Signs.** Subject to the following:

- (1) **Content.** The signs shall bear only the name of the subdivision or development.
- (2) **Area and Number.** There shall be not more than two (2) signs located at each entrance to a subdivision. No sign shall exceed thirty-two (32) square feet in area. Such identification signs shall only be erected after review and approval by the Zoning Administrator.
- (3) **Height.** No sign shall project higher than twelve (12) feet above curb level.
- (4) **Location.** The location of any such sign shall be at the discretion of the Zoning Administrator based upon the character of the area, the type and purpose of the sign.

(c) **Nonflashing, Illuminated Church Bulletins.** Subject to the following:

- (1) **Area and Number.** There shall be not more than one (1) sign per lot, except that on a corner lot, two (2) signs (one facing each street) shall be permitted. No sign shall exceed thirty-two (32) square feet in area nor be closer than five (5) feet from any lot line.
- (2) **Projection.** No sign shall project beyond the property line into the public right-of-way.
- (3) **Height.** No sign shall project higher than one (1) story or fifteen (15) feet above the curb level, whichever is lower.

(d) **Bed and Breakfast Signs.** Subject to the following:

- (1) **Content.** The sign shall bear only the name, address and other pertinent information regarding the bed and breakfast establishment.
- (2) **Area and Number.** There shall not be more than one (1) sign per lot street frontage. No sign shall exceed twelve (12) square feet in area. Such sign shall have a ten (10) feet setback from a public right-of-way or lot line.
- (3) **Projection.** No sign shall project beyond the property line into the public right-of-way.
- (4) **Height.** No sign shall project higher than six (6) feet above the street level.

- (e) **Home Occupation/Professional Home Office.** Subject to the following:
  - (1) **Content.** The sign shall bear only the name, address, hours and other pertinent information regarding the on-site home occupation or professional home office maintained in compliance with the Village's Zoning Code.
  - (2) **Area and Number.** There shall not be more than one (1) sign per lot. No sign shall exceed twelve (12) square feet in gross area. Such sign shall have a ten (10) foot setback from a public right-of-way or lot line, and illumination shall be indirect.
  - (3) **Projection.** No sign shall project beyond the property line into the public right-of-way.
  - (4) **Height.** No sign shall project higher than six (6) feet above the street level.

### **Sec. 13-1-145 Commercial, Agricultural and Industrial Signs Requiring a Permit.**

- (a) **Permitted Signs.** The following signs in this Section shall require a sign permit to be issued unless otherwise specified. Signs may be permitted in specific zoning categories, subject to the following restrictions.
- (b) **Height and Setback Requirements.** In zoning districts where no front yard setbacks are required, a sign must be attached to the building and shall project no more than three (3) feet over the abutting public sidewalk or established street grade.
- (c) **Number of Signs Permitted.**
  - (1) **Total Number.** No more than one (1) off-premises third party sign or directory/community sign and two (2) signs of any other type shall be located at any business, except that premises occupied by a shopping center may, as an alternative, have one (1) detached directory sign plus one (1) wall sign for each place of business located in said shopping center.
  - (2) **Corner Lots.** Businesses with streets fronting both sides shall be allowed two (2) types of signs for each street frontage; no street frontage buildings shall be allowed two (2) of the same type of sign for that particular business.
- (d) **Types of Signs; Maximum Size; Number; location.**
  - (1) **Type 1 – Directory Signs.** Directory signs advertising a business or activity conducted, an area of interest, or a service available, at a specific location. Such signs shall be not more than twenty-four (24) square feet in gross area. There shall be not more than two (2) such signs relating to any one (1) such use in the approaching direction along any one (1) highway/street. No such sign shall be more than ten (10) miles away from the location to which it relates. Such signs may be placed with a ten (10) foot setback from the right-of-way line of a public highway/street or lot line. A larger number of directory signs may be permitted upon application to the Zoning Board of Appeals and if such Board finds that additional signage is necessary for directing the traveling public. *Permit required.*
  - (2) **Type 2 – Wall Signs.** Wall signs on and parallel to the exterior wall of a building or structure, and not extending more than six (6) inches from the wall surface, shall not exceed in gross area for any one (1) premise or be more than twenty (20) feet in height. *Permit required:*

- a. Three hundred (300) square feet in a B-1 Central Business District or AEO District.
  - b. Three hundred (300) square feet in a B-2 Highway Business District.
  - c. Three hundred (300) square feet in an I-1 Industrial District.
- (3) **Type 3 – Projecting Signs.** Projecting signs fastened to, suspended from, or supported by a building or structure, shall not exceed in gross area for any one (1) premise: One hundred (100) square feet on each of two (2) faces in a B-1 Central Business District or AEO District; one hundred (100) square feet on each of two (2) faces in the B-2 Highway Business District; and one hundred (100) square feet on each of two sides in an I-1 Industrial District. Such signs shall not extend more than five (5) feet into any required yard nor more than three (3) feet into any public right-of-way; shall not be less than ten (10) feet from any side lot line; shall not exceed a height of twenty (20) feet above the mean centerline street grade; and shall not be less than ten (10) feet above a pedestrian sidewalk nor less than fifteen (15) feet above a road, street, alley or driveway. *Permit required.*
- (4) **Type 4 – Ground Signs.** All parts of ground signs and their supporting structure shall have a minimum setback requirement of ten (10) feet from the right-of-way and shall not exceed in gross area for any one (1) premise: Eighty (80) square feet on each side in the B-1 Central Business District or AEO District; one hundred twenty (120) square feet on each side in the B-2 Highway Business District; or one hundred sixty (160) square feet on each side in the I-1 District. Such signs shall not exceed twenty (20) feet in height above mean centerline street grade. *Permit required.*
- (5) **Type 5 – Roof signs.** Roof Signs shall not exceed ten (10) feet in height above the roof, shall meet all the yard and height requirements for the district in which they are located and shall not exceed three hundred (300) square feet on all sides for any one (1) premises. *Permit required*
- (6) **Type 6 – Window Signs.** Window signs may be placed in the windows of business establishments per the standards of Section 13-1-143(k). *No permit required.*
- (7) **Type 7 – Recreational Directory Sign.** Recreational directory signs indicating the direction to a cottage, resort, residence or similar use. Such signs shall not be more than twelve (12) square feet in gross area. Where a common posting standard is provided all such signs shall be attached to the standard recreational directory. The resulting composite sign shall not exceed thirty-two (32) square feet in gross area. Signs may be placed at the right-of-way line of a highway/street. *Permit required.*
- (8) **Type 8 – Off-Premises Third Party Signs.** Off-premises third party signs are prohibited except that a business in a B-1, B-2, B-3 or I-1 District may host one (1) off-premises third party or community/directory pylon or ground sign directing customers to another business location. No business shall employ or utilize more than one (1) off-premises directory/community sign within the limits of the Village. Shared signs shall comply with the dimensional requirements of Subsections (d)(4) and (5) above, except that the secondary directory sign's dimensions shall not exceed fifty percent (50%) of the primary sign's maximum allowable dimensions. Such signs shall share the same pylon or ground sign mountings whenever possible.
- (9) **Type 9 – Shopping Center/Industrial Park Directory Signs.** In a shopping center or

industrial park, one (1) free-standing identification/directory sign for each street upon which the development fronts may be permitted showing the name of said center or park and represented business or industries. Directory signs for shopping centers or industrial parks are permitted as an alternative to ground signs or projecting signs for individual stores in the shopping center or business in the industrial park. The top of a directory sign shall not exceed thirty-two (32) feet in height above the mean centerline street grade and the bottom of the sign shall not be less than ten (10) feet above the sidewalk and not more than sixteen (16) feet above a driveway or alley. Double supporting pylons shall not be greater than ten (10) feet apart. That portion of the directory sign which advertises the shopping center or industrial park name shall not exceed one hundred (100) square feet for one (1) side and a total of two hundred (200) square feet for all sides. That portion of the directory sign which advertises the individual store/business name shall not exceed sixteen (16) square feet for one (1) side and a total of thirty-two (32) square feet for all sides. Directory signs shall have a ten (10) foot setback from any public right-of-way or lot line.

(e) **Permitted locations of Signs Requiring a Permit.**

<b>Zoning District</b>	<b>Types of Signs Permitted</b>
B-1, B-2, B-3	1, 2, 3, 4, 5, 6, 7, 8, 9
I-1	1, 2, 3, 4, 5, 6, 7, 8, 9
A-1, A-2	1, 2, 3, 4, 5, 6, 7, 8
C-1	3, 6, 7
AEO	Per district requirements

**Sec. 13-1-146 Special Sign Requirements.**

A sign permit is required in any zoning district for the following special sign types:

(a) **Electronic Message Unit Signs.**

- (1) Such signs may be used only to advertise activities conducted on the premises or to present public service information.
- (2) Segmented messages must be displayed for not less than one-half (1/2) second and more than ten (10) seconds.
- (3) Traveling messages may travel no slower than sixteen (16) light columns per second and no faster than thirty-two (32) columns per second.

(b) **Portable Signs/Message Boards.**

- (1) The use of portable, temporary or non-fixed signs or message boards is prohibited within the Village unless the owner or tenant of the property on which such type of sign is to be located first obtains a portable/temporary sign permit from the Zoning Administrator. Such permit is valid for the calendar year and is subject to annual review by the Zoning Administrator for compliance with the requirements of this Subsection.
- (2) The Zoning Administrator shall not issue a permit for placement of a portable

sign/message board if it presents a vision obstruction. The maximum size of a portable sign/message board shall be ten (10) square feet on each face, back to back. Portable signs/message boards shall not be located in any public rights-of-way, shall not have flashing lights, and shall be securely fastened to prevent any hazardous condition.

- (c) **Search Lights.** The Zoning Administrator may permit the temporary use of a searchlight for advertising purposes in any district provided that the searchlight will not be located in any public right-of-way, will not be located closer than ten (10) feet to an adjacent property and will not cause a hazard to traffic or adjoining properties. Searchlight permits shall not be granted for a period of more than five (5) days in any six (6) month period.
- (d) **Sandwich Signs.** In instances where the property owner or business tenant in a B-1 Community Commercial District or B-2 Highway Commercial District wishes to erect an on-premises temporary sandwich board advertising that business, there is a limit of one (1) sandwich board per business tenant and such sign shall not exceed four (4) feet in height and eight (8) square feet per side display area. Sandwich signs may be placed only after issuance of a sign permit and shall be placed in a manner so as not to present a hazard. Sandwich signs shall be removed from the right-of-way area at the close of each business day.
- (e) **On-Site Banner Signs.** On-site banner signs, whether permanent or temporary, shall not be erected for over sixty (60) days.
- (f) **Over-the-Street Banners.** Over-the-street banners are not permitted, except for civic activities.
- (g) **Neon Signs.** Exterior neon or gas illumination signs require a sign permit.
- (h) **Signs Accessory to Roadside Stands.**
  - (1) **Content.** The signs shall only be for the purpose of identification of the roadside stand and advertising the agricultural products for sale therein.
  - (2) **Area and Number.** The signs shall be on the same zoning lot (either zoned agricultural or with a conditional use permit in other zoning districts) as the roadside stand, and there shall be not more than three (3) signs per parcel. No sign shall exceed twelve (12) square feet in area nor be closer than fifty (50) feet from any other zoning lot.
  - (3) **Projection.** No sign shall project beyond the property line into the public way.
  - (4) **Height.** No sign shall project higher than fifteen (15) feet above the curb level.
  - (5) **Permit.** A sign permit is required for this type of sign.

## **Sec. 13-1-147 Awnings and Canopies.**

- (a) **Permitted Awnings.** No awnings shall be erected or maintained, except such awnings as comply with the following requirements, and then only if the permit required hereunder is first obtained and the same conform to the regulations of the zoning district in which the same are to be located:
  - (1) **Support.** Awnings shall be securely attached to and supported by the building and shall be without posts or columns beyond the setback line.
  - (2) **Height.** All awnings shall be constructed and erected so that the lowest portion thereof shall be not less than eight (8) feet above the level of the public sidewalk or public thoroughfare.

- (3) **Awning Extension from Curb Line.** No entrance awning shall extend beyond a point eight (8) feet into the right-of-way.
  - (4) **Advertising.** No advertising shall be placed on any awning, except that the name and logo of the establishment within the building to which the awning is attached may be painted or otherwise permanently placed in a space not exceeding eight (8) inches in height on the front and side edges.
- (b) **Permitted Canopies.** No canopies shall be erected or maintained, except such canopies as comply with the following requirements, and then only if the permit required hereunder is first obtained and the same conform to the regulations of the zoning district in which the same are to be located:
- (1) **Support.** The structural support of all canopies shall be properly designed and be approved by the Zoning Administrator as in compliance with the Building Code of the Village. All frames and supports shall be designed to withstand a wind pressure as provided in this Article. All canopies and awnings shall be attached to a building, and no supports shall exist beyond the setback line between the canopy and/or awning and the sidewalk or ground below.
  - (2) **Height Above Sidewalk.** All canopies shall be constructed and erected so that the lowest portion thereof shall not be less than eight (8) feet above the level of the sidewalk or public thoroughfare.
  - (3) **Canopy Extension from Curb Line.** No entrance canopy shall extend beyond a point eight (8) feet from the face of a wall or building.
  - (4) **Advertising.** No advertising shall be placed on any canopy, except that the name and logo of the establishment may be painted or placed in a space not exceeding twenty-four (24) inches in average height on the front and side edges. Such name may be so painted or placed irrespective of any prohibition otherwise applicable hereunder, providing, however, that if such canopy shall contain more or other than the name of the establishment in letters more than eight (8) inches high on the front and side edges, it shall be considered as a sign and be subject to all the provisions hereof.

### **Sec. 13-1-148      Landscape Features.**

Landscape features such as plant materials, berms, boulders, fencing and similar design elements unincorporated or in conjunction with freestanding signs are encouraged and shall not be counted as allowable sign area. The base of signs shall be landscaped so as to conceal footings, mountings, brackets, and related structural elements.

### **Sec. 13-1-149      Prohibited or Restricted Signs.**

- (a) **Traffic Interference.** Signs shall not resemble, imitate or approximate the shape, size, form or color of railroad or traffic signs or devices. Signs, canopies and awnings shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals or devices or the safe flow of traffic. No sign shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window or fire escape. No sign, awning or canopy shall be placed so

as to obstruct or interfere with traffic visibility.

- (b) **Moving or Flashing Signs.** No sign shall be erected which has any flashing, rotating or brilliant intermittent parts or lights, bare reflecting-type bulbs, or utilizes a spot or beacon light to illuminate a sign, except those giving public service information such as time, date, temperature, weather or similar information. Public information display signs require approval by the Village Board. No signs, billboards or other advertising media which creates a hazard or dangerous distraction to vehicular traffic or a nuisance to adjoining residential property shall be permitted in any district.
- (c) **Signs on Public Rights-of-Way.** Signs shall not be permitted on public rights-of-way, except for municipal traffic control, parking and directional signs and as otherwise specified in this article.
- (d) **Billboards.** No new billboards shall be permitted in the Village of Fall River after the original effective date of this Article. Billboards located upon property annexed to the Village and existing as of the effective date of this Article are permitted to remain unless the owner structurally alters such billboard in any manner. If damaged, or if structural alteration is made/required, such billboard shall be permanently removed. However, any billboards existing as of the effective date of this Article must be removed permanently within three (3) years following annexation, and with such removal being agreed to in writing by the owner/lessor/lessee thereof in writing prior to such annexation.
- (e) **Painted Wall and Other Prohibited Signs.** Painted wall signs are signs which are painted directly onto the surface of the building; painted wall signs are prohibited in the Village of Fall River. No person shall paste or otherwise fasten any paper or other material, paint, stencil or write any number, sign, name or any disfiguring mark within any street right-of-way, on any sidewalk, curb, gutter, street, post, fire hydrant, pole or tree, any other sign, building, fence or other structure, nor shall any of said objects be defaced in any manner. No signage shall be used except those types specifically permitted by this Article.
- (f) **Immoral Sign Subjects.** Signs which bear or contain statements, words, pictures, or symbols of obscene, pornographic or immoral subjects are prohibited.
- (g) **Swinging Signs.** Swinging signs are prohibited.
- (h) **Third-Party Signs.** Third-party signs and billboards are prohibited, except as provided in Section 13-1-145(d)(6).
- (i) **Advertising Vehicle Sign Configuration.** No persons shall park any vehicle or trailer on a public right-of-way or on private properties so as to be seen from a public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purposes of providing advertisement of products or directing people to a business activity located on the same or nearby property or any other premises. Business vehicles containing typical business signage and which are actively used on a daily basis for business purposes, are exempt from this prohibition.
- (j) **Floodlighted and Illuminated Signs.** Signs may be floodlighted or illuminated, subject to the following restrictions:
  - (1) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of a public right-of-way and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver

of any motor vehicle, or which otherwise interfere with any driver's operations of a motor vehicle, are prohibited.

- (2) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any residential property, and which are of such intensity or brilliance as to cause a public nuisance, are prohibited.
- (3) No sign shall be so floodlighted or illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.
- (4) Spotlights and beacons are restricted under Subsection (b) above.

## **Sec. 13-1-150 Nonconforming Signs.**

### **(a) Nonconforming Signs.**

- (1) **Nonconforming Sign Criteria.** Signs existing as of the effective date of this Article which do not conform to the provisions of this Article are nonconforming signs and shall be subject to the provisions of this Section. Nonconforming signs may be maintained. No nonconforming on-premises sign shall be altered or moved to a new location without being brought into compliance with the requirements of this Article. [Refer to Subsection (b) below.] Compliance is the responsibility of the property owner.
- (2) **New Signs Not Permitted.** Business signs on the premises of a nonconforming use or building may be continued per this Section, but new signs for such uses shall not be allowed, nor shall expand in number, area, height, or illumination. New signs, not to exceed the maximum allowable aggregate sign area, may be erected only upon the complete removal of all other signs existing at the time of adoption of this Article.
- (3) **Removal Upon Business Termination.** Nonconforming signs shall be removed when the principal structure located on the premises undergoes a change of use, or shall be removed per Section 13-1-151(a). Closing businesses must remove their signs within thirty (30) days of closing.
- (4) **Change in Sign User.** Whenever there is a change in the sign user (excluding off-premises signs) or owner of the property on which the sign is located, the new sign user or new property owner shall forthwith notify the Zoning Administrator of the change. No new sign permit is required unless there is modification of the sign face or sign structure.

### **(b) Alteration of Signs.**

- (1) **Alteration Defined.** For the purpose of this Article, alteration of a sign is considered to be any change to the exterior appearance of any part of the sign, its frame, its supporting structure, or its lighting including: changing the message (except for marquee or off-premises advertising signs), symbols, color, material, height or location.
- (2) **Maintenance Exception.** Altering a sign does not include maintaining the existing appearance of the sign; replacing the sign face or the supporting structure with identical materials, colors, and messages; changing the message of a marquee sign; or changing the face of an off-premises advertising sign.

### **(c) Loss of legal Nonconforming Status.**

- (1) In addition to the standards in Subsections (a) and (b) above, a sign may also lose its

nonconforming status if one (1) or more of the following occurs:

- a. If said sign is damaged by fire, flood, explosion, earthquake, vandalism, war, riot or Act of God; or structurally altered in any way, except for normal maintenance and repair; the sign may be reconstructed and used as before if it is reconstructed within three (3) months after such calamity, unless the damage to the sign is fifty percent (50%) or more of its replacement value, in which case, the constructed sign shall comply with the provisions of this Article.
  - b. The sign is relocated;
  - c. The sign fails to conform to the Village requirements regarding maintenance and repair, abandonment or dangerous or defective signs;
- (2) On the date of occurrence of any of the above, the sign shall be immediately brought in compliance with this Article with a new permit secured therefor or shall be removed.
- (d) **Legal Nonconforming Sign Maintenance and Repair.** Nothing in this Article shall relieve the owner or use of a legal nonconforming sign or the owner of the property in which the sign is located from the provisions of this Article regarding safety, maintenance and repair of signs. However, legal nonconforming signs shall not be reinstalled, reconstructed or have their useful life extended.

### **Sec. 13-1-151 Dangerous and Abandoned Signs.**

- (a) **Removal of Dangerous Signs.** All signs shall be removed by the owner or tenant of the premises upon which the sign is located if in the judgment of the Zoning Administrator, such sign is so old, dilapidated or has become so out of repair as to be dangerous or unsafe, whichever occurs first. If the owner or tenant fails to remove it, the Zoning Administrator may remove the sign at cost of the owner, following adequate written notice. The owner may appeal the decision of the Building Inspector to the Zoning Board of Appeals.
- (b) **Abandoned Signs.** Except as otherwise herein provided, all sign messages shall be removed by the owner or lessee of the premises upon which an off-premises sign is located when the business it advertised is no longer conducted where advertised. If the owner or lessee fails to remove the sign, the Zoning Administrator shall give the owner sixty (60) days' written notice to remove said sign and thereafter upon the owner's or lessee's failure to comply may remove such sign, any costs for which shall be charged to the owner of the property or may be assessed as a special assessment against the property, and/or the Zoning Administrator may take any other appropriate legal action necessary to attain compliance.
- (c) **Violations.** All signs constructed or maintained in violation of any of the provisions of this Sign Code after the date of adoption are hereby declared public nuisances within the meaning of the Village of Fall River Code of Ordinances. In addition to the penalty provisions for violations of this Article, the Zoning Administrator or Village Board may bring an action to abate the nuisance in the manner set forth in the Wisconsin Statutes or Village ordinances.

### **Sec. 13-1-152 Construction and Maintenance Regulations for Signs.**

- (a) **Installation.** All signs shall be properly secured, supported and braced and shall be kept in reasonable structural condition and shall be kept clean and well painted at all times. Bolts or screws shall not be fastened to window frames. Every sign and its framework, braces, anchors and other supports shall be constructed of such material and with such workmanship as to be safe and satisfactory to the Building Inspector or Zoning Administrator.
- (b) **General Requirements.**
  - (1) **Construction Standards.** All signs, except flat signs and those signs weighing less than ten (10) pounds, shall be designed, fastened and constructed to withstand a wind pressure of not less than thirty (30) pounds per square foot of area and shall be constructed, attached, fastened or anchored to adequately support the dead load and any anticipated live loads (i.e., ice, snow) of the sign.
  - (2) **Projection.** Signs including supports shall not interfere with surrounding properties or traffic.
  - (3) **Prohibited Mounting.** No signs shall be painted on, attached to or affixed to any trees, rocks, or other similar organic or inorganic natural matter, including utility poles or apparatus.
  - (4) **Maintenance.** All signs, including supports and attachments, shall be properly maintained and have an appearance that is neat and clean. All signs shall be kept in good structural condition, well painted, and clean at all times and the immediate premises shall be maintained in a clean, sanitary and inoffensive condition and kept free and clear of all obnoxious substances, rubbish and weeds.
  - (5) **Annexed Areas.** All signs in newly annexed areas shall comply with this Article within three (3) years of annexation.

### **Sec. 13-1-153 Variances or Exceptions.**

Variations or exceptions to these sign regulations may be granted by the Zoning Board of Appeals following a recommendation from the Zoning Administrator, pursuant to the procedures of the Village Zoning Code.

### **Sec. 13-1-154 Violations of Sign Code.**

- (a) **Construction Without Permit.** Any person, firm or corporation who begins, erects, improperly alters, or completes the erection or construction of any sign, awning or canopy controlled by this Article prior to the granting of a sign permit shall pay a penalty double the amount of the permit otherwise required.
- (b) **Compliance Notice.**
  - (1) If the Zoning Administrator finds any sign, awning or canopy regulated herein unsafe or insecure or is a menace to the public, or has been improperly erected, altered or maintained, it shall give written notice to the sign owner and to the property owner.
  - (2) If such sign, awning or canopy owner fails to remove or alter the sign, awning or canopy so as to comply with the standards herein set forth within five (5) days after such notice, the Zoning Administrator may cause such sign, awning or canopy to be removed or

altered at the expense of the owner of the sign, awning or canopy or the owner of the property upon which it is located so as to comply with the provisions of this Article, per Sec. 66.0627, Wis. Stats.

- (c) **Violations; Penalties.** Any person who shall violate any of the provisions of this Article shall be subject to a penalty which shall be as follows:
- (1) Any person found guilty of violating any part of this Article who has previously been notified of being in violation, upon conviction thereof, be subject to a forfeiture as prescribed by Section 13-1-225.
  - (2) Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Article shall preclude the Village from also maintaining any appropriate action to prevent or remove a violation of any provision of this Article.

**Sec. 13-1-155 through Sec. 13-1-159      Reserved for Future Use.**

## **Article 1: Performance Standards–Industrial Developments**

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### **Sec. 13-1-160 Article Intent.**

It is the intent of this Article to use performance standards for the regulation of industrial uses to facilitate a more objective and equitable basis for control and to insure that the community is adequately protected from potential hazardous and nuisance-like effects.

### **Sec. 13-1-161 Vibration.**

- (a) No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.
- (b) Vibrations not directly under the control of the property user and vibrations from temporary construction or maintenance activities shall be exempt from the above standard.

### **Sec. 13-1-162 Regulation of Outdoor Lighting.**

- (a) **Purpose; Intent.** It is the intent of this Section to define practical and effective measures by which the obtrusive aspects of excessive and/or careless outdoor light usage can be minimized, while preserving safety, security and nighttime use and enjoyment of property. These measures will reasonably curtail the degradation of the nighttime visual environment by encouraging lighting practices that direct appropriate light amounts of light where and when it is needed, increasing the use of energy-efficient sources, and decreasing the wastage of light, sky glow, and glare resulting from over-lighting and poorly shielded or inappropriately directed lighting fixtures.
- (b) **Conformance With Applicable Codes.** All outdoor illuminating devices shall be installed and maintained in conformance with the provisions of this Section, the Village Building and Electrical Codes, and applicable zoning and sign regulations of the jurisdictions as applicable and under appropriate permit and inspection.
- (c) **Applicability.**
  - (1) **New Uses, Buildings and Major Additions or Modifications.**
    - a. For all proposed new land uses, developments, buildings and structures that require a building permit or other authorization from the Village, all outdoor lighting fixtures shall meet the requirements of this Section.
    - b. All building additions and/or modifications of twenty-five percent (25%) or more in terms of additional dwelling units, gross floor area, or parking area, either with a single addition or with cumulative additions subsequent to the effective date of this Section, shall be subject to the requirements of this Section for the entire property, including previously installed lighting and any new lighting.
  - (2) **Existing Uses.** Existing uses shall be exempted from the provisions of this Section

pursuant to the circumstances as described in Subsection (h) below. Existing uses and lighting which substantially deviate from the purposes and intent stated in Subsection (a) above, and which are brought to the attention of the Village Board by an aggrieved party or by a report from a Village official, may constitute a public nuisance, subject to abatement or other relief pursuant to Village ordinances and state law.

- (3) **Resumption of Use After Abandonment.** If a property or use with non-conforming lighting is abandoned as defined below in Subsection (d), then all outdoor lighting shall be reviewed and brought into compliance with this Section before any use is resumed.
  - (4) **Street Lighting.** Lighting for public roadways and streets is exempted from the provisions of this Section.
- (d) **Definitions.** As used in this Section unless the context clearly indicates otherwise, certain words and phrases shall mean the following:
- (1) **Development Project.** Any residential, commercial, industrial or mixed use subdivision plat, certified survey map parcel, or other development plan which is submitted to the Village for approval.
  - (2) **Diffuse.** To spread or scatter widely or thinly.
  - (3) **Direct Illumination.** Illumination resulting from light emitted directly from a lamp or luminaire, not light diffused through translucent signs or reflected from other surfaces such as the ground or building surfaces.
  - (4) **Fully Shielded Light Fixture.** A lighting fixture constructed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal as determined by a photometric test or certified by the manufacturer. Any structural part of the light fixture providing this shielding shall be permanently affixed.
  - (5) **Glare.** The sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes have adapted to cause annoyance, discomfort, or loss in visual performance and visibility. The magnitude of glare depends on such factors as the size, position, brightness of the source, and on the brightness level to which the eyes have become adopted.
  - (6) **Installed.** The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.
  - (7) **Light Pollution.** Any adverse man-made light.
  - (8) **Light Trespass.** Light from an outdoor luminaire falling on an adjacent property as observed at four (4) feet above ground at the property line.
  - (9) **Lumen per Acre Cap.** The upper limit, or most light allowed. Lower lighting levels are encouraged.
  - (10) **Luminaire.** The complete lighting assembly, less the support assembly.
  - (11) **Outdoor Light Fixture.** An outdoor illuminating device, outdoor lighting or reflective surface, lamp or similar device, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but not be limited to, lights used for:
    - a. Parking lot lighting.
    - b. Buildings and structures.
    - c. Recreational areas.

- d. Landscape lighting.
  - e. Billboards and other signs (advertising or other).
  - f. Product display area lighting.
  - g. Illuminating building overhangs and open canopies.
- (12) **Outdoor Recreation Facility.** An area designed for active recreation, whether publicly or privately owned, including, but not limited to, baseball diamonds, soccer and football fields, golf courses, tennis courts, and swimming pools.
- (13) **Person.** Any individual, tenant, lessee, owner, or any commercial entity including, but not limited to, firm, business, partnership, joint venture, corporation, or limited liability company.
- (14) **Sign, Externally Illuminated.** A sign illuminated by light sources from outside the sign surface.
- (15) **Sign, Internally Illuminated.** A sign illuminated by light sources enclosed entirely within the sign cabinet and not directly visible from outside the sign.
- (16) **Sign, Neon.** A sign including luminous gas-filled tubes formed into the text, symbols or decorative elements and directly visible from the outside of the sign cabinet.
- (17) **Sky Glow.** The brightening of the night sky that results from the scattering of artificial visible radiation by the constituents of the atmosphere.
- (18) **Temporary Lighting.** Lighting which does not conform to the provisions of this Section and which will not be used for more than one consecutive thirty (30) day period within a calendar year, with one (1) consecutive thirty (30) day extension. Temporary lighting is intended for uses which by their nature are of a limited duration; for example, holiday lighting decorations, civic events, or construction projects.
- (19) **Translucent.** Permitting light to pass through but diffusing it so that persons, objects, etc., on the opposite side are not clearly visible.
- (20) **Use, Abandonment of.** The relinquishment of a property, or the cessation of a use or activity, by the owner or tenant for a continuous period of six (6) months, excluding temporary or short-term interruptions for the purpose of remodeling, maintaining or rearranging a facility. A use shall be deemed abandoned when such use is suspended as evidenced by the cessation of activities or conditions which constitute the principal use of the property.
- (e) **Shielding and Outdoor Lighting Standards.** The following lighting standards are hereby imposed and required:
- (1) **Shielding Requirement.** All non-exempt outdoor lighting fixtures shall be fully shielded.
  - (2) **Light Trespass Prohibited.** All non-exempt outdoor lighting fixtures shall be placed so as to not cause light trespass, or light glare.
  - (3) **Fixture Limitation.** All non-exempt outdoor lighting fixtures shall be of a type and placed so as to not allow any light above the horizontal, as measured at the luminaire.
  - (4) **Shielding.** All light fixtures that are required to be shielded shall be installed and maintained in such a manner that the shielding is effective as described in Subsection (d)(4) for fully shielded fixtures.
  - (5) **Maximum Lumens Per Acre.** Residential and all other uses except commercial or

business uses shall not exceed five thousand five hundred (5500) lumens per acre. Commercial or business zoned uses shall not exceed seventy thousand (70,000) lumens per property.

- (f) **Outdoor Advertising Signs.** External illumination for signs shall conform to all provisions of this Section. All upward directed lighting is prohibited.
- (g) **Special Uses.**
  - (1) **Recreational Facilities.** Lighting for outdoor athletic fields, courts or tracks are exempt from the provisions of this Section except that field lighting for these facilities shall be turned off within one-half hour after the last game or event of the night.
  - (2) **Temporary Exemptions.** Any person may request of the Village Board a temporary exemption from the provisions of this Section.
- (h) **Exemptions.**
  - (1) **Nonconformance.** Any lighting in existence as of the original effective date of this Section is subject to the following:
    - a. Bottom-mounted or unshielded outdoor advertising sign lighting shall not be used beginning five (5) years after enactment of this Section.
    - b. All other outdoor light fixtures lawfully installed prior to and operable on the original effective date of this Section are exempt from all requirements of this Section. There shall be no change in use or lamp type, or any replacement (except for same-type and same-output lamp replacement), or structural alteration made, without conforming to all applicable requirements of this Section. Further, if the property is abandoned, or if there is a change in use of the property, the provisions of this Section will apply when the abandonment ceases or the new use commences.
  - (2) **State and Federal Facilities.** Compliance with the intent of this Section at all state and federal facilities is encouraged, but is not mandatory.
  - (3) **Emergency Lighting.** Emergency lighting, used by law enforcement, firefighting, or medical personnel, or at their direction, is exempt from all requirements of this Section as long as the emergency exists.
  - (4) **Swimming Pool and Fountain Lighting.** Underwater lighting used for the illumination of swimming pools and fountains is exempt from the lamp type and shielding standards, though it must conform to all other provisions of this Section.
  - (5) **Residential Fixtures.**
    - a. Outdoor light fixtures attached to residential buildings and located below the eave and less than two thousand (2,000) lumens are exempt from the provisions of this Section. Light fixtures two thousand (2,000) lumens and over are not exempt. Outdoor fixtures above the eave, or attached to buildings or poles separate from the residence are not exempt. Spot or flood lights shall be fully shielded and directed no more than 45° above straight down.
    - b. Examples of lamps with two thousand lumens or less: The acceptability and shielding restrictions applicable to a particular lamp are decided by its initial lumen output, not wattage (check manufacturer's specifications). Examples of lamp types of two thousand (2,000) lumens or less are:

1. 100 watt standard incandescent.
  2. 15 watt cool white fluorescent.
  3. 15 watt compact fluorescent.
  4. 18 watt low pressure sodium.
- (6) **Flags, Lighted.** United States and State of Wisconsin flags are exempt from the provisions of this Section. All other outdoor lighted flags, such as, but not limited to, decorative and commercial flags shall conform to the provisions of this Section.
  - (7) **Holiday Lighting.** Holiday lighting is exempt from the provisions of this Section from the seven (7) days before Thanksgiving until January 30 of the following year.
  - (8) **Internally Illuminated and Neon Outdoor Signs.** Internally illuminated and neon lighted outdoor signs are exempt from the provisions of this Section.
  - (9) **Laser and Search Lights.** Laser and search lights are exempt from the provisions of this Section when used for temporary purposes of not more than five (5) consecutive days in a six (6) month period. This restriction shall apply to either the same person or same property.
  - (10) **Towers.** Legally required safety lighting for towers shall be exempt from this Section.
  - (11) **Airfields and Airports.** Airfields and airports, both commercial and non-commercial, shall be exempt from the provisions of this Section where lighting is used for air safety reasons. All other lighting shall conform to this Section.
- (i) **Special Considerations.** When an existing light would be in violation of this Section, but is exempted, the exemption may be withdrawn if the Village Board finds the lighting to be:
    - a. Substantially aggravating or constitutes a nuisance to affected properties or traffic on public rights-of-way; or
    - b. The lighting serves little useful purpose or is excessive in view of its purpose, upon finding of the Village Board.
  - (j) **Appeals.** Any person substantially aggrieved by any decision of the designated official made in administering this Section has the right to appeal to the Zoning Board of Appeals.
  - (k) **Law Governing Conflicts.** Where any provision of federal, state, county, or local statutes, codes, ordinances, or laws conflict with any provision of this Section, the more restrictive shall govern unless otherwise regulated by law.

