

**ARTICLE 5  
SPECIFIC PROCEDURAL REQUIREMENTS**

**Divisions**

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**DIVISION 1  
ZONING CODE AMENDMENT**

**490-300 Generally**

From time to time, it may be necessary or desirable to amend the text of this chapter and the zoning map. This division describes the procedures and requirements to amend this chapter and the zoning map.

**490-301 Initiation**

- A. Text amendment.** An amendment to the text of this chapter may be initiated by (1) any property owner in the City, (2) the Common Council or any Alderperson, (3) the Mayor, (4) the Plan Commission or any member of the commission, (5) the Zoning Board of Appeals or any member of the board; and (6) the zoning administrator.
- B. Map amendment (rezoning).** An amendment to the zoning map may be initiated by (1) the owner of the property to be affected, (2) the Common Council or any Alderperson, (3) the Mayor, (4) the Plan Commission or any member of the commission, (5) the Zoning Board of Appeals or any member of the board; and (5) the zoning administrator.

~~Any of the following may submit an application to amend the text of this chapter or the zoning map:~~

- ~~(1) a property owner in the area to be affected by the proposed amendment;~~
- ~~(2) the Common Council, or any member of the council;~~
- ~~(3) the Plan Commission, or any member of the commission;~~

~~(4) the Zoning Board of Appeals, or any member of the board; and~~

~~(5) the Zoning Administrator.~~

**490-302 Review procedure [1]**

The general steps outlined below describe the process for reviewing an application to amend the zoning regulations, including the zoning map.

- 1. Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent ~~may/must~~ **may** meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
- 2. Submittal of application materials.** The applicant submits a complete application to the Zoning Administrator along with the application fee as may be established by the Common Council.
- 3. Distribution to Department of Natural Resources.** If the proposed amendment would revise ~~floodplain or the~~ shoreland-wetland regulations in this chapter, the Zoning Administrator sends a copy of the application to the regional office of the Wisconsin Department of Natural Resources within 5 workdays of receipt.
- 4. Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

General Flowchart for **Zoning Code Amendment**



- 5. Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
- 6. General notice by type of application.** If a proposed amendment would revise the text of this chapter, the Zoning Administrator provides for (i) a class 2 public notice, (ii) distribution list notice, and (iii) meeting agenda notice consistent with Article 4. If a property owner initiates a proposed amendment that would revise the zoning map, the Zoning Administrator provides for (i) class 2 public notice, (ii) property owner notice, (iii) distribution list notice, and (iv) meeting agenda

notice consistent with Article 4. If the City initiates a proposed amendment that would revise the zoning map, the Zoning Administrator provides for (i) class 2 public notice, (ii) distribution list notice, and (iii) meeting agenda notice consistent with Article 4.

7. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any other person upon request.
8. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission City staff to conduct additional research and prepare such documents it deems necessary, including a preliminary decision document.
9. **Plan Commission recommendation.** After considering the public comments received at the public hearing and the staff report, if any, the Plan Commission makes a recommendation to the Common Council based on the decision criteria in this division to (i) approve the amendment, (ii) approve the amendment with conditions, or (iii) deny the amendment.
10. ~~**Preparation of ordinance.** If the Plan Commission recommends approval, the City Attorney drafts an ordinance.~~
11. ~~**Common Council meeting with first reading.** Allowing for proper notice, the Common Council conducts a first reading of the ordinance, as drafted, at a regular or special meeting.~~
12. ~~**General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Common Council.~~
13. **Common Council meeting with second reading.** Allowing for proper notice, the Common Council considers the application at a regular or special meeting.
14. **Decision.** The Common Council after considering the Plan Commission's recommendation makes a decision, based on the decision criteria in this division, to (i) approve the amendment, (ii) approve the amendment with conditions, or (iii) deny the amendment.
15. **Required vote with downzoning.** An amendment must be approved by at least two-thirds of the members-elect if the amendment would decrease the development density of the land to be less dense than was allowed under its previous usage or that would reduce the number of permitted uses of the land to fewer uses than were allowed under its previous usage. If the property owner requests or agrees to the downzoning, the ordinance may be enacted by a simple majority of the members-elect.<sup>[2]</sup>
16. **Required vote with protest of airport.** If a proposed amendment would make any change in an airport affected area, as defined under § 62.23 (6)(am)1.b., Wis. Stats., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment, no ordinance which makes such change may be approved except by the affirmative vote of two-thirds of the members of the Common Council present and voting.<sup>[3]</sup>
17. ~~**Preparation of decision document.** If the Common Council approves the proposed amendment, the Zoning Administrator City Attorney prepares a final ordinance for signature.~~
18. **Applicant notification.** Within a reasonable time following the Common Council's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.
19. **Notification to Department of Natural Resources.** If the proposed amendment is approved and modifies the  ~~floodplain-shoreland-wetland~~ regulations in this chapter, the Zoning Administrator sends a copy of the ordinance to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email within 10 calendar days of the date of ~~the~~ decision.

20. **Preparation of new zoning map.** If the proposed amendment is approved and modifies the zoning map, a new zoning map is prepared consistent with Article 6.

**Editorial notes:**

[1] See § 62.23 (7)(d), Wis. Stats.

[2] See § 66.10015 (3), Wis. Stats.

[3] See § 62.23 (7)(d)(2m), Wis. Stats.

#### 490-303 Effective date of adopted ordinance

- A. ~~Generally.~~** An adopted ordinance shall take effect as prescribed in state law.
- B. ~~Exceptions.~~** ~~An amendment involving floodplain regulations does not become effective until it is reviewed and approved by the regional office of the Wisconsin Department of Natural Resources. An amendment that modifies official floodplain zoning maps, floodway lines, or water surface profiles does not become effective until it is reviewed and approved by the Federal Emergency Management Agency.~~

#### 490-304 Basis of decision

- A. Generally.** The adoption of a zoning code, along with any amendments to it, is a legislative action taken within parameters established by state statutes, federal law, and court rulings. To help guide the review of a proposed code amendment, various factors are listed below which can be used to the extent deemed appropriate in exercising the City's legislative discretion.
- B. Text amendment.** If a proposed amendment would revise the text of this chapter, the Plan Commission, in making its recommendation, and the Common Council, in making its decision, should consider the following factors, as applicable:
- (1) whether the amendment is consistent with the City's comprehensive plan;
  - (2) whether the amendment is consistent with other planning documents adopted by the Common Council;
  - (3) whether this chapter with the amendment is internally consistent;
  - (4) whether the amendment is the least restrictive approach to address issues of public health, safety, and welfare;
  - (5) the extent to which the text amendment will likely create new nonconforming uses and structures;
  - (6) if the proposed amendment relates to shoreland-wetland regulations, whether the chapter as amended complies with § 62.231, Wis. Stats.; Ch. NR 117, Wis. Admin. Code; and other state laws;
  - (7) whether the proposed amendment is needed to comply with a new or revised state or federal law; and
  - (8) any other factor not specifically or generally listed but deemed appropriate by the Plan Commission or Common Council given the circumstances.
- C. Zoning map amendment.** If a proposed amendment would revise the zoning map, the Plan Commission, in making its recommendation, and the Common Council, in making its decision, should consider the following factors, as applicable:
- (1) whether the amendment is consistent with the City's comprehensive plan, including future land use maps or similar maps;
  - (2) whether the amendment is consistent with other planning documents adopted by the Common Council;
  - (3) the extent to which the amendment will or will likely increase or decrease the number of nonconforming uses and structures; and

- (4) any other factor not specifically or generally listed but deemed appropriate by the Plan Commission or Common Council given the circumstances.

**D. Special review criteria for amendments to the shoreland-wetland overlay district boundary.** To ensure this chapter remains consistent with the shoreland protection objectives of § 281.31, Wis. Stats., the Common Council 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 wetland functions:

- (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 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.

#### **490-305 Imposition of conditions**

- A. Generally.** The Plan Commission may recommend, and the Common Council may impose, one or more conditions of approval deemed necessary to grant approval.
- B. Mandatory conditions of approval relating to certain existing land uses.** If a property owner applies for a zoning map amendment and the current land use on the subject property is not permitted in the proposed zoning district, that use must be removed as a condition of approval. If the existing land use is considered a conditional use in the proposed zoning district, the property owner must, as a condition of approval, submit a conditional use application and obtain approval for that land use. If conditional use approval is not granted, the use must be removed as a condition of approval.

