

Accessory Buildings

(Portion pulled from Town Code Updated 2015)

SECTION 1: TITLE 13 entitled Zoning, Chapter 2 entitled General Provisions, Section 13-2-10 entitled Building Location, Subsection 13.2.10(b) entitled Offsets, Subsection 13-2-10 (b)(4) is hereby repealed and recreated to read as follows:

SEC. 13-2-10(b) Offsets

- (4) Unless excepted by this section or another section of this ordinance, every structure, shall be at least thirty (30) feet from the Conservancy District line and at least two (2) feet above the highest ground elevation at the Conservancy District line on the lot and filling and/or grading activities within 30 foot offset area shall not be allowed except for the maintenance, repair, replacement, reconstruction or new construction of town, county and state streets, highways and bridges, and normal driveway construction and related bridges that are necessary in order to provide access to a property or structure, including limited excavating and filling as necessary, provided such facilities are deemed essential or provided that failure of existing streets, driveways and bridges would endanger public health or safety and the proposed project has received all the necessary approvals and/or permits from the Army Corps of Engineers and/or the Wisconsin Department of Natural Resources. Wisconsin Department of Natural Resources and Army Corps of Engineer permits must be obtained for all private driveways and bridges located in the wetland.

SECTION 2: Title 13 entitled Zoning, Chapter 2 entitled General Provisions, Section 13-2-10 entitled Building Location, Subsection 13-2-10(d) entitled Accessory Building Size and Location is hereby repealed and recreated to read as follows:

SEC. 13-2-10 Building Location

- (d) Accessory Buildings
 - (1) Application and approval.
 - a. Accessory building zoning permit application. An application for an accessory building zoning permit shall be submitted to the Town Clerk, including building plans and specifications, rendered elevations, and a plat of survey (or certified survey map) illustrating the location of the accessory building with respect to property lines (i.e. setback and offsets), adjacent buildings, and the location of well and septic fields on the subject property, along with payment of the applicable fee as may be set by the Town Board from time to time by separate resolution.
 - b. Review and approval.
 1. Town Building Inspector. Any residential or agricultural accessory building less than six hundred (600) square feet in area shall be reviewed and approved by the Town Building Inspector. The building permit is issued by the Building Inspector.
 2. Town Plan Commission and Board. Any residential or agricultural accessory

building greater than six hundred (600) square feet in area or exceeding the maximum height requirement for an accessory building per the applicable zoning district shall be reviewed and approved by the Town Plan Commission and Board. The zoning permits are issued by the Town Planner and the building permits are issued by the Building Inspector.

- c. Recertification of location for a residential or agricultural accessory building. Per Sec. 13-2-2(b), the Town Building Inspector shall have the right to request a recertification of any structure location and elevations if the structure is closer than 3 feet to the minimum offset, setback or elevation requirements.

(2) Location.

- a. No accessory building shall be erected, structurally altered or placed on a lot in any District so that any portion thereof is closer than 10 feet to the principal building or other accessory building or structure on said lot.
- b. Standard or Double-Frontage Lot. No accessory building or structure in any District other than in the C-1 Conservancy and A-1 Agricultural District shall project closer to the base setback line from the primary street than the principal building, and shall meet the setback requirement for the district in which it is located from the secondary street. The primary street the street where the driveway provides access to the principal building.
- c. Corner Lot. Accessory buildings on corner lots must meet the setback requirement as measured from the primary street and any secondary street or other public right of way abutting the corner lot. The primary street shall be the street where the driveway provides access to the principal building.

(3) Size. The aggregate total floor area of any accessory building or buildings used for residential or agricultural purposes, may be constructed in accordance with the following table, and may not exceed the maximum F.A.R. of the applicable zoning district:

	COLUMN 1	COLUMN 2
LOT SIZE	ACCESSORY BUILDING MAXIMUM	DETACHED GARAGE*
Less 0.50 acres	600 sq. ft.	900 sq. ft.
0.50 to 0.99 acres	900 sq. ft.	1,000 sq. ft.
1.00 acre to 2.99 acres	1,200 sq. ft.	1,200 sq. ft.
3 acres or more	1.5% of the Lot Area	1,500 sq. ft.