### **Sec. 13-1-163 Odor.**

No operation or activity shall emit any substance or combination of substances in such quantities that create an objectionable odor as defined in Chapter NR 154.18, Wis. Adm. Code.

### **Sec. 13-1-164 Particulate Emissions.**

No operation or activity shall emit into the ambient air from any direct or portable source any matter that will affect visibility in excess of the limitations established in Chapter NR 154.11, Wis. Adm. Code.

**Sec. 13-1-165 Visible Emissions.**

No operation or activity shall emit into the ambient air from any direct or portable source any matter that will affect visibility in excess of the limitations established in Chapter NR 154.11(6), Wis. Adm. Code.

**Sec. 13-1-166 Hazardous Pollutants.**

No operation or activity shall emit any hazardous substances in such a quantity, concentration or duration as to be injurious to human health or property, and all emissions of hazardous substances shall not exceed the limitations established in Chapter NR 154.19, Wis. Adm. Code.

**Sec. 13-1-167 through Sec. 13-1-179 Reserved for Future Use.**

## **Article J: Signal Receiving Antennas; Wind Energy Systems; Wireless Telecommunications Systems**

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### **Sec. 13-1-180 Signal Receiving Antennas (Satellite Dishes).**

- (a) **Purpose.** In order to secure uniformity and compliance with Federal Communications Commission rules (FCC 96-328) on over-the-air reception devices implementing Section 207 of the Telecommunications Act of 1996, this Section regulating the placement of signal receiving antennas and over-the-air reception devices is adopted to:
- (1) Provide uniform regulation where necessary of all signal receiving antenna devices;
  - (2) Secure placement of such antennas in an aesthetically sensitive manner while allowing users reasonable reception of signals;
  - (3) Preserve the integrity of historic preservation districts;
  - (4) Protect the public from injury from roof-mounted antennas that are inadequately mounted, unduly susceptible to wind pressure, improperly installed and wired, or are placed on structures insufficiently designed or constructed to safely support the roof-mounted antenna; and
  - (5) Provide for placement of such antennas in locations that preserve access to rear property areas by firefighting apparatus and emergency personnel.
- (b) **Definitions.**
- (1) For purposes of this Section, a "signal receiving antenna" is defined as any apparatus capable of receiving communications from a transmitter or a transmitter relay located in a planetary orbit. This definition includes all types of signal receiving antennas, and over-the-air reception devices, including, without limitation, parabolic antennas, home earth stations, satellite television disks, UHF and VHF television antennas, and AM, FM, ham and short-wave radio antennas, regardless of the method of mounting.
  - (2) "Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his/her interest. The personal representative of at least one (1) owner shall be considered an owner.
- (c) **Limited Permit Requirement.**
- (1) No owner shall, within the Village of Fall River, build, construct, use or place any type of signal receiving antenna or over-the-air reception device that is roof-mounted or proposed to be located in a designated historic preservation district until a permit shall have first been obtained from the Zoning Administrator.
  - (2) Application for a signal receiving antenna permit when required under Subsection (c)(1) shall be made in writing to the Zoning Administrator. With such application, there shall be submitted a sufficient set of mounting plans and specifications to allow a determination to be made that the device can be safely roof-mounted, or, in the case of a historic preservation district, can be located in such a manner as to not seriously detract from the historic character of the district. There is no fee for such permit. If such

application meets the requirements of this Section, the application shall be approved.

- (d) **Exemption.** Signal receiving devices less than twenty-four (24) inches in diameter are exempt from the requirements of this Section, except for the requirements in Subsection (e)(1), (6), (8) and (11).
- (e) **Installation Standards.** Signal receiving antennas installed in any zoning district within the Village of Fall River shall comply with the following provisions:
  - (1) **Setbacks.**
    - a. Any signal receiving antenna and its mounting post shall be located a minimum of ten (10) feet from any property line. The purpose of setback regulations is to protect the aesthetics of the area and to preserve adequate access for emergency equipment and personnel.
    - b. Subject to the provisions herein, signal receiving antennas shall only be located in the rear yard of any lot. If reasonable reception of signals is not possible with a rear yard placement due to the physical characteristics of the lot and area, the signal receiving antenna shall be placed in the side yard of the lot. In the event that reasonable reception of signals is not possible by locating the signal receiving antenna on the rear or side yard of the property, such antenna may be placed in the front yard or on the roof of structures on the property following compliance with Subsection (c) above. For corner lots, a side yard is only a yard that does not face a street.
    - c. If side yard, front yard or roof mounting is requested, the Zoning Administrator shall determine where reasonable reception is possible, based on evidence provided by the person seeking to erect or construct the antenna.
  - (2) **Mounting.** Signal receiving antennas attached to the roof of any principal or accessory structure shall be permitted only if the structure is properly constructed to carry all imposed loading and complies with applicable state and local building code requirements. The Zoning Administrator may require engineering calculations.
  - (3) **Diameter.** The diameter of the signal receiving antenna shall not exceed fifteen (15) feet for the ground-mounted antenna and ten (10) feet for the roof-mounted antenna, except for stations used to provide community antenna television services.
  - (4) **Height.**
    - a. A ground-mounted signal receiving antenna, including any platform or structure upon which said antenna is mounted or affixed, may not exceed eighteen (18) feet in height, as measured from the ground to the highest point of the dish.
    - b. A roof-mounted antenna may not exceed fifteen (15) feet in height above the surrounding roof line as measured from the lowest point of the existing roof line.
  - (5) **Wind Pressure.** All signal receiving antennas shall be permanently mounted in accordance with the manufacturer's specifications for installation. All such installations shall meet a minimum wind load design velocity of eighty (80) mph.
  - (6) **Electrical Installations.** Electrical installations in connection with signal receiving antennas, including grounding of the system, shall be in accordance with the National Electrical Safety Code, Wisconsin State Electrical Code and the instructions of the manufacturer. In cases of conflict, the stricter requirements shall govern. All cable used

to conduct current or signals from the signal receiving antenna to the receivers shall be installed underground unless installation site conditions preclude underground. If a signal receiving antenna is to be used by two (2) or more residential property owners, all interconnecting electrical connections, cables and conduits must also be buried. The location of all such underground lines, cables and conduits shall be shown on the application for a permit. All signal receiving antennas shall be grounded against direct lightning strikes.

- (7) **Temporary Placement.** No portable or trailer-mounted signal receiving antenna shall be allowed, except for temporary installation for on-site testing and demonstration purposes for periods not exceeding five (5) days. However, such trial placement shall be in accordance with all provisions of this Section.
  - (8) **Advertising.** No form of advertising or identification, sign or mural is allowed on the signal receiving antenna other than the customary manufacturer's identification plates.
  - (9) **Interference with Broadcasting.** Signal receiving antennas shall be filtered and/or shielded so as to prevent the emission or reflection of an electromagnetic radiation that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to its installation, the owner of the signal receiving antenna shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.
  - (10) **Compliance with Federal Regulations.** The installation and use of every signal receiving antenna shall be in conformity with the Federal Cable Communications Policy Act of 1984 and regulations adopted thereunder.
  - (11) **Aesthetic Considerations.** Signal receiving antennas shall be located and designed to reasonably reduce visual impact from surrounding properties at street level.
- (f) **Enforcement.**
- (1) It shall be unlawful to construct, use, build or locate any signal receiving antenna in violation of any provisions of this Section. In the event of any violation, the Village Board, a Village enforcement official or any property owner who would be specifically damaged by such violation may institute appropriate action or proceedings to enjoin a violation of this Section.
  - (2) Any person, firm or corporation who fails to comply with the provisions of this Section shall, upon conviction, be subject to the general penalty found in Section 1-1-6.

## **Sec. 13-1-181 Wind Energy Systems.**

No person shall construct or operate a wind energy conversion system (WECS) in the Village of Fall River without having fully complied with the provisions of PSC 128, Wis. Adm. Code.

## **Sec. 13-1-182 Mobile Tower Siting.**

(a) **Title; Purpose; Authority.**

- (1) **Title.** This Section is entitled the Village of Fall River Mobile Tower Siting Ordinance.

- (2) **Purpose.** The purpose of this Section is to regulate by zoning permit:
  - a. The siting and construction of any new mobile service support structure and facilities;
  - b. With regard to a Class I collocation, the substantial modification of an existing support structure and mobile service facilities; and
  - c. With regard to a Class II collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.
- (3) **Authority.** The Village of Fall River Village Board has the specific authority under Secs. 62.23 and 66.0404, Wis. Stats., to adopt and enforce this Section.
- (b) **Definitions.** The following definitions shall be applicable in this Section:
  - (1) **Antenna.** Communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.
  - (2) **Building Permit.** A permit issued by the Village that authorizes an applicant to conduct construction activity that is consistent with the Village's Building Code [Title 15, Chapter 1 of the Code of Ordinances].
  - (3) **Class 1 Collocation.** The placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.
  - (4) **Class 2 Collocation.** The placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.
  - (5) **Collocation.** Class 1 or Class 2 collocation or both.
  - (6) **Distributed Antenna System.** A network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.
  - (7) **Equipment Compound.** An area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.
  - (8) **Existing Structure.** A support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with the Village.
  - (9) **Fall Zone.** The area over which a mobile support structure is designed to collapse.
  - (10) **Mobile Service.** Has the meaning given in 47 USC 153(33).
  - (11) **Mobile Service Facility.** The set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a planned geographic area, but does not include the underlying support structure.
  - (12) **Mobile Service Provider.** A person who provides mobile service.
  - (13) **Mobile Service Support Structure (Tower).** A freestanding structure that is designed to support a mobile service facility.
  - (14) **Permit.** A permit, other than a building permit, or approval issued by the Village which authorizes any of the following activities by an applicant:
    - a. A Class 1 collocation.

- b. A Class 2 collocation.
  - c. The construction of a mobile service support structure.
- (15) **Public Utility.** Has the meaning given in Sec. 196.01(5), Wis. Stats.
- (16) **Search Ring.** A shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.
- (17) **Substantial Modification.** The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:
- a. For structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet.
  - b. For structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by ten percent (10%) or more.
  - c. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by twenty (20) feet or more, unless a larger area is necessary for collocation.
  - d. Increases the square footage of an existing equipment compound to a total area of more than two thousand five hundred (2,500) square feet.
- (18) **Support Structure.** An existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.
- (19) **Utility Pole.** A structure owned or operated by an alternative telecommunications utility, as defined in Sec. 196.01(1d), Wis. Stats.; public utility, as defined in Sec. 196.01(5), Wis. Stats.; telecommunications utility, as defined in Sec. 196.01(10), Wis. Stats.; political subdivision; or cooperative association organized under Ch. 185, Wis. Stats.; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in Sec. 182.017(lg)(cq), Wis. Stats.; for video service, as defined in Sec. 66.0420(2)(y), Wis. Stats.; for electricity; or to provide light.
- (c) **Siting and Construction of Any New Mobile Service Support Structure and Facilities; Regulation Limitations.**
- (1) **Application Process.**
- a. A Village zoning permit is required for the siting and construction of any new mobile service structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the Village obtainable with this permit through the conditional use permit process.
  - b. A written permit application shall be completed by the applicant and submitted to the Village Clerk-Treasurer. The application shall contain, at a minimum, the following information:
    1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address - shall be provided.
    2. The location of the proposed or affected support structure.
    3. The location of the proposed mobile service facility.

4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
  6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- c. A permit application will be provided by the Village upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.
  - d. If an applicant submits to the Village an application for conditional use and zoning permits to engage in an activity described in this Section, which contains all of the information required under this Section, the Village shall consider the application complete. If the Village determines that the application is incomplete, the Village shall notify the applicant in writing, within ten (10) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is considered complete.
  - e. Within ninety (90) days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the ninety (90) day period:
    1. Review the application to determine whether it complies with all applicable aspects of the Village's Building Code and, subject to the limitations in this Section, provisions of this Zoning Code.
    2. Make a final decision whether to approve or disapprove the application.
    3. Notify the applicant, in writing, of its final decision.
    4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
  - f. The Village may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn

statement under Subsection (c)(l)b6.

- g. If the applicant provides the Village with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in the Zoning Code, that Zoning Code provision does not apply to such a structure unless the Village provides the applicant with substantial evidence that the engineering certification is flawed.
  - h. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Three Thousand Dollars (\$3,000.00) per Sec. 66.0404(4)(d), Wis. Stats.] .
- (2) **Regulatory and Application Limitations.** With regard to the siting and construction of a new mobile service support structure/facilities, the substantial modification of an existing support structure and mobile service facility as part of a Class 1 collocation, or a Class 2 collocation, the Village, pursuant to Sec. 66.0404(4), Wis. Stats., shall not:
- a. Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.
  - b. Enact a moratorium ordinance on the permitting, construction, or approval of any such activities.
  - c. Enact an ordinance regulation prohibiting the placement of a mobile service support structure in particular locations within the Village.
  - d. Charge a mobile radio service provider a fee in excess on the amounts prescribed in Sec. 66.0404(4)(d), Wis. Stats.
  - e. Charge a mobile radio service provider any recurring fee for an activity described in Sec. 66.0404(2)(a), Wis. Stats., or a Class 2 collocation.
  - f. Permit third-party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.
  - g. Disapprove of an application to conduct an activity described in Sec. 66.0404(2)(a), Wis. Stats., based solely on aesthetic concerns.
  - h. Disapprove an application to conduct a Class 2 collocation on aesthetic concerns.
  - i. Enact or enforce a Village ordinance related to radio frequency signal strength or the adequacy of mobile service quality.
  - j. Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the Village which fall into disuse. [Note: Per Sec. 66.0404(4)(i), Wis. Stats., there is a rebuttable presumption that a surety requirement of Twenty Thousand Dollars (\$20,000.00) or less complies with this Subsection.]
  - k. Prohibit the placement of emergency power systems.
  - l. Require that a mobile service support structure be placed on property owned by the political subdivision.
  - m. Disapprove an application based solely on the height of the mobile service support structure or on whether the structure requires lighting.
  - n. Condition approval of such activities on the agreement of the structure or mobile

service facility owner to provide space on or near the structure for the use of or by the Village at less than market rate, or provide the Village other services via the structure or facilities at less than the market rate.

- o. Limit the duration of any permit that is granted.
- p. Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.
- q. Disapprove an application based on an assessment by the Village of the suitability of other locations for conducting the activity.
- r. Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.
- s. Impose a setback or fall zone requirement for a mobile service support structure that is different from a requirement that is imposed on other types of commercial structures.
- t. Consider an activity a substantial modification under Subsection (b)(17)a-b above if a greater height is necessary to avoid interference with an existing antenna.
- u. Consider an activity a substantial modification under Subsection (b)(17)c above if a greater protrusion is necessary to shelter the antenna from increment weather or to connect the antenna to the existing structure by cable.
- v. Limit the height of a mobile support structure to under two hundred (200) feet.
- w. Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the Village in connection with the Village's exercise of its authority to approve the application.
- x. Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the Village to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, the Village or an entity in which the Village or other political subdivision has a governance, competitive, economic, financial or other interest.

(d) **Class 1 Collocation.**

(1) **Application Process.**

- a. A zoning permit is required for a Class 1 collocation. A Class 1 collocation is a conditional use in the Village obtainable with this permit through the conditional use process of this Chapter.
- b. A written permit application shall be completed by the applicant and submitted to the Village. The application must contain, at a minimum, the following information:
  - 1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
  - 2. The location of the proposed or affected support structure.
  - 3. The location of the proposed mobile service facility.
  - 4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas,

transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
  6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- c. A permit application will be provided by the Village upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.
  - d. If an applicant submits to the Village an application for a permit to engage in an activity described in this Section, which contains all of the information required under this Section, the Village shall consider the application complete. If the Village does not believe that the application is complete, the Village shall notify the applicant in writing, within ten (10) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
  - e. Within ninety (90) days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the ninety (90) day period:
    1. Review the application to determine whether it complies with all applicable aspects of the Village's Building Code and, subject to the limitations of this Section, zoning ordinances.
    2. Make a final decision whether to approve or disapprove the application.
    3. Notify the applicant, in writing, of its final decision.
    4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
  - f. The Village may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under Subsection (d)(1)b6.
  - g. If an applicant provides the Village with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse

within a smaller area than the setback or fall zone area required in a zoning ordinance, that Zoning Code provision does not apply to such a structure unless the Village provides the applicant with substantial evidence that the engineering certification is flawed.

- h. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Three Thousand Dollars (\$3,000.00) per Sec. 66.0404(4)(d), Wis. Stats.] .

(2) **Regulatory and Application Limitations.** The regulatory and application parameters and limitations prescribed in Subsection (c)(2) above shall be applicable.

(e) **Class 2 Collocation.**

(1) **Application Process.**

- a. A Village zoning permit is required for a Class 2 collocation. A Class 2 collocation is a permitted use in the Village but still requires the issuance of Village building permits.
- b. A written permit application shall be completed by the applicant and submitted to the Village. The application must contain, at a minimum, the following information:
  - 1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
  - 2. The location of the proposed or affected support structure.
  - 3. The location of the proposed mobile service facility.
- c. A permit application will be provided by the Village upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.
- d. Per Title 15, Chapter 1 of this Code of Ordinances, a Class 2 collocation is also subject to the same requirements for the issuance of a building permit to which any other type of commercial development/construction or land use development is subject.
- e. If an applicant submits to the Village an application for a permit to engage in an activity described in this Section, which contains all of the information required under this Section, the Village shall consider the application complete. If any of the required information is not in the application, the Village shall notify the applicant in writing, within five (5) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- f. Within forty-five (45) days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the forty-five (45) day period:
  - 1. Make a final decision whether to approve or disapprove the application.
  - 2. Notify the applicant, in writing, of its final decision.
  - 3. If the application is approved, issue the applicant the relevant permit.

- 4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- g. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Five Hundred Dollars (\$500.00) or the commercial building permit fee equivalent, per Sec. 66.0404(4)(d)].
- (2) **Regulatory and Application Limitations.** The regulatory and application parameters and limitations prescribed in Subsection (c)(2) above shall be applicable.
- (f) **Penalty Provisions.** Any person, partnership, corporation or other legal entity that fails to comply with the provisions of this Section shall, upon conviction, be subject to the penalties and/or forfeitures prescribed in Section 13-1-245, plus applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this Section. In addition, the Village of Fall River may seek injunctive relief from a court of record to enjoin further violations.

**Sec. 13-1-183 through Sec. 13-1-199      Reserved for Future Use.**

**Article K:            Accessory Uses and Structures; Screening and Landscaping; Fences and Hedges**

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**Sec. 13-1-200    Accessory Uses or Structures.**

- (a) **Building Permit Required for Accessory Buildings.**
  - (1) **Permit Required.** No owner shall, within the Village of Fall River, build, construct, use or place any type of an accessory structure or building, including prefabricated accessory buildings, until a building permit shall have first been obtained from the Building Inspector. Application for an accessory structure permit shall be made in writing to the Building Inspector. With such application, there shall be submitted a fee pursuant to the Village Building Code fee schedule and a complete set of plans and specifications, including a plot plan or drawing accurately showing the location of the proposed accessory structure with respect to adjoining alleys, lot lines and buildings. If such application meets all requirements of this Section, the application shall be approved.
  - (2) **Applicability to Temporary, Movable and Permanent Buildings.** For purposes of this Zoning Code, no regulatory distinction is made between temporary, permanent, prefabricated or movable accessory buildings (such as those mounted on skids).
- (b) **Principal Use to be Present.** An accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction, unless a special limited-duration one-time waiver is granted by the Village Board due to unique circumstances. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.
- (c) **Number of Permitted Garages and Accessory Buildings on Residential Lots.** An accessory use or structure in a residential district may be established subject to the following regulations:
  - (1) **Accessory Building Number Limits.** In any residential district, in addition to the principal building, a detached garage or attached garage, one (1) additional accessory building and two (2) children's play structures may be placed on a lot, except as provided in Subsection (c)(2) below.
  - (2) **Limitation on Number of Detached Garages and Accessory Buildings.**
    - a. Residentially zoned parcels with a single garage attached to the dwelling are permitted to have an additional one (1) or two (2) car detached garage on the parcel. If a detached garage is erected, no other detached accessory buildings may be constructed or maintained on the parcel.
    - b. Residentially zoned parcels with more than a one (1) stall garage attached to the dwelling are permitted to have an additional one (1) stall detached garage on the parcel. If a detached garage is erected, no other detached accessory buildings may be constructed or maintained on the parcel.
    - c. Garages attached to dwellings shall be three (3) stalls or less. Dwellings with an attached three (3) stall garage are not permitted to have an additional detached garage on the parcel.

(d) **Standards for Attached Accessory Buildings/Garages.**

- (1) **Setback Requirements.** All accessory buildings which are attached to the principal building, including attached garages, shall comply with the yard/setback requirements of the principal building. An accessory structure or use shall not be forward of the front line of the principal structure.
- (2) **Determination of Attached Status.** When accessory buildings are attached to the principal building, including attached garages, by a breezeway, passageway or similar means, or are separated by a nominal gap, they are considered to be a part of the principal building and shall comply in all respects with the yard/setback requirements and local building code requirements for the principal building.
- (3) **Carports.** For purposes of this Section, a carport, as defined in Section 13-1-300(a), shall be considered to be an attached garage.
- (4) **Attached Garage Square Footage Limits.**
  - a. The maximum square feet of attached garage floor area shall be limited to the smaller of either one thousand (1,000) square feet or the first floor dwelling unit area in the case of a single family residence.
  - b. The maximum square feet of attached garage floor area shall be limited to the smaller of either six hundred (600) square feet or the first floor dwelling unit area in the case of a duplex, two-family dwelling, or multi-family dwelling.

(e) **Standards for Detached Accessory Buildings/Garages; Lot Area Coverage; Square Footage.**

- (1) **Size Restrictions.** In the aggregate, detached accessory buildings and structures, including detached garages, shall not occupy more than thirty percent (30%) of any required rear yard area, or be larger than one thousand (1,000) square feet, whichever is more restrictive, on residential lots of fifteen thousand (15,000) square feet or less. On lots of fifteen thousand (15,000) square feet or larger, detached accessory buildings and structures shall not exceed thirty percent (30%) of any required rear yard area of one thousand five hundred (1,500) square feet, whichever is more restrictive.
- (2) **Front or Side Yard Placement Prohibited.** No detached accessory building shall occupy any portion of the required front or side yard. Only rear yard placement is permissible. An accessory structure or use shall not be located forward of the front line of the principal structure.
- (3) **Height.** Single-story detached garages and other single-story detached accessory buildings shall be twenty (20) feet or less in height. Two-story detached garages and other detached accessory buildings shall be twenty-five (25) feet or less in height. Accessory buildings in commercial and industrial districts shall not exceed twenty-five (25) feet in height.
- (4) **Setback Requirements.** Detached accessory buildings and garages shall have a six (6) foot setback from side or rear lot lines, except where the zoning district classification requires a specific setback standard. However, where a rear lot abuts an alley, accessory buildings not attached to the principal building shall be located so as to be not closer than six (6) feet to the rear lot line, except that when the accessory building is a garage that has its entrance facing the alley, the rear yard setback shall be twenty (20) feet for

the garage.

- (5) **Setback from Principal Structure.** An accessory building shall not be nearer than ten (10) feet to the principal structure unless the applicable building code regulations in regard to one (1) hour fire-resistive construction are complied with. In no event can the accessory uses or structures be forward of the front line of the principal structure.
  - (6) **Setback from Other Accessory Buildings.** No detached accessory building shall be located within five (5) feet of any other accessory building.
  - (7) **Placement Where Utility Easements Exist.** Where there is an existing utility easement, no detached garage or accessory building may be located closer than three (3) feet to such utility easement. In newly platted land divisions, detached garages and accessory buildings shall be located ten (10) feet from the utility easement.
  - (8) **Exterior Finishes.** Galvanized exterior finishes are not permitted on detached accessory structures. All accessory structures and garages shall be constructed of durable materials and shall not utilize fabric/plastic/rubber materials used in such a fashion or manner so as to be a substitute for building walls and/or roof or roofs of said accessory structure or garage.
  - (9) **Lot Area Coverage Determination.** The dimensions of any swimming pool, children's play structure, detached garage, detached wind and solar energy conversion units, and other detached accessory buildings/ structures shall be included in the determination of available lot area coverage for accessory structures.
  - (10) **Required Roof Overhangs.** All detached structures over one hundred fifty (150) square feet in size, in a residential district, must have a minimum one (1) foot overhang with fascia and soffit on all sides, unless an alternative option is approved by the Village Board.
  - (11) **Setback/Yard Requirements.** Except where a zoning district requires specific setback standards, detached accessory structures shall not be closer than three (3) feet to any lot line.
- (f) **Use Restrictions – Residential District.** Accessory uses or structures in residential districts shall not involve the conduct of any business, trade or industry except for home occupations as defined herein and shall not be occupied as a dwelling unit. Accessory buildings shall not be used for residential purposes.
  - (g) **Corner lots.** When an accessory structure is located on the rear of a reversed corner lot, it shall not be located beyond the front yard required on the adjacent interior lot to the rear, nor nearer than three (3) feet to the side line of the adjacent structure.
  - (h) **Landscaping Uses and Lawn Accessories.** Accessory decorative lawn accessories, structures and vegetation used for landscaping may be placed in any required yard area. Permitted landscaping structures and vegetation include flag poles, ornamental light standards, lawn furniture, sun dials, fountains, statuary, bird baths, walks, paths, paved terraces, ornamental pools, trees, shrubs and flowers and gardens, provided newly placed vegetation and accessories are located no closer than three (3) feet to a property or right-of-way line.
  - (i) **Temporary Accessory Uses.** Temporary accessory uses such as real estate sale field offices or shelters for materials and equipment being used in the construction of the permanent structure may be permitted by the Zoning Administrator.

- (j) **Garages in Embankments in Front Yards.** Where the mean natural grade of a front yard is more than eight (8) feet above the curb level, a private garage may be erected within the front yard, provided as follows:
  - (1) That such private garage shall be located not less than five (5) feet from the front lot line;
  - (2) That the floor level of such private garage shall be not more than one (1) foot above the curb level; and
  - (3) That at least one-half (1/2) the height of such private garage shall be below the mean grade of the front yard.
- (k) **Outdoor Lighting.** Outdoor lighting installations shall not be permitted closer than three feet to an abutting property line and, where not specifically otherwise regulated, shall not exceed fifteen (15) feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties and shall not register more than one-half foot candles at the property line.
- (l) **Retaining Walls.** Retaining walls may be permitted anywhere on the lot, provided, however, that no individual wall shall exceed six (6) feet in height, and a terrace of at least three (3) feet in width shall be provided between any series of such walls.
- (m) **Children's Play Structures.** For purposes of this Section, children's play structures, including play houses, tree houses or elevated play structures and climbing gyms, shall be considered accessory structures and shall comply with the requirements of this Section, specifically setback standards, whether such play structures are placed on a foundation or not. Swing sets, slides and sandboxes are not considered children's play structures for purposes of this Section. A building permit is not required for the construction of a play structure. Play structures shall not be used for storage or be constructed out of materials that would constitute a nuisance.
- (n) **Terrace Area Restrictions.** In addition to the definitions and restrictions contained in Title 6, Chapter 2 of this Code of Ordinances, no person shall place any accessory structure or use, including landscaping ornaments, stones and basketball backboard/hoops, in the terrace area.
- (o) **Offensive Uses Prohibited.** No accessory use shall be dangerous, obnoxious or offensive to persons residing in the vicinity, nor shall it impair the use, enjoyment or value of any property.
- (p) **Prohibited Dwelling Use.** No accessory dwelling unit in any Residential District shall be used or let for living purposes, whether for compensation or not.
- (q) **Gardening.** Home gardening is a permitted accessory use on any residential lot with a dwelling or the principal use on any vacant lot or parcel.
- (r) **Dog Houses/Runs.** Dog houses and/or runs shall comply with the setback requirements in Section 13-1-202.
- (s) **Agricultural Structures.** Agricultural structures in properly zoned agricultural districts such as barns, silos and windmills shall not exceed in height twice their distance from the nearest lot line.
- (t) **Tents; Fabric-Covered Structures; Hoop-Supported Structures.**
  - (1) **Prohibited Use as Permanent Accessory Structure.** No tent, plastic or fabric- covered structure, or a structure supported by hoops or a tubular frame, may be used as a permanent accessory structure in a non-agricultural district without Village Board

approval; such structures may be erected and used no more than six (6) months per year without being removed. An exception is that a plastic or fabric-covered hoop- supported or tubular greenhouse may be maintained if used exclusively for personal greenhouse use.

- (2) **Anchoring Requirement.** Any permitted tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame shall be fastened or anchored in a stable manner to the ground.
- (3) **Limitations on Utility Service.** No plumbing, electrical, heating or other utility service may be installed in a tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame except for seasonal use in personal greenhouses. A tent shall not be used as a dwelling other than for temporary recreational use.
- (4) **Compliance with Accessory Building Requirements.** Any tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame, shall comply with the dimensional and yard/setback requirements of this Section.

### **Sec. 13-1-201 Outside Storage of firewood.**

- (a) **Permitted limited Storage.** No person shall store firewood in the front yard on residentially zoned property, except that firewood may be temporarily stored in the front yard for a period of thirty (30) days from the date of its delivery.
- (b) **Storage.** Firewood should be neatly stacked and may not be stacked closer than two (2) feet to any lot line and not higher than six (6) feet from grade, except adjacent to a fence where firewood can be stacked against the fence as high as the fence. Fences as used in this Section shall not include hedges and other vegetation. Any structures erected to shelter firewood are accessory structures subject to the standards in Section 13-1-200.
- (c) **Debris Removal.** All brush, debris and refuse from processing of firewood shall be promptly and properly disposed of and shall not be allowed to remain on the premises.
- (d) **Diseased Wood.** Woodpiles that contain diseased wood that is capable of transmitting disease to healthy trees and woodpiles that harbor or are infested or inhabited by rats or other vermin are public nuisances and may be abated pursuant to the provisions of this Code of Ordinances.
- (e) **Lot Area Coverage.** Not more than twenty percent (20%) of the side and rear yard may be used for storage of firewood at any one (1) time.

### **Sec. 13-1-202 Fences.**

- (a) **Definitions.** The following words and terms shall have the meanings herein provided in this Section:
  - (1) **Arbor.** A decorative solid or latticework structure or trellis which is used as an entrance focal point along a barrier which serves the purpose of a fence.
  - (2) **Berm.** A mound of earth higher than the final elevation of a lot.
  - (3) **Fence.** An enclosed barrier or vertical screen device consisting of wood, stone, vinyl or metal intended to limit ingress or egress and/or provide privacy and containment. This definition also includes, but is not limited to, trellises, railings and walls when used

around the perimeter of a property.

- (4) **Fence, Agricultural/Farm.** A fence meeting the agricultural fence standards of Chapter 90, Wis. Stats., consisting of wire strands, high tensile strands or other types of material used for agricultural purposes meeting the statutory requirements.
  - (5) **Fence, Architectural or Aesthetic.** A fence constructed to enhance the appearance of the structure or the landscape.
  - (6) **Fence, Boundary.** A fence placed on or within five (5) feet of the property lines of adjacent properties.
  - (7) **Fence, Good Neighbor.** A fence constructed of solid or spaced boards where the face boards are installed at the center of the posts so that the fence looks the same from both sides.
  - (8) **Fence, Protective.** A fence constructed to enclose a hazard to the public health, safety and welfare.
  - (9) **Fence, Security.** A fence designed for protection of a site, of an open-type similar to woven wire or wrought iron fencing, not exceeding eight (8) feet in height.
  - (10) **Install, Installation, Installed.** To construct, erect, install, place, or replace over sixteen (16) lineal feet.
  - (11) **Lot, Double Frontage.** An interior lot having street frontage on the front and the rear of the lot.
  - (12) **Trellis.** A frame or structure of open latticework.
- (b) **Fence Permit Required.** No person shall install a fence in the Village of Fall River without first obtaining a fence permit from the Village, including special purpose fences under Subsection (n), paying the required permit fee prescribed by Sec. 1-3-1, and complying in all respects with the terms and conditions of this Section. A fence permit shall be valid only for the term of issuance, unless sooner revoked. A fence permit is not required for painting, maintenance, or repair or replacement of less than sixteen (16) lineal feet of a fence within a five (5) year period. A fence permit may include reasonable conditions required by the Village. A fence permit application shall be filed with the Village and include the following:
- (1) **Fee Payment.** Payment of the permit fee and completed application forms required by the Building Inspector, Zoning Administrator or Village Clerk-Treasurer.
  - (2) **Plan.** A drawing, site plan or plat map displaying property boundaries, the location of buildings and structures on the property, the proposed location of the fence and its distances from other structures on the parcel.
  - (3) **Design Information.** Accurate design information for the proposed fence, including height and materials to be utilized.
  - (4) **Leased Property – Owner 's Consent.** If the fence is proposed to be installed on leased or rented property, the written consent of the owner.
- (c) **Responsibilities of Property Owner; Location Determination.**
- (1) **Proper Location Responsibility.** The property owner installing a fence is solely responsible for ensuring that the fence is properly located on his/her property, and is in compliance with height, setback, vision clearance and materials requirements . If uncertainty exists regarding the actual location of lot lines, it is the owner's responsibility to secure a lot survey.