#### **490-306 Staff report content**

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division,
- (2) a preliminary recommendation for approval or denial,
- (3) a preliminary list of conditions for approval whether the preliminary staff recommendation is for approval or denial, and
- (4) other information deemed necessary.

#### **490-307 Appeal**

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of the final~~that~~ decision.

#### **490-308 through 490-324 reserved**

## DIVISION 2 PLANNED DEVELOPMENT DISTRICT

### 490-325 Generally

A planned development district allows for more flexibility in the development of land while ensuring substantial compliance with the intent of this chapter and the City's comprehensive plan. As further described in Article 8, the following may be reviewed as a planned development district:

- (1) conventional planned development district,
- (2) cottage housing project,
- (3) adaptive reuse project,
- (4) traditional neighborhood design (TND) project, and
- (5) conservation subdivision.

### 490-326 Development agreement

If a planned development district is established pursuant to this division, the City and developer may enter into a development agreement that specifies the duties and obligations of both parties with respect to the development project.

### 490-327 Coordination with land division requirements

If the project involves a land division, the developer must submit a preliminary plat or a certified survey map as set forth in Chapter 478 of the municipal code at the same time the general development plan is submitted for review. This requirement is intended to ensure the project as intended will be able to comply with all applicable land division requirements. Review of the preliminary plat or certified survey map will occur as a separate action

### 490-328 Implementation schedule and project phasing

- A. Application materials.** If project phasing is proposed, the applicant must include with the application a proposed implementation schedule identifying the anticipated commencement and completion dates for each phase, along with any related details necessary to evaluate the timing and coordination of the overall development.
- B. Development agreement.** Depending on the nature of the project, the development agreement should incorporate an implementation schedule and address project phasing as appropriate.

### 490-329 Review procedure

Establishment of a planned development district involves a two-step process. The review of a proposed project begins with a general development plan. If the general development plan is approved (i.e., an ordinance is adopted), a final development plan for all or a part of the project is reviewed. If the final development plan is approved, the project is officially approved. The general steps outlined below describe the process for reviewing an application for a planned development district.

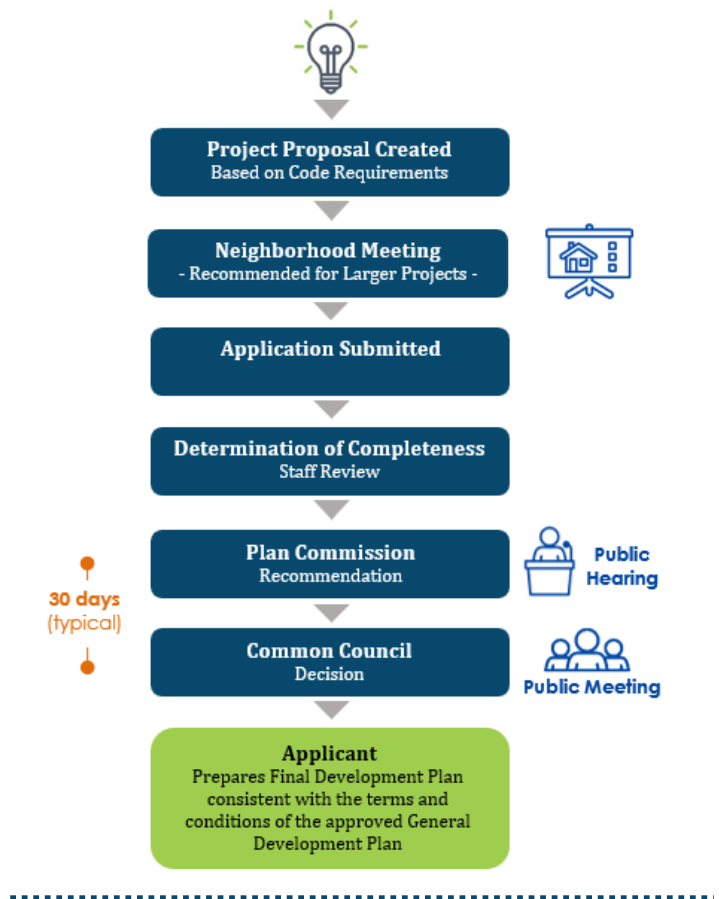
#### Step One – General Development Plan

1. **Neighborhood meeting.** Before submitting an application, the applicant or the applicant's agent should hold a neighborhood meeting as described in Article 4.
2. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent **may/must may** meet with the Zoning Administrator and other City staff, as

appropriate, to review the proposal, along with applicable regulations and review procedures.

3. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
4. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
5. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission’s meeting schedule.
6. **General notice.** Consistent with Article 4, the Zoning Administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
7. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
8. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct City staff to conduct additional research related to the proposed district.
9. **Staff follow-up.** After the close of the public hearing, the Plan Commission may direct the Zoning

General Flowchart for General Development Plan



Administrator to prepare a preliminary decision document.

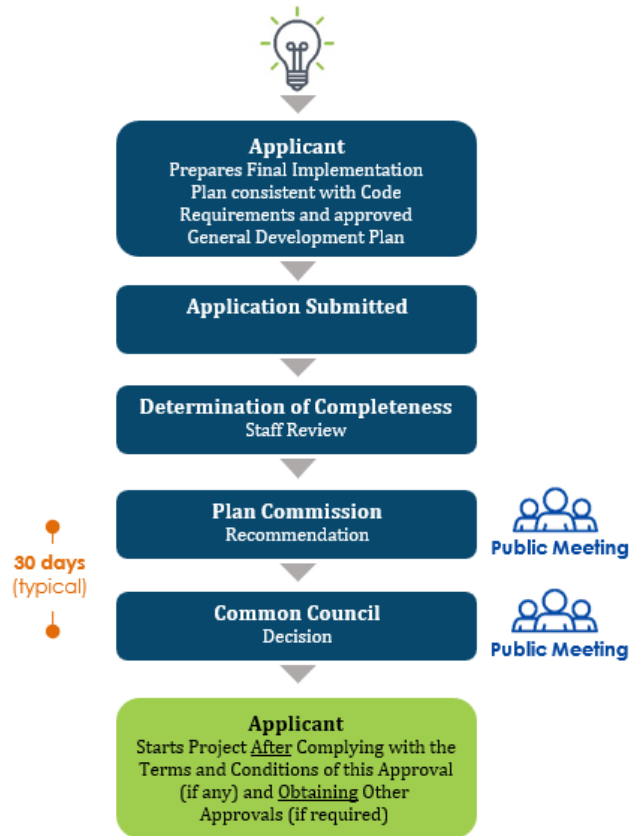
10. **Plan Commission recommendation.** The Plan Commission makes a recommendation to the Common Council based on the decision criteria in this division to (i) approve the general development plan, subject to approval of a final development plan; (ii) approve the general development plan with conditions, subject to approval of a final development plan; or (iii) deny the general development plan.
11. **Preparation of ordinance.** If the Plan Commission recommends approval, the City Attorney drafts an ordinance.
12. **Common council meeting with first reading.** Allowing for proper notice, the Common Council conducts a first reading of the ordinance, as drafted, at a regular or special meeting.
13. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Common Council.
14. **Common Council meeting with second reading.** Allowing for proper notice, the Common Council considers the application at a regular or special meeting.
15. **Decision.** The Common Council after considering the Plan Commission's recommendation makes a decision, based on the decision criteria in this division, to (i) approve the general development plan, subject to approval of a final development plan; (ii) approve the general development plan with conditions, subject to approval of a final development plan; or (iii) deny the general development plan.
16. **Preparation of decision document.** If the Common Council approves the general development plan ~~is approved~~, the ~~Zoning Administrator~~City Attorney prepares a final ordinance for signature.
17. **Applicant notification.** Within a reasonable time following the Common Council's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

### Step Two – Final development plan

1. **Submittal of final development plan.** The applicant submits a final development plan and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council. At the discretion of the applicant, such materials may be submitted concurrently with the review of the general development plan.
2. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
4. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.

5. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division that evaluates whether the final development plan is consistent with the approved general development plan and the suitability of the proposed plan given the additional information provided in the plan and supplemental materials. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **Meeting.** Allowing for proper notice, the Plan Commission reviews the final development plan and the staff report, if any.
7. **Determination of consistency.** The Plan Commission determines whether the final development plan is generally consistent with the approved general development plan with respect to density/intensity and permissible land uses. If the Plan Commission determines that the final development plan is not generally consistent, the Plan Commission shall render that decision in writing and take no further action on the final development plan.
8. **Plan Commission recommendation.** If the final development plan is deemed to be consistent with the general development plan, the Plan Commission makes a recommendation to the Common Council based on the decision criteria in this division to (i) approve the final development plan, (ii) approve the final development with conditions, or (iii) deny the final development plan.
9. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Common Council.
10. **Common Council meeting.** Allowing for proper notice, the Common Council considers the application at a regular or special meeting.
11. **Decision.** The Common Council after considering the Plan Commission's recommendation makes a decision, based on the decision criteria in this division, to (i) approve the final development, (ii) approve the final development plan with conditions, or (iii) deny the final development plan.
12. **Preparation of decision document.** Based on the action of the Common Council, the Zoning Administrator prepares a decision document consistent with this division.
13. **Applicant notification.** Within a reasonable time following the Common Council's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

General Flowchart for Final Development Plan



**490-330 Basis of decision**

- A. General development plan.** The review of a general development plan for a proposed planned development district is a legislative action carried out within the framework of this code, applicable state statutes, federal law, and relevant court decisions. To help guide this review, a set of factors is provided below. These factors may be considered, as appropriate, in the exercise of the City's legislative discretion.
- (1) whether development in the proposed project is in keeping with the spirit and intent of this chapter;
  - (2) whether development in the proposed project is consistent with the City's comprehensive plan;
  - (3) whether development in the proposed district is consistent with a neighborhood plan or other subarea plan that may have been prepared for land in or near the proposed district;
  - (4) the effects of development in the proposed project on traffic safety and efficiency, both within and outside of the district;
  - (5) whether the proposed plan for development in the proposed project is properly planned and is properly coordinated with the existing and anticipated land uses on properties in the immediate and surrounding area;
  - (6) the extent to which the natural features and open space on the site are preserved;
  - (7) whether development in the proposed project complies with provisions of this chapter and other land development regulations of the City that may apply;
  - (8) the effects of development in the proposed project on public services and facilities;
  - (9) whether adequate water and sanitary sewer facilities can be provided;
  - (10) the proposed means of maintaining any undeveloped areas of the proposed project for the purpose for which it was set aside;
  - (11) effects of the proposed use on surrounding properties, including existing and anticipated uses;
  - (12) effects of the proposed use on the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district and adjoining districts; and
  - (13) any other factor that relates to the purposes of this chapter set forth in § 46-05 or as allowed by state law.
- B. Final development plan.** If the Common Council approves a general development plan, the Plan Commission in their review of the final development plan should consider the factors listed below.
- (1) Whether the final development plan is consistent with the approved general development plan.
  - (2) Whether the final development plan is consistent with the standards in Article 9.
  - (3) Whether the final development plan is consistent with the approved phasing and development timing.
  - (4) Whether the final development plan is consistent with the development standards in this code as applicable.

**490-331 Imposition of conditions**

- A. Generally.** The Plan Commission may recommend, and the Common Council may impose, conditions of approval deemed necessary to grant approval. Such conditions may relate to any

of the factors it considered in reaching its decision. In addition, the Plan Commission may recommend and the Common Council may require the provision of off-site exactions that may be necessary to approve the establishment of the planned development district project.

- B. Effect on contracts with another party.** The Common Council may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-332 Staff report content

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division,
- (2) a preliminary recommendation for approval or denial,
- (3) a preliminary list of conditions for approval whether the preliminary staff recommendation is for approval or denial, and
- (4) other information deemed necessary.

#### 490-333 Effect of approval

The approval of a planned development district runs with the land and is binding on all future ~~subsequent~~ property owners.

#### 490-334 Effect of approved planned development district on land division standards

Development in a planned development district is subject to the City's land division regulations to the extent applicable, except that the Plan Commission or Common Council may waive a development standard in the land division regulations as provided therein.

#### 490-335 Amendment of an approved general development plan

A general development plan may be amended by following the review procedures in effect at the time of application.

#### 490-336 Amendment of an approved final development plan

- A. Generally.** The property owner may submit an application to propose a change to a previously issued approval for a final development plan.
- B. Minor ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a minor alteration~~, the Administrator is authorized to review and act on the petition with notice to the Plan Commission.
- C. Major ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a major alteration~~, the review procedure in effect at the time of submittal must be followed.

#### 490-337 Expiration of an approval

If any portion of a planned development district that can be developed remains substantially undeveloped 5 years after the date of the final approval required for completion of the project, the Common Council may rescind the approval, in whole or in part, following a public hearing with a 30-day notice to the property owner. Upon petition and with cause, the Common Council may grant a

one-time extension, not to exceed 2 years.<sup>[1]</sup> If the Common Council rescinds an approval, undeveloped lands in the district must be reclassified based on the zoning regulations in effect at that time. Developed portions of the planned development district may either be allowed to retain the planned development district designation or reclassified based on the zoning regulations in effect at that time.

**Editorial notes:**

[1] See § 66.10015 (5)23 (7)(gm), Wis. Stats.

#### 490-338 Appeal

- A. General development plan.** An aggrieved person may appeal the Common Council's decision for the general development plan by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the~~that decision.
- B. Final development plan.** An aggrieved person may appeal the Plan Commission's decision for the final development plan by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the~~that decision.

490-339 through 490-349 reserved

### DIVISION 3 DESIGNATION OF HISTORIC OVERLAY DISTRICT

#### 490-350 Generally

The Historic Preservation Commission may propose geographically defined areas within the City to be designated as historic overlay districts and shall, with the assistance of the Plan Commission, prepare a historic preservation plan in ordinance form for each area.

#### 490-351 Preservation plans

- A. Criteria.** Guideline criteria to be considered in the development of historic district plans are as follows:
  - (1) Regulation of construction, reconstruction, alteration and demolition shall conform to the criteria and standards in Article 20.
  - (2) All new structures shall be constructed to a height visually compatible with the building and environment with which they are visually related.
  - (3) The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related.
  - (4) In the street elevation of a building, the proportion between the width and height in the facade shall be visually compatible with the building and environment with which it is visually related.
  - (5) The proportions and relationships between doors and windows in the street facade should be visually compatible with the buildings and environment with which it is visually related.
  - (6) The rhythm of solids to voids, created by openings in the facade, should be visually compatible with the buildings and environment with which it is visually related.
  - (7) The existing rhythm created by existing building masses and spaces between them should be preserved.

- (8) The materials used in the final facade should be visually compatible with the buildings and environment with which it is visually related.
- (9) The texture inherent in the facade should be visually compatible with the buildings and environment with which it is visually related.
- (10) Colors and patterns used on the facade (especially trim) should be visually compatible with the buildings and environment with which it is visually related.
- (11) The design of the roof should be visually compatible with the buildings and environment with which it is visually related.
- (12) The landscape plan should be sensitive to the individual building, its occupants and their needs. Further, the landscape treatment should be visually compatible with the buildings and environment with which it is visually related.
- (13) The street facade should blend with other buildings via directional expression. When adjacent buildings have a dominant horizontal or vertical expression, this expression should be carried over and reflected.
- (14) Architectural elements should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of the area.

In addition to the above, the Historic Preservation Commission may also refer to any guidelines promulgated by the Secretary of the Interior.

- B. Analysis.** Each historic preservation plan prepared for or by the Historic Preservation Commission must include (1) a cultural and architectural analysis supporting the historic significance of the area, (2) the specific guidelines for development, and (3) a statement of preservation objectives.

#### 490-352 Review procedure

The general steps outlined below describe the process for reviewing an application to create a historic overlay district.