- a. Any property improved with a single-family residence that does not have an attached garage, may construct a detached garage in accordance with Column 2 of the above table, and may also construct an accessory building in accordance with Column 1 of the above table, provided, however, that the detached garage shall be located within fifty (50) feet of the residential structure. Any property improved with a single-family residence that does have an attached garage shall be limited to the accessory building maximum square feet shown in column 1.
- b. Any outdoor area adjacent to the accessory building that is covered by an attached roof overhang or porch shall not exceed 30% of the total enclosed accessory building square

footage. Outdoor areas covered by roof overhang or porch shall not be used for the purpose of outdoor storage or enclosed with exterior walls at any time unless approved by the Town Plan Commission and Town Board.

- (4) Quantity. In residential districts or residential PUDs the maximum number of detached accessory buildings shall be limited to three (3) structures, providing the aggregate square footage does not exceed the maximum size allowed or required open space. In all other zoning districts, there shall be no limit for the number of accessory buildings, providing the aggregate square footage does not exceed the maximum size allowed or required open space.
- (5) Use.
 - a. Accessory buildings shall be permitted only for uses subordinate to and customarily incidental to the permitted principal use of the property or buildings. The Town Plan Commission and/or Town Board may require a deed restriction to be recorded with the property limiting the use of the structure to residential and/or agricultural purposes for buildings greater than six hundred (600) square feet
 - b. A structure attached to the principle building via a breezeway shall be considered an accessory building unless all of the following conditions are met:
 - 1. The breezeway is fully enclosed and no longer than ten (10) feet.
 - 2. The structure is fully enclosed with materials that match the principal building.
 - 3. The structure is built on a foundation or basement (post, pier, or grade beam foundations are prohibited).
 - c. On properties where residential uses are permitted, an attached garage may be converted into residential living space, provided that the property owner simultaneously constructs an attached garage to the residential structure, which attached garage shall meet the minimum requirements set forth in this chapter, and otherwise complies with this Code.
- (6) Appearance and Compatibility. Accessory buildings shall be compatible with the principle structure. The Town Plan Commission and/or Town Board may require specific elements of the accessory structure be compatible with the principal structure, which may include:
 - a. Building materials.
 - b. Material colors.
 - c. Roof pitch.
 - d. Windows.
 - e. Building massing and scale.
- (7) Request for waiver or modification. A petitioner may request that the Town Board of Appeals, waive enforcement or allow modification of one or more provisions of this chapter dealing with size, quantity and location limitations stated in this section as follows:
 - a. Written request. In addition to the accessory building application, the petitioner shall submit a written request for a waiver or modification to the Town Clerk which shall include: a statement specifying the specific provision that the petitioner requests the Town to waive or modify and what, if any, substantial reasons exist for the request for waiver or modification; what, if any, effect the proposed accessory building will have on

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

SECTION 3: Title 13 entitled Zoning, Chapter 2 entitled General Provisions, Section 13-2-9 entitled Conditional Uses, Subsection 13-2-9(12) entitled In-law is hereby repealed and recreated to read as follows:

SEC. 13-2-9 Conditional Uses

- (12) **In-Law Unit.** Subject to the following:
- a. The location, building plan, site plan and plan of operation shall be submitted for approval per Section 13-2-4. Prior to scheduling a public hearing, the Town Plan Commission shall review the specific proposal.
 - b. The Waukesha County Environmental Resources Department shall certify that the septic system will accommodate the proposed use in accordance with all federal, state, county and local sanitary codes, including COMM 83.

- c. Maximum living area per in-law unit shall not exceed 800 square feet and shall contain no more than two bedrooms. There shall be an additional parking space for the in-law unit. There shall be no more than one (1) in-law unit per single family lot.
- d. Architecture of the residence shall be compatible with the adjacent residential neighborhood and shall appear to be a single-family residence. All other appropriate zoning district requirements for the principal living unit shall be complied with.
- e. The Town Plan Commission shall determine if it is appropriate to have an interior door between the living units, if the units are contiguous, but it is not required that the living units be contiguous.
- f. A deed restriction shall be filed in the Waukesha County Register of Deeds Office and a copy of the recorded document presented to the Building Inspector prior to issuance of the building permit. This deed restriction shall state that the in-law unit is to be occupied by not more than two persons related by blood or marriage to the family occupying the principal unit and the conditional use is not transferable without formal approval of the Town Plan Commission and Town Board.
- g. Both units of the structure must have smoke alarms installed and in working order at the time the final occupancy permit is issued.