- (2) **Covenant/Easement Compliance.** The property owner is responsible for complying with any private subdivision covenants or deed restrictions or utility easement(s) restrictions, including any applicable plan review/approval requirements.
- (d) **Fence Installation General Requirements.** No fence shall be installed except in strict compliance with this Section:
  - (1) **Digger's Hotline.** Prior to fence installation, the applicant shall contact Diggers Hotline service to have the project site marked.
  - (2) **Good Neighbor Placement Requirement.** Structural and support components of a fence shall face internally into the applicant's lot, facing away from adjacent properties. Fences shall be installed with the finished side facing adjacent properties or the public right-of-way. Fence posts shall be located on the inside of the fence facing the property on which the fence is located, except when the style of fence is of a design commonly known as a "Good Neighbor Fence."
  - (3) **Grade, Contour.** Fences shall be installed plumb and the top finish of the fence shall be uniform. Fences shall follow the contour of the ground to the extent practical. Adjustments for grade shall occur at the bottom of the fence.
  - (4) **Height.** Fence height shall be measured from the surface of the ground immediately below the fence. Berms, retaining walls or other methods to raise the elevation of the fence site shall require approval by the Building Inspector prior to installation. The height of fences and walls shall be measured vertically from the finished grade on the exterior side of the fence. Raising the finished grade by placing fill solely for the purpose of adding additional height to a fence is prohibited. If a fence is placed on a berm, the berm shall be included in the height of the fence and the height will be measured vertically from the base of the berm.
  - (5) **Placement near sidewalks.** Fences shall be installed no closer than two (2) feet to a public sidewalk.
  - (6) **Fence Placement where Public Easements Exist.** Where there is an existing public easement, no fence may be located within the easement area.
- (e) **Approved Fence Materials.**
  - (1) **Proper Materials.** Fences located in side and/or rear yards of residential parcels shall be constructed using materials suitable for residential-style fencing, including, but not limited to: brick, fieldstone, wrought iron, vinyl, chain link [with a required top rail support and a minimum nine (9) gauge thickness], split rail wood, stockade or board-on-board wood.
  - (2) **Open Visibility Standard.** Residential front yard fences shall be fifty percent (50%) open (see-through) and be of wrought iron, picket or split rail design. Chain link fencing is permitted in side or rear yards only and its use is not permitted in residential front yards.
  - (3) **Agricultural Fences.** Agricultural/farm fences shall only be permitted in agriculturally-zoned or used districts, as determined by the Village, and shall comply with Ch. 90, Wis. Stats.
  - (4) **Improper Materials.** No fence shall be constructed of used, discarded or scrap materials in disrepair, including, but not limited to, pallets, tree branches/stumps, crates, vehicle parts, refuse or other similar items. Materials not specifically manufactured for fencing,

such as doors, railroad ties, landscape timbers or utility poles shall not be used in fences. Fences shall not be constructed of luminous materials or smooth or corrugated metal materials.

- (5) **Finish.** All fences, including privacy fences, shall only be painted or stained in neutral colors.
- (f) **Modifications to Existing Fences.** All modifications to a pre-existing fence shall comply with this Section. Any existing fence shall not be enlarged, extended or replaced for more than sixteen (16) linear feet in a three (3) year period except in compliance with this Section.
- (g) **Height and Placement of Residential Fences Regulated.**
  - (1) **Height.** Residential fences six (6) feet or less in height are permitted with a two (2) foot setback on rear and side lot lines, but shall not continue beyond the front of the principal structure or the required front yard setback, whichever is furthest from the street right-of-way. A fence may be placed on the rear or side lot line provided both property owners consent in writing and a copy of such agreement is filed with the Village Clerk-Treasurer per Subsection (h). Residential fences less than or equal to four (4) feet in height are permitted in the front yard setback area but shall not be closer than two (2) feet to any public right-of-way and shall not exceed two and one-half (2-1/2) feet in height in a vision clearance triangle [see Subsection (j) below].
  - (2) **Narrow Lot Standards.** In any residential district or on any lot or premises, the principal use of which is for residential purposes, no lengthwise fence or other lengthwise barrier or obstruction shall be erected, placed, installed or reinstalled in any area where there is a distance between main residential buildings of ten (10) feet or less.
  - (3) **Non-Residential Fences Adjacent to Residential Parcels.** No fence or wall shall be erected, placed or maintained along a lot line on any non-residentially zoned property, adjacent to a residentially zoned property, to a height exceeding eight (8) feet.
- (h) **Setback for Residential Fences.**
  - (1) **Fence Setback With No Adjacent Owner Consent.** Fences in or adjacent to a residential property (or property primarily residential in use) are permitted along lot lines with a minimum two (2) foot side and rear yard setback without permission from adjacent property owners.
  - (2) **Fence Setback With Adjacent Owner Consent.**
    - a. Fences may be placed on property lines only with the written approval of adjoining property owners, a copy of which shall be provided to the Village; such fences shall fully comply with the permit and standards requirements of this Section.
    - b. If a new fence is constructed or erected on a property line without the express written consent of the adjoining property owner, whether proper permits have been issued or not, a written complaint may be filed with the Zoning Administrator, who shall give notice to the owner of the fence to remove the fence. If the owner does not comply within thirty (30) days from the date of notification, the Zoning Administrator may request the Village of Fall River to remove it at the owner's expense.
  - (3) **Front Setback Areas.** Fences may be constructed alongside lot lines but shall not extend into the front setback area as extended to the side lot lines.

- (i) **Industrial/Commercial Security Fences.** Security fences are permitted on the property lines in all districts except residential districts, but shall not exceed eight (8) feet in height and shall be of an open type similar to woven wire or wrought iron fencing.
- (j) **Corner Lot Vision Clearance Requirements.**
  - (1) **Standards.** In order to provide adequate vision clearance on corner lots, no fence shall be erected or maintained within the triangular space formed by two (2) intersecting street, alley, or driveway (public or private) property lines and a line joining points on such property lines (or projections thereof) located less than:
    - a. A minimum of twenty (20) feet from the intersection of the two street property lines;
    - b. A minimum of fifteen (15) feet from the intersection of the two alley property lines; or
    - c. A minimum of ten (10) feet from the intersection of the two driveway property lines.
  - (2) **Determination.** Street or alley property lines are measured from the right-of-way or easement lines establishing such street or alley. Driveway lines are measured from the easement establishing such driveway, or, in the case of no easement, from the edge of the driveway surface.
- (k) **Prohibited Fences.**
  - (1) **Dangerous Condition; Barbed Wire.** No fence shall be constructed which is of a dangerous condition, or which uses barbed wire, provided, however, that barbed wire may be used in industrially zoned areas if the devices securing the barbed wire to the fence are eight (8) feet above the ground or height and project toward the fenced property and away from any public area.
  - (2) **Electric Fences.** Although fences which conduct electricity or are designed to electrically shock are generally prohibited, such fences using smooth wire are allowed for the limited purpose of deer control if located five (5) feet from a lot line.
  - (3) **Improper Wire Fencing.** No woven, twisted, welded or interlaced wire fence or farm-type woven wire, such as using chicken wire, shall be located in a non-industrial district, unless such fencing is ornamental in character.
  - (4) **Improper Wood-Slat Fencing.** No wood-slat or plastic snow fence shall be permitted as a regular use in a Residential District, except as a temporary use under Subsection (m).
  - (5) **Post-Only Fences.** No fence shall consist solely of fence posts or be maintained as an incompletely constructed fence consisting only of posts and supporting members.
- (l) **Fences to be Repaired; Corrective Action.**
  - (1) **Good Repair Requirement.** All fences shall be maintained and kept safe and in a state of good repair, and the finished side or decorative side of a fence shall face adjoining property. Fences shall be maintained in a manner as to prevent rust, corrosion and deterioration, so as not to become a public or private nuisance, and so as not to be dilapidated or a danger to adjoining property owners or the public. Fences shall not create an appearance of patchwork, which is indicative of a state of disrepair. Every fence installed shall be maintained by the owner in such a way that it will remain plumb and in good repair.

- (2) **Compliance Standards for Existing Fences.** Any existing fences which do not conform to the requirements of this Section and which are damaged, or in need of repair to the extent that exceeds fifty percent (50%) of the then value of the fence, said entire fence shall either be completely dismantled or reconstructed in compliance with the provision of this Section.
  - (3) **Failure to Maintain.** All new and existing fences shall be maintained in such a manner so as not to allow rust, dents or deterioration to take place. Failure to maintain a fence in good condition and repair will result in the Village issuing an order to the property owner to take whatever steps are necessary to correct the condition. Said notice shall set forth a reasonable time for compliance and shall set forth a notice that failure to comply will result in a violation and with a penalty set forth in Section 1-1-6.
- (m) **Temporary Fences; Permit Not Required.**
- (1) **Standards.** Fences erected for the protection of planting or to warn of construction hazard, or for similar purposes, shall be clearly visible or marked with colored streamers or other such warning devices at four (4) foot intervals. Such fences shall comply with the setback requirements set forth in this Section. The issuance of a permit shall not be necessary for temporary fences as described herein, but said fences shall not be erected for more than forty-five (45) days.
  - (2) **Seasonal Fences.** This Section is not intended to regulate seasonal or temporary fences such as garden or snow fences except that such fences shall be removed when the condition or season for the said fence was erected no longer exists. Under no circumstances shall a snow fence be erected for more than five (5) months.
- (n) **Special Purpose Fences.**
- (1) **Swimming Pool/Hot Tub Fences.** Swimming pool and hot tub fences shall comply with the requirements of Section 13-1-203.
  - (2) **Pet Enclosures; Dog Runs.** Pet enclosures and dog runs shall be permitted in residential districts subject to the following conditions:
    - a. No fence permit is required prior to installation of a pet enclosure or dog run.
    - b. No pet enclosure or dog run shall be in excess of two hundred and fifty (250) square feet in area, or be more than six (6) feet in height above the surface of the ground.
    - c. Pet enclosures and dog runs may be constructed of any material permitted for a residential fence.
    - d. No pet enclosure or dog run shall be constructed contrary to required vision clearance area requirements.
    - e. Pet enclosures and dog runs shall be located no closer than ten (10) feet to a side or rear lot line, and shall not be located to the front of the principal structure.
  - (3) **Anhydrous Ammonia Sites.** Anhydrous ammonia tank sites shall be fenced as prescribed in Section 8-1-13.
- (o) **Nonconforming Fences.** Any fence existing on the effective date of this Chapter and not in conformance with this Section may be maintained, but alterations, modifications or improvements of more than fifty percent (50%) of said fence shall require the owner to bring the fence into compliance with this Section.

## **Sec. 13-1-203 Swimming Pools and Hot Tubs.**

- (a) **Definition.** A private or residential swimming pool is an outdoor structure containing a body of water in a receptacle or other container having a depth for water at any point greater than two (2) feet located above or below the surface of ground elevation, having an area greater than one hundred fifty (150) square feet, used or intended to be used solely by the owner, operator or lessee thereof and his/her family, and by friends invited to use it, and includes all structural facilities, appliances and appurtenances, equipment and other items used and intended to be used for the operation and maintenance of a private or residential swimming pool. Such pool is installed in such a manner that the pool will remain in place as a fixture throughout the full year and will be considered as a permanent or semi-permanent structure on the land.
- (b) **Exempt Pools.** Storable children's swimming or wading pools, with a maximum dimension of fifteen (15) feet and a maximum wall height of twenty-four (24) inches and which are so constructed that it may be readily disassembled for storage and reassembled to its original integrity are exempt from the provisions of this Section. Inflatable pools of all types are exempt.
- (c) **Permit; Construction Requirements.**
  - (1) **Permit Required.** Before work is commenced on the construction or erection of private or residential swimming pools or hot tubs or on any alterations, additions, remodeling or other improvements, an application for a swimming pool or hot tub building permit to construct, erect, alter, remodel or add must be submitted in writing to the Building Inspector. Plans and specifications and pertinent explanatory data shall be submitted to the Building Inspector at the time of application. No work or any part of the work shall be commenced until a written permit for such work is obtained by the applicant. The required building permit fee pursuant to the Village Building Code shall accompany such application.
  - (2) **Construction Requirements.** In addition to such other requirements as may be reasonably imposed by the Zoning Administrator, the Zoning Administrator shall not issue a permit for construction or installation of a swimming pool or hot tub unless the following construction requirements are observed and the fee as prescribed in Section 1-3-1 is paid:
    - a. All materials and methods of construction in the construction, alteration, addition, remodeling or other improvements for pool or hot tub installation shall be in accord with all state regulations and with any and all Ordinances of the Village of Fall River now in effect or hereafter enacted.
    - b. All plumbing work shall be in accordance with all applicable Ordinances of the Village of Fall River and all state codes. Every private or residential swimming pool or hot tub shall be provided with a suitable draining method and, in no case, shall waters from any pool or hot tub be drained into the sanitary sewer system, onto lands of other property owners adjacent to that on which the pool is located on in the general vicinity.
    - c. All electrical installations, including lighting and heating but not limited thereto,

which are provided for, installed and used in conjunction with a private swimming pool or hot tub shall be in conformance with the state laws and Village Ordinances regulating electrical installations.

(d) **Setbacks and Other Requirements.**

- (1) **Permissible Locations.** Private swimming pools or hot tubs shall be erected or constructed on rear or side lots only and only on a lot occupied by a principal building. No swimming pool or hot tub shall be erected or constructed on an otherwise vacant lot. A lot shall not be considered vacant if the owner owns the contiguous lot and said lot is occupied by a principal building.
- (2) **Setbacks.** All swimming pools and outdoor hot tubs shall be at least ten (10) feet from any lot line or building, measured at the water line, unless designed and approved by the Village as an addition to a building.
- (3) **Prohibited Placement Areas.** Swimming pools and hot tubs shall not be constructed in the front yard or in a required corner side yard.
- (4) **Area Calculations.** Swimming pools either open or enclosed shall be considered the same as accessory buildings for purposes of calculating the maximum area they may occupy in a required rear yard.

(e) **Enclosure.**

- (1) **Fence; In-Ground Pools.** All outdoor, below grade swimming pools shall have a fence or other solid structure not less than four (4) feet in height completely enclosing the pool with no opening therein (other than doors or gates) larger than three (3) inches square. All gates or doors opening through the enclosure shall be kept securely closed and locked at all times when not in actual use and shall be equipped with a self-closing and self-latching device designed to keep and be capable of keeping such door or gate securely locked at all times when not in actual use.
- (2) **Above-Ground Pools; Pool Wall Barrier.**
  - a. An approved barrier shall consist of a solid wall of durable material of which the pool itself is constructed and shall extend directly above the vertical water enclosing wall of the pool. Such walls shall extend more than three (3) feet above the level of the ground immediately adjacent to the pool. Such a solid pool wall barrier shall not be located within six (6) feet of any other wall or fence or other structure which can be readily climbed by children. Every entrance to a pool, such as a ladder, must be secured or adequately safeguarded to prevent unauthorized entry into the pool.
  - b. The pool enclosure may be omitted where portable pools are installed above ground and have a raised deck around the entire pool perimeter with an attached enclosed railing a minimum of thirty-six (36) inches high on the top.
- (3) **Miscellaneous Requirements.**
  - a. Swimming pools and hot tubs surrounded in whole or in part by a deck which has steps leading to the swimming pool or hot tub shall be equipped with a gate a minimum of four (4) feet in height and capable of being latched and locked with a combination lock or by a lock worked by a key to secure access to the swimming pool or hot tub when not in use.

- b. Service gates and gates which are part of a fence or wall enclosing a swimming pool or hot tub which are located across a driveway shall be kept closed and latched at all times by the property owner or occupier when not in use for ingress or egress. When such areas are not in use, such gates shall be locked with a combination lock or by a lock worked by a key.
- c. Hot tubs equipped with a fitted cover and capable of supporting a minimum of two hundred (200) pounds shall be exempt from required fencing.
- (f) **Draining and Approval Thereof.** No private swimming pool shall be constructed so as to allow water therefrom to drain into any sanitary sewer nor to overflow upon or cause damage to any adjoining property. Provisions may be made for draining the contents of any swimming pool into a storm sewer, but such installation shall be subject to prior approval by the Plumbing Inspector.
- (g) **Filter System Required.** All private swimming pools within the meaning of this Chapter must have, in connection therewith, some filtration system to assure proper circulation of the water therein and maintenance of the proper bacterial quality thereof.
- (h) **Dirt Bottoms Prohibited.** All swimming pools of a permanent nature shall have the sides and bottom of a smooth finish, and no sand or dirt bottom shall be permitted.
- (i) **Compliance.** All swimming pools and outdoor hot tubs existing at the time of original passage of this Code of Ordinances not satisfactorily fenced shall comply with the fencing requirements of this Section or when water is placed in the pool. Enclosures on existing pools shall be inspected by the Building Inspector for compliance. Variations in enclosure requirements that do not adversely affect the safety of the public may be approved.

## **Sec. 13-1-204 Retaining Walls.**

- (a) **Purpose.** The purpose of this Section is to protect public and private property from the effects of poorly designed and constructed retaining walls.
- (b) **Permit Required.** A permit shall be required for all retaining walls constructed that exceed twenty-four (24) inches in height, including terraced retaining wall projects where the total height of all walls exceeds twenty-four (24) inches, and are closer than fifteen (15) feet to a property line.
- (c) **Application.** Application shall be made to the Zoning Administrator on forms provided and shall include a site plan and a set of construction plans. Plans sealed by a professional engineer registered in the State and/or other information necessary to adequately review the proposed retaining wall may also be required by the Zoning Administrator.
- (d) **Performance Standards.** A retaining wall shall be designed to resist the lateral pressure of the retained material in accordance with accepted engineering practice. Walls retaining drained earth may be designed for pressure equivalent to that exerted by an equivalent fluid weighing not less than thirty (30) pounds per cubic foot and having a depth equal to that of the retained earth. Any surcharge shall be in addition to the equivalent fluid pressure.
- (e) **Setbacks.** Setbacks for retaining walls shall be the same as for fences under Section 13-1-202.

## Sec. 13-1-205 Portable Storage Units.

### (a) Scope of Provisions.

#### (1) Portable Storage Container Units. A portable storage unit may be either:

- a. Any container, shed-like container, or other portable structure, typically enclosed or open only on the top of the unit, no larger in dimension than ten (10) feet wide x ten (10) feet in height x twenty (20) feet in length and transported to a residential location for temporary storage purposes (typically known as PODs, MODs, etc.). Such units or containers are designed or intended to be used for the storage of personal property and are located for such purposes outside of an enclosed building; or
- b. Non self-propelled, fully enclosed trailers that are designed or used to transport materials, goods and equipment and are temporarily placed on property zoned or used for residential purposes (semi-trailers) for storage purposes.

#### (2) Units Excluded; Limitations. Dumpsters and commercial shipping containers of the kind used to ship goods and materials by rail, ship or truck are not included in the scope of this Section and are subject to different regulations. Commercial shipping containers shall not be placed or used for storage or any other purpose on a residential property.

### (b) Permissible Portable Storage Unit Use. The use of portable storage units on a residential parcel is allowed under the following conditions:

#### (1) Authorization. Authorization has been obtained from the Building Inspector pursuant to Subsection (c) below for temporary placement on a property.

#### (2) Number. There shall be no more than one (1) portable storage unit per residential property. No other type of temporary storage or shipping container may also be located on the property.

#### (3) Duration. A portable storage unit shall not remain on a residential property for more than sixty (60) consecutive days, and must not be placed on any one property in a zoning district in excess of sixty (60) days in a twelve (12) month period.

#### (4) Placement Location.

- a. The portable storage unit shall be placed within the buildable area of the lot and be on a concrete, asphalt or similar hard surface.
- b. If a portable storage unit is placed in the required front yard, the unit shall be located only in the area primarily used for vehicular ingress and egress and shall be located a minimum of ten (10) feet from the edge of the curb. Where no curb exists, the portable storage unit shall have a fifteen (15) foot setback from the edge of the pavement.
- c. If a portable storage unit is placed in a rear or side yard, the setback requirements for accessory buildings for that zoning district shall be complied with.

#### (5) Prohibited Materials. Portable storage units shall not be used to store materials and substances including or of a similar nature: contractor's materials and equipment, nonresidential items and equipment, solid waste, refuse, hazardous materials, explosives, flammable liquids, and other harmful or illegal substances and materials.

#### (6) Construction Site Exception. Portable storage units for the temporary storage of

personal property associated with and made necessary by construction at a residential property are exempt from the aforementioned conditions. Portable storage units associated with construction activities at a site where a building permit has been issued are permitted for the duration of the construction and shall be removed from the site within fifteen (15) days of the end of construction.

(c) **Authorization Procedures.**

- (1) **Notification.** The owner or occupant of a residential lot or parcel on which a portable storage unit will be placed is responsible for providing notice to the Building Inspector within twenty-four (24) hours of placement. The owner or occupant shall provide his/her name, property address, contact telephone number(s), and email address.
- (2) **Authorization.** The Building Inspector will respond by mail or email with a written authorization if the owner or occupant has provided sufficient information. Upon request, the Building Inspector may grant a time extension upon a showing of good cause and there have been no violations of the requirements under this Section.

## **Sec. 13-1-206 Sports Courts.**

(a) **Scope of Provisions.** A sports court is a dedicated hard surfaced area purpose-built for playing tennis, basketball, shuffleboard, or other similar such sporting activities on a residential lot. A residential driveway or paved parking area occasionally used for such activities is not considered to be a sports court. A sports court may be constructed and maintained on a residential lot in addition to permissible detached accessory structures.

(b) **Permit Application.**

- (1) **Permit Requirement.** An accessory building zoning permit per Section 13-1-200(a) is required for all sports courts prior to construction.
- (2) **Application Requirements.** In addition to the required application information prescribed in Section 13-1-200(a), permit applications for sports courts shall include the following additional information:
  - a. Court dimensions;
  - b. A site plan drawn to scale showing the location of the court on the lot, and the distance from other structures and property lines;
  - c. Lighting plan;
  - d. Landscaping plan;
  - e. Fencing plan, including information on the height and type of proposed fencing; and
  - f. Any other information deemed necessary by the Building Inspector.

(c) **Standards for Sports Courts.**

- (1) **Number.** A residential lot is permitted to have one (1) sports court. A sports court may only be constructed on a lot after the principal structure is under construction or present.
- (2) **Location.** Sports courts may only be located in rear or side yard areas. No sports court may be constructed in a front yard or over an easement.
- (3) **Setback Requirements.** A sports court, and attendant facilities (example: equipment structure), shall be located a minimum of ten (10) feet from any property lines or

- residential structure.
- (4) **Lighting.** If a sports court will have lighting, such lights shall be extinguished by 10:00 p.m., shall be directed onto the court, and shall be shielded and directed downwards to minimize light migration and glare onto adjacent properties. All such lighting shall comply with Village of Fall River lighting ordinances.
  - (5) **Fencing.**
    - a. Fencing enclosing a sports court on a residential parcel shall use either purpose-manufactured sports netting or utilize corrosion-resistant #9 gauge woven wire mesh similar to chain link design. No such fence shall exceed ten (10) feet in height. Fence posts shall be decay-resistant.
    - b. Upon application for consideration, the Plan Commission may modify such fencing requirements where structures or vegetation provide a substantial equivalent of the fencing required by this Section. However, such waiver shall not permit a sports court enclosure fence to serve as a lot line fence governed by Section 13-1-202.
  - (6) **Drainage.** Adequate provisions, satisfactory to the Building Inspector, shall be made to prevent drainage of surface water from the sports court onto adjoining properties.
  - (7) **Additional Requirements.** The Building Inspector shall have the authority when granting a permit to require such design changes, additions and safeguards which he/she determines to be necessary.
- (d) **Miscellaneous Requirements.**
- (1) **Hours of Operation.** No sports court located within one hundred (100) feet of an adjacent residence shall be used between 10:00 p.m. and 7:00 a.m.
  - (2) **Private Use Only.** Sports courts on residential parcels shall not be used for commercial purposes.
  - (3) **Noise Limitations.** No excessive, loud or unnecessary noises from a sports court which disturb the comfort and quiet of neighboring residents is permissible. Village noise ordinances shall be complied with.
  - (4) **Nuisances.** No sports court shall be maintained or operated in such a manner as to create a hazard or nuisance or in other ways be detrimental to the public safety, health and welfare or result in substantial adverse effect on neighboring properties.
  - (5) **Complaints.** In the event complaints are received regarding a sports court, the Building Inspector shall refer such complaints to the Plan Commission. Following written notice to the property owner with the sports court and public hearing, the Plan Commission may issue an order to terminate the objectionable activity complained about or impose appropriate changes.

**Sec. 13-1-207 through Sec. 13-1-219      Reserved for Future Use.**

## **Article L: Administration**

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### **Sec. 13-1-220 General Administrative System.**

This Chapter contemplates an administrative and enforcement officer entitled the "Zoning Administrator" to administer and enforce the same. Certain considerations, particularly with regard to granting of permitted conditional uses, planned unit development conditional uses, changes in zoning districts and zoning map, and amending the text of this Zoning Chapter require review and recommendation by the Plan Commission and ultimate action by the Village Board. A Zoning Board of Appeals is provided to assure proper administration of the Chapter and to avoid arbitrariness.

### **Sec. 13-1-221 Zoning Administrator.**

(a) **Appointment.**

- (1) The Village Board shall designate the Zoning Administrator as the administrative enforcement officer for the provisions of this Chapter. The duty of the Zoning Administrator shall be to interpret and administer this Chapter and to issue, after on-site inspection, all permits required by this Chapter.
- (2) Due to the size of the Village of Fall River, it may not be feasible to find a suitable person willing to take on the responsibility of being Zoning Administrator on a part-time basis. It is therefore provided that the function of the Zoning Administrator can be delegated to a committee of the Village Board, to another Village official, or a single member of the Village Board or the Village President. An officer other than a Village Board member or another employee of the Village may also be designated to handle the duties of Zoning Administrator on a part-time basis in addition to the other duties performed by such person.

(b) **Duties.** In enforcing and administering this Chapter, the Zoning Administrator shall perform the following duties:

- (1) Issue the necessary building permits and occupancy and zoning use permits required by the provisions of this Chapter, provided its provisions have been complied with.
- (2) Keep an accurate record of all permits, numbered in the order of issuance, in a record book for this purpose.
- (3) In case of any finding of a violation of a provision of this Chapter, notify, in writing, the actual violator where known, the owner of the property on which the violation has taken place and the Village Board, indicating the nature of the violation and the action necessary to correct it.
- (4) Receive, file and process for action all applications for conditional uses, variances and amendments to this Chapter which are filed in the zoning office.
- (5) Initiate, direct and review, from time to time, a study of the provisions of this Chapter and make reports of the recommendations to the Plan Commission and Village Board for investigation and appropriate action.
- (6) Carry out such additional responsibilities as are hereinafter set forth by the provisions

of this Chapter.

- (c) **Authority.** In the enforcement of this Chapter, the Zoning Administrator shall have the power and authority for the following:
- (1) At any reasonable time and for any proper purpose to enter upon any public or private premises and make inspection thereof.
  - (2) Upon reasonable cause or question as to proper compliance, to revoke any building or occupancy permit and issue cease and desist orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this Chapter, such revocation to be in effect until reinstated by the Zoning Administrator or the Zoning Board of Appeals, or take any other action as directed by the Village Board to insure compliance with or to prevent violation of its provisions.
  - (3) In the name of the Village and with authorization of the Village Board commence any legal proceedings necessary to enforce the provisions of this Chapter or the Building Code, including the collection of forfeitures provided for herein.

### **Sec. 13-1-222      Role of Specific Village Officials in Zoning Administration.**

- (a) **Plan Commission.** The Plan Commission, together with its other statutory duties, shall make reports and recommendations relating to the plan and development of the Village of Fall River to the Village Board, other public officials and other interested organizations and citizens. In general, the Plan Commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning. Under this Chapter, its functions are primarily recommendatory to the Village Board pursuant to guidelines set forth in this Chapter as to various matters and, always, being mindful of the intent and purposes of this Chapter. Recommendations shall be in writing. A recording thereof in the Commission's minutes shall constitute the required written recommendation. The Commission may, in arriving at its recommendation, on occasion of its own volition, conduct its own public hearing. The Plan Commission shall have the powers to conduct and hold public hearings on all proposed amendments to the Village Zoning Ordinance as provided in Sec. 62.23(7)(d), Wis. Stats.
- (b) **Village Board.** The Village Board, the governing body of the Village, subject to recommendations by the Plan Commission and the holding of public hearings by said Board, has ultimate authority to grant planned unit development applications, issue conditional use permits, make changes and amendments in zoning districts, the zoning map and supplementary floodland zoning map and to amend the text of this Chapter. The Village Board may delegate to the Plan Commission the responsibility to hold some or all public hearings as required under this Chapter.
- (c) **Zoning Board of Appeals.** A Zoning Board of Appeals is established to provide an appeal procedure for persons who deem themselves aggrieved by decisions of administrative officers in enforcement of this Chapter. See Article N of this Chapter for detail provisions.

## Sec. 13-1-223 Zoning Permit.

- (a) **Permit Required.** No building shall be erected, moved or structurally altered until a building permit therefor shall have been applied for and issued. For purposes of this Zoning Code, a building permit shall mean a zoning permit.
- (b) **Application.** All applications for a building permit shall be accompanied by a location sketch in duplicate, drawn to scale, showing the location, actual shape and dimensions of the lot to be built upon, the exact size and location on the lot of the proposed or existing building and accessory building, the lines within which the building shall be erected, altered or moved, the existing or intended use of each building, or part of a building, the number of families the building is intended to accommodate, and such other information with regard to the lot and neighboring lots or buildings as may be necessary to determine and provide for the enforcement of these zoning regulations.
- (c) **Application; Dimensions.** All dimensions shown relating to the location and size of the lot shall be based on actual survey. The lot and the location of the building thereon shall be staked out on the ground before construction is started.
- (d) **Issuance or Denial.** Except as otherwise provided in these zoning regulations, the Zoning Administrator shall forward the application, with his/her recommendation, to the Village Board for determination, and the Village Board shall issue or refuse to issue a building permit within thirty (30) days after receipt of an application therefor. Refusal to issue a building permit shall be given in writing, with the reasons for such refusal.
- (e) **Proper Applicants; In General.** The following shall be considered proper applicants for a building permit or certificate of compliance under the terms of these zoning regulations:
  - (1) Record title owner under properly recorded instrument of conveyance;
  - (2) Vendee under properly recorded land contract;
  - (3) Vendee under written contract of sale, agreement to sell, earnest money agreement, or similar real estate agreement;
  - (4) Duly authorized agent for any of the above.
- (f) **Identification.** The Zoning Administrator may request proper proof of the applicant showing that he/she is a proper applicant, under the terms of this Chapter. The application for a building permit or certificate of compliance shall not be considered filed until such time as the requested proof is filed with the Zoning Administrator office. The Zoning Administrator may revise the form of application for building permit and certificate of compliance to conform with the terms of this Chapter. If the applicant is not the fee simple owner of the property involved, the name of the owner of any lienholder shall be included in the application.
- (g) **Time Limitations.** Any building permit granted under this Chapter shall become null and void within six (6) months after it is issued if construction on the property for which the permit is granted has not been commenced within the six (6) month period. In all such cases where a permit has become null and void, a new application must be filed for a new building permit before any construction can be commenced at such location. All building permits granted under the terms of this Chapter shall be valid for only twelve (12) months. Building permits shall expire on the first anniversary date from their issuance. If a certificate of compliance

has not been issued for the property by the expiration date of the building permit, application for a new building permit must be made in order to continue work on the premises involved.

- (h) **Conditions for Refusal; Appeal Procedure.** The Zoning Administrator or Village Engineer shall not issue a building permit for any property, the improvement of which might tend to interfere with the exterior lines of planned new streets, highways, parks or playgrounds, or the exterior lines of planned widening or extending of existing streets, highways, parks or playgrounds. Any person who feels aggrieved by the decision of the Zoning Administrator or Village Engineer may appeal to the Zoning Board of Appeals, which has power in a specific case, by the vote of a majority of its members, to grant a permit for a building or such street, highway, parkway, park or playground, which will as little as practicable increase the cost of opening such street, highway, park or playground and such Zoning Board of Appeals may impose reasonable requirements as a condition of granting such permit, which requirements shall be designed to promote the health, convenience, safety or general welfare of the Village. Such board shall refuse a permit where the applicant will not be substantially damaged by placing his/her building outside the planned street, highway, park or playground.
- (i) **Fees.** Prior to issuing a building permit the Zoning Administrator shall collect from the applicant to defray the cost to the Village of processing the application, a permit fee.
- (j) **Additional Requirements.** In addition to other requirements of this Chapter, no building or moving permit shall be issued unless:
  - (1) Sanitary sewer and water is available, or installation thereof has been approved by the Village Board or, alternatively;
  - (2) A sanitary sewer system in accordance with SPS 382, Wis. Adm. Code, and related sections thereof, has been approved for the premises and the premises is in compliance with NR112.01 through NR112.25, Wis. Adm. Code.

### **Sec. 13-1-224 Site Plan Approval.**

- (a) **Site Plan Approval.** All applications for building permits for any construction, reconstruction, expansion or conversion, (including mobile home parks and subdivisions) except for one (1) and two (2) family residences in Residential Districts, shall require site plan approval by the Plan Commission in accordance with the requirements of this Section.
- (b) **Application.** The applicant for a building permit shall also submit a site plan and sufficient plans and specifications of proposed buildings, machinery and operations to enable the Plan Commission or its expert consultants to determine whether the proposed application meets all the requirements applicable thereto in this Chapter.
- (c) **Administration.** The Zoning Administrator shall make a preliminary review of the application and plans and refer them, along with a report of his/her findings, to the Plan Commission within ten (10) business days. The Plan Commission shall review the application and may refer the application and plans to any expert consultants selected by the Village Board to advise whether the application and plans meet all the requirements applicable thereto in this Chapter. Within forty (40) business days of its receipt of the application, the Plan Commission shall authorize the Zoning Administrator to issue or refuse a building permit.
- (d) **Requirements.** In acting on any site plan, the Plan Commission shall consider the following:

- (1) The appropriateness of the site plan and buildings in relation to the physical character of the site and the usage of adjoining land areas.
  - (2) The layout of the site with regard to entrances and exits to public streets ; the arrangement and improvement of interior roadways; the location, adequacy and improvement of areas for parking and for loading and unloading and shall, in this connection, satisfy itself that the traffic pattern generated by the proposed construction or use shall be developed in a manner consistent with the safety of residents and the community, and the applicant shall so design the construction or use as to minimize any traffic hazard created thereby.
  - (3) The adequacy of the proposed water supply, drainage facilities and sanitary and waste disposal.
  - (4) The landscaping and appearance of the completed site. The Plan Commission may require that those portions of all front, rear and side yards not used for off-street parking shall be attractively planted with trees, shrubs, plants or grass lawns and that the site be effectively screened so as not to impair the value of adjacent properties nor impair the intent or purposes of this Section.
- (e) **Effect on Municipal Services.** Before granting any site approval, the Plan Commission may secure such professional recommendations from retained experts as may be deemed necessary from the Village Engineer or other municipal officials, with special attention to the effect of such approval upon existing municipal services and utilities. Should additional facilities be needed, the Plan Commission shall forward its recommendations to the Village Board and shall not issue final approval until the Village Board has entered into an agreement with the applicant regarding the development of such facilities.