1. **Submittal of application materials.** The applicant submits a complete application to the Zoning Administrator along with the application fee as may be established by the Common Council.
2. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
3. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Historic Preservation Commission consistent with the commission's meeting schedule.
4. **Special notice to owners.** The Zoning Administrator sends a notice to all property owners within the proposed district.
5. **General notice for Historic Preservation Commission public hearing.** Consistent with Article 4, the Zoning Administrator provides for (i) a class 1 public notice, (ii) property owner notice, and (iii) meeting agenda notice.

6. **Public hearing (Historic Preservation Commission).** Allowing for proper notice, the Historic Preservation Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or Historic Preservation Commission may request a continuance. If the public hearing is adjourned, the Historic Preservation Commission may direct City staff to conduct additional research and prepare any documents it deems necessary.
7. **Historic Preservation Commission recommendation.** After considering ~~all~~ the information submitted by the applicant and public comments received at the public hearing, the Historic Preservation Commission makes a recommendation to (i) approve the establishment of the district, (ii) approve the establishment of the district with conditions, or (iii) deny the establishment of the district.
8. **Plan Commission recommendation.** After considering the Historic Preservation Commission's recommendation, the Plan Commission makes a recommendation within 30 calendar days of the date of the commission's action to (i) approve the establishment of the district, (ii) approve the establishment of the district with conditions, or (iii) deny the establishment of the district.
9. Preparation of ordinance. If the Plan Commission recommends approval, the City Attorney drafts an ordinance.
10. Common Council meeting with first reading. Allowing for proper notice, the Common Council conducts a first reading of the ordinance, as drafted, at a regular or special meeting.
- 11.
12. **General notice for Common Council public hearing.** Notice for the public hearing by the Common Council must be provided as described in steps 4 and 5 above.
13. **Second public hearing (Common Council).** Allowing for proper notice, the Common Council conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or Historic Preservation Commission may request a continuance. If the public hearing is adjourned, the Common Council may direct City staff to conduct additional research and prepare any documents it deems necessary.
14. **Decision.** After considering the public comments received at the public hearing, the staff report, if any, and the recommendations of the Historic Preservation Commission and the Plan Commission, the Common Council makes a decision, based on the decision criteria in this division, to (i) approve the establishment of the district, (ii) approve the establishment of the district with conditions, or (iii) deny the establishment of the district.
15. Preparation of decision document. Based on the action of the Common Council, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Common Council. If the Common Council approves the establishment of the historic overlay district, the City Attorney prepares a final ordinance for signature.
16. **Applicant notification.** If the historic overlay district is approved, the Zoning Administrator sends the decision document to all property owners within the historic overlay district by regular mail.
17. **Administrative steps.** If the historic overlay district is approved, a new zoning map is prepared consistent with Article 6.

#### 490-353 Basis of decision

The Historic Preservation Commission and Plan Commission, in making their recommendations, and the Common Council, in making its decision, must determine whether the proposed district:

- (1) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, or community;
- (2) is identified with historic personages or with important events in national, state, or local history;

- (3) embodies the distinguishing characteristics of architectural types or specimens inherently valuable for the study of a period or periods, styles, methods, or construction, or of indigenous materials or craftsmanship;
- (4) is representative of the notable works of master builders, designers, or architects who influenced their age; or
- (5) has yielded, or may be likely to yield, information important to history or prehistory.

#### 490-354 Interim control

The Building Inspector may not issue a building permit for the alteration, construction, demolition, or removal of a property or structure within a nominated historic overlay district from the date of the meeting of the Historic Preservation Commission at which a nomination form is first presented until the final disposition of the nomination, unless the alteration, removal, or demolition is authorized by resolution of the Common Council as necessary for public health, welfare or safety. The delay may not exceed 180 days.

#### 490-355 Appeal

An aggrieved person may appeal the Common Council's decision by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the~~that decision.

490-**356** through 490-374 reserved

## DIVISION 4 DESIGNATION OF HISTORIC STRUCTURE AND SITE

#### 490-375 Review procedure

The general steps outlined below describe the process for reviewing an application to designate a historic structure or site and rescind such designation.

1. **Pre-application meeting.** Before submitting an application, the applicant or their agent ~~may/must~~may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a complete application to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Historic Preservation Commission consistent with the commission's meeting schedule.

5. **Special notice.** The Historic Preservation Commission must notify the following of the pending application: department of public works, parks division, fire and police departments, health department, if any, Building Inspector, and Plan Commission. Each department may respond to the commission with its comments on the proposed designation or rescission.
6. **General notice.** Consistent with Article 4, the Zoning Administrator provides for (i) a class 1 public notice, (ii) property owner notice, and (iii) meeting agenda notice.
7. **Public hearing by Historic Preservation Commission.** Allowing for proper notice, the Historic Preservation Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or commission may request a continuance. If the public hearing is adjourned, the Historic Preservation Commission may direct City staff to conduct additional research and prepare any documents it deems necessary. The Historic Preservation Commission may hear expert witnesses and shall have the power to subpoena any witnesses and records it deems necessary.
8. **Independent investigation.** The Historic Preservation Commission may conduct an independent investigation into the proposed designation or rescission.
9. **Decision.** After considering ~~all of~~ the information submitted by the applicant, public comments received at the public hearing, the Historic Preservation Commission makes a decision to (i) approve the designation/recession of the historic structure or site, (ii) approve the designation/recession of the historic structure or site with conditions, or (iii) deny the designation/recession of the historic structure or site.
10. **Preparation of decision document.** Based on the action of the Historic Preservation Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Commission.
11. **Applicant notification.** Within a reasonable time following the Historic Preservation Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.
12. **Administrative actions.** If the application for a designation or recession is approved, the Zoning Administrator sends the decision document to the City Clerk, Building Inspector, Plan Commission, assessor for the City, and others as appropriate.
13. **Recording of decision document.** If the application for a designation or recession is approved, the decision document is recorded, at the City's expense, in the register of deeds office for Ozaukee County.

#### 490-376 Basis of decision

The Historic Preservation Commission, in making its decision, must determine whether the historic site or structure:

- (1) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, or community;
- (2) is identified with historic personages or with important events in national, state, or local history;
- (3) embodies the distinguishing characteristics of architectural types or specimens inherently valuable for the study of a period or periods, styles, methods, or construction, or of indigenous materials or craftsmanship;
- (4) is representative of the notable works of master builders, designers, or architects who influenced their age; or
- (5) has yielded, or may be likely to yield, information important to history or prehistory.

**490-377 Interim control**

The Building Inspector may not issue a building permit for the alteration, construction, demolition, or removal of a property or structure from the date of the meeting of the Historic Preservation Commission at which a nomination form is first presented until the final disposition of the nomination, unless the alteration, removal, or demolition is authorized by resolution of the Common Council as necessary for public health, welfare, or safety. The delay may not exceed 180 days.

**490-378 Appeal**

An aggrieved person may appeal the Common Council's decision by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the~~that decision.

**490-379 through 490-399 reserved**

## DIVISION 5 CONDITIONAL USE

**490-400 Generally**

Although each zoning district is primarily intended for a predominant type of land use, there are a number of uses that may be appropriate under certain conditions. These are referred to as conditional uses. This division describes the requirements and procedures for reviewing a conditional use, including an amendment of an approved conditional use.

**490-401 Applicability and restrictions**

- A. General applicability.** Those land uses designated as a conditional use in the land use matrix (Appendix A) must comply with the requirements in this division.
- B. Limitation due to nonconforming lot.** If an existing lot is considered a nonconforming lot (e.g., due to lot area or lot width), conditional uses are not allowed unless the Plan Commission determines, on a case-by-case basis, that the specific nonconformity does not impact the lot's suitability for the proposed conditional use. A favorable determination does not influence or predetermine the Common Council's ultimate decision on the conditional use application under this division.
- C. Limitation due to a nonconforming use on the lot.** If an existing lot has a nonconforming use, conditional uses are not allowed, unless the Plan Commission determines, on a case-by-case basis, the non-conforming use and the proposed conditional use are compatible. A favorable determination does not influence or predetermine the Common Council's ultimate decision on the conditional use application under this division.
- D. Limitation due to existing conditional use on the lot.** If an existing lot has an approved conditional use, all other conditional uses are not allowed, unless the Plan Commission determines, on a case-by-case basis, that the existing and proposed conditional uses are compatible. A favorable determination does not influence or predetermine the Common Council's ultimate decision on the conditional use application under this division.