SECTION 4: Title 13 entitled Zoning, Chapter 2 entitled General Provisions, Section 13-2-24 Special Exceptions, Subsection 13-2-24(b) entitled Limited Jurisdiction is hereby repealed and recreated to read as follows:

SEC. 13-2-24 Special Exceptions

- (b) Limited Jurisdiction.** The Board of Appeals shall have no authority to grant a special exception to any of the requirements of this zoning ordinance except as described herein. The Board of Appeals authority to grant special exceptions is limited to the following issues:
- (1) In all districts where in-law conditional uses are allowed, the Board of Appeals may by special exception increase the otherwise applicable maximum living area limitation up to a maximum of 1200 square feet.
 - (2) In all districts, the Board of Appeals may by special exception reduce the otherwise applicable street setback requirement by not more than 25 percent.
 - (3) In all districts, the Board of Appeals may by special exception reduce the otherwise applicable side and rear yard offset requirement by not more than 25 percent.
 - (4) In all districts, the Board of Appeals may by special exception reduce the otherwise applicable open space requirement by not more than 25 percent.
 - (5) In all districts, the Board of Appeals may by special exception reduce the otherwise applicable F.A.R. requirement by not more than 25 percent.
 - (6) The Board of Appeals shall have such additional special exception authority as may be specifically granted to the Board of Appeals by this Zoning Code. No such authority shall be implied, but shall apply only if described in this Zoning Code by reference to the Board of Appeals by name and specifically authorizes a "special exception."

SECTION 5: Title 13 entitled Zoning, Chapter 3 entitled Zoning Districts, Subsection 13-3-3 entitled C-1 Conservancy District is hereby repealed and recreated to read as follows:

SEC. 13-3-3 C-1 Conservancy District

The primary purpose of this district is to preserve, protect, and enhance the streams, intermittent streams, and wetland areas in Waukesha Town. The proper regulation of these areas will serve to maintain and improve water quality, both ground and surface; prevent flood damage; protect wildlife habitat; prohibit the location of structures, except as noted below, on soils which are generally not suitable for such use; protect natural watersheds; protect existing natural woodlands; and protect the natural recreational resources of the Town.

(a) Use Regulations.

(1) Permitted Uses.

The following uses are permitted in this, district, provided they do not involve dumping, filling, indiscriminate woodland clearing, or any other activity that would substantially disturb or impair the natural fauna, flora, water courses, water regimen, woodlands, or topography:

- a) Farming and related agricultural uses, not including the erection of buildings or structures.
- b) The harvesting of any wild crops such as marsh hay, ferns, moss, berries, tree fruits and tree seeds.
- c) Grazing.
- d) Forest and game management, and sustained yield forestry.
- e) Hunting and fishing, unless prohibited by other ordinances or laws.
- f) Navigation and boat landing sites.
- g) Swimming beaches.
- h) Wilderness areas and wildlife preservation and refuges.
- i) Hiking and nature trails.
- j) Telephone, telegraph and power transmission lines.

The following uses are permitted in this district:

Maintenance, repair, replacement, reconstruction or new construction of town, county and state streets, highways and bridges, and normal driveway construction and related bridges that are necessary in order to provide access to a property or structure, including limited excavating and filling as necessary, provided such facilities are deemed essential or provided that failure of existing streets, driveways and bridges would endanger public health or safety and the proposed project has received all the necessary approvals and/or permits from the Army Corps of Engineers and/or the Wisconsin Department of Natural Resources. Wisconsin

Department of Natural Resources and Army Corps of Engineer permits must be obtained for all private driveways and bridges located in the wetland.

- (2) Conditional Uses. Commercial and Residential Ponds et. al.
- (3) Area, Height and Yard Requirements. None.
- (4) **Structures & Buildings.** None permitted, except as authorized by this section or unless accessory to the principal use and a conditional use permit for the structure or building has been approved. No structure or building shall be utilized for human habitation.

(b) **Building Location.**

See Section 13-2-10.