## **Sec. 13-1-225      Violations and Penalties.**

- (a) **Violations.** It shall be unlawful to use or improve any structure or land, or to use water or air in violation of any of the provisions of this Chapter. In case of any violation, the Village Board, the Zoning Administrator or any property owner who would be specifically damaged by such violation may cause appropriate action or proceeding to be instituted to enjoin a violation of this Chapter or cause a structure to be vacated or removed.
- (b) **Remedial Action.** Whenever an order of the Zoning Administrator has not been complied with within thirty (30) days after written notice has been mailed to the owner, the resident agent or occupant of the premises, the Village Board, the Zoning Administrator or the Village Attorney may institute appropriate legal action or proceedings.
- (c) **Penalties.**
  - (1) Any person, firm or corporation who fails to comply with the provisions of this Chapter or any order of the Zoning Administrator issued in accordance with this Chapter or resists enforcement shall, upon conviction thereof, be subject to a forfeiture and such additional penalties as provided for in Section 1-1-6 of this Code of Ordinances.
  - (2) Failure to obtain a permit prior to commencement of work under this Chapter shall double the fee for the required permit.
  - (3) The Village of Fall River may refuse to issue a building permit for structures/parcels in

violation of any provision of this Zoning Code.

### **Sec. 13-1-226 Fees.**

The following fees shall be applicable for this Chapter:

- (a) **Rezoning and Zoning Application.** A fee per application (including repetitions of previous applications) is required, as prescribed by the fee schedule in Section 1-3-1.
- (b) **Conditional Use Permit Application.** All conditional use applications shall be filed with the Village Clerk-Treasurer along with a filing fee prescribed in Section 1-3-1.
- (c) **Variance and Appeals Applications.** All applications for variances and appeals shall be filed with the Village Clerk-Treasurer along with a filing fee prescribed in Section 1-3-1.
- (d) **Building Permit Application.** The fees for building permits shall be established in Title 15, Building Code, of this Code of Ordinances.

### **Sec. 13-1-227 through Sec. 13-1-239 Reserved for Future Use.**

## **Article M: Changes and Amendments to the Zoning Code**

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### **Sec. 13-1-240 Authority.**

Whenever the public necessity, convenience, general welfare or good zoning practice requires, the Village Board may, by ordinance, change the district boundaries established by this Chapter and the Zoning Map incorporated herein and/or the Supplementary Floodland Zoning Map incorporated herein, or amend, change or supplement the text of the regulations established by this Chapter or amendments thereto. Such change or amendment shall be subject to the review and recommendation of the Plan Commission.

### **Sec. 13-1-241 Initiation of Changes or Amendments.**

The Village Board, the Plan Commission, the Zoning Board of Appeals and other government bodies and any private petitioners may apply for an amendment to the text of this Chapter to the District boundaries hereby established or by amendments hereto in the accompanying zoning map made a part of this Chapter and/or the Supplementary Floodland Zoning Map to be made a part of this Chapter by reference.

### **Sec. 13-1-242 Procedure for Changes or Amendments.**

#### **(a) Petition.**

- (1) Petitions for any change to the district boundaries and map(s) or amendments to the text regulations shall be addressed to the Village Board and shall be filed with the Village Clerk-Treasurer. The person requesting such action shall provide all information requested on the petition including:
  - a. Name and street address of the petitioner.
  - b. The lot number of any real estate owned by the petitioner adjacent to the area proposed to be changed.
  - c. Legal description of the property to be altered.
  - d. The existing use of all buildings on such land.
  - e. The principal use of all properties within three hundred (300) feet of such land.
  - f. Purpose for which such property is to be used.
  - g. Reciting of facts indicating that the proposed change will not be detrimental to the general public interest and the purposes of this Chapter.
  - h. Names and addresses of all abutting and opposite property owners within three (300) feet of the property to be altered.
  - i. Plot plan or survey plat, drawn to scale, showing the property to be rezoned, location of structures, and property lines within three hundred (300) feet of the parcel.
  - j. Any further information requested to the petition or which may be required by the Plan Commission to facilitate the making of a comprehensive report to the Village Board.

- (2) Failure to supply such information shall be grounds for dismissal of the petition.
  - (3) A petition for change or amendment submitted by a private property owner shall be prepared in triplicate and filed with the Village Clerk-Treasurer and shall be accompanied by the appropriate fee to defray the cost of giving notice, investigation and other administrative processing.
- (b) **Plan Commission Recommendation.** The Village Board or the Village Clerk-Treasurer shall cause the petition to be forwarded to the Plan Commission for its consideration and recommendation. The Plan Commission shall review all proposed amendments to the text and zoning map(s) within the corporate limits and shall recommend in writing that the petition be granted as requested, modified or denied. A recording of the recommendation in the Plan Commission's official minutes shall constitute the required written recommendation. In arriving at its recommendation, the Commission may on occasion, of its own volition, conduct its own public hearing on proposed amendment(s).
- (c) **Public Hearing.**
- (1) The Village Board, following receipt of recommendation of the Plan Commission, shall hold a public hearing upon each proposed change or amendment, giving notice of the time, place and the change or amendment proposed by publication of a Class 2 notice, under Chapter 985, Wis. Stats. At least ten (10) days' prior, written notice shall also be given to the clerk of any municipality within one thousand (1,000) feet of any land to be affected by the proposed change or amendment.
  - (2) The Village Board may delegate to the Plan Commission the responsibility to hold public hearings as required under this Section.
- (d) **Village Board Action; Rezoning Voting; Down Zoning.**
- (1) Following such public hearing, the Plan Commission shall make a recommendation on the proposed rezoning ordinance making the proposed rezoning, change or amendment. The Village Board shall then review the Plan Commission's recommendation and make its determination.
  - (2) The Village Board may enact a down zoning ordinance only if the ordinance is approved by at least two-thirds of the members-elect, except that if the down zoning ordinance is requested, or agreed to, by the person who owns the land affected by the proposed ordinance, the ordinance may be enacted by a simple majority of the members-elect.
  - (3) "Down zoning ordinance" means a zoning ordinance that affects an area of land in the following ways:
    - a. By decreasing the development density of the land to be less dense than was allowed under its previous usage; or
    - b. By reducing the permitted uses of the land that are specified in a zoning ordinance, or other land use regulation, to fewer uses than were allowed under its previous usage.

*State Law Reference: Section 66.1005, Wis. Stats.*

### **Sec. 13-1-243 Protest.**

- (a) **Statutory Protest – Rezoning.** In the event of a protest against amendment to the zoning map, duly signed and acknowledged by the owners of twenty percent (20%) or more, either of the areas of the land included in such proposed change, or by the owners of twenty percent (20%) or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such changes or amendments shall not become effective except by the favorable vote of three-fourths (3/4) of the full Village Board membership.
- (b) **Statutory Protest – Zoning Code Text Amendment.** In the event of protest against amendment to the text of the regulations of this Chapter, duly signed and acknowledged by twenty percent (20%) of the number of persons casting ballots in the last general election, it shall cause a three-fourths (3/4) vote of the full Village Board membership to adopt such amendment.

### **Sec. 13-1-244 Substandard Lots.**

- (a) **Definition.** Per Sec. 66.10015(1)(e), Wis. Stats., a "substandard lot" is a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements."
- (b) **Prohibited Actions Regarding Substandard Lots.** Notwithstanding any other law or rule, or any action or proceeding under common law, the Village, and its subunits and officials, may not enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:
  - (1) Conveying an ownership interest in a substandard lot.
  - (2) Using a substandard lot as a building site if all of the following apply:
    - a. The substandard lot or parcel has never been developed with one (1) or more of its structures placed partly upon an adjacent lot or parcel.
    - b. The substandard lot or parcel is developed to comply with all other ordinances of the Village.
- (c) **Prohibited Lot Merger Requirement.** Notwithstanding the authority granted under Secs. 61.35 and 62.23, Wis. Stats., the Village may not enact or enforce an ordinance or take any other action that requires one (1) or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

*State Law Reference: Sec. 66.10015, Wis. Stats.*

### **Sec. 13-1-245 Notifications to Registered Citizens Regarding Zoning or Comprehensive Plan Changes.**

- (a) **Notice Registry.**
  - (1) **List of Registered Citizens; Scope.** The Village of Fall River shall maintain a registry

list of persons who submit a written or electronic request to receive notice of any proposed municipal zoning action or ordinance change, or comprehensive plan amendment, which would affect the allowable use of the person's property. This notification list shall apply to any proposed zoning ordinance or comprehensive plan amendment which would impact the allowable use, size or density requirements pertaining to the registered person's property.

(2) **Registration Requests.** To be included on the list to receive notice of such proposed zoning regulation or comprehensive plan changes, a person shall make a written or electronic request to the Village Clerk-Treasurer. Verbal requests shall not be accepted. With such request, the person shall provide:

- a. His/her name;
- b. Mailing address;
- c. Telephone number (landline, cellphone, fax);
- d. Email address; and
- e. Preferred method of notification (non-binding on the municipality).

(b) **Annual Registration Information Notice.**

(1) **Public Notification to be Provided.** Annually, the Village shall inform residents of the municipality that they may add their names to the notification list. The date of providing such annual notice shall be set by the Village of Fall River.

(2) **How Annual Notification is Provided.** The annual notice requirement providing information on the notice registry can be provided by any one of the following methods, or combination of methods:

- a. Publication of a Class 1 notice pursuant to Ch. 985, Wis. Stats.;
- b. First class mail;
- c. Giving notice on the Village's website; or
- d. Including the information in a mailing that is sent to all property owners, such as, but not limited to, tax or utility statements, newsletters, etc.

(c) **Form of Notifications.** Following recommendation from the Plan Commission on the proposed zoning regulation change or comprehensive plan amendment but prior to action by the Village Board to vote on such proposal, the Village shall send a notice to each person on the notice registry list. Such notice shall include a copy of the proposed zoning or change or comprehensive plan amendment, or a summary thereof. Such notice shall be by first class mail or by any other reasonable form agreed to by the registered person and the Village, including email, voice mail or text message. The Village shall not require a fee for the sending of such notices except that the Village may charge each person on the list who receives a notice by first class mail a fee that does not exceed the approximate cost of providing the mailed notice to the person. An ordinance or amendment that is subject to this notice requirement may take effect even if the Village fails to send the notice.

*State Law Reference: Secs. 62.23(7)(d)4. and 66.1001(4)(f), Wis. Stats.*

**Sec. 13-1-246 through Sec. 13-1-259      Reserved for Future Use.**

## Article N: Appeals

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### Sec. 13-1-260 Appeals to the Zoning Board of Appeals.

- (a) **Scope of Appeals.** Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Village of Fall River affected by any decision of the administrative officer. Such appeal shall be taken within thirty (30) days of the alleged grievance or judgment in question by filing with the officer(s) from whom the appeal is taken and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof, together with payment of a filing fee as may be established by the Village Board. The officer(s) from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record of appeals upon which the action appeals from was taken.
- (b) **Stay of Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his/her opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) **Powers of Zoning Board of Appeals.** In addition to these powers enumerated elsewhere in this Code of Ordinances, the Zoning Board of Appeals shall have the following powers:
  - (1) **Errors.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or Building Inspector.
  - (2) **Variances.** To hear and grant appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare and justice secured.
  - (3) **Interpretations.** To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts; the Plan Commission may make a recommendation but is not mandatory.
  - (4) **Substitutions.** To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made; the Plan Commission may make a recommendation but is not mandatory. Whenever the Zoning Board of Appeals permits such a substitution, the use may not thereafter be changed without application.
  - (5) **Unclassified Uses.** To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district; the Plan Commission may make a recommendation but is not mandatory.
  - (6) **Temporary Uses.** To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involve the erection of a substantial structure and are compatible with the neighboring uses; the Plan

Commission may make a recommendation but is not mandatory. The permit shall be temporary, revocable, subject to any condition required by the Zoning Board of Appeals and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Chapter shall be required.

- (7) **Permits.** The Zoning Board of Appeals may reverse, affirm wholly or partly, modify the requirements appealed from and may issue or direct the issue of a permit.

### **Sec. 13-1-261 Hearing on Appeals.**

The Zoning Board of Appeals shall fix a reasonable time for the hearing, cause notice thereof to be published in the official newspaper not less than seven (7) days prior thereto, cause notice to be given to the appellant or applicant and the administrative officer(s) appealed from by regular mail or by personal service not less than five (5) days prior to the date of hearing. In every case involving a variance, notice shall also be mailed not less than five (5) days prior to the hearing of the fee owners of records of all land within one hundred (100) feet of any part of the subject building or premises involved in the appeal.

### **Sec. 13-1-262 Decisions of Zoning Board of Appeals.**

- (a) **Timeframe.** The Zoning Board of Appeals shall decide all appeals and applications within thirty (30) days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and the Zoning Administrator.
- (b) **Conditions.** Conditions may be placed upon any zoning permit ordered or authorized by the Zoning Board of Appeals.
- (c) **Validity.** Variances, substitutions or use permits granted by the Zoning Board of Appeals shall expire within eighteen (18) months unless substantial work has commenced pursuant to such grant.

### **Sec. 13-1-263 Variances.**

- (a) **Purpose.**
  - (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him/her undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
  - (2) The Zoning Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection that the flood protection elevation for the particular area or permit standards lower than

those required by state law.

- (3) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.
- (b) **Application for Variances.** The application for variation shall be filed with the Village Clerk-Treasurer. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:
- (1) Name and address of applicant and all abutting and opposite property owners of record.
  - (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
  - (3) Address and description of the property.
  - (4) A site plan showing an accurate depiction of the property.
  - (5) Additional information required by the Village Clerk-Treasurer, Building Inspector, Village Engineer, Zoning Board of Appeals and/or Zoning Administrator.
- (c) **Public Hearing of Application.**
- (1) The Zoning Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than seven (7) days before the hearing in one (1) or more of the newspapers in general circulation in the Village, and shall give due notice to the parties in interest, the Zoning Administrator and the Village Board. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Zoning Board of Appeals shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Village Board.
- (d) **Action of the Zoning Board of Appeals.** For the Zoning Board of Appeals to grant a variance, it must find that:
- (1) Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
  - (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
  - (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.
  - (4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

- (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.
- (e) **Conditions.** The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Chapter. Per Sec. 62.23(7)(e)7.e., Wis. Stats., the Village Board authorizes the Zoning Board of Appeals to impose an expiration date for a variance if such date relates to a specific date by which action or work authorized must be commenced or completed. In the absence of a different expiration date being established at the time of granting a variance, no order of the Zoning Board of Appeals granting a variance shall be valid for a period longer than eighteen (18) months from the date of such order unless within such period the erection or alteration of a building is started or the use is commenced per the variance approval.
- (f) **Standards for Qualifying For A Variance.** To qualify for a variance, the applicant must demonstrate that their property meets the following three (3) requirements:
- (1) **Unique Property Limitations.**
- a. The applicant must show that the property has conditions that are unique or special to that property, that such unique physical characteristics prevent compliance with the regulations of this Zoning Code. Examples, but not limited to, of such conditions are physical limitations unique to the property such as wetlands or exceptionally unique steep slopes.
  - b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the "unique property limitation" test:
    1. Financial considerations of the applicant.
    2. The personal circumstances of the applicant (i.e. need for an expanded garage, a growing family, an unemployed family member returning home, etc.).
    3. The existence of nearby Zoning Code violations.
    4. Lack of objections from neighbors.
- (2) **No Harm To Public Interests.** To qualify for a variance, the applicant must demonstrate that the proposed variance is not contrary to the public interest. In applying this test, the Zoning Board of Appeals must consider the impacts of the variance proposal, and, if setting a precedent, the cumulative impacts of similar projects on the interests of the neighbors, the overall Village of Fall River and the general public. Such factors are generally identified in Section 13-1-4.
- (3) **Unnecessary Hardship.**
- a. To qualify for a variance, the applicant must demonstrate that the special condition(s) of the property creates an unnecessary hardship. When determining whether an unnecessary hardship exists, the property as a whole shall be considered rather than a portion of the property.
  - b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the "unnecessary hardship" test:
    1. Conditions which are self-imposed or created by a prior owner (i.e. owner expands home and then argues there is no suitable location for a proposed

- new garage).
2. Economic or financial hardship to the applicant (i.e. construction of a new garage in a complying location would cost more than placing the garage in a location requiring a variance).
  3. Lack of objections from neighbors.
- c. Due to Wisconsin court decisions, the "unnecessary hardship" determination requires that the Board of Appeals apply different tests for use variances and area variances:
1. For a use variance unnecessary hardship can be determined to exist only if the property owner can show that he/she would have *no reasonable use of the property* without a variance. A use variance would permit a property owner to put property to an otherwise prohibited use.
  2. For an area variance unnecessary hardship can be determined to exist only if the property owner can show that compliance with the requirements of the Zoning Code would *unreasonably prevent the property owner from using the land for a permitted purpose* (leaving the property owner without any use that is permitted for the property under the Zoning Code) or would render *conformity with such zoning restrictions unnecessarily burdensome*. Area variances are intended to provide an increment of relief (usually small) from a physical dimensional requirement of the Zoning Code such as building height or setback requirements. In applying the test for an area variance the Zoning Board of Appeals shall consider the purpose of the Zoning Code, the Zoning Code's restrictions on the applicant's property, and the cumulative effects granting of a variance would have on the neighborhood, community and on the public interests.
  3. Unless the Zoning Board of Appeals finds that a property cannot be used for any permitted purpose, area variances shall not be granted for greater than a forty percent (40%) deviation in the area, setback, height or density requirements specified in this Chapter.

(Note: The above standards reflect the Wisconsin Supreme Court's decisions in *State ex rel. Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Board of Adjustment*, 2004 WI 56, \_Wis. 2d \_\_, 679 N.W.2d 514).

## **Sec. 13-1-264     Review by Court of Record.**

Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Zoning Board of Appeals.

**Sec. 13-1-265 through Sec. 13-1-279      Reserved for Future Use.**

## **Article 0: Mobile Home Communities**

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### **Sec. 13-1-280 Intent-Where Mobile Home Communities Permitted.**

- (a) **Location.** Mobile home communities may be established in the R-4 Residential District as a conditional use in accordance with the procedures, requirements and limitations set forth in this Article. Within such mobile home communities, mobile homes, with such additional supporting uses and occupancies as are permitted herein, may be established subject to the requirements and limitations set forth in these and other regulations.
- (b) **Intent.** It is the intent of this Article to recognize mobile homes constructed prior to October 1, 1974, as distinct and different from units designated as Mobile Homes within the definitions of this Article and to prohibit units not meeting the requirements for Mobile Homes as defined herein. Units constructed prior to 1974 are prohibited. Mobile Homes meeting the requirements of the One- and Two-Family Building Dwelling Code shall not be permitted in a mobile home community except as a conditional use. Permits may be obtained only after approval by the Village Board. Manufactured or modular homes are not mobile homes for purposes of this Article.
- (c) **Exceptions.** No person shall park, locate or place any mobile home outside of a licensed mobile home community in the Village of Fall River, except:
  - (1) Unoccupied mobile homes may be parked on the lawfully situated premises of a licensed mobile home dealer for the purposes of sale display; the lawfully situated premises of a vehicle service business for purposes of servicing or making necessary repairs; the premises leased or owned by the owner of such mobile home for purposes of sales display for a period not exceeding one hundred twenty (120) days, provided no business is carried on therein, or in an accessory private garage, building or rear yard of the owner of such mobile home, provided no business is carried on therein.
  - (2) Individual mobile homes may be allowed by the Village Board in Residential Districts as temporary uses not to exceed one hundred twenty (120) days under exceptional circumstances, such as to provide temporary housing during reconstruction following a fire.

### **Sec. 13-1-281 Definitions.**

The following definitions are used in this Article:

- (a) **Mobile Home Communities (Parks).** Mobile home communities/parks are distinguished from subdivisions lacking common facilities and continuing management services. The latter would be controlled by general subdivision regulations, which would apply also to mobile home subdivisions without common open space or continuing management.
- (b) **Mobile Home Subdivision.** A parcel of land platted for subdivision according to all requirements of the comprehensive plan, designed or intended for lots to be conveyed by deed to individual owners for residential occupancy primarily by mobile homes.
- (c) **Residential Manufactured Home.** A single-family dwelling built on or after October 1, 1974,

in accordance with the ANSI Code (American National Standards Institute) or in accordance with the HUD Code (Housing & Urban Development), both of which govern the heating and cooling systems, electrical systems, fire safety, body and frame construction, thermal protections and plumbing systems. All said homes shall bear the proper approved Wisconsin insignia as required by the pertinent codes of the Wisconsin Department of Safety and Professional Services, Wis. Adm. Code.

- (d) **"Mobile home"** means a dwelling constructed prior to October 1, 1974 which is, or was as originally constructed, designed to be transported by any motor vehicle upon a public highway and designed, equipped and used primarily for sleeping, eating and living quarters, or is intended to be so used; and includes any additions, attachments, annexes, foundations and appurtenances, except that a mobile home is not deemed a mobile home if the assessable value of such additions, attachments, annexes, foundations and appurtenances equals or exceed fifty percent (50%) of the assessable value of the mobile home. The term "mobile home" shall not include a factory-built structure or manufactured or modular home meeting the following requirements:
  - (1) Intended to be set on a foundation by virtue of its construction.
  - (2) Which is normally transported only once, from the factory to the construction site.
  - (3) Which, from its construction, is designed to be permanently affixed to land.
- (e) **Foundation Siding.** A fire and weather resistant, pre-finished material surrounding the entire perimeter of a home and completely enclosing a space between the exterior wall of such home and the ground. Foundation siding shall be properly vented, harmonious, and compatible with the house and installed within sixty (60) days from the date of placement on site.
- (f) **Primary Exposure.** Open areas adjacent to the front wall (or main entrance) of a dwelling unit.
- (g) **Secondary Exposure.** Open areas adjacent to side and rear walls of a dwelling unit.
- (h) **Statutory Definitions.** In addition to the above definitions, definitions contained in the Wisconsin Statutes shall also be applicable.

## **Sec. 13-1-282 Mobile Home Occupancy Permits.**

- (a) Mobile homes legally located and occupied on premises outside a licensed mobile home community prior to the original enactment of this Chapter may be continued in such location, provided that the owner of the premises on which such unit is located shall apply to the Zoning Administrator within sixty (60) days after the original effective date of this Chapter for a use permit showing the date on which such use and occupancy commenced, the names of the owner and occupants and that such use and occupancy is otherwise in conformity with the applicable laws and regulations of the state and Village. Such nonconforming use shall be automatically terminated upon a discontinuance for any reason for twelve (12) consecutive months or if the total structural repairs and alterations to the mobile home exceed fifty percent (50%) of the net value.
- (b) The owner or occupant of a mobile home shall, within five (5) days after entering of a licensed mobile home community or removing to another mobile home community within the Village, obtain a permit from the Zoning Administrator. Such permits shall be issued only for mobile homes which bear a seal, stamp or certificate of the manufacturer guaranteeing that the

mobile home is constructed in accordance with the standards of the American National Standards Institute Book A 119.1, as originally existing, or, if amended, as amended.

- (c) Nothing herein shall prevent the owner of a mobile home under Subsection (a) hereof from replacing the mobile home with a newer model, provided that the replacement unit meets all applicable standards of construction in the industry existing as of the date of replacement, not at the date of manufacture of the replacement unit.

### **Sec. 13-1-283 Minimum Number of Lots or Spaces.**

- (a) Where a new mobile home community is to be established for the development of a single mobile home community, the minimum area shall be two (2) acres. Minimum number of lots or spaces completed and ready for occupancy before first occupancy is permitted shall be established as twenty-five percent (25%) of total units permitted on the site.
- (b) These limitations shall not apply where expansion of an existing mobile home community is concerned and where such expansion will not increase variation from requirements applying to mobile home communities, as set forth herein.

### **Sec. 13-1-284 Permitted and Permissible Uses and Structures.**

The following principal uses and structures are permitted within authorized mobile home communities:

- (a) **One-Family Detached Mobile Homes (residential mobile home).** In mobile home communities, recreational vehicles shall not be occupied as living quarters and sales lots shall not be permitted, but dwellings may be sold on lots they occupy in residential use.
- (b) **Permitted Accessory Uses and Structures.** Uses and structures that are customarily accessory and clearly incidental to permitted principal uses and structures shall be permitted, except for those requiring specific approval as provided below.

### **Sec. 13-1-285 Mobile Home Community Developer's Permit.**

- (a) No person shall construct or extend any mobile home community or mobile home community building or facility within the limits of the Village of Fall River without first securing a mobile home community developer's permit from the Village. Such permits shall be issued by the Village Clerk-Treasurer upon approval by the governing body.
- (b) Applications for mobile home community developer's permits shall be filed with the Village Clerk-Treasurer with sufficient copies for the Village Clerk-Treasurer to forward one (1) each to the Building Inspector, Fire Chief and law enforcement authorities who shall investigate and review said application to determine whether the applicant, the premises on which said community will be located and the proposed design and specifications thereof and all buildings proposed to be constructed thereon will comply with the applicable regulations, ordinances and laws of the state and Village and report their findings in writing to the governing body within sixty (60) days. Such reports shall be considered by the governing body before any permit is issued hereunder. Failure of any officer or body to report within the allotted time shall be deemed a favorable recommendation.

- (c) Applications for mobile home community developer's permit shall be accompanied by a fee as prescribed by the Village to cover the cost of investigation and processing, plus regular building permit fees for all buildings or structures to be erected within the proposed mobile home community.
- (d) Applications shall be made on forms furnished by the Village Clerk-Treasurer and shall include the following information:
  - (1) Name and address of applicant.
  - (2) Location and legal description of the proposed mobile home community, addition, modification or extension.
  - (3) A complete plot plan showing compliance with all applicable provisions of this Chapter and the municipal building code and zoning and subdivision ordinances.
  - (4) Completion preliminary engineering plans and specifications, including a scale drawing of the proposed community showing, but not limited to:
    - a. Plans and specifications of all utilities, including: sewerage collection and disposal, storm water drainage, water and electrical distribution and supply, refuse storage and collection, lighting, telephone and cable television/internet systems.
    - b. Location and width of roadways and walkways, buffer strips, recreational and other common areas.
    - c. The location of mobile home stands with the mobile home spaces, including a detailed sketch of at least one (1) typical mobile home space and stand therein.
    - d. Landscape plan showing all plantings.
    - e. Plans and specifications of all mobile home community buildings and structures.
  - (5) Interest of applicant in proposed mobile home community or extension thereof. If owner of tract is a person other than applicant, a duly verified statement by the owner that applicant is authorized by him/her to construct and maintain the proposed mobile home community, addition, modification or extension and make the application.
  - (6) Written statements describing proposed mobile home community operations, management and maintenance, including proposed fees and charges and other requirements to be imposed on mobile home community occupants by the mobile home community operator.
- (e) Final engineering plans and specifications complying with the provisions of this Article and the zoning regulations and any modifications or conditions imposed by the governing body shall be submitted to the Village Clerk-Treasurer and checked by the proper municipal officials for compliance before the license is issued.

**Sec. 13-1-286      Standard Requirements for Mobile Home Communities, Additions or Extensions.**

All new mobile home communities and modifications of or additions or extensions to existing mobile home communities shall comply with the following:

- (a) Chapter HSS 177, Wisconsin Administrative Code, as now existing or hereafter amended, is hereby made a part of this Chapter and incorporated herein by reference as if fully set forth, except that such regulations shall not be deemed to modify any requirement of this Chapter

or any other applicable law or ordinance of the state or Village of Fall River.

- (b) Mobile home spaces shall be a minimum of fifty (50) feet wide and one hundred (100) feet in depth, have a setback of twenty (20) feet from all street rights-of-way, and have a side yard setback of ten (10) feet, except that driveways may extend to within four (4) feet of a property line. Accessory structures, such as awnings, cabanas, storage cabinets, carports, windbreaks or attached porches shall be considered part of the unit for purposes of determining compliance with this provision. No mobile home site shall be rented for a period of less than thirty (30) days. There shall be two (2) surfaced automobile parking spaces for each mobile home. Unless adequately screened by existing vegetative cover, a mobile home community shall be screened around its outer perimeter by a planting of hedges or trees, capable of reaching a height of fifteen (15) feet or more, the individual trees to be such a number and so arranged that within ten (10) years they will have formed a screen equivalent in opacity to a solid fence or wall. Such permanent planting shall be grown or maintained to a height of not less than fifteen (15) feet when mature.
- (c) No mobile home community shall be laid out, constructed or operated without Village sanitary sewer service.
- (d) All liquid wastes originating at units, service or other buildings shall be discharged into a sewerage system extended from and connected with the public sewerage system. Such systems shall comply with all provisions of the Wisconsin Administrative Code and Village ordinances relating to plumbing and sanitation. Each individual space shall be provided with a three (3) inch watertight sewer connection protected from damage by heaving and thawing or parking of the unit and located within the rear one-third (1/3) of the stand, with a continuous grade which is not subject to surface drainage, so constructed that it can be closed when not in use and trapped in such a manner that it can be kept odor free.
- (e) Adequate provision shall be made for the disposal of solid and liquid wastes in a manner approved by the Village Board. Open burning of waste or refuse is prohibited.
- (f) All television cable systems, electrical and telephone distribution lines and oil or gas piping serving the mobile home community or spaces therein shall be installed underground. Distribution systems shall be new and all parts and installations shall comply with all applicable federal, state and local codes.
- (g) Each space shall be provided with direct electrical service of not less than one hundred (100) amperes for two hundred twenty (220) volt service.
- (h) A minimum of two (2) off-street parking spaces surfaced with bituminous concrete or similar material capable of carrying a wheel load of four thousand (4,000) pounds shall be provided for each mobile home space.
- (i) Condition of soil, ground water level, drainage and topography shall not create hazards to the property, health or safety of occupants of mobile home spaces or living units. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable and/or sudden flooding, subsidence or erosion shall be used for any purpose which would expose persons or property within or without the park to hazards.
- (j) Exposed ground surfaces in all parts of every mobile home community shall be paved or covered with stone screenings or other solid material or protected with a vegetative growth

that is capable of preventing soil erosion and eliminating objectionable dust.

- (k) The ground surface in all parts of every mobile home community shall be graded and equipped to drain all surface water in a safe, sanitary and efficient manner.
- (l) All mobile home communities shall be furnished with individual outdoor lot lighting of twenty-five to sixty (25-60) watts so spaced and equipped with luminaires placed for the safe movement of pedestrians and vehicles at night.
- (m) All mobile home spaces shall abut upon a street. All streets shall be provided with a smooth, hard and dense surface which shall be well drained under normal use and weather conditions for the area. Pavement edges shall be curbed and protected to prevent raveling of the wearing surface and shifting of the pavement base. Grades of streets shall be sufficient to insure adequate surface drainage but not more than eight percent (8%), provided a maximum grade of twelve percent (12%) may be used if approved by the street superintendent, as safe and designed to avoid traffic hazards. Streets shall be at approximately right angles within one hundred (100) feet of an intersection. Intersections of more than two (2) streets at one (1) point shall not be allowed. A distance of at least one hundred fifty (150) feet shall be maintained between center lines of offset intersecting streets.
- (n) All mobile home communities shall be provided with pedestrian walks between individual mobile homes, park streets and community facilities of not less than three (3) feet in width. Grade and surfacing of walks shall be approved by the Village Engineer as safe and comparable to sidewalks in other areas of the municipality subject to similar usage, except, that as an alternative, inverted curbing may be used which provides approximately three (3) feet of concrete walking area adjacent to the curblin.
- (o) All mobile home communities shall have a greenbelt or buffer strip not less than ten (10) feet wide along all boundaries. Unless adequately screened by existing vegetative cover, all mobile home communities shall be provided within such greenbelt or buffer strip with screening of natural growth or screen fence, except where the adjoining property is also a mobile home community. Compliance with this requirement shall be made within five (5) years from the granting of the mobile home community developer's permit. Screening or planting requirements may be waived or modified by the governing body if it finds that the exterior architectural appeal and functional plan of the mobile home community, when completed, will be materially enhanced by modification or elimination of such screen planting requirements.
- (p) Mobile home community operators shall, at the time of approval, pay the mobile home community development fees required for conventional subdivisions in Title 14 of this Code of Ordinances.
- (q) Single-family nondependent mobile homes and approved accessory structures included in the original plans and specifications or revisions thereof, parks, playgrounds, open space, off-street parking lots, one (1) mobile home community office and service buildings for exclusive use of mobile home community residents shall be the only permitted uses in mobile home communities, provided the Village Board may approve the following uses when designed and limited to exclusive use of mobile home community residents:
  - (1) Laundromats.
  - (2) Clubhouses and facilities for private, social or recreation clubs.

- (3) Swimming pools.
- (r) No signs shall be erected in mobile home communities.
- (s) All mobile home communities shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home space. Entrances to mobile home communities shall be designed to minimize congestion and traffic hazards and allow free movement of traffic on adjacent streets.

### **Sec. 13-1-287 Mobile Home Community Operator's license.**

- (a) It shall be unlawful for any person to establish, operate, maintain or administer or permit to be established, operated or maintained upon any property owned, leased or controlled by him/her a mobile home community within the Village of Fall River without a valid, unexpired mobile home community license issued by the Village Clerk-Treasurer and approved by the Village Board upon determination that the standards in this Section have been met and payment of the required fees.
- (b) Mobile home community licenses shall be issued for a calendar year and shall expire on December 31 next succeeding date of issue. Licenses may be issued after January 1 of any year but no rebate or diminution of the fee shall be allowed therefor.
- (c) The annual fee for a mobile home community license shall be per Section 1-3-1 for each fifty (50) mobile home spaces or fraction thereof; such fee shall also be paid upon the renewal of such license. Licenses may be transferred during a license year for a fee per Section 1-3-1 .
- (d) Licenses granted under this Section shall be subject to revocation or suspension by the governing body for cause in accordance with applicable statutory procedures, and the procedures in that Section shall be followed. "Cause" as used in this Subsection shall include, but not be limited to:
  - (1) Failure or neglect to abide by the requirements of this Chapter or the laws or regulations of the State of Wisconsin relating to mobile home communities and their operation.
  - (2) Conviction of any offense under the laws of the state or ordinances of the Village relating to fraudulent or misleading advertising or deceptive practices regarding the sale or renting of mobile homes or the leasing or rental of mobile home spaces or sale, lease or operation of community facilities.
  - (3) Operation or maintenance of the mobile home community in a manner inimical to the health, safety or welfare of mobile home community occupants or the inhabitants of the Village, including, but not limited to, repeated violations of laws or ordinances relating to health, sanitation, refuse disposal, fire hazards, morals or nuisances.
  - (4) Transfer or sale of an ownership interest in any mobile home space or the underlying land other than to another eligible licensee. Such action shall also subject the owner of the underlying land to all requirements of the state or municipal subdivision control laws and regulations regardless of the size or number of lots or spaces so transferred or sold.
- (e) Except as provided in Subsection (f) of this Section, no mobile home community license shall be granted for any premises or to any person not meeting the following standards and requirements:
  - (1) All standards and requirements set forth in Section 13-1-286 except as specifically

waived or modified in writing by the Village Board and endorsed on the mobile home developer's permit. This requirement includes a valid certificate from the Wisconsin Department of Health Services that the mobile home park complies with the provisions of Ch. HSS 177, Wis. Adm. Code, applicable thereto.