**490-402 Review procedure**

The general steps outlined below describe the process for reviewing an application for a conditional use.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent ~~may/must~~may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.

- 2. **Neighborhood meeting.** If the scope of the project is comparatively large or the proposed use has the potential of affecting other properties in the area, the applicant should conduct a neighborhood meeting as described in Article 4.
- 3. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
- 4. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
- 5. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission’s meeting schedule.

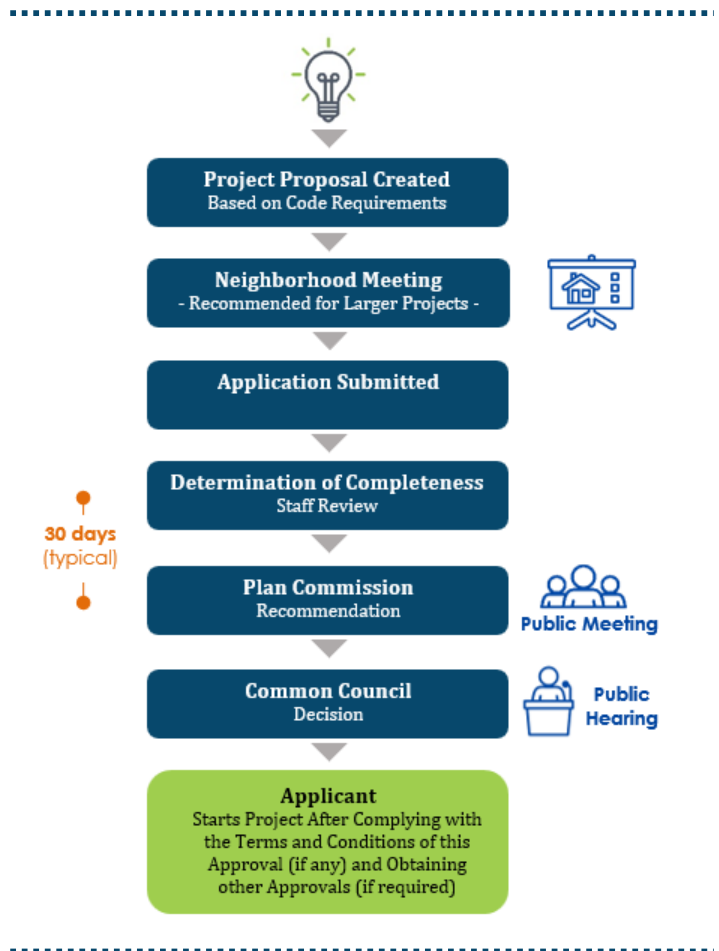
6. **Staff report preparation and distribution.**  
 The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.

7. **Plan Commission recommendation.** The Plan Commission makes a recommendation to (i) approve the conditional use, (ii) approve the conditional use with conditions, or (iii) deny the conditional use.

8. **General notice.** Consistent with Article 4, the Zoning Administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.

9. **Public hearing.** Allowing for proper notice, the Common Council conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Common Council may request a continuance. If the public hearing is adjourned, the Common Council may direct City staff to conduct additional

General Flowchart for Conditional Use



research and prepare such documents it deems necessary, including a preliminary decision document.

10. **Staff follow-up.** After the close of the public hearing, the Common Council may direct the Zoning Administrator to prepare a preliminary decision document.
11. **Decision.** The Common Council after considering the Plan Commission's recommendation makes a decision, based on the decision criteria in this division, to (i) approve the conditional use; (ii) approve the conditional use; or (iii) deny the conditional use.
12. **Preparation of decision document.** Based on the action of the Common Council, the ~~Zoning Administrator~~ City Attorney prepares a decision document consistent with this division and any direction provided by the Common Council.
13. **Applicant notification.** Within a reasonable time following the Common Council's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.
14. **~~Acceptance by property owner~~ Preparation of land covenant.** If the application is approved, the City Attorney prepares a land covenant. The property owner must sign the ~~same decision document~~ to acknowledge the terms of the approval and return the same to the Zoning Administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the Zoning Administrator requesting an extension and the Zoning Administrator may, with cause, extend the period within which the ~~decision~~ document must be signed. If the signed ~~decision~~ document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the City at the expiration of such time limit.
15. **Recording of ~~decision document~~ land covenant.** If the property owner returns the ~~decision-land covenant~~ document within the required time period with the required signatures, the ~~decision~~ document is recorded against the subject property in the register of deeds office for Ozaukee County.

#### 490-403 Basis of decision

The Plan Commission, in making its final recommendation, and the Common Council, in making its decision, should consider whether the proposal complies with:

- (1) the standard conditions of approval set forth in § 490-405,
- (2) each of the special conditions of approval set forth in § 490-406,
- (3) each of the performance standards set forth in Article 17,
- (4) each of the development standards prescribed for the requested conditional use,
- (5) all other applicable sections of the zoning code, and
- (6) all other applicable sections of the municipal code.

In addition, the Plan Commission and Common Council must ensure compliance with the following standards:

- (1) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or welfare of the City.
- (2) The uses, values, and enjoyment of other property in the surrounding area that are already permitted shall be, in no foreseeable manner, substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- (3) The establishment, maintenance, or operation of the conditional use is compatible with surrounding properties, whether in the same or different zoning districts. In making this

determination, the Plan Commission and Common Council must determine whether the petitioner has demonstrated there are no adverse effects on surrounding properties or that potentially adverse effects have been eliminated or reduced to an acceptable level. Approaches that could be employed to mitigate potentially adverse effects will depend on the circumstances but may include (i) adjusting the location of the use, or parts thereof, on the subject property; (ii) limiting hours of operation; (iii) limiting the size or scope of the use, or parts thereof; (iv) controlling how the use is managed on an on-going basis; (v) providing additional landscaping; (vi) providing additional screening; and (vii) limiting operations conducted out-of-doors, if otherwise allowed.

- (4) The establishment, maintenance, or operation of the conditional use will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted within the district and/or which are consistent with the standards in the comprehensive plan.
- (5) Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made to accommodate the use.
- (6) Adequate measures have been taken or will be taken providing ingress and egress to minimize traffic congestion on public streets so as not to diminish the level of service of any intersection which is impacted by traffic arising from the conditional use.

In making such determination, the personal experience of surrounding property owners may be considered substantial evidence to the extent deemed appropriate.

#### **490-404 Effect of comprehensive plan**

While § 66.1001 (2m)(b), Wis. Stats., does not require that a conditional use be consistent with the City's adopted comprehensive plan, the City nevertheless encourages such consistency.

#### **490-405 Standard terms for an approved conditional use**

The terms and conditions listed below are automatically incorporated into a conditional use order authorizing a use, unless otherwise specifically stated in the approval.

- (1) Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the ~~Plan Commission~~Common Council for determination.
- (2) No use is hereby authorized unless the use is conducted in a lawful, orderly, and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to any law, ordinance, order or rule of either the municipal governing body, Ozaukee County, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein.
- (3) This conditional use order does not constitute a building permit or any license or other permit required by City ordinance or other law.
- (4) The approved conditional use shall be confined to the subject property described, without extension or expansion other than as noted herein, and may not vary from the purposes herein mentioned unless expressly authorized in writing by the Plan Commission as being in compliance with all pertinent ordinances.
- (5) The property shall comply with all rules and regulations of the City and the local fire department, including submission to routine inspections by the City staff and fire department staff.
- (6) Prior to the execution of the conditional use permit, the applicant must obtain any and all approvals that must be obtained before the use may be established or the commencement of any land-disturbing activity related to the approved conditional use.