- (2) Mobile home communities should be used only for the parking and occupancy of single-family non-dependent mobile homes and accessory structures and appurtenances and uses.
  - (3) Applicant shall file with the Village Board certificates certifying that all equipment, roads, sanitary facilities, water facilities and other equipment and facilities, including roads, have been constructed or installed in the mobile home community as required by this Chapter and are in required operating condition at the time of said application. In addition, the Building Inspector and the Chief of the Fire Department shall inspect or cause to be inspected each application and the premises to determine compliance with all applicable laws, regulations and ordinances applicable thereto. These officials shall furnish the Village Board in writing the information derived from such investigation and a statement as to whether the applicant and the premises meet the requirements of the department for whom the officer is certifying.
  - (4) Location and operation of the mobile home community shall comply with all zoning and land use ordinances of the state and Village.
- (f) Mobile home communities in existence and operating under a valid mobile home community license upon the effective date of this Chapter, including mobile home communities in areas hereafter annexed to the Village, shall be exempt from the requirements hereof relating to land use and occupancy provided such use and occupancy complies with the applicable laws and ordinances in effect at the time of issuance of the original license but shall file application for a mobile home community developer's nonconforming use permit and comply with all other provisions of this Chapter within six (6) months after the effective date hereof, provided that an existing mobile home community having a density in excess of that provided in Section 13-1-286 shall not increase its density and shall be operated in other respects in accordance with this Chapter. The governing body may extend the time for compliance as herein required upon such conditions as it shall determine necessary to protect the health, safety and welfare of mobile home community occupants or inhabitants of the Village. All extensions, modifications or additions to lawfully licensed existing mobile home communities or facilities or structures therein shall comply with this Chapter.

**Sec. 13-1-288      Operation of Mobile Home Communities;  
Responsibilities of Mobile Home Community  
Management.**

- (a) In every mobile home community there shall be located an office of the attendant or person in charge of said mobile home community. A copy of the mobile home community license and of this Chapter shall be posted therein and the mobile home community register shall, at all times, be kept in said office.
- (b) The attendant or person in charge and the mobile home community licensee shall operate the

mobile home community in compliance with this Chapter and regulations and ordinances of the Village and state and their agents or officers and shall have the following duties:

- (1) Maintain a register of all mobile home community occupants, to be open at all times to inspection by state, federal and municipal officers, which shall show:
  - a. Names and addresses of all owners and occupants of each mobile home.
  - b. Number of children of school age.
  - c. State of legal residence.
  - d. Dates of entrance and departure of each mobile home.
  - e. Make, model, year and serial number or license number of each mobile home and towing or other motor vehicles and state, territory or country which issued such licenses.
  - f. Place of employment of each occupant, if any.
- (2) Notify mobile home community occupants of the provisions of this Chapter and inform them of their duties and responsibilities and report promptly to the proper authorities any violations of this Chapter or any other violations of law which may come to their attention.
- (3) Report to law enforcement authorities all cases of persons or animals affected or suspected of being affected with any dangerous communicable disease.
- (4) Supervise the placement of each mobile home on its stand which includes securing its stability and installing all utility connections and tiedowns.
- (5) Maintain mobile home community grounds, buildings and structures free of insect and rodent harborage and infestation and accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.
- (6) Maintain the mobile home community free from growth of noxious weeds.
- (7) Maintain the mobile home community free of litter, rubbish and other flammable materials; provide portable fire extinguishers of a type approved by the Fire Chief in all locations designated by the Chief and maintain such extinguishers in good operating condition and cause every area within the mobile home community designated as a fire lane by the Fire Chief to be kept free and clear of obstructions.
- (8) Check to ensure that every mobile home unit has furnished, and in operation, a substantial, fly-tight, watertight, rodentproof container for the deposit of garbage and refuse in accordance with the ordinances of the Village.
- (9) Provide for the sanitary and safe removal and disposal of all refuse and garbage at least weekly. Removal and disposal of garbage and refuse shall be in accordance with the laws of the State of Wisconsin and the ordinances and regulations of the municipality, including regulations promulgated by the Fire Chief.
- (10) Allow inspections of mobile home community premises and facilities at reasonable times by municipal officials or their agents or employees.

### **Sec. 13-1-289      Responsibilities and Duties of Mobile Home Community Occupants.**

- (a) Mobile home community occupants shall comply with all applicable requirements of this

Chapter and regulations issued hereunder and shall maintain their mobile home space, its facilities and equipment in good repair and in a clean and sanitary condition.

- (b) Mobile home community occupants shall be responsible for proper placement of their mobile homes on the mobile home stand and proper installation of all utility connections in accordance with the instructions of the mobile home community management.
- (c) No owner or person in charge of a dog, cat or other pet animal shall permit it to run at large or to cause any nuisance within the limits of any mobile home community.
- (d) Each owner or occupant of a nonexempt mobile home within a mobile home community shall remit to the licensee or authorized mobile home community management the cash deposit and monthly parking permit fee.
- (e) It shall be the duty of every occupant of a mobile home community to give the mobile home community licensee or management, or his/her agent or employee, access to any part of such mobile home community or mobile home premises at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this Chapter or any law or ordinance of the state or Village or lawful regulation or order adopted thereunder.
- (f) Mobile homes shall be parked only on the mobile home stands provided and shall be placed thereon in accordance with all requirements of this Chapter.
- (g) No mobile home owner or occupant shall conduct in any unit or any mobile home community any business or engage in any other activity which would not be permitted in single-family residential areas in the Village.
- (h) No person shall discharge any wastewater on the surface of the ground within any mobile home community.
- (i) No person shall erect or place upon any mobile home space any permanent or temporary structure intended to be used for dwelling purposes or in connection with any mobile home unit except as specifically authorized by this Chapter.

### **Sec. 13-1-290 Additional Regulations on Mobile Homes and Mobile Home Communities.**

- (a) Wrecked, damaged or dilapidated mobile homes shall not be kept or stored in a mobile home community or upon any premises in the Village. The Building Inspector or Village Board shall determine if a mobile home is damaged or dilapidated to a point which makes it unfit for human occupancy. Such mobile homes are hereby declared to be a public nuisance. Whenever the Building Inspector or Village Board so determines, he/she shall notify the licensee or landowner and owner of the mobile home in writing that such public nuisance exists within the mobile home community or on lands owned by him/her giving the findings upon which his/her determination is based and shall order such home removed from the mobile home community or site or repaired to a safe, sanitary and wholesome condition of occupancy within a reasonable time, but not less than thirty (30) days.
- (b) Authorized representatives of the Village Board are authorized and directed to inspect mobile home communities not less than once in every twelve (12) month period to determine the health, safety and welfare of the occupants of the mobile home community and inhabitants of the Village as affected thereby and the compliance of structures and activities therein with

this Chapter and all other applicable laws of the state and ordinances of the Village.

- (c) Fires in mobile home communities shall be made only in stoves and other cooking or heating equipment intended for such purposes. Outside burning is prohibited except by permit and subject to requirements or restrictions of the Fire Chief.
- (d) All plumbing, building, electrical, oil or gas distribution, alterations or repairs in the mobile home community shall be in accordance with the regulations of applicable laws, ordinances and regulations of the state and municipalities and their authorized agents, and may be performed by a professional mobile home service technician.
- (e) All mobile homes in mobile home communities shall be skirted unless the unit is placed within one (1) foot vertically of the stand with soil or other material completely closing such space from view and entry by rodents and vermin. Areas enclosed by such skirting shall be maintained free of rodents and fire hazards.
- (f) No person shall construct, alter or add to any structure, attachment or building in a mobile home community or on a mobile home space without a permit from the Building Inspector. Construction on, or addition or alteration to the exterior of a mobile home shall be of the same type of construction and materials as the mobile home affected. This Subsection shall not apply to addition of awnings, antennas or skirting to mobile homes. Accessory structures on mobile home spaces shall comply with all setback, side yard and rear yard requirements for mobile home units.
- (g) Storage under mobile homes is prohibited.

### **Sec. 13-1-291 Compliance with Plumbing, Electrical and Building Ordinances.**

All plumbing, electric, electrical, building and other work on or at any mobile home community under this Chapter shall be in accordance with the ordinances of the Village and the requirements of the State Plumbing, Electrical and Building Codes and the regulations of the State Board of Health. Licenses and permits granted under this Chapter grant no right to erect or repair any structure, to do any plumbing work or to do any electric work.

### **Sec. 13-1-292 Standards for General Site Planning for Mobile Home Communities.**

The following guides, standards and requirements shall apply in site planning for mobile home communities:

- (a) **Principal Vehicular Access Points.** Principal vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. Merging and turnout lanes and/or traffic dividers shall be required where existing or anticipated heavy flows indicate need. In general, minor streets shall not be connected with streets outside the community in such a way as to encourage the use of such minor streets by substantial amounts of through traffic. No lot within the community shall have direct vehicular access to a street bordering the development.
- (b) **Access for Pedestrians and Cyclists.** Access for pedestrians and cyclists entering or leaving

the community shall be by safe and convenient routes. Such ways need not be adjacent to or limited to the vicinity of vehicular access points. Where there are crossings of such ways and vehicular routes at edges of planned developments, such crossings shall be safety located, marked and controlled and where such ways are exposed to substantial vehicular traffic at edges of communities, safeguards may be required to prevent crossings except at designated points. Bicycle paths, if provided, shall be so related to the pedestrian way system that street crossings are combined.

- (c) **Protection of Visibility-Automotive Traffic, Cyclists and Pedestrians.** At intersections of any streets, public or private, the provisions of Section 13-1-120 shall apply and is hereby adopted by reference.
- (d) **Ways for Pedestrians and/or Cyclists in Exterior Yards.** In any exterior yard, required or other, ways for pedestrian and/or cyclists may be permitted, if appropriately located, fenced or landscaped to prevent potential hazards arising from vehicular traffic on adjacent streets or other hazards and annoyances to users or to occupants of adjoining property. When otherwise in accord with the requirements concerning such ways set forth above, approved ways in such locations shall be counted as common recreation facilities and may also be used for utilities easements.
- (e) **Internal Relationships.** The site plan shall provide for safe, efficient, convenient and harmonious groupings of structures, uses and facilities, and for appropriate relation of space inside and outside buildings to intended uses and structural features. In particular:
  - (1) **Streets, Drives and Parking and Service Areas.** Streets, drives and parking and service areas shall provide safe and convenient access to dwellings and community facilities and for service and emergency vehicles, but streets shall not be so laid out as to encourage outside traffic to traverse the community, nor occupy more land than is required to provide access as indicated, nor create unnecessary fragmentation of the community into small blocks. In general, block size shall be the maximum consistent with use, the shape of the site and the convenience and safety of the occupants.
  - (2) **Vehicular Access to Streets.** Vehicular access to streets from off-street parking areas may be direct from dwellings if the street or portion of the street serves fifty (50) units or less. Determination of units served shall be based on normal routes anticipated for traffic. Along streets or portions of streets serving more than fifty (50) dwelling units, or constituting major routes to or around central facilities, access from parking and service areas shall be so combined, limited, located, designed and controlled as to channel traffic conveniently, safely and in a manner that minimizes marginal traffic friction, and direct vehicular access from individual dwellings shall generally be prohibited.
  - (3) **Ways for Pedestrians and Cyclists; Use by Emergency, Maintenance or Service Vehicles.**
    - a. Walkways shall form a logical, safe and convenient system for pedestrian access to all dwellings, project facilities and principal off-street pedestrian destinations. Maximum walking distance in the open between dwelling units and related parking spaces, delivery areas and trash and garbage storage areas intended for use of occupants shall not exceed one hundred (100) feet.

- b. Walkways to be used by substantial numbers of children as play areas or routes to school, bus stops or other destinations shall be so located and safeguarded as to minimize conflicts with normal automotive traffic. If an internal walkway system is provided, away from streets, bicycle paths shall be incorporated in the walkway system. Street crossings shall be held to a minimum on such walkways and shall be located and designated to provide safety and shall be appropriately marked and otherwise safeguarded. Ways for pedestrians and cyclists, appropriately located, designed and constructed may be combined with other easements and used by emergency, maintenance or service vehicle but shall not be used by other automotive traffic.

**Sec. 13-1-293 through Sec. 13-1-299      Reserved for Future Use.**

## Article P: Definitions

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### Sec. 13-1-300 Definitions.

- (a) **Zoning Definitions.** For the purposes of this Chapter, the following definitions shall be used, unless a different definition is specifically provided for a section. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not permissive. The word "person" includes individuals, all partnerships, associations, and bodies political and corporate. The word "lot" includes the word "plot" or "parcel" or "tract" . The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged", or "designed to be used or occupied".
- (1) **A Zones.** Areas of potential flooding shown on the Village's "Flood Insurance Rate Map" which would be inundated by the regional flood as defined herein. These zones may be numbered as AO, A1 to A99, or be unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
  - (2) **Abutting.** Have a common property line or district line, or are separated only by a river, stream, or transportation or utility right-of-way.
  - (3) **Accessory Apartment.** A separate complete housekeeping unit that is substantially contained within the structure of a single-family dwelling, but can be isolated from it.
  - (4) **Accessory Building.** A subordinate building or portion of the main building, the use of which is incidental to the permitted use of the main building. An accessory building is considered to be an accessory structure.
  - (5) **Accessory Structure.** A subordinate structure, the use of which is incidental to, customarily found in connection with, and located on the same lot as the principal structure or use of the property. Accessory structures include, but are not limited to, detached garages and carports, sheds, barns, gazebos, swimming pools, hot tubs, fences, firewood protection structures, retaining walls and detached stairways and lifts; and impervious, pervious or porous driveways, parking lots, sidewalks, patios and decks (both detached and attached). For purposes of this Chapter, no regulatory distinction is made between permanent, temporary, prefabricated or moveable accessory buildings or structures. An accessory structure may consist of just a roof and may have one (1) or more open sides.
  - (6) **Accessory Use.** See "Use, Accessory".
  - (7) **Acre, Net.** The actual land devoted to the land use, excluding public streets, public lands or unusable lands, and school sites contained within forty-three thousand five hundred sixty (43,560) square feet.
  - (8) **Adjacent Property Owner.** The owner of property located within three hundred (300) feet of a subject property under this Code.
  - (9) **Adult-Oriented Establishment.** Any premises including, without limitation, "adult bookstores," or "adult motion picture theaters." It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged

so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. "Adult-Oriented Establishment" further includes, without limitation, any premises physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.

- (10) **Agriculture, Animal.** The use of land for animal feeding operations, including areas for the storage, treatment and disposal of manure and other related waste products.
- (11) **Agriculture, Crop.** The use of land for the production of row crops, field crops, tree crops, timber, bees, apiary productions, and fur-bearing mammals.
- (12) **Agriculturally-Related Residence.** A residence which is occupied by:
  - a. A person who, or a family at least one (1) member of which earns a substantial part of his/her livelihood from farm operations on the land; or
  - b. A parent or child of the owner of the farm.
- (13) **Agricultural Processing and Packaging.** An establishment primarily engaged in refining, processing or otherwise adding value to raw agricultural goods, including, but not limited to, washing, sorting, cutting, bagging, freezing, canning, packing, bottling or butchering.
- (14) **Agricultural Research and Development.** The use of land or buildings for agriculture research and the cultivation of new agricultural products.
- (15) **Agricultural Sales and Service.** An establishment primarily engaged in:
  - a. The sale or rental of farm tools and implements, feed and grain, tack, animal care products, farm supplies and the like; or
  - b. Performing agricultural or horticultural services on a fee or contract basis, including, but not limited to, crop dusting and spraying services, harvesting and plowing services, agricultural land grading services, farm equipment service and repair, and large animal veterinary services.
- (16) **Agricultural Storage.** Grain elevators and other facilities for the warehousing and storage of agricultural products.
- (17) **Agricultural Use.** Beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; wholesale plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least thirty-five (35) acres of which are enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446(d); and vegetable raising.
- (18) **Aircraft Landing Strip.** A site maintained for occasional use by manned aircraft for landing or take off.
- (19) **Airport, Public.** Any airport which complies with the definition contained in Sec.

114.013(3), Wis. Stats., or any airport which serves or offers to serve common carriers engaged in air transport.

- (20) **Alley.** A public or private right-of-way not more than twenty-one (21) feet wide which affords only a secondary means of access to the side or rear of an abutting property.
- (21) **Alley.** A public or private way which affords only secondary vehicular access to abutting property.
- (22) **Animal Hospital/Veterinary Services.** A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use of a kennel shall be limited to short-term boarding and shall be only incidental to such hospital use.
- (23) **Animal Unit.** As defined in Ch. NR 243.03(3), Wis. Adm. Code.
- (24) **Animal Waste.** Manure, milking center waste and other organic waste generated by livestock, farm animals, or any number combination of animal units or portion thereof. It includes animal bedding, water, soil, hair, feathers, and other debris that becomes intermingled with animal excreta in normal waste handling operations.
- (25) **Animal Waste Storage Structure.** A waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. Does not include equipment used to apply waste to land. For purposes of ATCP 51.12(2) and 51.14, Wis. Adm. Code, does not include any of the following:
  - a. A structure used to collect and store waste under a livestock housing facility.
  - b. A waste digester consisting of a sealed structure in which animal waste is subject to managed biological decomposition.
- (26) **Animal Waste Utilization.** The application of animal waste on suitable land in a manner which will achieve compliance with livestock performance standards and prohibitions established in Ch. NR 151, Wis. Adm. Code, NRCS Conservation Practice Standard Code 590 and meet other designated water quality objectives. Land suitable for animal waste utilization excludes wetlands or lands below the OHWM, closed depressions, slopes in excess of twenty-five percent (25%) and other areas that may be determined as sensitive and adversely affecting surface water or groundwater quality.
- (27) **Antenna.** Any device or equipment used for the transmission or reception of electromagnetic waves, which may include an omni-directional antenna (rod), a directional antenna (panel) or a parabolic antenna (dish).
- (28) **Apartment.** A suite of rooms or a room in a multiple dwelling, which suite or room is arranged, intended or designed to be occupied as a residence of a single family, individual or group of individuals, with separate facilities and utilities which are used or intended to be used for living, sleeping, cooking and eating.
- (29) **Arterial Street.** A public street or highway used or intended to be used primarily for large volume or heavy through traffic. Arterial streets shall include freeways and expressways as well as arterial streets, highways and parkways.
- (30) **Authority.** A person, committee, or board to whom the power to issue a permit, or make a determination, decision, or judgment has been delegated.
- (31) **Automobile Wrecking/Salvage Yard.** Any premises on which is kept more than one (1) vehicle, not in running order or operating condition, or in a general state of disrepair, which is not completely enclosed within a building.

- (32) **Basement.** A story partly or wholly underground. The height of a basement shall be the vertical distance between the surface of the basement floor and the surface of the floor next above it. A basement shall be counted as a story for the purposes of height measurements if the vertical distance between the ceiling and the main level of the adjoining ground is more than five (5) feet, or if used for business purposes, or if used for living purposes by other than the owner and his immediate family, and a janitor or servants of the owner.
- (33) **Bed and Breakfast Establishment Building.** A building that provides ten (10) or fewer sleeping rooms for temporary occupancy for compensation by transient guests who are traveling for business or pleasure and is the owner's personal residence and occupied by the owner at the time of rental. The partnership form of ownership shall be allowed under this definition.
- (34) **Best Management Practices (BMPs).** Practices and industry standards designed to minimize environmental damage.
- (35) **Block.** A tract of land bounded by streets or by a combination of streets and public parks or other recognized lines of demarcation.
- (36) **Bluffline.** A line along the top of a slope preservation zone. There can be more than one bluffline.
- (37) **Boarding House.** A building other than a hotel or restaurant where meals or lodging are regularly furnished by prearrangement for compensation for three (3) or more persons not members of a family, but not exceeding ten (10) persons and not open to transient customers.
- (38) **Boathouse.** A building or portion thereof used for the housing or care of boats and other associated marine equipment for noncommercial purposes and not permitted to be used for human habitation.
- (39) **Buffer Zone.** A designated neutral area designed to separate conflicting land uses. A natural vegetative screening of trees, shrubs or other plantings is usually employed in such a designated area.
- (40) **Buildable Lot Area.** The portion of a lot remaining after required yards have been provided.
- (41) **Building.** Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery or materials. When a building is divided into separate parts by unpierced walls extending from the ground up, each part shall be deemed a separate building.
- (42) **Building, Accessory.** A building or portion of a building subordinate to the main building and used for a purpose customarily incidental to the permitted use of the main building or the use of the premises. An automobile trailer or other vehicle or part thereof or other building shall not be used as a dwelling or lodging place and shall not be considered an accessory building or use.
- (43) **Building, Alterations of.** Any change or rearrangement of the supporting members such as bearing walls, beams, columns or girders of a building, an addition to a building, or movement of a building from one location to another.
- (44) **Building Area.** The total area bounded by the exterior walls of a building at the floor

levels, but not including basements, utility rooms, garages, porches, breezeways and unfinished attics.

- (45) **Building, Detached.** A building surrounded by open space on the same lot.
- (46) **Building, Front Line of.** A line parallel to the street intersecting the foremost point of the building, excluding uncovered steps.
- (47) **Building, Height of.** The vertical distance from the average curb level in front of the lot or the finished grade at the building line, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof or to the average height of the highest gable of a gambrel, hip or pitch roof.
- (48) **Building, Principal or Main.** The building on a lot in which is conducted the principal use as permitted on such lot by the regulations of the district in which it is located.
- (49) **Building Setback Line.** A line parallel to the lot line at a distance parallel to it, regulated by the yard requirements set up in this Zoning Code. A line measured across the width of a lot at that point where the principal structure is placed in accordance with setback provisions.
- (50) **Building, Principal.** A building in which the principal use of the lot on which it is located is conducted.
- (51) **Bulkhead Line.** A geographic line along a reach of navigable water that has been adopted by the Village and approved by the Wisconsin Department of Natural Resources pursuant to Sec. 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this Title.
- (52) **Business.** An occupation, employment or enterprise which occupies time, labor and materials, or wherein merchandise is exhibited or sold, or where services are offered.
- (53) **Camouflage Design.** A wireless communication service facility that is disguised, hidden or screened, but remains recognizable as a tower or antenna.
- (54) **Campground.** Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four (4) or more camping units, or which is advertised or represented as a camping area.
- (55) **Camping Unit.** Any portable device, no more than four hundred (400) square feet in area, used as a temporary shelter, including but not limited to a camping or travel trailer, motor home, bus, van, pickup truck, tent or other mobile recreational vehicle.
- (56) **Canopy.** A rigid structure attached to and extending outward from a building, designed to protect the building and/or people under the canopy from the sun, rain or snow.
- (57) **Carport.** A carport is a covered structure used to offer limited protection to vehicles, primarily cars, from the elements. The structure can either be free standing or attached to a wall. Unlike most structures a carport does not have four (4) walls, and usually has one or more sides open. (See "Accessory Structure".)
- (58) **Cellar.** That portion of a building having more than half of the floor-to-ceiling height below the average grade of the adjoining ground. This portion is not a completed structure and serves as a substructure or foundation for a building.
- (59) **Centerline.** A line connecting the points on highways from which setback distances shall be measured, at any point on the highway.

- (60) **Certificate of Compliance.** A certification that the construction and the use of land or building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this Chapter.
- (61) **Channel.** Those floodlands normally occupied by a stream of water under average annual high-water flow conditions while confined within generally well-established banks.
- (62) **Clinic, Medical or Dental.** A group of medical or dental offices organized as a unified facility to provide medical or dental treatment as contrasted with an unrelated group of such offices, but not including bed-patient care.
- (63) **Club or Lodge.** A building or portion thereof or premises owned by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as business.
- (64) **Cluster Subdivision.** A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located, in return for the provision of permanent undeveloped land.
- (65) **Complete Application for Local Approval - Livestock Facilities Conditional Use.** An application that contains everything required under ATCP 51.30(1)-(4), Wis. Adm. Code.
- (66) **Compliant Building Location.** An area on a lot where a building could be located in compliance with all applicable ordinance requirements.
- (67) **Conditional Use.** The occupations, vocations, skills, arts, businesses, professions or uses specifically designated in each zoning district, which for their respective conduct, exercise or performance in such designated districts may require reasonable, but special, peculiar, unusual or extraordinary limitations, facilities, plans, structures, thoroughfares, condition modification, or regulations in such district for the promotion or preservation of the general public welfare, health, convenience or safety therein and in the Village and, therefore, may be permitted in such district only by a conditional use permit.
- (68) **Community Living Arrangement.** The following facilities licensed or operated or permitted under the authority of the Wisconsin Statutes: Child welfare agencies under Section 48.60, group foster homes for children under Section 48.02(7m) and community-based residential facilities under Section 50.01, but does not include day care centers, nursing homes, general hospitals, special hospitals, prisons and jails. The establishment of a community living arrangement shall be in conformance with applicable Sections of the Wisconsin Statutes, including Sections 46.03(22), 69.97(15), 62.23(7)(i) and 62.23(7a), and amendments thereto, and also the Wisconsin Administrative Code.
- (69) **Conforming Use.** Any lawful use of a building or lot which complies with the provisions of this Chapter.
- (70) **Controlled Access Arterial Street.** The condition in which the right of owners or occupants of abutting land or other persons to access, light, air or view in connection with an arterial street is fully or partially controlled by public authority.
- (71) **Corner Lot.** On corner lots, the setback shall be measured from the street line on which

the lot fronts. The setback from the side street shall be equal to seventy-five percent (75%) of the setback required on residences fronting on the side street - but the side yard setback shall in no case restrict the buildable width to less than thirty (30) feet. Said corner lots shall be consisting of a parcel of property abutting on two (2) or more streets at their intersection providing that the interior angle of such intersection is less than one hundred thirty-five degrees (135°).

- (72) **Conservation Standards.** Guidelines and specifications for soil and water conservation practices and management enumerated in the Technical Guide, prepared by the USDA Soil Conservation Service for Columbia County, adopted by the County Soil and Water Conservation District Supervisors, and containing suitable alternatives for the use and treatment of land based upon its capabilities from which the landowner selects that alternative which best meets his needs in developing his soil and water conservation.
- (73) **Court.** An open, unoccupied space other than a yard, on the same lot with a building, and which is bounded on two (2) sides by the building.
- (74) **Crawlways or Crawl Space.** An enclosed area below the first usable floor of a building, generally less than five (5) feet in height, used for limited access to plumbing and electrical utilities.
- (75) **Curb Break.** Any interruption or break in the line of a street curb in order to connect a driveway to a street or otherwise to provide vehicular access to abutting property.
- (76) **Curb Level.** The level of the established curb in the front of the building measured at the center of such front.
- (77) **Day Care Center, Family.** A place or home which provides care for eight (8) or more children under the age of seven (7) years for less than twenty-four (24) hours a day and is licensed as provided for in Sec. 48.65, Wis. Stats.
- (78) **Day Care Center, Group.** A dwelling or center that provides care and supervision for nine (9) or more children and is licensed by the Wisconsin Department of Health and Social Services.
- (79) **Deck.** An unenclosed exterior structure that has no roof or sides, but has a permeable floor that allows the infiltration of precipitation.
- (80) **Development.** Any artificial or man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
- (81) **Development Regulations.** The part of a zoning ordinance enacted under Section 62.23(7), Wis. Stats., that applies to elements including setback, height, lot coverage, and side yard. [See Section 62.23(7)(hb)a, Wis. Stats.]
- (82) **Disabled.** Having a physical or mental impairment that substantially limits one or more major life activities.

- (83) **District, Basic.** A part or parts of the Village for which the regulations of this Chapter governing the use and location of land and building are uniform.
- (84) **District, Overlay.** Overlay districts, also referred to herein as regulatory areas, provide for the possibility of superimposing certain additional requirements upon a basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict of the conflicting requirements shall apply.
- (85) **Double Wide Mobile Home.** A double wide mobile home is a mobile home consisting of two (2) mobile home sections combined horizontally at the site while still retaining their individual chassis for possible future movement.
- (86) **Dwelling.** A building designed or used exclusively as a residence or sleeping place, but does not include boarding or lodging houses, motels, hotels, tents, cabins or mobile homes.
- (87) **Dwelling Unit.** A group of rooms constituting all or part of a dwelling, which are arranged, designed, used or intended for use exclusively as living quarters for one (1) family.
- (88) **Dwelling, Efficiency.** A dwelling unit consisting of one (1) principal room with no separate sleeping rooms.
- (89) **Dwelling, Single-Family.** A detached building designed for or occupied by one (1) family.
- (90) **Dwelling, Two-Family.** A detached building containing two (2) separate dwelling (or living) units, designed for occupancy by not more than two (2) families.
- (91) **Dwelling, Multiple-Family.** A residential building designed for or occupied by three (3) or more families, with the number of families in residence not to exceed the number of dwelling units provided.
- (92) **Dwelling Unit.** A building or portion thereof used exclusively for human habitation, including single-family, two-family and multi-family dwellings, but not including hotels, motels or lodging houses.
- (93) **Elderly Day Care Home.** Locations which provide day care and food service for adults who are unable to be left alone while other family members are at work or otherwise not at home during the day. Overnight lodging is not to be provided at a day care center.
- (94) **Emergency Shelters.** Public or private enclosures designed to protect people from aerial, radiological, biological or chemical warfare; fire; flood; windstorm; riots; or invasions.
- (95) **Equal Degree of Hydraulic Encroachment.** The effect of any encroachment into the floodway is to be computed by assuming an equal degree of hydraulic encroachment on the opposite side of a river or stream for a significant hydraulic reach, in order to compute the effect of the encroachment upon hydraulic conveyance. This computation assures that the property owners up, down or across the river or stream will have the same rights of hydraulic encroachment.
- (96) **Essential Services.** Services provided by public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface or overhead gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communication systems and accessories thereto, such as poles,

towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations and hydrants, but not including buildings.

- (97) **Expanded Livestock Facility.** The entire livestock facility that is created by the expansion after May 1, 2006, and includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.
- (98) **Expansion.** An addition to an existing structure regardless of whether the addition is vertical or horizontal or both.
- (99) **Expansion of Livestock Facility.** An increase in the largest number of animal units kept at a livestock facility on at least ninety (90) days in any twelve (12) month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities for at least ninety (90) days in any twelve (12) month period.
- (100) **Family.** One (1) or more persons immediately related by blood, marriage or adoption and living as a single housekeeping unit in one (1) dwelling unit shall constitute a family. A family may include in addition thereto two (2) but not more than two (2) persons not related by blood, marriage or adoption. A person shall be considered to be related for the purpose of this Section if he is dwelling for the purpose of adoption or for a foster care program.
- Exceptions: Nothing in this Chapter shall prohibit, under the definition of "Family," priests, laybrothers, nurses or such other collective body of persons living together in one (1) house under the same management and care, subsisting in common, and directing their attention to a common object or the promotion of their mutual interest and social happiness as set forth by the Wisconsin Supreme Court in *Missionaries of Our Lady of LaSalette vs. Village of Whitefish Bay Board of Zoning Appeals*, 267 Wis. 609, which is hereby incorporated by reference.
- (101) **Family Day Care Home.** A dwelling also licensed as a day care center by the State Department of Health and Social Services where, for compensation of consideration, a resident of the dwelling provides group care for at least four (4), but not more than eight (8), children between the ages of infancy and seven (7) years of age at a location other than the child's own home or the home of relatives or guardians.
- (102) **Farm.** Land consisting of five (5) acres or more on which produce, crops, livestock or flowers are grown primarily for off-premise consumption, use or sale.
- (103) **Farm Animals.** See "Livestock".
- (104) **Farming – General.** General farming shall include floriculture, forest and game management, orchards, raising of grain, grass, mint and seedcrops, raising of fruits, nuts and berries, sod farming and vegetable farming. General farming includes the operating of such an area for one (1) or more of the above uses with the necessary accessory uses for treating or storing the produce, provided, however, that the operation of any such accessory uses shall be secondary to that of the normal farming activities.
- (105) **Farmstead.** A single-family residential structure located on a parcel of land, which primary land use is associated with agriculture.

- (106) **Flood.** A temporary rise in streamflow or stage in lake level that results in water overtopping the banks and inundating the areas adjacent to the steam channel or lake bed.
- (107) **Flood Insurance Study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations; or an examination, evaluation and determination of mudslide (i.e., mud flow) and/or floor-related erosion hazards. Such studies shall result in the publication of a Flood Insurance Rate Map showing the intensity of flood hazards in either numbered or unnumbered A Zones.
- (108) **Flood Profile.** A graph showing the relationship of the floodwater surface elevation of a flood event of a specified recurrence interval to the stream bed and other significant natural and man-made features along a stream.
- (109) **Flood Protection Elevation.** A point two (2) feet above the water surface elevation of the 100-year recurrence interval flood. This safety factor, also called "freeboard," is intended to compensate for the many unknown factors that contribute to flood heights greater than those computed. Such unknown factors may include ice jams, debris accumulation, wave action and obstructions of bridge openings.
- (110) **Flood Stage.** The elevation of the floodwater surface above an officially established datum plane, which is Mean Sea Level, 1929 Adjustment, on the Supplementary Floodland Zoning Map.
- (111) **Floodlands.** For the purpose of this Code, the floodlands are all lands contained in the "regional flood" or 100-year recurrence interval flood. For the purpose of zoning regulation, the floodlands are divided into the floodway district, the floodplain conservancy district and the floodplain fringe overlay district.
- (112) **Floodplain Fringe.** Those floodlands, outside the floodway, subject to inundation by the 100-year recurrence interval flood. For the purpose of this Code, the floodplain fringe includes the floodplain conservancy district and the floodplain fringe overlay district.
- (113) **Floodproofing.** Measures designed to prevent and reduce flood damage for those uses which cannot be removed from, or which, of necessity, must be erected in the floodplain, ranging from structural modifications through installation of special equipment or materials, to operation and management safeguards, such as the following: reinforcing the basement walls; underpinning of floors; permanent sealing of all exterior openings; use of masonry construction; erection of permanent watertight bulkheads, shutters and doors; treatment of exposed timbers; elevation of flood- vulnerable utilities; use of waterproof cement; adequate fuse protection; sealing of basement walls; installation of sump pumps; placement of automatic swing check valves; installation of seal-tight windows and doors; installation of wire reinforced glass; location and elevation of valuable items; waterproofing, disconnecting, elevation or removal of all electric equipment; avoidance of the use of flood-vulnerable areas; temporary removal of waterproofing of merchandise; operation of emergency pump equipment; closing of backwater sewer valve; placement of plugs and food drain pipes; placement of movable watertight bulkheads; erection of sand bag levees; and the shoring of weak walls or structures. Floodproofing of structures shall be extended at least to a point two (2) feet above the elevation of the regional flood. Any structure that is located entirely or

partially below the flood protection elevation shall be anchored to protect it from larger floods.

- (114) **Floodway.** A designated portion of the 100-year flood area that will safely convey the regulatory flood discharge with small, acceptable upstream and downstream stage increases, limited in Wisconsin to 0.1 foot unless special legal measures are provided. The floodway, which includes the channel, is that portion of the floodplain not suited for human habitation. All fill, structures and other development that would impair floodwater conveyance by adversely increasing flood stages or velocities or would itself be subject to flood damage should be prohibited in the floodway.
- (115) **Floor Area–Business and Manufacturing Buildings.** For the purpose of determining off-street parking and off-street loading requirements, the sum of the gross horizontal areas of the floors of the building, or portion thereof, devoted to a use requiring off-street parking or loading. This area shall include accessory storage areas located within selling or working space occupied by counters, racks or closets and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices. However, floor area, for the purposes of determining off-street parking spaces, shall not include floor area devoted primarily to storage purposes except as otherwise noted herein.
- (116) **Floor Area–Dwelling Units.** The square feet of floor space of the several floors of a dwelling unit within the outside line of walls and includes the total of all space on all floors of a building, but not including porches, balconies, garages or space in a basement or cellar when the same is used for storage or incidental uses. Residential floor area is measured from the exterior faces of the exterior walls or from the center lines of walls or portions separating dwelling units.
- (117) **Floor Area–Business and Manufacturing Buildings.** For uses other than residential, the floor area shall be measured from the exterior faces of the exterior walls or from the centerline of walls or partitions separating such uses, and shall include all floors, lofts, balconies, mezzanines, cellars, basements and similar areas devoted to such uses. For the purpose of determining off-street parking and off-street loading requirements, the sum of the gross horizontal areas of the floors of the building, or portion thereof, devoted to a use requiring off-street parking or loading. This area shall include elevators and stairways, accessory storage areas located within selling or working space occupied by counters, racks or closets and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices. However, floor area, for the purposes of determining off-street parking spaces, shall not include floor area devoted primarily to storage purposes except as otherwise noted herein.
- (118) **Footprint.** The land area covered by a structure at ground level, measured on a horizontal plane. The "footprint" of a residence includes attached garages and porches, but excludes decks, patios, carports and roof overhangs.
- (119) **Foster Family Home.** The primary domicile of a foster parent which is four (4) or fewer foster children and which is licensed under Section 48.62 of the Wisconsin Statutes and amendments thereto.
- (120) **Frontage.** All the property butting on one (1) side of a street between two (2)

intersecting streets or all of the property abutting on one (1) side of a street between an intersecting street and the dead end of a street.

- (121) **Frontage, Reversed.** Where the rear lot line of a corner lot coincides with all or part of the side lot line of an adjoining lot in the same block.
- (122) **Garage, Private.** An accessory building or space for the storage only of not more than four (4) wheeled, licensed motor vehicles.
- (123) **Garage-Public.** Any building or portion thereof, not accessory to a residential building or structure, used for equipping, servicing, repairing, leasing or public parking of motor vehicles.
- (124) **Garage, Storage.** Any building or premises used for the storage only of motor-driven vehicles, pursuant to previous arrangements, not to transients, where no equipment, parts, fuel, grease or oil are sold and vehicles are not equipped, serviced, repaired, hired or sold.
- (125) **Garden Center.** A place of business where retail and wholesale products and produce are sold to the consumer. These centers, which may include a nursery and/or greenhouses, import most of the items sold, and may include plants, nursery products and stock, potting soil, hardware, power equipment and machinery, hoes, rakes, shovels, and other garden and farm variety tools and utensils.
- (126) **Gasoline Station.** Any area of land, including structures thereon, that is used for the sale of gasoline or other motor vehicle fuel and oil and other lubricating substances; sale of motor vehicle accessories; and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning or otherwise cleaning or servicing such vehicles.
- (127) **Gift Stores.** Retail stores where items such as art, antiques, jewelry, books and notions are sold.
- (128) **Grade.** When used as a reference point in measuring the height of a building, the "grade" shall be the average elevation of the finished ground at the exterior walls of the main building.
- (129) **Gravel Pit.** An open land area where sand, gravel, and rock fragment are mined or excavated including such on-site processing that are related to the mining or excavation of the sand, gravel, and rock fragment such as stockpiling of materials, blending mineral material aggregates or non-metallic minerals, crushing, screening, scalping and dewatering.
- (130) **Group Foster Home.** Any facility operated by a person required to be licensed by the State of Wisconsin under Section 48.62, Wis. Stats., for the care and maintenance of five (5) to eight (8) foster children.
- (131) **Hardware Stores.** Retail stores where items such as plumbing, heating and electrical supplies, sporting goods and paints are sold.
- (132) **Home Occupation.** Any business or profession carried on primarily by a member of the immediate family residing on the premises, carried on primarily within the principal building thereto and meeting the standards of Section 13-1-93.
- (133) **Hospital.** An institution intended primarily for the medical diagnosis, treatment and care of patients being given medical treatment. A hospital shall be distinguished from a clinic

by virtue of providing for bed-patient care.

- (134) **Hotel.** A building in which lodging, with or without meals, is offered to transient guests for compensation and in which there are more than five (5) sleeping rooms with no cooking facilities in any individual room or apartment.
- (135) **Institution.** A building occupied by a nonprofit corporation or a nonprofit establishment for public use.
- (136) **Junk.** Any scrap, waste, reclaimable material or debris, whether or not stored or used in conjunction with dismantling, processing, salvage, storage, baling, disposal or other use or disposition. Junk includes, but is not limited to, vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, brush, wood and lumber.
- (137) **Junkyard.** Any place at which personal property is or may be salvaged for reuse, resale or reduction or similar disposition and is owned, possessed, collected, accumulated, dismantled or assorted, including but not limited to used or salvaged or new scrapped base metal or metals, their compounds or combinations, used for salvaged rope, bags, paper, rags, glass, rubber, lumber, millwork, brick and similar property, except animal matter; and used motor vehicles, machinery or equipment which are used, owned or possessed for the purpose of wrecking or salvaging parts therefrom.
- (138) **Kennel.** Any facility where dogs or cats are kept for twenty-four (24) hours or more for boarding, training, or similar purposes for compensation, except that "kennel" does not include any of the following:
- a. An animal shelter.
  - b. A facility owned or operated by a veterinarian licensed under Ch. 453, Wis. Stats., where animals are boarded only in conjunction with the provision of veterinary care.
- (139) **Livestock.** Domestic animals traditionally used in Wisconsin in the production of food, fiber or other animal products, and includes cattle, swine, poultry, sheep and goats. The term "livestock" does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites, camelids or mink.
- (140) **Livestock Facility.** A feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of forty-five (45) days or more in any twelve (12) month period. A "livestock facility" includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this Chapter, except that an operator may elect to treat a separate species facility as a separate "livestock facility".
- (141) **Livestock Structure.** A building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. Livestock structure includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or animal waste storage structure. Livestock structure does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a

machine shed or like facility that is not used for livestock.

- (142) **Loading Area.** A completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public street or alley.
- (143) **Lodging House.** A building where lodging only is provided for compensation for not more than three (3) persons not members of the family.
- (144) **Lot.** A parcel of land having frontage on a public street, or other officially approved means of access, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area and other open space provisions of this Code as pertaining to the district wherein located.
- (145) **Lot Area.** The area of contiguous land bounded by lot lines, exclusive of land designated for public thoroughfares.
- (146) **Lot, Corner.** A lot situated at the intersection of two (2) streets.
- (147) **Lot Coverage (residential).** The area of a lot occupied by the principal building or buildings and accessory building.
- (148) **Lot Coverage (except residential).** The area of a lot occupied by the principal building or buildings and accessory buildings including any driveways, parking areas, loading areas, storage areas and walkways.
- (149) **Lot, Interior.** A lot with frontage on only one (1) street.
- (150) **Lot, Reversed Corner.** A corner lot, the street side lot line of which is substantially a continuation of the front lot line of the first lot to its rear.
- (151) **Lot, Substandard.** A parcel of land held in separate ownership having frontage on a public street, or other officially approved access, occupied or intended to be occupied by a principal building or structure together with accessory buildings and uses, having insufficient size to meet the lot width, lot area, yard, off-street parking area, or other open space provisions of this Chapter.
- (152) **Lot, Through.** A lot having a pair of opposite lot lines along two (2) or more parallel public streets and which is not a corner lot. On a through lot both street lines shall be deemed front lot lines.
- (153) **Lot Depth.** The shortest horizontal distance between the front lot line and the rear lot line measured at a ninety (90) degree angle from the road right-of-way.
- (154) **Lot Line.** Legally established lines dividing one (1) lot, plot of land or parcel of land from an adjoining lot or plot of land or parcel of land as defined herein.
- (155) **Lot Line, Front.** A line separating the lot from the street or approved private road.
- (156) **Lot Line, Rear.** A lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular-shaped lot, a line ten (10) feet in the length within the lot, parallel to and at the maximum distance from the front lot line.
- (157) **Lot Line, Side.** Any lot boundary line not a front line or a rear lot line.
- (158) **Lot of Record.** A lot which has been recorded in the Office of the Register of Deeds prior to the effective date of this Chapter.
- (159) **Lot Width.** The horizontal distance between the side lot lines at the building setback line.
- (160) **Machine Shops.** Shops where lathes, presses, grinders, shapers, and other wood and metal working machines are used, such as blacksmith, tinsmith, welding, and sheet

- metal shops; plumbing; heating and electrical repair and overhaul shops.
- (161) **Marquee or Canopy.** A roof-like structure of a permanent nature which projects from the wall of a building.
- (162) **Manufactured Dwelling.** A dwelling structure or component thereof as is defined in Sec. 20.07(52), Wis. Adm. Code, One- and Two-Family Uniform Dwelling insignia certifying that it has been inspected and found to be in compliance with Subchapter V of said Uniform Dwelling Code.
- (163) **Manufactured Home.** A dwelling structure or component thereof fabricated in an off-site manufacturing facility for installation at the building site and certified and labeled as a manufactured home under 42 USC Secs. 5401-5426, which, when placed on the site:
- a. Is set on an enclosed foundation in accordance with Sec. 70.43(1), Wis. Stats., and SPS 321, Subchapters III, IV and V, Wis. Adm. Code, or is set on a comparable enclosed continuous foundation system approved by the Building Inspector, who may require a plan for such foundation to be certified by a registered architect or engineer to ensure proper support for such structure;
  - b. Is installed in accordance with the manufacturer's instructions;
  - c. Is properly connected to utilities ;
  - d. Has an area of at least eight hundred (800) square feet of living space, with a minimum of twenty-four (24) square feet in width in its smallest horizontal dimension, exclusive of attached garage, carport or open deck, and is used exclusively as a single-family residence; and
  - e. Meets other applicable standards of this Chapter.
- (164) **Manure Pit.** A structure or earthen pond located outside of a bam or shelter and used for containment of manure and other wastes from livestock and poultry.
- (165) **Mini-Storage/Warehouse Structure.** A structure where self-contained sections thereof are rented for storage purposes, typically serving residential and small business clients.
- (166) **Minor Structures.** Any small, movable accessory erection or construction such as birdhouses, tool houses, pet houses, play equipment, arbors and walls and fences under four (4) feet in height.
- (167) **Mobile Home.** A manufactured home that is HUD certified and labeled under the National Mobile Home Construction and Safety Standards Act of 1974. A mobile home is a transportable structure, being eight (8) feet or more in width (not including the overhang of the roof), built on a chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities.
- (168) **Mobile Home (see also Manufactured Home).** That which is, or was as originally constructed, designed to be transported by any motor vehicle upon a public highway, and designed, equipped and used primarily for sleeping, eating and living quarters, or is intended to be so used; including any additions, attachments, annexes, foundations and appurtenances. In the purpose of this Section, a mobile home shall remain classified as a mobile home regardless of whether its wheels or other rolling devices have been removed or not, and even though assessable value of additions, attachments, annexes, foundations and appurtenances or other added investments to the mobile home equal or

exceed fifty percent (50%) of the assessable value of the mobile home. Excluded from this definition are "manufactured homes" as defined above.

**Note: Mobile Homes vs. Modular Homes**

*"Mobile homes" have been required to follow construction standards, including heating, electrical and plumbing, since 1976 through a Federal Housing and Urban Development (HUD) program. In Wisconsin this is administered under contract by the Division of Safety and Buildings, Wisconsin Department of Commerce. The current proper and legal term for mobile homes is "manufactured homes". While the manufactured home itself is not covered by the Wisconsin Uniform Dwelling Code (UDC), any site-built addition to that home, such as a basement, crawl space or room addition attached to the home, does have to be constructed to meet the requirements of the UDC if the manufactured home was built after June 1, 1980.*

*While manufactured homes are constructed to the HUD construction standards, "manufactured dwellings" must meet the UDC standards. Such non-HUD factory-built homes are referred to as "manufactured dwellings". However, double-wide manufactured mobile homes often are similar in appearance to modular homes. For purposes of identification, a manufactured (mobile) home is identified with a red metal rectangular label affixed to the rear of each full or half unit. This indicates the home has been constructed in accordance with the HUD manufactured home standards. In contrast, a modular home or manufactured dwelling will be identified with a red plastic sticker, called a "Wisconsin Insignia", imprinted with the outline of the State of Wisconsin. It will usually be affixed to the electrical panel, vanity base cabinet or kitchen cabinet. Inspectors must first identify what they are looking at before applying the applicable code regulations.*

- (169) **Mobile Home Lot.** A parcel of land for the placement of a single mobile home and the exclusive use of its occupants.
- (170) **Mobile Home Community.** A parcel of land which has been developed for the placement of mobile homes and is owned by an individual, a firm, trust, partnership, public or private association, or corporation, and where individual lots are rented to individual mobile home users. A mobile home community is also any lot on which two (2) or more mobile homes are parked for the purpose of permanent habitation and including any associated service, storage, recreations and other community service facilities designed for the exclusive use of community occupants.
- (171) **Mobile Home Subdivision.** A land subdivision, as defined by Chapter 236 of the Wisconsin Statutes and any Village Land Division Ordinance, with lots intended for the placement of individual mobile home units. Individual homesites are in separate ownership as opposed to the rental arrangements in mobile home communities.
- (172) **Modular Unit.** A prefabricated, detached single- or double-family dwelling unit

designed for long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems, which is or was designed to be transported and mounted on a permanent foundation.

- (173) **Motel.** A building containing lodging rooms having adjoining individual bathrooms, and where each lodging has a doorway opening directly to the outdoors, and more than fifty percent (50%) of the lodging rooms are for rent to transient tourists for a continuous period of less than thirty (30) days.
- (174) **Motor Freight Terminal.** A building or area in which freight brought by motor truck is assembled and/or stored for routing in intrastate and interstate shipment by motor truck.
- (175) **Navigable Waters.** Has the meaning in Section 30.01 (4m), Wis. Stats.
- (176) **New Livestock Facility.** A livestock facility that will be used as a livestock facility for the first time, or for the first time in at least five (5) years. "New livestock facility" does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding five (5) years.
- (177) **Nonconforming Lot.** A lot of record existing on the date of passage of this Chapter which does not have the minimum width or contain the minimum area for the zone in which it is located.
- (178) **Nonconforming Structure.** A dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one (1) or more of the development regulations in the current zoning ordinance. [See Section 62.23(7)(hb)b, Wis. Stats.]
- (179) **Nonconforming Use.** A use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance. [See Section 62.23(7)(ab), Wis. Stats.]
- (180) **Nonmetallic Mining.** Operations or activities for the extraction from the earth for the sale or use by the operator of mineral aggregates or nonmetallic minerals such as stone, sand, gravel, asbestos, beryl, clay, feldspar, peat, talc, topsoil, including such operations or activities such as excavation, grading, and dredging.
- (181) **Nuisance.** An injurious effect on the safety, health, or morals of the public, or use of property which works some substantial annoyance, inconvenience, or injury to the public and which causes hurt, inconvenience or damage.
- (182) **Nursery.** Any building or lot, or portion thereof, used for the cultivation or growing of plants and including all accessory buildings.
- (183) **Nursery School.** Any building used routinely for the daytime care and education of preschool age children and including all accessory buildings and play areas other than the child's own home or the homes of relatives or guardians.
- (184) **Nursing Home.** Any building used for the continuous care, on a commercial or charitable basis, of persons who are physically incapable of caring for their own personal needs.
- (185) **Official Letter of Map Amendment.** Official notification from the Federal Emergency Management Agency (FEMA) that a Flood Hazard Boundary Map or Flood Insurance Rate Map has been amended.
- (186) **Operator.** A person who applies for or holds a local approval for a livestock facility.

- (187) **Ordinary Maintenance and Repair.** Any work done on a nonconforming structure that does not constitute expansion, structural alteration or reconstruction and does not involve the replacement, alteration or improvement of any portion of the structure's foundation.
- (188) **Other Official Approved Access.** A private road or easement extending from a private property to a component of the public street system which the Village Board has approved as a primary means of access.
- (189) **Outlot.** A lot remnant or parcel of land within a plat remaining after platting, which is intended for open space use, for which no development is intended other than that which is accessory to the open space use. An outlot may not be developed for any use or structure that requires a private, onsite wastewater treatment system.
- (190) **Parking Area, Semi-Public.** An open area other than a street, alley or place used for temporary parking of more than four (4) self-propelled vehicles and available for public uses, whether free, for compensation, or as an accommodation for clients or customers.
- (191) **Parking Lot.** A structure or premises containing five (5) or more parking spaces open to the public.
- (192) **Parties in Interest.** Includes all abutting property owners, all property owners within one hundred (100) feet, and all property owners of opposite frontages.
- (193) **Party Wall.** A wall containing no opening which extends from the elevation of building footings to the elevation of the outer surface of the roof or above, and which separates contiguous buildings but is in joint use for each building.
- (194) **Person.** An individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.
- (195) **Places of Assembly.** Places where people gather or congregate for amusement, worship, learning, etc. This includes schools, churches, theaters, playgrounds, etc.
- (196) **Planned Unit Development.** A large lot or tract of land containing two (2) or more principal buildings of uses developed as a unit where such buildings or uses may be located in relation to each other rather than to a lot line or zoning district boundaries.
- (197) **Populate (Animals).** To add animal units for which a permit or other local approval is required.
- (198) **Porch.** A building walkway with a roof over it, providing access to a building entrance.
- (199) **Private Individual Sewage Treatment System.** A sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same lot as the structure. This term includes alternative sewage systems, substitutes for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) structure or a system located on a different parcel than the structure.
- (200) **Private Individual Water System.** A system supplying water for human consumption with a well and pump serving a single structure located on the same lot as the structure. This term includes alternative water supply systems, substitutes for the well or pump, a system serving more than one (1) structure or a system located on a different parcel than the structure.
- (201) **Professional Home Offices.** Residences of doctors of medicine, practitioners, dentists, clergymen, architects, landscape architects, professional engineers, registered land

surveyors, lawyers, artists, teachers, tradesmen, authors, musicians or other recognized professions used to conduct their professions. Tradesmen shall be defined as a person or persons who hold themselves out with a particular skill including, but not limited to, carpenters, masons, plumbers, electricians, roofers and others involved in the building trade.

- (202) **Property Line.** A line that separates parcels of land owned by different persons.
- (203) **Qualified Nutrient Management Planner.** A person qualified under ATCP 50.48, Wis. Adm. Code.
- (204) **Quarrying.** The removal of mineral aggregates, topsoil or other natural materials from the earth by excavating, stripping or any other mining process.
- (205) **Racetrack.** A facility or track operated where vehicles of any type competitively race, whether for compensation or not.
- (206) **Railroad Right-of-Way.** A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops, or car yards.
- (207) **Rear Yard.** A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearest point of the principal structure. This yard shall be opposite the street yard or one (1) of the street yards on a corner lot.
- (208) **Reasonable Accommodation.** Allowing a disabled person to deviate from the strict requirements of the Village's zoning ordinances if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.
- (209) **Recreational Vehicle.** Any vehicle or structure designed and used for temporary, seasonal human living quarters which meets all of the following qualifications:
  - a. Is not used as the permanent residence of the owner or occupant;
  - b. Is used for temporary living quarters by the owner or occupant while engaged in recreation or vacation activities;
  - c. Is towed or self-propelled on public streets or highways incidental to such recreation or vacation activities;Examples of such vehicles include van campers, tent camping trailers, self-contained travel trailers, pickup campers, camping buses, and self-contained, self-propelled truck chassis mounted vehicles providing living accommodations. Manufactured or mobile homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "recreational vehicles". The term "recreational vehicle" does not include a temporarily placed "manufactured" or "mobile" home.
- (210) **Recreational Vehicle Camp.** A part, court, campsite, lot, parcel or tract of land designed, maintained or intended for the purpose of supplying the location or accommodations for any recreational vehicles as defined herein, and upon which said recreational vehicles are parked.
- (211) **Recycling Center.** A facility designed to be a collection point where only recyclable materials are sorted and temporarily stored prior to shipment to others who will use

those materials for reuse and/or processing into new products. This shall not include junk yards.

- (212) **Regional Flood.** This regional flood is a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every one hundred (100) years; this means that in any given year, there is a one percent (1%) chance that the regional flood may occur or be exceeded. During a typical thirty (30) year mortgage period, the regional flood has a twenty-six percent (26%) chance of occurrence.
- (213) **Related Livestock Facilities.** Livestock facilities that are owned or managed by the same person, and related to each other in at least one (1) of the following ways:
- a. They are located on the same tax parcel or adjacent tax parcels of land. (Note: A mere acquisition of a neighboring livestock facility does not constitute an "expansion" unless more animal units are added to the combined facilities).
  - b. They use one (1) or more of the same livestock structures to collect or store manure.
  - c. At least a portion of their manure is applied to the same landscaping acreage.
- (214) **Restaurant.** A business establishment consisting of a kitchen and dining room, whose primary purpose is to prepare and serve food to be eaten by customers seated in the dining room.
- (215) **Restaurant, Drive-in.** A business establishment consisting of a kitchen, with or without a dining room, where food is prepared and packaged to be eaten either off the premises or within automobiles parked on the premises.
- (216) **Retail.** The sale of goods or merchandise in small quantities to the consumer.
- (217) **Roadside Stand.** A building or part of a building no more than five hundred (500) square feet used for the retail sale of agricultural and related incidental products, excluding livestock, produced on the farm where the stand is located. There shall be no more than one (1) such stand on any one premises.
- (218) **Sanitary Landfill.** A land disposal facility where solid waste is disposed on land by utilizing the principles of engineering to confine the solid waste to the smallest practical area, to reduce it to its smallest practical volume, and to cover it with a layer of earth or other approved material as required.
- (219) **School, Private.** An elementary or intermediate school other than a parochial school giving regular instruction capable of meeting the requirements of state compulsory education laws and approved as such and operating at least five (5) days a week for a normal school year and supported by other than public funds, but not including a school for the mentally handicapped or a college or other institution of higher learning.
- (220) **School, Commercial.** A school limited to special instruction such as business, art, music trades, handicraft, dancing or riding.
- (221) **Seat.** Furniture upon which to sit having a linear measurement not less than twenty-four (24) inches across the surface used for sitting.
- (222) **Separate Species Facility.** A livestock facility that meets all of the following criteria:
- a. It has only one (1) of the following types of livestock, and that type of livestock is

not kept on any other livestock facility to which the separate species facility is related. (Note: See also definition for "related livestock facility"):

1. Cattle.
  2. Swine.
  3. Poultry.
  4. Sheep.
  5. Goats.
- b. It has no more than five hundred (500) animal units.
  - c. Its livestock housing and manure storage structures, if any, are separate from the livestock housing and manure storage structures used by livestock facilities to which it is related.
  - d. It meets one (1) of the following criteria:
    1. Its livestock housing and manure storage structures, if any, are located at least seven hundred and fifty (750) feet from the nearest livestock housing or manure storage structure used by a livestock facility to which it is related.
    2. It and the other livestock facilities to which it is related have a combined total of fewer than one thousand (1,000) animal units.
- (223) **Setback.** The minimum horizontal distance between the front lot line and the nearest point of the foundation of that portion of the building to be enclosed. The overhang cornices shall not exceed twenty-four (24) inches. Any overhang of the cornice in excess of twenty-four (24) inches shall be compensated by increasing the setback by an amount equal to the excess of cornice over twenty-four (24) inches. Uncovered steps shall not be included in measuring the setback.
- (224) **Signs.** Any medium, including its structure, words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or trademarks by which anything is made known and which are used to advertise or promote an individual, firm, association, corporation, profession, business, commodity or product and which is visible from any public street or highway.
- (225) **Site Plan.** Includes but is not limited to a drawing to scale of not less than one (1) inch equals fifty (50) feet, showing all physical aspects such as buildings, setback dimensions, sidewalks, driveways, playgrounds, parking, and so forth which pertain to the proposed development and its relation to the surrounding area in conformance to the zoning of the area in which the development will exist.
- (226) **Stable, Commercial.** A building or land where horses are kept for remuneration, hire, sale, boarding, riding or show.
- (227) **Story.** That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. Any portion of a story exceeding fourteen (14) feet in height shall be considered as an additional story for each fourteen (14) feet or fraction thereof. A basement having one-half (1/2) or more of its height above grade shall be deemed a story for purposes of height regulation.
- (228) **Story, Half.** That portion of a building under a gable, hip or mansard roof, the wall plates of which, on at least two (2) opposite exterior walls, are not more than four and one-

half (4-1/2) feet above the finished floor of such story. In the case of one (1) family dwellings, two (2) family dwellings and multi-family dwellings less than three (3) stories in height, a half (1/2) story in a sloping roof shall not be counted as a story for the purposes of this Code.

- (229) **Street.** A public or private thoroughfare which affords the principal means of access to abutting property.
- (230) **Street Yard.** A yard extending across the full width of the lot, the depot of which shall be the minimum horizontal distance between the existing street or highway right-of-way line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two (2) street yards.
- (231) **Structural Alterations.** Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams or girders.
- (232) **Structural Component.** Any part of the framework of a building or other structure. The structural components of a building's exterior walls include the vertical studs, top and bottom plates, and window and doorsills and headers. A structural component may be non-loadbearing, such as the framework of a wall at the gable end of a one-story house. Wall coverings, such as siding on the exterior and dry wall on the interior, are not included in the definition of structural component.
- (233) **Structural Erosion Control Measure.** A retaining wall or other man-made structure whose primary function is to control erosion.
- (234) **Structure.** Any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, a river bed, stream bed or lake bed or upon another structure. Structure includes swimming pools, hot tubs, patios, decks and retaining walls, but does not include landscaping or earthwork such as graded areas, filled areas, ditches, berms or earthen terraces. Structure does not include small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, bird feeders, birdhouses and birdbaths.
- (235) **Temporary Structure.** A movable structure not designed for human occupancy nor for the protection of goods or chattels and not forming an enclosure, such as billboards.
- (236) **Tent or Hoop-Supported Structure.** Any structure, building, enclosure, canopy, or tent top, with or without full sidewalls, temporary or permanent, primarily constructed of a frame of any material covered by a fabric of natural or synthetic material, whether opaque, translucent, or transparent, but does not include:
  - a. Family or individual camping tents used by the resident of the lot and the resident's non-paying guests for camping activities.
  - b. Party tents or canopies erected for a party or event.
  - c. Screen tents or picnic canopies of the type usually used to shelter a family picnic table or outdoor furniture.
- (237) **Tourist Camp.** A tract or parcel of land on which one (1) or more automobile trailers, tents or camp cabins are located, open to the public free or for a fee.
- (238) **Transmission Services.** Electric power lines, telephone and telegraph lines, communication towers, cables, sewage lift stations, sewer and water pipes, and other

pipes, conduits and accessory structures that are used to transport power, convey information or transport material between two (2) points, other than wireless communication service facilities.

- (239) **Use.** The purpose or activity for which the land or building thereof is designed, arranged or intended, or for which it is occupied or maintained.
- (240) **Use, Accessory.** A subordinate building or use which is located on the same lot on which the principal building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use, when permitted by district regulations.
- (241) **Use, Permitted.** A use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations and performance standards, if any, of such districts.
- (242) **Use, Principal.** The main use of land or building as distinguished from subordinate or accessory use.
- (243) **Utilities.** Public and private facilities, such as water wells, water and sewage pumping stations, water storage tanks, electrical power substations, static transformer stations, telephone and telegraph exchanges, microwave radio relays and gas regulation stations, inclusive of associated transmission facilities, but not including sewage disposal plants, municipal incinerators, warehouses, shops, storage yards and power plants.
- (244) **Utility Building or Structure.** An accessory building used for storage of gardening or home-related supplies of limited size not exceeding ten by fourteen (10 x 14) feet and no greater than nine (9) feet in height.
- (245) **Utility Room.** A room or area in the home used for the mechanicals of the home (furnace, water heater, water softener).
- (246) **Value Added Agriculture.** A small commercial, manufacturing or service operation, which is accessory to an agricultural use. Examples of value added agriculture include, but are not limited to, small scale food processing, handcrafting, agriculture-related product packaging and marketing, and agricultural tourism. These farm-based activities cannot exceed a certain size and scale, but may involve new structures. Additional permits and licenses may be required to carry on these activities.
- (247) **Variance.** A relaxation of the terms of this Chapter by the Board of Appeals where the literal enforcement of this Chapter would deny to the property owner a use of his/her property enjoyed as a right by other property owners within the same zoning district.
- (248) **Vehicle, Motor.** Every device in, upon or by which any person or property is or may be transported.
- (249) **Vending Machine.** A retail business device, electrically or manually operated, used by the general public to obtain dairy products, cigarettes, foodstuffs or other merchandise without entering a public shop, store, market or other such building.
- (250) **Vision Setback Area.** An unoccupied triangular space at the intersection of highways or streets with other highways or streets or at the intersection of highways or streets with railroads. Such vision clearance triangle shall be bounded by the intersecting highway, street or railroad right-of-way lines and a setback line connecting points located on such right-of-way lines by measurement from this intersection as specified in this Chapter.

- (251) **Wall, Retaining.** A structure designed to resist the lateral displacement of soil or other materials.
- (252) **Waste.** Manure, milking center waste, and other organic waste generated by a livestock facility.
- (253) **Waste Storage Facility.** One (1) or more waste storage structures, and includes stationary equipment and piping used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. "Waste storage facility" does not include equipment used to apply waste to land.
- (254) **Waste Storage Structure.** A waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. "Waste storage structure" does not include equipment used to apply waste to land. Pursuant to the purposes of ATCP 51.12(2) and 51.14, Wis. Adm. Code, "waste storage facility" does not include any of the following:
- a. A structure used to collect and store waste under a livestock housing facility.
  - b. A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.
- (255) **Winter Grazing Area.** Cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period October 1 to April 30. "Winter grazing area" does not include any of the following:
- a. An area, other than a pasture, where livestock are kept during the period from May 1 to September 30.
  - b. An area which at any time has an average of more than four (4) livestock animal units per acre.
  - c. An area from which livestock have unrestricted access to navigable waters of the state, such that the livestock access prevents adequate vegetative cover on banks adjoining the water.
  - d. An area in which manure deposited by livestock causes nutrient levels to exceed the standards in ATCP 51.16, Wis. Adm. Code.
- (256) **WPDES Permit.** A Wisconsin pollutant discharge elimination permit issued by the Wisconsin Department of Natural Resources under NR 243, Wis. Adm. Code.
- (257) **Yard.** An open space on the same lot with a building, unobstructed by structures except as otherwise provided herein.
- (258) **Yard, Front.** A yard extending the full width of the lot between the front lot line and the nearest part of the principal building excluding uncovered steps. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimensions.
- (259) **Yard, Rear.** A yard extending the full width of the lot between the rear lot line to the nearest part of the principal building.
- (260) **Yard, Side.** A yard on each side of the principal building extending from the building to the lot line and from the front yard line to the rear yard line.
- (261) **Yard, Street.** Yard abutting a street.
- (262) **Yard, Transitional.** That yard which must be provided on a zoning lot in a Business District which adjoins a zoning lot in a Residential District, or that yard which must be

provided on a zoning lot in an Industrial District which adjoins a zoning lot in either a Residential or Business District.

- (263) **Zero Lot Line.** The concept whereby two (2) respective dwelling units within a building shall be on separate and abutting lots and shall meet on the common property line between them, thereby having zero space between said units.
- (264) **Zoning Permit.** A permit issued by the Zoning Administrator to certify that the use of lands, structures, air and waters subject to this Chapter are or shall be used in accordance with the provisions of said Chapter.

## TITLE 13 • CHAPTER 2

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# Floodplain Zoning

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## **Article A: Introduction**

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### **Sec. 13-2-1 Statutory Authorization.**

This Chapter is adopted pursuant to the authorization in Secs. 61.35 and 62.23, Wis. Stats. for villages and cities; and the requirements in Sec. 87.30, Wis. Stats.

### **Sec. 13-2-2 Finding of Fact.**

Uncontrolled development and the use of the floodplains and rivers of the Village of Fall River would impair the public health, safety, convenience, general welfare and tax base.

### **Sec. 13-2-3 Statement of Purpose.**

This Chapter is intended to regulate floodplain development to:

- (a) Protect life, health and property;
- (b) Minimize expenditures of public funds for flood control projects;
- (c) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (d) Minimize business interruptions and other economic disruptions;
- (e) Minimize damage to public facilities in the floodplain;
- (f) Minimize the occurrence of future flood blight areas in the floodplain;
- (g) Discourage the victimization of unwary land and home buyers;
- (h) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (i) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

### **Sec. 13-2-4 Title.**

This Chapter shall be known as the Floodplain Zoning Ordinance for the Village of Fall River, Columbia County, Wisconsin.