- (7) Should the permitted conditional use be abandoned in any manner, or discontinued in use for 12 months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to the City, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Common Council, pursuant to the enforcement provisions of this conditional use order, and all applicable ordinances.
- (8) Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises, structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
- (9) Unless this conditional use order expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Plan Commission if the Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the Plan Commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
- (10) As a condition precedent to the issuance of the conditional use permit, the owner of the subject property must approve the ~~issuance of this conditional use order~~ and covenant upon the terms and conditions described herein in writing, and the petitioner is required to accept the terms and conditions of the same in its entirety in writing.
- (11) The petitioner must, on demand, reimburse the City for all costs and expenses of any type that the City incurs in connection with this application, including the cost of professional services incurred by the City (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the City is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.
- (12) Any unpaid bills owed to the City by the subject property owner or ~~his or her~~ their tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the City; shall be placed upon the tax roll for the subject property if not paid within 30 days of billing by the City, pursuant to § 66.0627, Wis. Stats. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the City, including possible cause for termination of this approval.
- (13) The petitioner must file with the City Clerk a current mailing address and current phone number at which the petitioner can be reached, which must be continually updated by the petitioner if such contact information should change, for the duration of the conditional use. If the petitioner fails to maintain such current contact information, the petitioner thereby automatically waives notice of any proceedings that may be commenced under this approval, including proceedings to terminate this conditional use.
- (14) All conditions of approval imposed by duly adopted motion of the ~~Plan Commission~~ Common Council in its consideration of the petitioner's application, as noted in the minutes of the ~~Plan Commission~~ Common Council meeting at which approval was granted, are specifically incorporated herein by reference.
- (15) Should any paragraph or phrase of this conditional use order be determined by a court of competent jurisdiction to be unlawful, illegal, or unconstitutional, said determination as to the

particular phrase or paragraph will not void the rest of the approval and the remainder shall continue in full force and effect.

- (16) If any aspect of this conditional use order or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the ~~Plan Commission~~ Common Council.
- (17) If the property owner/operator is a business entity, such as a limited liability company or a corporation, such entity shall for the life of the conditional use continuously maintain a registered office in the state of Wisconsin as evidenced by registration with the Wisconsin Department of Financial Institutions.
- (18) The property owner may not change the size and/or shape of the subject property by any means without the approval of the ~~Plan Commission~~ Common Council. If the ~~Plan Commission~~ Common Council determines that a proposed change is substantial with regard to the overall size of the parcel and/or configuration, such change shall require issuance of a new conditional use approval pursuant to the requirements in effect at the time of application.
- (19) This approval is given under the City's zoning code and is not to be, in any way, interpreted to abrogate any private rights other property owners may have pursuant to an easement or a deed restriction.
- (20) If this conditional use terminates for any reason, the property owner must remove equipment, buildings, structures, or any improvements specifically related to the conditional use and which cannot be utilized for an approved use (i.e., a use permitted by right or a different conditional use as approved).
- (21) In the event the subject property is found to be in violation and then brought into compliance, the Common Council reserves the right to impose periodic reviews to ensure continued compliance.
- (22) Following approval, the petitioner must comply with any requests for self-certification as described in § 490-~~413~~ 414.

**490-406 Special conditions of approval**

**A. Generally.** Based on substantial evidence, the Plan Commission may recommend, and the Common Council may impose one or more conditions of approval deemed necessary to grant approval. Conditions and restrictions may relate to the establishment, location, construction, maintenance, operation of the use, off-site impacts, and any other aspect of the use that impacts the public health, safety, or general welfare. Examples of such conditions may include, but are not limited to the following.

Issue	Potential condition
1. Hours of operation	Limit hours of operation to hours to be more compatible with surrounding uses.
2. Buffering	Require more of a buffer than what is otherwise required by this chapter. Buffering may include landscaping, walls or fences, berms, and other features to physically separate adjoining uses.
3. Maximum floor area	Establish a maximum floor area that may be less than what is otherwise allowed.
4. <u>Maximum lot coverage</u>	<u>Establish a maximum lot coverage that may be less than what is otherwise allowed.</u>
5. Maximum number of patrons	Limit the size of the use by establishing maximum patron loads, often by seats and/or tables.

6. Uses within buildings	Limit commercial uses to the first floor of a multistory building.
7. Number and/or location of entrances	Design the site and building so that entrances are located in areas away from adjoining properties.
8. Outdoor activity	Restrict locations and/or times of outdoor activity.
9. Outdoor storage	Establish a maximum area for outdoor storage that may be less than what is otherwise allowed.
10. Take-out food service	Prohibit drive-up service windows and/or walk-up service windows in certain areas of the property (e.g., near a residential use). If these are allowed, limitations could be set.
11. Delivery services	Prohibit delivery services that entail frequent trips or establish upper limits on the activity.
12. Signage	Prohibit signage in areas of the property that may cause an impact on surrounding areas.

**B. Limitation on imposing conditions.** A condition of approval may not lessen a development standard or other requirement in this chapter.

**C. Effect on contracts with another party.** The review authority may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-407 Financial guarantee

**A. Generally.** The Plan Commission may require a financial guarantee as set forth in Article 4 to remove a building, structure, or other improvement that may pose a hazard or nuisance after a conditional use has been terminated or abandoned, unless otherwise required by an applicable state law or administrative code provision. Any such financial guarantee must expressly state that it will remain in full force and effect for a period of at least 6 months after the City receives a written notice of an expiration or termination of the financial guarantee. The applicant must remove any equipment or structure placed or erected pursuant to a conditional use order that may pose a hazard or nuisance after the use has abandoned or revoked not less than 30 days prior to termination or expiration of the financial guarantee.

**B. Amount.** Unless specifically stated in the zoning code, the amount of the financial guarantee is based upon the estimated cost of the removal of the equipment, building or structure, or any other improvement plus 20 percent.

#### 490-408 Staff report content

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division,
- (2) a preliminary recommendation for approval or denial,
- (3) a preliminary list of conditions for approval whether the preliminary staff recommendation is for approval or denial, and
- (4) other information deemed necessary.

**490-409 Content of decision document**

- A. Approval.** If the application for a conditional use is approved, the decision document may include the following:
- (1) a statement that the conditional use is approved;
  - (2) a description of the conditional use;
  - (3) a description of where the conditional use will occur on the property;
  - (4) reasons for the decision based on the criteria listed in this division;
  - (5) conditions of approval that must be satisfied prior to the establishment of the conditional use, if any;
  - (6) conditions of approval that must be complied with during the life of the conditional use, if any;
  - (7) a statement indicating that the property owner must sign the decision document and return it to the Zoning Administrator to acknowledge acceptance of the same;
  - (8) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (9) a statement that an aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  - (10) a statement indicating the nature of the approval (i.e., personal to the property owner or runs with the land);
  - (11) other information the Common Council or Zoning Administrator deems appropriate;
  - (12) the signature of the Zoning Administrator; and
  - (13) the date of the decision.
- B. Denial.** If the application for a conditional use is denied, the decision document may include, but not necessarily be limited to, the following:
- (1) a statement that the conditional use is denied,
  - (2) a description of the project, including acreage and proposed use characteristics,
  - (3) reasons for the decision based on the criteria listed in this division,
  - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
  - (5) a statement that the decision may be appealed as provided for in this division,
  - (6) other information the Common Council or Zoning Administrator deems appropriate,
  - (7) the signature of the Zoning Administrator, and
  - (8) the date of the decision.

**490-410 Term for an approval**

- A. Generally.** A conditional use order authorizing a conditional use ~~has a 5-year term~~ runs with the land unless otherwise specified in the conditional use order.
- B. Change in term as part of renewal.** If a term is specified in a conditional use order (i.e., the approval is not permanent), the Plan Commission during the renewal process may revise the term to be a longer period (e.g., change renewal from 5 years to 10 years) or make the approval permanent (e.g., remove the renewal requirement from the order).

- C. Administrative renewal.** The order may describe an administrative renewal process to allow for streamlined renewal of the conditional use order with a provision that allows the Plan Commission to remove the conditional use order from administrative renewal if there are concerns with compliance with the conditional use order or concerns raised by the public about the applicant's operations. If the Plan Commission pulls the conditional use order from administrative renewal, the conditional use order will remain in effect while the Plan Commission provides due process to the applicant in reviewing the conditional use order and its potential renewal.

#### 490-411 Effect of approval

- A. Generally.** Unless otherwise specified in the conditional use order, approvals run with the land, subject to the applicable term.
- B. Temporary uses.** If a use is listed as a temporary use in the land use matrix (Appendix A) and is approved by the Plan Commission as a conditional use, the use may be re-established with the written approval of the Zoning Administrator if they determine that the use to be re-established is substantially the same as what was originally approved and that the approved use did not create any potentially adverse impacts on the public health, safety, or welfare.