### **Sec. 13-2-5 General Provisions.**

- (a) **Areas To Be Regulated.** This Chapter regulates all areas of special flood hazard identified as Zones A, AO, AH, AI-30, or AE on the Flood Insurance Rate Map. Additional areas identified on maps approved by the Wisconsin Department of Natural Resources (DNR) and the Village may also be regulated under the provisions of this Chapter where applicable.
- (b) **Official Maps and Revisions.** Special Flood Hazard Areas (SFHA) are designated as Zones A, AI-30, AE, AH, or AO on the Flood Insurance Rate Maps (FIRMs) based on flood hazard analyses summarized in the Flood Insurance Study (FIS) listed in Subsection (b)(1) below. Additional flood hazard areas subject to regulation under this Chapter are identified on maps based on studies approved by the DNR and listed in Subsections (b)(2) below. These maps

and revisions are on file in the Office of the Village Clerk-Treasurer of the Village of Fall River, Wisconsin:

- (1) **Official maps.** Based on the Flood Insurance Study (FIS):
  - a. Flood Insurance Rate Map (FIRM), panel number 5502ICO465F, 55021CO468F, and 55021CO469F, dated May 16, 2016.
  - b. Flood Insurance Study (FIS) for Columbia County, Wisconsin, and incorporated Areas, Volumes 55021CV001C and 55021CV002C, dated May 16, 2016. Approved by: The DNR and FEMA.
- (2) **Official Maps Based on Other Studies.** Any maps referenced in this Section must be approved by the DNR and be more restrictive than those based on the FIS at the site of the proposed development:
  - a. Fall River Dam Failure Analysis approved by the Wisconsin Department of Natural Resources on June 22, 2021, including:
    1. Elevations shown in the column labeled "Regulatory (Feet NAVD)" in the floodway data table dated 6/22/2021 and titled "Fall River Dam Failure Floodway Data" within locations at and upstream of the Corporate Limit shown in the table.
    2. Flood profile dated 6/22/2021 and titled "Fall River Dam Hydraulic Shadow Profile" within locations at and upstream of the Corporate Limit shown in the profile. In the case of any apparent discrepancy between the profile and the data table referenced in Subsection (b)(2)a.1 above, the information in the data table shall govern.
    3. Map dated 6/22/2021 and titled "Fall River Dam Hydraulic Shadow" within areas at and upstream of the Corporate Limit shown on the map. In the case of any apparent discrepancy between this map and the date referenced in Subsection (b)(2)a.1 above, the information in the data table shall govern.
  - b. Flood Storage Map, Columbia County, Panel 2 of 4, dated May 16, 2016.
- (c) **Establishment of Floodplain Zoning Districts.** The flood hazard areas regulated by this Chapter are divided into districts as follows:
  - (1) The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters, within AE Zones as shown on the FIRM, or within A Zones shown on the FIRM when determined according to Subsection (d) below.
  - (2) The Floodfringe District (m) is that portion of a riverine special flood hazard area outside the floodway within AE Zones on the FIRM, or, when floodway limits have been determined according to Subsection (d) below, within A Zones shown on the FIRM
  - (3) The General Floodplain District (GFP) is those riverine areas that may be covered by floodwater during the regional flood in which a floodway boundary has not been delineated on the FIRM and also includes shallow flooding areas identified as AH and AO Zones on the FIRM.
  - (4) The Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.
- (d) **Locating Floodplain Boundaries.** Discrepancies between the exterior boundaries of Zones

AI-30, AE, AH, or A on the official floodplain zoning map and actual; field conditions shall be resolved using the criteria in Subsections (d)(1) and (2) below. If a significant difference exists, the map shall be amended according to Sections 13-2-80, 13-2-81 and 13-2-82. The Zoning Administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The Zoning Administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined. Disputes between the Zoning Administrator and an applicant over the district's boundary line shall be settled according to Section 13-2-53 and the criteria in Subsection (d)(1) and (2) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to Article H Amendments:

- (1) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- (2) Where flood profiles do not exist for projects, including any boundary of Zones A or AO, the location of the boundary shall be determined by the map scale.

(e) **Removal of Lands From Floodplain.**

- (1) Compliance with the provisions of this Chapter shall not be grounds for removing land from the floodplain unless it is filled at least two (2) feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to Secs. 13-2-80, 13-2-81 and 13-2-82.
- (2) The delineation of any of the Floodplain Districts may be revised by the Village where natural or man-made changes have occurred and/or where more detailed studies have been conducted. However, prior to any such change, approval must be obtained from the Wisconsin Department of Natural Resources and the Federal Emergency Management Agency. A completed Letter of Map Revision is a record of this approval. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:
  - a. The land and/or land around the structure must be filled at least two (2) feet above the regional or base flood elevation.
  - b. The fill must be contiguous to land outside the floodplain. The Applicant shall obtain a floodplain development permit before applying for a LOMR or LOMR-F.
- (3) Removal of lands from the floodplain may also occur by operation of Sec. 87.30(1)(e), Wis. Stats., and if a property owner has obtained a letter of map amendment from the Federal Emergency Management Agency under 44 CFR 70.

(f) **Compliance.**

- (1) No structure or use within areas regulated by this Chapter shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged, or altered without full compliance with the terms of these regulations and all other applicable regulations that apply to uses within the jurisdiction of these regulations.
- (2) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with Article

- (3) Floodplain development permits issued on the basis of plans and applications approved by the floodplain administrator authorize only the use, and arrangement, set forth in such approved plans and applications, or amendments thereto if approved by the floodplain administrator. Use arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with Section 13-2-90.
- (g) **Municipalities and State Agencies Regulated.** Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this Chapter and obtain necessary permits. State agencies are required to comply if Sec. 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation (DOT) is exempt when Sec. 30.2022, Wis. Stats., applies. Although exempt from a local zoning permit and permit fees, DOT must provide sufficient project documentation and analysis to ensure that the community is in compliance with Federal, State, and local floodplain standards.
- (h) **Abrogation and Greater Restrictions.**
- (1) This Chapter supersedes all the provisions of any zoning ordinance enacted under Sec. 61.35, Wis. Stats., for villages and Sec. 62.23, Wis. Stats., for cities which relate to floodplains or 87.30, Wis. Stats. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (2) This Chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this Chapter imposes greater restrictions, the provisions of this Chapter shall prevail.
- (i) **Interpretation.** In their interpretation and application, the provisions of this Chapter are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this Chapter, required by NR 116, Wis. Adm. Code, is unclear, the provisions shall be interpreted in light of the standards in effect on the date of the adoption of this Chapter or in effect on the date of the most recent text amendment to this Chapter.
- (j) **Warning and Disclaimer of Liability.** The flood protection standards in this Chapter are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This Chapter does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this Chapter create liability on the part of, or a cause of action against, the Village of Fall River or any officer or employee thereof for any flood damage that may result from reliance on this Chapter.
- (k) **Severability.** Should any portion of this Chapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected.
- (l) **Annexed Areas for Cities and Villages.** The Columbia County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the Village of Fall River adopts and enforces an ordinance which meets the requirements of NR 116, Wis. Adm. Code, and 44 CFR 59-72, the National Flood Insurance Program (NFIP). These annexed lands are described on the Village of Fall River's official zoning map. County floodplain zoning provisions are

incorporated by reference for the purpose of administering this Section and are on file in the office of the Village Clerk-Treasurer. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

**Sec. 13-2-6 through Sec. 13-2-19    Reserved for Future Use.**

## **Article B:           General Provisions Applicable to All Floodplain Districts**

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### **Sec. 13-2-20           General Standards Applicable to All Floodplain Districts.**

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and assure that all necessary permits have been received from these governmental agencies whose approvals are required by Federal or State law:

- (a) If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be:
  - (1) Designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (2) Constructed with materials resistant to flood damage;
  - (3) Constructed by methods and practices that minimize flood damage; and
  - (4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (b) If a subdivision or other proposed new development is in a flood-prone area, the Village shall assure that:
  - (1) Such proposed subdivision or other proposed new development is consistent with the need to minimize flood damage within the flood-prone area;
  - (2) Public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
  - (3) Adequate drainage is provided to reduce exposure to food hazards.
- (c) All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this Chapter and all other requirements of 13-2-70(b).

### **Sec. 13-2-21           Hydraulic and Hydrologic Analyses.**

- (a) No floodplain development shall:
  - (1) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or
  - (2) Cause any increase in the regional flood height due to floodplain storage area lost.
- (b) The Zoning Administrator shall deny permits if it is determined the proposed development obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of Article H Amendments are met.

### **Sec. 13-2-22           Watercourse Alterations.**

- (a) No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The standards of Section 13-2-21 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.
- (b) As soon as is practicable, but not later than six (6) months after the date of the watercourse alteration or relocation, and pursuant to Article H Amendments, the Village shall apply for a Letter of Map Revision (LORM) from FEMA. Any such alterations shall be reviewed and approved by FEMA and the WisDNR through the LOMC process.

### **Sec. 13-2-23 Chapter 30, 31, Wis. Stats., Development.**

Development which requires a permit from the Department, under Chapters 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning ordinance are made according to Article H Amendments.

### **Sec. 13-2-24 Public or Private Campgrounds.**

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- (a) The campground is approved by the Wisconsin Department of Agriculture, Trade and Consumer Protection.
- (b) A land use permit for the campground is issued by the Zoning Administrator.
- (c) The character of the river system and the elevation of the campground is such that a seventy-two (72) hour warning of an impending flood can be given to all campground occupants.
- (d) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this Section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation.
- (e) This agreement shall be for no more than one (1) calendar year, at which time the agreement shall be reviewed and updated, by the officials identified in Subsection (d), to remain in compliance with all applicable regulations, including those of the Wisconsin Department of Agriculture, Trade and Consumer Protection and all other applicable regulations.
- (f) All mobile recreational vehicles placed on the site must meet one (1) of the following:
  - (1) Only camping units that are fully licensed, if required, and ready for highway use, are allowed; or
  - (2) The camping units shall not occupy any site in the campground for more than one hundred and eighty (180) consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of twenty-four (24) hours. [A mobile

recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.]

- (g) All camping units that remain on site for more than thirty (30) days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed one hundred and eighty (180) days and shall ensure compliance with all the provisions of this Section.
- (h) The Village of Fall River shall monitor the limited authorization issued by the campground operator to assure compliance with the terms of this Section.
- (i) All camping units that remain in place for more than one hundred and eighty (180) consecutive days must meet the applicable requirements of either Articles C, D or E of this Chapter for the floodplain district in which the structure is located.
- (j) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.
- (k) All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

**Sec. 13-2-25 through Sec. 13-2-29 Reserved for Future Use.**

## **Article C: Floodway District (FW)**

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### **Sec. 13-2-30 Applicability of Floodway District Regulations.**

This Article/District applies to all floodway areas on the floodplain zoning maps and those identified pursuant to Section 13-2-53.

### **Sec. 13-2-31 Floodway District Permitted Uses.**

The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:

- They are not prohibited by any other ordinance;
  - They meet the standards in Sections 13-2-32 and 13-2-33; and
  - All permits or certificates have been issued according to Section 13-2-70:
- (a) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
  - (b) *Nonstructural* industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
  - (c) *Nonstructural* recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas, and hiking and horseback riding trails, subject to the fill limitations of Section 13-2-32(d).
  - (d) Uses or structures accessory to open space uses, or classified as historic structures that comply with Sections 13-2-32 and 13-2-33.
  - (e) Extraction of sand, gravel or other materials that comply with Section 13-2-32(d).
  - (f) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with Chapters 30 and 31, Wis. Stats.
  - (g) Public utilities, streets and bridges that comply with Section 13-2-32(c).

### **Sec. 13-2-32 Standards for Developments in Floodway Areas.**

- (a) **General Standards.**
  - (1) Any development in floodway areas shall comply with Article B and have a low flood damage potential.
  - (2) Applicants shall provide an analysis calculating the effects of the proposal on the regional flood height to determine the effects of the proposal according to Sections 13-2-22 and 13-2-70(c). The analysis must be completed by a registered professional engineer in the State of Wisconsin.
  - (3) Any encroachment in the regulatory floodway is prohibited unless the data submitted for Subsection (a)(2) above demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in Section 13-2-5(e).

- (b) **Structures.** Structures accessory to permanent open space uses, including utility and sanitary facilities, or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:
- (1) The structure is not designed for human habitation, does not have a high flood damage potential, and is constructed to minimize flood damage;
  - (2) The structure shall either have the lowest floor elevation to or above the flood protection elevation or shall meet all the following standards:
    - a. Have the lowest floor elevated to or above the regional flood elevation and be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to the flood protection elevation without human intervention during flooding;
    - b. Have structural components capable of meeting all provisions of Subsection (b)(7) below; and
    - c. Be certified by a Wisconsin-registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with Subsection (b)(7) below;
  - (3) Must be anchored to resist flotation, collapse, and lateral movement;
  - (4) Mechanical and utility equipment must be elevated to or above the flood protection elevation;
  - (5) Must not obstruct the flow of flood waters or cause and increase in flood levels during the occurrence of the regional flood; and
  - (6) For a structure designed to allow the automatic entry of flood waters below the Regional Flood Elevation, the applicant shall submit a plan that meets Subsections (b)(1)-(5) and meets or exceeds the following standards:
    - a. The lowest floor must be elevated to or above the regional flood elevation;
    - b. A minimum of two (2) openings having a total new area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
    - c. The bottom of all openings shall be no higher than one (1) foot above the lowest adjacent grade; openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters, otherwise must remain open; and
    - d. The use must be limited to parking, building access or limited storage.
  - (7) Certification of floodproofing measures is required. Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:
    - a. Reinforcement of floors and walls to resist rupture, collapse, or lateral movement caused by water pressures or debris buildup;
    - b. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters in such systems and must be in accordance with the provisions in Sections 13-2-33(d) and (e);

- c. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors;
  - d. Cutoff valves on sewer lines or the elimination of gravity flow basement drains; and
  - e. Placement of utilities to or above the flood protection levels.
- (c) **Public Utilities, Streets and Bridges.** Public utilities, streets and bridges may be allowed by permit, if:
- (1) Adequate floodproofing measures are provided to the flood protection elevation; and
  - (2) Construction meets the development standards of Section 13-2-21.
- (d) **Fills or Deposition of Materials.** Fills or deposition of materials may be allowed by permit, if:
- (1) The requirements of Section 13-2-21 are met;
  - (2) No material is deposited in the navigable channel unless a permit is issued by the Department pursuant to Chapter 30, Wis. Stats., and a permit pursuant to Sec. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this Article are met;
  - (3) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
  - (4) The fill is not classified as a solid or hazardous waste material.

### **Sec. 13-2-33 Prohibited Uses In The Floodway District.**

All uses not listed as permitted uses in Section 13-2-31 are prohibited, including the following uses:

- (a) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
- (b) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (c) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (d) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and SPS 383, Wis. Adm. Code;
- (e) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and NR 811 and NR 812, Wis. Adm. Code;
- (f) Any solid or hazardous waste disposal sites;
- (g) Any wastewater treatment ponds or facilities, except those permitted under NR 110.15(3)(b), Wis. Adm. Code;
- (h) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

**Sec. 13-2-34 through Sec. 13-2-39 Reserved for Future Use.**

## **Article D: Floodfringe District (FF)**

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### **Sec. 13-2-40 Applicability of Floodfringe District Regulations.**

This Article/District applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to Section 13-2-53.

### **Sec. 13-2-41 Floodfringe District Permitted Uses**

Any structure, land use, or development is allowed in the Floodfringe District if the standards in Section 13-2-42 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in Section 13-2-70 have been issued.

### **Sec. 13-2-42 Standards for Development in Floodfringe Areas.**

- (a) **Compliance With Other Provisions.** Section 13-2-21 shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of Article F Nonconforming Uses.
- (b) **Residential Uses.** Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe area, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of Article F Nonconforming Uses:
  - (1) All new construction, including placement of manufactured homes and the substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill, unless the requirements of Subsection (b)(2) can be met. The fill around the structure shall be one (1) foot or more above the regional flood elevation extending at least fifteen (15) feet beyond the limits of the structure. No area may be removed from the Floodfringe District unless it can be shown to meet Section 13-2-5(e).
  - (2) Notwithstanding Subsection (b)(1) above, the basement or crawlspace floor may be placed at the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind is allowed below the regional flood elevation.
  - (3) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in Subsection (b)(4) below;
  - (4) In developments where existing street or sewer line elevations make compliance with Subsection (b)(3) impractical, the Village of Fall River may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:
    - a. The Village of Fall River has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled

vehicles during a regional flood event; or

- b. The Village of Fall River has a WisDNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.
- (c) **Accessory Structures or Uses.** In addition to Article B, new construction and substantial improvements of accessory structure shall be constructed on fill with its lowest floor at or above the regional flood elevation.
- (d) **Commercial Uses.** In addition to Article B, any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of Subsection (b) above. Subject to the requirements of Subsection (9) below, storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.
- (e) **Manufacturing and industrial Uses.** In addition to Article B, any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall have the lowest floor elevated to or above the flood protection elevation or meet the flood proofing measures in Section 13-2-74. Subject to the requirements of Subsection (f), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.
- (f) **Storage of Materials.** Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with Section 13-2-74. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.
- (g) **Public Utilities, Streets and Bridges.** All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans, and:
  - (1) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction of or repair of such facilities may only be permitted if they are designed to comply with Section 13-2-74;
  - (2) Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.
- (h) **Sewage Systems.** All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to Section 13-2-74(c) to the flood protection elevation and shall meet the provisions of all local ordinances and SPS 383, Wis. Adm. Code.
- (i) **Wells.** All wells shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to Section 13-2-74(c), to the flood protection elevation and shall meet the provisions of NR 811 and NR 812, Wis. Adm. Code.
- (j) **Solid Waste Disposal Sites.** Disposal of solid or hazardous waste is prohibited in floodfringe areas.
- (k) **Deposition of Materials.** Any deposited material must meet all the provisions of this Chapter.
- (l) **Manufactured Homes.**
  - (1) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local

emergency management authorities.

- (2) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
  - a. Have the lowest floor elevated to the flood protection elevation; and
  - b. Be anchored so they do not float, collapse or move laterally during a flood.
- (3) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in Section 13-2-42(b).

(m) **Mobile Recreational Vehicles.**

- (1) All mobile recreational vehicles that are on site for one hundred and eighty (180) consecutive days or more and be either:
  - a. Fully licensed and ready for highway use; or
  - b. Shall meet the elevation and anchoring requirements in Section 13-2-42(1)(1)-(2).
- (2) A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

**Sec. 13-2-43 through Sec. 13-2-49 Reserved for Future Use**

## **Article E: General Floodplain District (GFP); Flood Storage District (FSD)**

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### **Sec. 13-2-50 Applicability of General Floodplain District Regulations; Floodway Boundaries.**

- (a) **Applicability.** The provisions for the General Floodplain District shall apply to development in all floodplains mapped as A, AO, AH, and in AE Zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in Section 13-2-5(b)
- (b) **Floodway Boundaries.** For proposed development in Zone A, or in Zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in Section 13-2-5(b), the boundaries of the regulatory floodway shall be determined pursuant to Section 13-2-53. If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of Article C. If the development is located entirely within the floodfringe, the development is subject to the standards of Article D.

### **Sec. 13-2-52 General Floodplain District Permitted Uses.**

- (a) Pursuant to Section 13-2-53, it shall be determined whether the proposed use is located within a floodway or floodfringe area.
- (b) Those uses permitted in the Floodway (Section 13-2-31) and Floodfringe Districts (Section 13-2-41) are allowed within the General Floodplain District, according to the standards of Section 13-2-52, provided that all permits or certificates required under Section 13-2-70 have been issued.

### **Sec. 13-2-53 Standards for Development in the General Floodplain District.**

- (a) Article C applies to floodway areas, determined pursuant to Section 13-2-53; Article D applies to floodfringe areas, determined pursuant to Section 13-2-53:
- (b) New construction and substantial improvement of structures in Zone AO shall have the lowest floor, including basement, elevated:
  - (1) To or above the depth, in feet, as shown on the FIRM above the highest adjacent natural grade; or
  - (2) If the depth is not specified on the FIRM, to or above two (2) feet above the highest adjacent natural grade.
- (c) New construction and substantial improvement of structures in Zone AH shall have the lowest floor, including basement, elevated to or above the flood protection elevation.
- (d) In AO/AH zones, provide adequate drainage paths to guide floodwaters around structures.
- (e) All development in Zones AO and AH shall meet the requirements of Article D applicable to flood fringe areas.

## **Sec. 13-2-53 Determining Floodway and Floodfringe Limits.**

Upon receiving an application for development within the General Floodplain District, the Zoning Administrator shall:

- (a) Require the applicant to submit two (2) copies of an aerial photograph or a plan which shows the proposed development with respect to the General Floodplain District limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and floodproofing measures, and the flood zone as shown on the FIRM.
- (b) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries;
  - (1) A Hydrologic and Hydraulic Study as specified in Section 13-2-70(c)(3).
  - (2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil type and other pertinent information;
  - (3) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

## **Sec. 13-2-54 Flood Storage District (FSD).**

- (a) **Purpose.** The Flood Storage District delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The District protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.
- (b) **Applicability.** The provisions of this Section apply to all areas within the Flood Storage District (FSD), as shown on the official floodplain zoning maps.
- (c) **Permitted Uses.** Any use or development which occurs in a Flood Storage District must meet the applicable requirements in Section 13-2-42.
- (d) **Standards for Development in Flood Storage Districts.**
  - (1) Development in a Flood Storage District shall not cause an increase equal or greater than 0.00 of a foot in the height of the regional flood.
  - (2) No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.
  - (3) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as Flood Storage District — on this waterway — is rezoned to the Floodfringe District. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without

floodplain storage, as per Article H Amendments.

- (4) No area may be removed from the Flood Storage District unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.

**Sec. 13-2-55 through Sec. 13-2-59 Reserved for Future Use.**

## **Article F: Nonconforming Uses**

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### **Sec. 13-2-60 General Applicability of Nonconforming Use Status.**

(a) **Applicability.**

- (1) The standards in this Section shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance or with Sec. 87.30, Wis. Stats., and NR 116.12-14, Wis. Adm. Code, and 44 CFR 59-72. These standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this Chapter or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.
- (2) As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value and a list of the costs of those activities associated with changes to those buildings.

(b) **Existing Lawful Use of a Structure.** The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this Chapter may continue subject to the following conditions:

- (1) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this Chapter. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure. The construction of a deck that does not exceed two hundred (200) sq. ft. and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure;
- (2) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this Chapter;
- (3) The Village of Fall River shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- (4) No modification or addition to any nonconforming structure or any structure with a

nonconforming use, which over the life of the structure would equal or exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this Chapter. Contiguous dry land access must be provided for residential and commercial uses in compliance with Section 13-2-42(b). The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the fifty percent (50%) provisions of this Subsection;

- (5) No maintenance on a per-event basis to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this Chapter. Contiguous dry land access must be provided for residential and commercial uses in compliance with Section 13-2-42(b).
- (6) If on a per-event basis the total value of the work being done under Subsections (b)(4) and (5) equals or exceeds fifty percent (50%) of the present equalized assessed value, the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this Chapter. Contiguous dry land access must be provided for residential and commercial uses in compliance with Section 13-2-42(b).
- (7) Except as provided in Subsection (b)(8) below, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet this Chapter's requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds fifty percent (50%) of the structure's present equalized assessed value.
- (8) For nonconforming buildings that are substantially damaged or destroyed by a non-flood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction.
  - a. Residential Structures.
    1. Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of Section 13-2-74.
    2. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
    3. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.
  5. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in Section 13-2-42(b).
  6. In AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
- b. Nonresidential Structures.
1. Shall meet the requirements of Subsection (b)(8)a above.
  2. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in Sections 13-2-74.
  3. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in Section 13-2-52.
- (9) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with Section 13-2-32(a), flood resistant materials are used, and construction practices and floodproofing methods that comply with Section 13-2-74 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of Subsection (b)(8)a above if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and preserve the historic character and design of the structure.

## **Sec. 13-2-61 Floodway Districts—Nonconforming Uses.**

- (a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a Floodway District, unless such modification/addition:
- (1) Has been granted a permit or variance which meets all Chapter requirements;
  - (2) Meets the requirements of Section 13-2-60;
  - (3) Shall not increase the obstruction to flood flows or regional flood height; and
  - (4) Any addition to the existing structure shall be floodproofed, pursuant to Section 13-2-74, by means other than the use of fill, to the flood protection elevation; and
  - (5) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - a. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two (2) openings must be provided with a minimum net area of at least one square inch for every one square foot (1sq. in.: 1 sq. ft.) of the enclosed area. The lowest part of the opening can be no more than twelve (12) inches above the adjacent grade;
    - b. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    - c. Mechanical and utility equipment must be elevated or floodproofed to or above the

flood protection elevation; and

- d. The use must be limited to parking, building access, or limited storage.
- (b) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, Section 13-2-74(c), and SPS 383, Wis. Adm. Code.
- (c) No new well or modification to an existing well used to obtain potable water shall be allowed in a Floodway District. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all Village of Fall River ordinances, Section 13-2-74(c), and NR 811 and NR 812, Wis. Adm. Code.

### **Sec. 13-2-62 Floodfringe District Nonconforming Uses.**

- (a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and meets the requirements of Section 13-2-42, except where Subsection (b) below is applicable.
- (b) Where compliance with the provisions of Subsection (a) above would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Zoning Board of Appeals, using the procedures established in Section 13-2-72, may grant a variance from those provisions of Subsection (a) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
  - (1) No floor is allowed below the regional flood elevation for residential or commercial structures;
  - (2) Human lives are not endangered;
  - (3) Public facilities, such as water or sewer, will not be installed;
  - (4) Flood depths will not exceed two (2) feet;
  - (5) Flood velocities will not exceed two (2) feet per second; and
  - (6) The structure will not be used for storage of materials as described in Section 13-2-42(f).
- (c) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances, Section 13-2-74(c), and SPS 383, Wis. Adm. Code.
- (d) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this Chapter, Section 13-2-74(c), and NR 811 and NR 812, Wis. Adm. Code.

### **Sec. 13-2-63 Flood Storage Districts – Nonconforming Uses.**

No modifications or additions shall be allowed to any nonconforming structure in a flood storage area unless the standards of Section 13-2-54 are met.

**Sec. 13-2-64 through Sec. 13-2-69 Reserved for Future Use.**

## **Article G: Administration**

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### **Sec. 13-2-70 Zoning Administrator, Permits.**

- (a) **Administration Responsibilities.** Where a Zoning Administrator, planning agency or a Zoning Board of Appeals have already been appointed to administer a zoning ordinance adopted under Secs. 59.69, 59.692, or 62.23(7), Wis. Stats., these officials shall also administer this Chapter.
- (b) **Zoning Administrator.** The Zoning Administrator is authorized to administer this Chapter and shall have the following duties and powers:
  - (1) Advise applicants of the provisions of this Chapter, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
  - (2) Issue permits and inspect properties for compliance with provisions of this Chapter and issue certificates of compliance where appropriate.
  - (3) Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.
  - (4) Keep records of all official actions such as:
    - a. All permits issued, inspections made, and work approved.
    - b. Documentation of certified lowest floor and regional flood elevations for floodplain development.
    - c. Floodproofing certificates.
    - d. Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
    - e. All substantial damage assessment reports for floodplain structures.
    - f. List of nonconforming structures and uses.
  - (5) Submit copies of the following items to the Department's regional office:
    - a. Within ten (10) days of the decision, a copy of any decision on variances, appeals for map or text interpretations, and map or text amendments.
    - b. Copies of any case-by-case analyses, and any other information required by the Department including an annual summary of the number and types of floodplain zoning actions taken.
    - c. Copies of substantial damage assessments performed and all related correspondence concerning assessments. [Note: Information on conducting substantial damage assessments is available on the DNR website at: <http://dnr.wi.gov/org/water/wm/dsfm/flood/title.html>].
  - (6) Investigate, prepare reports, and report violations of this Chapter to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department's regional office.
  - (7) Submit copies of text and map amendments to the FEMA regional office.
- (c) **Land Use Permit.** A land use permit shall be obtained before any new development, repair, modification, or addition to an existing structure — or change in the use of a building or structure — including sewer and water facilities, may be initiated. Application to the Zoning

Administrator shall include:

(1) **General Information.**

- a. Name and address of the applicant, property owner and contractor;
- b. Legal description, proposed use, and whether it is new construction or a modification.

(2) **Site Development Plan.** A site plan drawn to scale shall be submitted with the permit application form and shall contain:

- a. Location, dimensions, area and elevation of the lot;
- b. Location of the ordinary highwater mark of any abutting navigable waterways;
- c. Location of any structures with distances measured from the lot lines and street center lines;
- d. Location of any existing or proposed on-site sewage systems or private water supply systems;
- e. Location and elevation of existing or future access roads;
- f. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
- g. The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
- h. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of Articles C or D are met; and
- i. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to Section 13-2-20. This may include any of the information noted in Section 13-2-32(a).

(3) **Hydraulic and Hydrologic Studies to Analyze Development.** All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State of Wisconsin. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.

- a. *Zone A Floodplains and in AE Zones Within Which a Floodway is Not Delineated.*
  1. Hydrology: the appropriate method shall be based on the standards in NR 116.07(3), Wis. Adm. Code, Hydrologic Analysis: Determination of Regional Flood Discharge.
  2. Hydraulic modeling: the regional flood elevation shall be based on the standards in NR 116.07(4), Wis. Adm. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation and the following:*
    - i Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
    - ii Channel sections must be surveyed.
    - iii Minimum four (4) foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.

- iv A maximum distance of five hundred (500) feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
  - v The most current version of HEC—RAS shall be used.
  - vi A survey of bridge and culvert openings and the top of road is required at each structure.
  - vii Additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than five hundred (500) feet.
  - viii Standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standards accepted engineering practices.
  - ix The model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.
3. Mapping: a work map of the reach studied shall be provided, showing all cross-section locations, Floodway/Floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the Floodway:
- i If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
  - ii If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.
- b. *Zone AE Floodplains.*
- 1. Hydrology: if the proposed hydrology will change the existing study, the appropriate method to be used shall be based on NR 116.07(3), Wis. Adm. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
  - 2. Hydraulic model: the regional flood elevation shall be based on the standards on NR 116.07(4), Wis. Adm. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
    - i Duplicate Effective Model: the effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and

downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.

- ii Corrected Effective Model: the Corrected Effective Model shall not include any man-made physical changes since the effective model date, but shall impose the model into the most current version of HEC-RAS for Department review.
  - iii Existing (Pre-Project Conditions) Model: the Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.
  - iv Revised (Post-Project Conditions) Model: the revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.
  - v All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.
  - vi Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross-sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and top widths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.
3. Mapping: Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:
- i Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMS and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
  - ii Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
  - iii Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
  - iv If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plan Coordinate System in accordance with FEMA mapping specifications.

- v The revised floodplain boundaries shall tie into the effective floodplain boundaries.
  - vi All cross-sections from the effective model shall be labeled in accordance with the effective map and a cross-section lookup table shall be included to relate to the model input numbering scheme.
  - vii Both the current and proposed floodways shall be shown on the map.
  - viii The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.
- (4) **Expiration.** All permits issued under the authority of this Chapter shall expire no more than one hundred eighty (180) days after issuance. The permit may be extended for a maximum of one hundred eighty (180) days for good and sufficient cause. If the permitted work has not started within one hundred eighty (180) days of the permit date, the development must comply with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.
- (d) **Certificate of Compliance.** No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the Zoning Administrator, except where no permit is required, subject to the following provisions:
- (1) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this Chapter;
  - (2) Application for such certificate shall be concurrent with the application for a permit;
  - (3) If all ordinance provisions are met, the certificate of compliance shall be issued within ten (10) days after written notification that the permitted work is completed;
  - (4) The applicant shall submit a certification signed by a registered professional engineer, architect, or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 13-2-74.
  - (5) Where applicable pursuant to Section 13-2-52, the applicant must submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor (excluding pilings or columns), and an indication of whether the structure contains a basement.
  - (6) Where applicable pursuant to Section 13-2-52, the applicant must submit certifications by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice as required by Section 13-2-52.
- (e) **Other Permits.** The applicant must secure all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under Sec. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

## **Sec. 13-2-71 Zoning Agency.**

- (a) The Village of Fall River Village Board shall:
  - (1) Oversee the functions of the office of the Zoning Administrator; and

- (2) Review and advise the Village Board on all proposed amendments to this Chapter, maps and text.
- (3) Publish adequate notice pursuant to Ch. 985, Wis. Stats., specifying the date, time, place and subject of the public hearing.
- (b) The Village of Fall River Village Board shall not:
  - (1) Grant variances to the terms of this Chapter in place of action by the Board of Appeals; or
  - (2) Amend the text or zoning maps in place of official action by the Village Board.

## **Sec. 13-2-72 Board of Appeals.**

The Zoning Board of Appeals, created under Sec. 62.23(7)(e), Wis. Stats., for village and cities is hereby authorized to act, or shall be appointed to act, for the purposes of this Chapter. The Zoning Board of Appeals shall exercise the powers conferred by the Wisconsin Statutes and adopt rules for the conduct of business. The Zoning Administrator may not be the secretary of the Zoning Board of Appeals:

- (a) **Powers and Duties.**
  - (1) **Appeals.** The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Chapter.
  - (2) **Boundary Disputes.** The Zoning Board of Appeals shall hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
  - (3) **Variances.** The Zoning Board of Appeals shall hear and decide, upon appeal, variances from the standards of this Chapter.
- (b) **Appeals to the Zoning Board of Appeals.**
  - (1) **Eligible Parties.** Appeals to the Zoning Board of Appeals may be taken by any person aggrieved, or by any officer or department of the Village of Fall River affected by any decision of the Zoning Administrator or other administrative officer. Such appeal shall be taken within thirty (30) days unless otherwise provided by the rules of the Zoning Board of Appeals, by filing with the official whose decision is in question, and with the Zoning Board of Appeals, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Zoning Board of Appeals all records regarding the matter appealed.
  - (2) **Notice and Hearing for Appeals including Variances.**
    - a. **Notice.** The Zoning Board of Appeals shall:
      - 1. Fix a reasonable time for the hearing;
      - 2. Publish adequate notice pursuant to the Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
      - 3. Assure that notice shall be mailed to the parties in interest and the Department's regional office at least ten (10) days in advance of the hearing.
    - b. **Hearing.** Any party may appear in person or by agent or attorney. The Zoning Board of Appeals shall:
      - 1. Resolve boundary disputes according to Subsection (c) below.

2. Decide variance applications according to Subsection (d) below.
  3. Decide appeals of permit denials according to Section 13-2-73.
- (3) **Decision.** The final decision regarding the appeal or variance application shall:
- a. Be made within a reasonable time;
  - b. Be sent to the Department's regional office within ten (10) days of the decision;
  - c. Be a written determination signed by the chairperson or secretary of the Zoning Board of Appeals;
  - d. State the specific facts which are the basis for the Zoning Board of Appeals' decision;
  - e. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;
  - f. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Zoning Board of Appeals' proceedings.
- (c) **Boundary Disputes.** The following procedure shall be used by the Zoning Board of Appeals in hearing disputes concerning floodplain district boundaries:
- (1) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
  - (2) In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Zoning Board of Appeals.
  - (3) If the boundary is incorrectly mapped, the Zoning Board of Appeals should inform the Village Board and Plan Commission or the person contesting the boundary location to petition the governing body for a map amendment according to Sections 13-2-80 and 13-2-81.
- (d) **Variances.**
- (1) The Zoning Board of Appeals may, upon appeal, grant a variance from the standards of this Chapter if an applicant convincingly demonstrates that:
    - a. Literal enforcement of the Chapter's provisions will cause unnecessary hardship;
    - b. The hardship is due to adoption of the floodplain ordinance and unique property conditions not common to adjacent lots or premises. In such cases this Chapter or map must be amended;
    - c. The variance is not contrary to the public interest; and
    - d. The variance is consistent with the purpose of this Chapter in Section 13-2-3.
  - (2) In addition to the criteria in Subsection (d)(1), to qualify for a variance under FEMA regulations, the following criteria must be met:
    - a. The variance shall cause any increase in the regional flood elevation;
    - b. The applicant has shown good and sufficient cause for issuance of the variance;
    - c. Failure to grant the variance would result in exceptional hardship;
    - d. Granting the variance will not result in additional threats to public safety, extraordinary expense, create a nuisance, cause fraud on or victimization of the

- public, or conflict with existing local laws or ordinances.
- e. The variance granted is the minimum necessary, considering the flood hazard, to afford relief.
- (3) A variance shall not:
    - a. Grant, extend or increase any use prohibited in the zoning district.
    - b. Be granted for a hardship based solely on an economic gain or loss.
    - c. Be granted for a hardship which is self-created.
    - d. Damage the rights or property values of other persons in the area.
    - e. Allow actions without the amendments to this Chapter or map(s) required in Section 13-2-80.
    - f. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
  - (4) When a floodplain variance is granted, the Zoning Board of Appeals shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property and flood insurance premiums could increase up to Twenty-five Dollars (\$25.00) per One Hundred Dollars (\$100.00) of coverage. A copy shall be maintained with the variance record. A copy shall be maintained with the variance record.

### **Sec. 13-2-73 Board of Appeals to Review Appeals of Permit Denials.**

- (a) **Data Subject to Review.** The Zoning Board of Appeals shall review all data related to the appeal. This may include:
  - (1) Permit application data listed in Section 13-2-70(b).
  - (2) Floodway/floodfringe determination data in Section 13-2-53.
  - (3) Data listed in Section 13-2-32(a)(2)b where the applicant has not submitted this information to the Zoning Administrator.
  - (4) Other data submitted with the application, or submitted to the Zoning Board of Appeals with the appeal.
- (b) **Denied Permits Appeals Considerations.** For appeals of all denied permits the Zoning Board of Appeals shall:
  - (1) Follow the procedures of Section 13-2-72;
  - (2) Consider the Zoning Administrator's and/or Plan Commission's recommendations; and
  - (3) Either uphold the denial or grant the appeal.
- (c) **Increases in Regional Flood Elevation Appeals.** For appeals concerning increases in regional flood elevation, the Zoning Board of Appeals shall:
  - (1) Uphold the denial where the Zoning Board of Appeals agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners, as per the requirements of Article H Amendments; and
  - (2) Grant the appeal where the Zoning Board of Appeals agrees that the data properly demonstrates that the project does not cause an increase, provided no other reasons for denial exist.

## **Sec. 13-2-74 Floodproofing Standards for Nonconforming Uses and Structures.**

- (a) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA Floodproofing Certificate. Floodproofing is not an alternative to the development standards in Articles B, C, and D, and Sections 13-2-51 or 13-2-53.
- (b) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
  - (1) Certified by a registered professional engineer or architect; or
  - (2) Meeting or exceeding the following standards:
    - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
    - b. The bottom of all openings shall be no higher than one (1) foot above grade; and
    - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (c) Floodproofing measures shall be designed to:
  - (1) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
  - (2) Protect structures to the flood protection elevation;
  - (3) Anchor structures to foundations to resist flotation and lateral movement;
  - (4) Minimize or eliminate infiltration of flood waters;
  - (5) Minimize or eliminate discharges into flood waters;
  - (6) Placement of essential utilities to or above the flood protection elevation; and
  - (7) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - a. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two (2) openings must be provided with a minimum net area of at least one (1) square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than twelve (12) inches above the adjacent grade;
    - b. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    - c. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
    - d. The use must be limited to parking, building access or limited storage.

## **Sec. 13-2-75 Public Information.**

The Village of Fall River may do the following:

- (a) Place marks on structures to show the depth of inundation during the regional flood.
- (b) All maps, engineering data and regulations shall be available and widely distributed.
- (c) Real estate transfers should show what floodplain zoning district any real property is in.

**Sec. 13-2-76 through Sec. 13-2-79 Reserved for Future Use**

## **Article H: Amendments**

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### **Sec. 13-2-80 Amendments Required for Obstructions or Increases.**

Obstructions or increases may only be permitted if amendments are made to this Chapter, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 13-2-81.

- (a) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this Chapter, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 13-2-81. Any such alterations must be reviewed and approved by FEMA and the DNR.
- (b) In A Zones, increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this Chapter, the official floodplain maps, floodway lines, and water surface profiles, in accordance with Section 13-2-81.

### **Sec. 13-2-81 General Amendments.**

The Village Board may change or supplement the floodplain zoning district boundaries and this Chapter in the manner outlined in Section 13-1-82. Actions which require an ordinance amendment to this Chapter and/or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

- (a) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
- (b) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
- (c) Any changes to any other officially adopted floodplain maps listed in Section 13-2-5(b);
- (d) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
- (e) Correction of discrepancies between the water surface profiles and floodplain maps.
- (f) Any upgrade to a floodplain zoning ordinance text required by NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the Village of Fall River.

All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

[**Note:** Consult the FEMA web site - [www.fema.gov](http://www.fema.gov) - for a current map change fee schedule.]

### **Sec. 13-2-82 Procedures for Amendments.**

- (a) Ordinance amendments to this Chapter may be made upon petition of any interested party according to the provisions of Sec. 62.23, Wis. Stats. Such petitions shall include all necessary data required by Sections 13-2-53 and 13-2-70(b). The Land Use Permit shall not

- be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.
- (b) The proposed amendment shall be referred to the Plan Commission for a public hearing and recommendation to the Village Board. The amendment and notice of public hearing shall be submitted to the Department's regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of Sec. 62.23, Wis. Stats.
  - (c) No amendments shall become effective until reviewed and approved by the Department.
  - (d) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the Village Board.

**Sec. 13-2-83 through Sec. 13-2-89 Reserved for Future Use**

## **Article I: Enforcement and Penalties; Definitions**

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### **Sec. 13-2-90 Enforcement and Penalties.**

Any violation of the provisions of this Chapter by any person shall be unlawful and shall be referred to the Village of Fall River Village Attorney, who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the Village of Fall River a penalty of not more than Fifty Dollars (\$50.00), together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this Chapter is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the Village of Fall River, the state, or any citizen thereof pursuant to Sec. 87.30, Wis. Stats.

### **Sec. 13-2-91 Definitions.**

- (a) **Definitions Established.** Unless specifically defined below, words and phrases used in this Chapter shall have the same meaning as they have at common law and to give this Chapter its most reasonable application. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and not discretionary:
- (1) **A-Zones.** Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A-Zones. The A-Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
  - (2) **AH Zone.** See "Area of Shallow Flooding."
  - (3) **AO Zone.** See "Area of Shallow Flooding."
  - (4) **Accessory Structure or Use.** A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.
  - (5) **Alteration.** An enhancement, upgrade or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.
  - (6) **Area of Shallow Flooding.** A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.
  - (7) **Base Flood.** The flood having a one percent (1%) chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
  - (8) **Basement.** Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.
  - (9) **Building.** See "Structure."
  - (10) **Bulkhead Line.** A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to Sec. 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the

original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this Chapter.

- (11) **Campground.** Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for non-permanent overnight use by four (4) or more camping units, or which is advertised or represented as a camping area.
- (12) **Camping Unit.** Any portable device, no more than four hundred (400) square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.
- (13) **Certificate of Compliance.** A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this Chapter.
- (14) **Channel.** A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
- (15) **Coastal Floodplain.** An area along the coast of Lake Michigan or Lake Superior which is inundated by the regional flood and which is also subject to additional hazard due to wave runup.
- (16) **Coastal High Hazard Area.** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms.
- (17) **Crawlways or Crawl Space.** An enclosed area below the first usable floor of a building, generally less than five (5) feet in height, used for limited access to plumbing and electrical utilities,
- (18) **Deck** An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
- (19) **Department.** The Wisconsin Department of Natural Resources.
- (20) **Development.** Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
- (21) **Dryland Access.** A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
- (22) **Encroachment.** Any fill, structure, equipment, building, use or development in the floodway.
- (23) **Federal Emergency Management Agency (FEMA).** The federal agency that administers the National Flood Insurance Program.
- (24) **Flood Insurance Rate Map (FIRM).** A map of a community on which the Federal

Insurance Administration has delineated both special flood hazard areas (floodplains) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency (FEMA).

- (25) **Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
  - a. The overflow or rise of inland waters;
  - b. The rapid accumulation or runoff of surface waters from any source;
  - c. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
  - d. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
- (26) **Flood Frequency.** The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.
- (27) **Floodfringe.** That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
- (28) **Flood hazard Boundary flap.** A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
- (29) **Flood Insurance Study.** A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
- (30) **Historic Structure.** Any structure that is either:
  - a. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - c. Individually listed on a state inventory of historic places with historic preservation programs which have been approved by the Secretary of the Interior; or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior, or by the Secretary of the

Interior in states without approved programs.

- (31) **Increase in Regional Flood Height.** A calculated upward rise in the regional flood elevation, equal to or greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
- (32) **Land Use.** Any nonstructural use made of unimproved or improved real estate. (Also see "Development".)
- (33) **Lowest Adjacent Grade.** Elevation of the lowest ground surface that touches any of the exterior walls of a building.
- (34) **Lowest Floor.** The lowest floor of the lowest enclosed area (including basement).
- (35) **Maintenance.** The act or process of restoring to original soundness, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
- (36) **Manufactured Home.** A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
- (37) **Mobile/Manufactured Home Park or Subdivision.** A parcel (or contiguous parcels) of land, divided into two (2) or more manufactured home lots for rent or sale.
- (38) **Mobile/Manufactured Home Park or Subdivision, Existing.** A parcel of land, divided into two (2) or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this Chapter. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
- (39) **Mobile/Manufactured Home Park, Expansion to Existing.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
- (40) **Mobile Recreational Vehicle.** A vehicle which is built on a single chassis, four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles".
- (41) **Model, Corrected Effective.** A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross-sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
- (42) **Model, Duplicate Effective.** A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

- (43) **Model, Effective.** The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.
- (44) **Model, Existing (Pre-Project).** A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any manmade modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
- (45) **Model, Revised (Post-Project).** A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
- (46) **Moderate Wave Action Area (MoWA).** A special flood hazard area subject to the potential for breaking wave heights of greater than or equal to 1.5 feet, but less than three (3) feet, where the primary source of flooding is astronomical tides, storm surges, seiches, and/or tsunamis. A MoWA is an area within zone AE on a FIRM that is between the inland limit of Zone VE and a Limit of Moderate Wave Action where identified. (Also known as "Coastal A Zone".)
- (47) **Municipality or Municipal.** The county, city or village governmental units enacting, administering and enforcing this Chapter (Village of Fall River).
- (48) **NAVD or North American Vertical Datum.** Elevations referenced to mean sea level datum, 1988 adjustment.
- (49) **NGVD or National Geodetic Vertical Datum.** Elevations referenced to mean sea level datum, 1929 adjustment.
- (50) **New Construction.** Structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures.
- (51) **Nonconforming Structure.** An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this Chapter for the area of the floodplain which it occupies. (For example, an existing residential structure in the Floodfringe District is a conforming use; however, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
- (52) **Nonconforming Use.** An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this Chapter for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
- (53) **Obstruction to Flows** Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
- (54) **Official Floodplain Zoning Map.** That map, adopted and made part of this Chapter, as described in Section 13-2-5(b), which has been approved by the Department and FEMA.
- (55) **Open Space Use.** Those uses having a relatively low flood damage potential and not involving structures.
- (56) **Ordinary Highwater Mark.** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion,

destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

- (57) **Person** An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
- (58) **Primary Frontal Dune.** A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.
- (59) **Private Sewage System.** A sewage treatment and disposal system serving one (1) structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Wisconsin Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) structure or a system located on a different parcel than the structure.
- (60) **Public Utilities.** Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
- (61) **Reasonably Safe From Flooding.** Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- (62) **Regional Flood.** A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent (1%) chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
- (63) **Sand Dunes.** Naturally occurring accumulations of sand in ridges or mounds landward of the beach.
- (64) **Start of Construction.** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (65) **Structure.** Any manmade object with form, shape and utility, either permanently or

temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

- (66) **Subdivision.** Has the meaning given in Sec. 236.02(12), Wis. Stats.
- (67) **Substantial Damage.** Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent (50%) of the equalized assessed value of the structure before the damage occurred.
- (68) **Substantial Improvement.** Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds fifty percent (50%) of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (69) **Unnecessary Hardship.** Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the Chapter.
- (70) **Variance.** An authorization by the Zoning Board of Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- (71) **Violation.** The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
- (72) **Watershed.** The entire region contributing runoff or surface water to a watercourse or body of water.
- (73) **Water Surface Profile.** A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
- (74) **Well.** An excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

# TITLE 13 • CHAPTER 3

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## Shoreland-Wetland Zoning

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## **Article A:                   Statutory Authorization; Findings of Fact; Statement of Purpose and Title**

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### **Sec. 13-3-1               Statutory Authorization.**

This Chapter is adopted pursuant to the authorization in Sections 62.23, 62.231, 87.30 and 144.26, Wis. Stats.

### **Sec. 13-3-2               Findings of Fact.**

- (a) **Findings of Fact.** Uncontrolled use of the shoreland-wetlands and the pollution of the navigable waters of the Village of Fall River would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and preserve shore cover and natural beauty.
- (b) **Purpose.** To promote the public health, safety, convenience and general welfare, this Chapter has been established to:
  - (1) Further the maintenance of safe and healthful conditions;
  - (2) Prevent and control water pollution by filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters and to maintain storm and flood water capacity;
  - (3) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat;
  - (4) Prohibit certain uses detrimental to the shoreland-wetland area; and
  - (5) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities.
  - (6) Maintain the storm and flood water storage capacity of wetlands.

### **Sec. 13-3-3               Title of Chapter.**

Shoreland-Wetland Zoning Ordinance/Chapter for the Village of Fall River, Columbia County, Wisconsin.

### **Sec. 13-3-4 through Sec. 13-3-9               Reserved for Future Use.**

## **Article 8: General Provisions**

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### **Sec. 13-3-10 Compliance.**

The use of wetlands and the alteration of wetlands within the shoreland area of the Village of Fall River shall be in full compliance with the terms of this Chapter and other applicable local, state or federal regulations. (However, see Section 13-3-25 of this Chapter for the standards applicable to nonconforming uses.) All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this Chapter.

### **Sec. 13-3-11 Municipalities and State Agencies Regulated.**

Unless specifically exempted by law, all cities, villages, town and counties are required to comply with this Chapter and obtain all necessary permits. State agencies are required to comply if Section 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Section 30.12(4)(a), Wis. Stats., applies.

### **Sec. 13-3-12 Abrogation and Greater Restrictions.**

- (a) This Chapter supersedes all the provisions of any municipal zoning ordinance enacted under Section 62.23 or 87.30, Wis. Stats., which relate to shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than the provisions contained in this Chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This Chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this Chapter imposes greater restrictions, the provisions of this Chapter shall prevail.

### **Sec. 13-3-13 Interpretation.**

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this Chapter is required by a standard in Chapter NR 117, Wis. Adm. Code, and where the Chapter provision is unclear, the provision shall be interpreted in light of the Chapter NR 117 standards in effect on the date of the adoption of this Chapter or in effect on the date of the most recent text amendment to this Chapter.

### **Sec. 13-3-14 Severability.**

Should any portion of this Chapter be declared invalid or unconstitutional for any reason by a court of competent jurisdiction, the remainder of this Chapter shall not be affected.

**Sec. 13-3-15      Annexed Areas.**

The Columbia County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the municipality for all areas annexed by the municipality after May 7, 1982. These annexed lands are described on the municipality's official zoning map. The Columbia County shoreland zoning provisions are incorporated by reference for the purpose of administering this Section and are on file in the office of the Village Zoning Administrator.

**Sec. 13-3-16 through Sec. 13-3-19    Reserved for Future Use.**

## **Article C: Shoreland–Wetland Zoning District**

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### **Sec. 13-3-20 Purpose of Shoreland-Wetland Zoning.**

This Chapter is adopted to maintain safe and healthful conditions, to prevent and control water pollution, to protect fish spawning grounds, fish and aquatic life and wildlife habitation, to preserve shore cover and natural beauty and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner which minimizes adverse impacts upon the wetland.

### **Sec. 13-3-21 Official Shoreland–Wetland Zoning Maps.**

The following maps are hereby adopted and made a part of this Chapter and are on file in the office of the Village Clerk-Treasurer:

- (a) Wisconsin Wetland Inventory maps stamped "FINAL" on \_\_\_\_\_.
- (b) The boundaries of all floodplain districts are designated as floodplains or A-Zones on the maps listed below and in any revisions in the Village of Fall River Floodplain Appendix. Any change to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Village Clerk-Treasurer. If more than one (1) map or revision is referenced, the most current approved information shall apply. The pertinent floodplain zoning maps and flood insurance studies shall be (approved by FEMA and the DNR):
- (c) Based on the FIS Flood Insurance Rate Map (FIRM), panel numbers \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, dated June 17, 2008, with corresponding profiles that are based on the Flood Insurance Study (FIS) \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_. This map is the official floodplain zoning map and has been approved by the Department of Natural Resources and the Federal Emergency Management Agency (FEMA), and is on file in the office of the Village Clerk-Treasurer and the Columbia County Zoning Administrator. If more than (1) map is referenced, the regional flood profiles govern boundary discrepancies.
- (d) United States Geological Survey maps dated "photo revised"

### **Sec. 13-3-22 District Boundaries.**

- (a) The shoreland-wetland zoning district includes all wetlands in the Village of Fall River, Wisconsin, which are five (5) acres or more and are shown on the final Wetland Inventory Map that has been adopted and made a part of this Chapter in Section 13-3-21 and which are:
- (b) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the Village of Fall River shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this Chapter in Section 13-3-21 of this Chapter.

- (c) Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this Chapter in Section 13-3-21. Flood Hazard Boundary Maps, Flood Insurance Rate Maps, Flood Boundary-Floodway Maps, County Soil Survey Maps or other existing community floodplain zoning maps used to delineate floodplain area which have been adopted by the Village of Fall River shall be used to determine the extent of floodplain areas in the Village.
- (d) Determinations of navigability and ordinary high-water mark shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department (DNR) for the final determination of navigability or ordinary high-water mark.
- (e) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official shoreland-wetland zoning maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary as mapped is in error. If the Department staff concurs with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the official shoreland-wetland zoning maps, the Zoning Administrator shall be responsible for initiating a shoreland-wetland map amendment within a reasonable period.

### **Sec. 13-3-23 Permitted Uses.**

The following uses are permitted subject to the provisions of Chapters 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:

- (a) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
  - (1) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
  - (2) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
  - (3) The practice of silviculture, including the planting, thinning and harvesting of timber;
  - (4) The pasturing of livestock;
  - (5) The cultivation of agricultural crops; and
  - (6) The construction and maintenance of duck blinds.
- (b) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:
  - (1) The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected

- (2) The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
  - (3) The maintenance and repair of existing drainage ditches, where permissible under Section 30.20, Wis. Stats., or of other existing drainage systems (such as tiling) to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Chapter 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible;
  - (4) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
  - (5) The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction or maintenance;
  - (6) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed in Section 13-3-38(c) of this Chapter; and
  - (7) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (c) Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided below:
- (1) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted in this Section, provided that:
    - a. The road cannot, as a practical matter, be located outside the wetland;
    - b. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed in Section 13-3-38(c) of this Chapter;
    - c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
    - d. Road construction activities are carried out in the immediate area of the roadbed only; and
    - e. Any wetland alteration must be necessary for the construction or maintenance of the road.
  - (2) The construction and maintenance of nonresidential buildings provided that:
    - a. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
    - b. The building cannot, as a practical matter, be located outside the wetland;
    - c. The building does not exceed five hundred (500) square feet in floor area; and
    - d. Only limited filling and excavating necessary to provide structural support for the building is allowed.
  - (3) The establishment and development of public and private parks and recreation areas,

outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:

- a. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;
  - b. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;
  - c. The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in Subsection (c)(1) of this Section; and
  - d. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- (4) The construction and maintenance of electric and telephone transmission lines and water, gas and sewer distribution lines, and related facilities provided that:
- a. The transmission and distribution lines and related facilities cannot, as a practical matter, be located outside the wetland;
  - b. Only limited filling or excavating necessary for such construction or maintenance is allowed; and
  - c. Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in Section 13-3-38(c) of this Chapter.
- (5) The construction and maintenance of railroad lines, provided that:
- a. The railroad lines cannot, as a practical matter, be located outside the wetland;
  - b. Only limited wetland alteration necessary for such construction or maintenance is allowed; and
  - c. Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland as listed in Section 13-3-38 of this Chapter.

### **Sec. 13-3-24 Prohibited Uses.**

- (a) Any use not listed in Section 13-3-23 of this Chapter is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this Chapter in accordance with Section 13-3-38 of this Chapter.
- (b) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

### **Sec. 13-3-25 Nonconforming Structures and Uses.**

The existing lawful use of a structure, building or property, or its accessory use, which is not in conformity

with the provisions of this Chapter may be continued subject to the following conditions:

- (a) Notwithstanding Section 62.23(7)(h), Wis. Stats., the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this Chapter adopted under Section 62.231, Wis. Stats., or of an environmental control facility in existence on May 7, 1982, related to that structure, is permitted under Section 62.231(5), Wis. Stats. Section 62.23(7)(h), Wis. Stats., applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this Chapter or amendment.
- If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to the appropriate provisions of this Chapter.
  - Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this Chapter adopted under Sections 62.231 or 61.351, Wis. Stats., may be continued although such use does not conform with the provisions of this Chapter. However, such nonconforming use may not be extended.
  - The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of Section 30.121, Wis. Stats. Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

**Sec. 13-3-26 through Sec. 13-3-29 Reserved for Future Use.**

## **Article D: Administrative Provisions**

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### **Sec. 13-3-30 Zoning Administrator.**

The Zoning Administrator shall have the following duties and powers:

- (a) Advise applications as to the provisions of this Chapter and assist them in preparing permit applications and appeal forms.
- (b) Issue permits and certificates of compliance and inspect properties for compliance with this Chapter.
- (c) Keep records of all permits issued, inspections made, work approved and other official actions.
- (d) Have access to any structure or premises between the hours of 8:00 a.m. and 6:00 p.m. for the purpose of performing these duties.
- (e) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation and map or text amendments within ten (10) days after they are granted or denied to the appropriate district office of the Department.
- (f) Investigate and report violations of this Chapter to the appropriate Village planning agency and the District Attorney, corporation counsel or Village Attorney.

### **Sec. 13-3-31 Zoning Permits.**

- (a) **When Required.** Unless another Section of this Chapter specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in Section 13-3-41(b)(4) of this Chapter, or any change in the use of an existing building or structure is initiated.
- (b) **Application.** An application for a permit shall be made to the Zoning Administrator upon forms furnished by the Village and shall include, for the purpose of proper enforcement of these regulations, the following information:
  - (1) **General Information.**
    - a. Name, address and telephone number of applicant, property owner and contractor, where applicable.
      - a. Legal description of the property and a general description of the proposed use or development.
      - b. Whether or not a private water or sewage system is to be installed.
  - (2) **Site Development Plan.** The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:
    - a. Dimensions and area of the lot;
    - b. Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways;
    - c. Location of any existing or proposed on-site sewage systems or private water supply systems;
    - d. Location of the ordinary high-water mark of any abutting navigable

- e. waterways;
  - e. Location and landward limit of all wetlands;
  - f. Existing and proposed topographic and drainage features and vegetative cover;
  - g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain areas;
  - h. Location of existing or future access roads; and
  - i. Specifications and dimensions for areas of proposed wetland alteration.
- **Expiration.** All permits issued under the authority of this Chapter shall expire one (1) year from the date of issuance.

### **Sec. 13-3-32      Certificates of Compliance.**

- (a) Except where no zoning permit or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:
  - (1) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this Chapter.
  - (2) Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
  - (3) The certificate of compliance shall be issued within ten (10) days after the completion of the work specified in the zoning or conditional use permit, providing the building or premises or proposed use thereof conforms with all the provisions of this Chapter.
- (b) The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof, pursuant to rules and regulations established therefor by the Village Board.
- (c) Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption, certifying after inspection the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this Chapter.

### **Sec. 13-3-33      Conditional Use Permits for Wetland Areas.**

- (a) **Application.** Any use listed as a conditional use in this Chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional use permit has been granted by the Zoning Board of Appeals, following the procedures in Sections 13-3-37(c), (d) and (e) for hearing and deciding appeals.
  - **Conditions.** Upon consideration of the permit application and the standards applicable to the permitted uses in Section 13-3-23(c) of the Chapter, the Zoning Board of Appeals shall attach such conditions to a conditional use permit in addition to those required elsewhere in this Chapter, as are necessary to further the purposes of this Chapter as listed in Section 13-3-2 of this Chapter. Such conditions may include specifications for,

without limitation because of specific enumeration: type of shore cover; erosion potential; increased side yard setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Zoning Board of Appeals may require the applicant to furnish, in addition to the information required for a zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Chapter.

### **Sec.13-3-34 Fees.**

The Village Board may, by resolution, adopt fees for the following:

- (a) Zoning permits.
- (b) Certificates of compliance.
- (c) Public hearings.
- (d) Legal notice publications.
- (e) Conditional use permits.
- (f) Rezoning petitions.

### **Sec. 13-3-35 Recording.**

Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the Zoning Administrator of the land use and structures permitted.

### **Sec. 13-3-36 Revocation.**

Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the Zoning Board of Appeals.

### **Sec. 13-3-37 Zoning Board of Appeals.**

- (a) **Appointment.** The Village President shall appoint a Zoning Board of Appeals under Title 2, Chapter 4 of this Code of Ordinances and Section 62.23(7)(e), Wis. Stats., consisting of five (5) members subject to confirmation by the Village Board. The Zoning Board of Appeals shall adopt rules for the conduct of the business of the Zoning Board of Appeals as required by Section 62.23(7)(e)3, Wis. Stats.
- (b) **Powers and Duties.** The Zoning Board of Appeals under this Chapter shall:
  - (1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Chapter.
  - (2) Hear and decide applications for conditional use permits under this Chapter.
  - (3) May authorize, upon appeal in specific cases, such variance from the terms of the

Chapter as shall not be contrary to the public interest, where owing to special conditions, a literal enforcement of this Chapter will result in unnecessary hardship. In the issuance of a variance, the spirit of the Chapter shall be observed and substantial justice done. No variance from the terms of this Chapter shall be granted which is contrary to the public interest. A variance may be granted where, owing to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship. The granting of a variance shall not have the effect of granting or extending any use of property which is prohibited in that zoning district by this Chapter.

- (c) **Appeals to the Board.** Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement, decision or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the official from whom the appeal is taken and with the Zoning Board of Appeals, a notice of appeal specifying the reasons therefor. The Zoning Administrator or other official from whom the appeal is taken shall transmit to the Board all the papers constituting the record on which the appeal action was taken.
- (d) **Public Hearings.**
  - (1) Before making a decision on an appeal, the Zoning Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a Class 2 notice under Ch. 985, Wis. Stats., specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may appear in person, by agent or by attorney and present testimony.
  - (2) A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least ten (10) days prior to all public hearings on issues involving shoreland-wetland zoning.
- (e) **Decisions.**
  - (1) The final disposition of an appeal, or application for a conditional use permit, to the Zoning Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing, signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or persecution, or grant the application for a conditional use.
  - (2) A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within ten (10) days after the decision is issued.

## **Sec. 13-3-38      Amending Shoreland-Wetland Zoning Regulations.**

The Village Board may, from time to time, alter, supplement or change the district boundaries and

the regulations contained in this Chapter in accordance with the requirements of Section 62.23(7)(d)2, Wis. Stats., NR 117, Wis. Adm. Code, and the following:

- (a) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within five (5) days of the submission of the proposed amendment to the Village planning agency.
- All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Plan Commission, and a public hearing shall be held as required by Section 62.23(7)(d)2, Wis. Stats. The appropriate district office of the Department shall be provided with written notice of the public hearing at least ten (10) days prior to such hearing.
  - In order to ensure that the shoreland protection objectives in Section 144.26, Wis. Stats., will be accomplished by the amendment, the Village Board may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following:
    - (1) Storm and flood water storage capacity;
    - (2) Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
    - (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
    - (4) Shoreline protection against soil erosion;
    - (5) Fish spawning, breeding, nursery or feeding grounds;
    - (6) Wildlife habitat; or
    - (7) Areas of special recreational scenic or scientific interest, including scarce wetland types and habitat of endangered species.
  - Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Subsection (c) of this Section, the Department shall so notify the Village of its determination either prior to or during the public hearing held on the proposed amendment.
  - The appropriate district office of the Department shall be provided with:
    - (1) A copy of the recommendations and report, if any, of the Plan Commission on the proposed text or map amendment within ten (10) days after the submission of those recommendations to the Village Board; and
    - (2) Written notice of the Village Board's action on the proposed text or map amendment within ten (10) days after the action is taken.
  - If the Department notifies the Plan Commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Subsection (c) of this Section, that proposed amendment, if approved by the Village Board, may not become effective until more than thirty (30) days have elapsed since written notice of the Village Board approval was mailed to the Department, as required by Subsection (e) of this Section. If, within the thirty (30) day period, the Department notifies the Village Board that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the Village under Section 62.231(6), Wis. Stats., the proposed

amendment may not become effective until the ordinance adoption procedure under Section 62.231(6), Wis. Stats., is completed or otherwise terminated.

**Sec. 13-3-39      Reserved for Future Use.**

## **Article E: Penalties; Definitions**

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### **Sec. 13-3-40 Enforcement and Penalties.**

Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced, or any use or accessory use established after the effective date of this Chapter in violation of the provisions of this Chapter, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator shall refer violations to the Village Board and the Village Attorney who shall prosecute such violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this Chapter shall be subject to a forfeiture as specified in Sec. 1-1-6, "General Penalties," of this Code of Ordinances, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this Chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the Village, the State or any citizen thereof pursuant to Section 87.30(2), Wis. Stats.

### **Sec. 13-3-41 Definitions.**

- (a) For the purpose of administering and enforcing this Chapter, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.
- (b) The following terms used in this Chapter mean:
  - (1) **Accessory Structure or Use.** A detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.
  - (2) **Boathouse.** As defined in Section 30.121(1), Wis. Stats., a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts.
  - (3) **Department.** The Wisconsin Department of Natural Resources.
  - (4) **Development.** Any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.
  - (5) **Drainage System.** One (1) or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
  - (6) **Environmental Control Facility.** Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or

monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

- (7) **Fixed Houseboat.** As defined in Section 30.121(1), Wis. Stats., a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
- (8) **Navigable Waters.** Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. Under Section 144.26(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Section 62.231, Wis. Stats., and Chapter NR 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:
  - a. Such lands are not adjacent to a natural navigable stream or river;
  - b. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
  - c. Such lands are maintained in nonstructural agricultural use.
- (9) **Ordinary High-Water Mark.** The point on the bank or shore up to which the presence and action of surface water is so continuous so as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic.
- (10) **Planning Agency.** The Village Plan Commission created under Section 62.23(1), Wis. Stats.
- (11) **Regional Flood.** A flood determined to be representative or large floods known to have generally occurred in Wisconsin and which may be expected to occur or be exceeded on a particular stream because of like physical characteristics, once in every one hundred (100) years.
- (12) **Shorelands.** Lands within the following distances from the ordinary high-water mark of navigable waters; one thousand (1,000) feet from a lake, pond or flowage; and three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (13) **Shoreland-Wetland District.** The zoning district, created in this shoreland-wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this Chapter as described in Section 13-3-11 of this Chapter.
- (14) **Special Exception or Conditional Use.** A use which is permitted by this Ordinance provided that certain conditions specified in the Chapter are met and that a permit is granted by the Zoning Board of Appeals or, where appropriate, the planning agency designated by the Village Board.

- (15) **Unnecessary Hardship.** That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purpose of this Chapter.
- (16) **Variance.** An authorization granted by the Zoning Board of Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this Chapter.
- (17) **Wetlands.** Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (18) **Wetland Alteration.** Any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

# TITLE 13 • CHAPTER 4

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## Comprehensive Plan

### 13-4-1 Comprehensive Plan Adoption

#### Sec. 13-4-1 Comprehensive Plan Adoption.

- (a) **Authority.** Pursuant to Secs. 61.35 and 62.23(2) and (3), Wis. Stats., the Village of Fall River is authorized to prepare and adopt a comprehensive plan as defined in Secs. 66.1001(1)(a) and 66.1001(2), Wis. Stats.
- (b) **Written Procedures.** The Village Board of the Village of Fall River, Wisconsin, has adopted written procedures designed to foster public participation in every stage of the preparation of a comprehensive plan as required by Sec. 66.1001(4)(a), Wis. Stats.
- (c) **Plan Commission Recommendation.** The Plan Commission of the Village of Fall River, Wisconsin, by majority vote of the entire Commission recorded in its official minutes, dated \_\_\_\_\_, 20\_\_, has adopted a resolution recommending to the Village Board the adoption of the document entitled "Village of Fall River Comprehensive Plan", containing all of the elements specified in Sec. 66.1001(2), Wis. Stats.
- (d) **Public Hearing.** The Village has held at least one (1) public hearing on the Comprehensive Plan in compliance with the requirements of Sec. 66.1001(4)(d), Wis. Stats.
- (e) **Plan Adoption.** The Village Board of the Village of Fall River, Wisconsin, does, by the enactment of this Section, formally adopt the document entitled, "Village of Fall River Comprehensive Plan" pursuant to Sec. 66.1001(4)(c), Wis. Stats.

*State Law Reference: Sec. 66.1001, Wis. Stats.*