#### 490-412 Expiration of an approval

- A. Commencement of work.** A conditional use approval automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced. Upon petition and with cause, the Zoning Administrator may grant a one-time extension of up to 12 additional months if (1) the property owner submits a written request to the Administrator before the original approval expires; (2) the property owner demonstrates that the failure to commence substantial work was due primarily to circumstances beyond their control; and (3) the project is in compliance with the zoning regulations in effect at the time the extension is requested.
- B. Completion of work.** If substantial work, as authorized by the approval, begins within the initial time period but fails to progress in good faith toward completion, the Zoning Administrator should initiate the process to terminate the approval as outlined in Division 19 of this article.
- C. Cessation.** If the Zoning Administrator determines that an approved conditional use has not been in operation for more than 12 consecutive months, they should begin the process to terminate the approval as outlined in Division 19 of this article.

#### 490-413 Amendment of an approved conditional use

- A. Generally.** The property owner may submit an application to propose a change to a previously issued approval for a conditional use.
- B. Minor alterationchange.** If the Zoning Administrator determines the proposed change to the approval is ~~a minor alteration~~, the Administrator is authorized to review and act on the petition with notice to the Plan Commission and Common Council.
- C. Major alterationchange.** If the Zoning Administrator determines the proposed change to the approval is ~~a major alteration~~, the review procedure in effect at the time of submittal must be followed.

#### 490-414 Post-approval compliance review

Following approval, the Plan Commission must conduct a compliance review with the applicant to determine whether the development or use is complying with the terms and conditions of the approval. The review must be conducted as soon as practicable after the one-year anniversary of the approval. As part of the review, the Plan Commission may waive any additional mandatory

compliance reviews upon a finding of compliance. If the development or use is not in compliance, the Plan Commission may establish a timeline for achieving compliance and require mandatory compliance reviews at intervals it deems appropriate.

#### 490-415 Self-certification

- A. Generally.** To ensure compliance with this zoning code and any conditions of approval, the Zoning Administrator may, from time to time, submit a written request to the property owner and, if different, the operator for information regarding the approved conditional use. Self-certification allows the property owner and operator the opportunity to identify and correct any aspect of their use that may not fully comply before the City initiates enforcement proceedings. The purpose of self-certification is to encourage accountability, streamline administrative oversight, and promote transparency and public trust.
- B. Nature of self-certification.** Submission of a self-certification does not prevent the City from initiating enforcement action it deems appropriate.
- C. Failure to comply.** If the property owner or operator fails to submit a self-certification response within the time period specified in the request, the City may initiate enforcement actions, including revocation, suspension of permits, or other remedies authorized under this zoning code or state law.

#### 490-416 Appeal

An aggrieved person may appeal the Common Councils decision by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the~~that decision.

#### 490-417 through 490-424 reserved

### DIVISION 6

#### WIRELESS TELECOMMUNICATION FACILITY – CLASS 1 COLLOCATION AND NEW TOWER

#### 490-425 Review procedure

The general steps outlined below describe the process for reviewing an application for a Class 1 collocation and a new telecommunication tower as designated in the land use matrix (Appendix A).

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent ~~may/must~~may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **General notice.** Consistent with Article 4, the Zoning Administrator provides for ~~(i) a class 2 public notice, (ii) property owner notice, and (iii)~~ meeting agenda notice.
6. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
7. ~~**Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with Article 4.~~
8. ~~**Staff follow-up.** If the Plan Commission does not render a decision immediately following the public hearing, the Plan Commission may direct the Zoning Administrator to prepare a preliminary decision document.~~
9. **Decision.** After considering ~~all of~~ the information submitted by the applicant, ~~public comments received at the public hearing,~~ and the staff report, if any, the Plan Commission makes a decision to (i) approve the application, (ii) approve the application with conditions, or (iii) deny the application.
10. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission.
11. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.
- ~~12. **Recording of decision document.** If the property owner returns the decision document within the required time period with the required signatures, the decision document is recorded against the subject property in the register of deeds office for Ozaukee County.~~

In the event an applicant believes the City has exceeded its authority as described in § 66.0404, Wis. Stats., and other such laws as may apply which may include 47 USCA § 1455, the applicant must notify the Zoning Administrator in writing and the reviewing authority reserves the right to reconsider the matter to ensure that applicable laws are followed.

#### 490-426 Application form

An application form for a Class 1 collocation and a new telecommunication tower must include ~~all of~~ the following information as appropriate:

- (1) The name and business address of, and the contact individual for, the applicant.
- (2) The location of the proposed tower or affected tower.
- (3) The location of the proposed mobile service facility.
- (4) If an application is to substantially modify an existing telecommunication tower, a construction plan which describes the proposed modifications to the tower, and equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
- (5) If an application is to construct a new telecommunication tower, a construction plan which describes the proposed tower and equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.

- (6) If an application is to construct a new telecommunication tower, an explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.

#### 490-427 Imposition of conditions

- A. Generally.** The reviewing authority may impose one or more conditions of approval deemed necessary to grant approval. Such conditions may relate to any aspect of the use that impacts the public health, safety, or general welfare, subject to subsection (B) below.
- B. Limitations.** The reviewing authority may not impose any of the following as a condition of approval:
  - (1) A requirement relating to environmental testing, sampling, or monitoring.
  - (2) A requirement relating to radio frequency emissions.
  - (3) A requirement to pay a reoccurring fee.
  - (4) A requirement that the structure or mobile service facility owner must provide space on or near the structure for the use of or by the City at less than the market rate, or to provide the City other services via the structure or facilities at less than the market rate.
  - (5) Limit the duration of the approval.
  - (6) A requirement that the applicant must indemnify or insure the City in connection with the political subdivision's exercise of its authority to approve the application.
  - (7) A requirement that the applicant must give the City the right 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 City or an entity in which the City has a governance, competitive, economic, financial, or other interest.

#### 490-428 Staff report content

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division,
- (2) a preliminary recommendation for approval or denial,
- (3) a preliminary list of conditions for approval whether the preliminary staff recommendation is for approval or denial, and
- (4) other information deemed necessary.

#### 490-429 Expiration of an approval

- A. Non-establishment.** If the Zoning Administrator determines that substantial work as authorized by the approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, they must initiate the process to terminate the approval pursuant to Division 19 of this article. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond ~~his or her~~their control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

- B. Cessation.** If the Zoning Administrator determines that a wireless telecommunication facility has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, they must initiate the process to terminate the approval pursuant to Division 19 of this article.

#### 490-430 Amendment of an approval

- A. Generally.** The property owner may submit an application to propose a change to a previously issued approval for a new tower or a Class 1 collocation.
- B. Minor alterationchange.** If the Zoning Administrator determines the proposed change to the approval is ~~a minor alteration~~, the Administrator is authorized to review and act on the petition with notice to the Plan Commission.
- C. Major alterationchange.** If the Zoning Administrator determines the proposed change to the approval is ~~a major alteration~~, the review procedure in effect at the time of submittal must be followed.

#### 490-431 Fees

- A. Professional service reimbursement.** Costs incurred by the City in obtaining legal, planning, engineering, and other technical and professional advice in connection with an application shall be charged to the applicant as set forth in § 490- (209).
- B. Limitation on fees.** The total of all fees, excluding professional service reimbursement, associated with the review of an application may not exceed the limits established by § 66.0404 (4)(d), Wis. Stats.

#### 490-432 Appeal

~~Within 30 calendar days of the final decision, an aggrieved person may appeal a final decision made pursuant to this division by filing an appeal in the circuit court of Ozaukee County.~~

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of that decision.

**490-433 through 490-449 reserved**

### DIVISION 7 WIRELESS TELECOMMUNICATION FACILITY – CLASS 2 COLLOCATION

#### 490-450 Review procedure

The general steps outlined below describe the process for reviewing an application for a Class 2 collocation as designated in the land use matrix (Appendix A).

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will

expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

4. **Decision.** The Zoning Administrator makes a decision on the application within 45 days of the date the application is deemed complete, unless the time is extended by the applicant. The decision must be stated in writing. If approval is not granted, the reasons must be stated.

In the event an applicant believes the City has exceeded its authority as described in § 66.0404, Wis. Stats., and other such laws as may apply which may include 47 USCA § 1455, the applicant must notify the Zoning Administrator in writing and the reviewing authority reserves the right to reconsider the matter to ensure that applicable laws are followed.

#### 490-451 Expiration of an approval

- A. **Non-establishment.** If the Zoning Administrator determines that substantial work as authorized by the approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, they must initiate the process to terminate the approval pursuant to Division 19 of this article. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond ~~his or her~~their control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Cessation.** If the Zoning Administrator determines that a wireless telecommunication facility has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, they must initiate the process to terminate the approval pursuant to Division 19 of this article.

#### 490-452 Amendment of an approval

Following approval, the Zoning Administrator will review proposed changes to an approval consistent with the requirements in this division.

#### 490-453 Fees

- A. **Professional service reimbursement.** Costs incurred by the City in obtaining legal, planning, engineering, and other technical and professional advice in connection with an application shall be charged to the applicant as set forth in § 490-209.
- B. **Limitation on fees.** The total of all fees, excluding professional service reimbursement, associated with the review of an application may not exceed the limits established by § 66.0404 (4)(d), Wis. Stats.

#### 490-454 Appeal

An aggrieved person may appeal a final decision made pursuant to this division by filing an administrative appeal with the Zoning Board of Appeals within 30 calendar days ~~of the date of the~~ ~~final~~ ~~that~~ decision.

**490-455 through 490-474** reserved

## DIVISION 8 WIND ENERGY SYSTEM REVIEW

### 490-475 Review procedure

The review of a wind energy system must follow the requirements set forth in Ch. PSC 128, Wis. Admin. Code and § 66.0401, Wis. Stats.

**490-476 through 490-499** reserved

## DIVISION 9 COMMUNITY LIVING ARRANGEMENT REVIEW

### 490-500 Generally

Community living arrangements are a special type of congregate housing that is regulated by state law, and which are allowed by right in certain zoning districts and with a discretionary review in others.<sup>[1]</sup> This division describes the requirements and procedures for reviewing a community living arrangement that is subject to a discretionary review.

**Editorial notes:**

[1] See § 62.23 (7)(i), Wis. Stats.

### 490-501 Review procedure

The general steps outlined below describe the process for reviewing an application for a community living arrangement that is subject to discretionary review.

1. **Pre-application meeting.** The applicant or their agent ~~may/must~~ may meet with the Zoning Administrator to and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **General notice.** Consistent with Article 4, the Zoning Administrator provides for (i) a class 2 public notice, (ii) property owner notice, and (iii) meeting agenda notice.

6. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
7. ~~**Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct City staff to conduct additional research and prepare any documents it deems necessary.~~
8. **Plan Commission decision.** After ~~the public hearing has been closed, considering the information submitted by the applicant, the staff report, if any,~~ the Plan Commission makes a decision to (i) approve the community living arrangement, (ii) approve the community living arrangement, or (iii) deny the community living arrangement.
9. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission.
10. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

#### 490-502 Basis of decision

The Plan Commission, in making its decision, must ensure compliance with the following standards:

- (1) The establishment of the community living arrangement will not be detrimental to or endanger the public health, safety or welfare of the City.
- (2) The establishment of the community living arrangement will not impair or diminish the uses, values, and enjoyment of other property in the surrounding area that are already permitted.
- (3) The establishment of the community living arrangement is compatible with surrounding properties, whether in the same or different zoning districts. In making this determination, the Plan Commission must determine whether the petitioner has demonstrated there are no adverse effects on surrounding properties or that potentially adverse effects have been eliminated or reduced to an acceptable level. Approaches that could be employed to mitigate potentially adverse effects will depend on the particular circumstances but may include (i) adjusting the location of the use, or parts thereof, on the subject property; (ii) limiting the size or scope of the use, or parts thereof; (iii) providing additional landscaping; and (iv) providing additional screening.
- (4) The establishment of the community living arrangement will not impede the normal and ordinary development and improvement of the surrounding property for uses permitted within the district and/or which are consistent with the standards in the City's comprehensive plan.

#### 490-503 Imposition of conditions

- A. Generally.** When approving a community living arrangement, the Plan Commission may impose conditions it deems necessary to support the intent and purpose of this chapter.
- B. Effect on contracts with another party.** The review authority may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

**490-504 Content of decision document**

**A. Approval.** If the proposed work is approved, the decision document should include the following:

- (1) a statement that the proposed work is approved;
- (2) a description of the project;
- (3) reasons for the decision based on the criteria listed in this division;
- (4) conditions of approval, if any;
- (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (6) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (7) any other information the Plan Commission or Zoning Administrator deems appropriate; and
- (8) the date of the decision.

**B. Denial.** If the proposed work is denied, the decision document should include the following:

- (1) a statement that the proposed work is denied,
- (2) a description of the proposed work,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) any other information the Plan Commission or Zoning Administrator deems appropriate, and
- (7) the date of the decision.

**490-505 Effect of approval**

An approval of a community living arrangement runs with the land and is binding on all ~~subsequent~~ future property owners.

**490-506 Special provisions for community living arrangements**

**A. Limitations.** Under state law, a city may not limit the number of community living arrangements so long as the total capacity of such facilities does not exceed 25 or one percent of the City's population, whichever is greater. When that threshold is exceeded, the Common Council may prohibit additional community living arrangements from being located in the city. Additionally, when the capacity of community living arrangements in a ward reaches 25 or one percent of the population, whichever is greater, the Common Council may prohibit additional community living arrangements from being located in the ward. A foster home or a foster treatment home that is the primary domicile of a foster parent or foster treatment parent and that is licensed under § 48.62, Wis. Stats., and an adult family home certified under § 50.032 (1m)(b), Wis. Stats., are exempt from this provision.<sup>(1)</sup>

**B. Periodic review of existing facilities.** Not less than 11 months but not more than 13 months after the first licensure of an adult family home under § 50.033, Wis. Stats., or of a community living arrangement and every year thereafter, the Common Council may make a determination pursuant to § 59.69 (15)(j), Wis. Stats., as to the effect of such facility on the health, safety, or welfare of residents of the municipality. If the Common Council determines such facility poses a threat to the health, safety, or welfare of the residents of the municipality, the Common Council

may order such facility to cease operation or obtain a conditional use permit to continue operation. Such facility must cease operation within 90 days after date of the order, or the date of final judicial review of the order, or the date of the denial of a conditional use permit, whichever is later. The fact that an individual with acquired immunodeficiency syndrome or a positive test for the presences of HIV, as defined in § 252.01 (1M), Wis. Stats., antigen or nonantigenic products of HIV or an antibody to HIV resides in a community living arrangement with a capacity of 8 or fewer persons may not be used under this subsection to assert or prove that the existence of the community living arrangement in the community poses a threat to the health, safety, or welfare of the residents of the City.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23, Wis. Stats.

**490-507 Expiration of an approval**

- A. Commencement of work.** An approval for a community living arrangement automatically expires 12 months from the date of the decision unless substantial work, as authorized by the approval, has commenced. Upon petition and with cause, the Zoning Administrator may grant a one-time extension of up to 12 additional months if (1) the property owner submits a written request to the Administrator before the original approval expires; (2) the property owner demonstrates that the failure to commence substantial work was due primarily to circumstances beyond their control; and (3) the project is in compliance with the zoning regulations in effect at the time the extension is requested.
- B. Completion of work.** If substantial work, as authorized by the approval, begins within the initial time period but fails to progress in good faith toward completion, the Zoning Administrator should initiate the process to terminate the approval as outlined in Division 19 of this article.

**490-508 Appeal**

An aggrieved person may appeal the Plan Commission's decision by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the~~that decision.

**490-509 through 490-524 reserved**

## DIVISION 10 CERTIFICATE OF APPROPRIATENESS

**490-525 Generally**

A certificate of appropriateness is required for the following:

- (1) Reconstruction or alteration of a historic structure or site. A certificate of appropriateness is not needed for ordinary maintenance and repairs, provided that the work involves repairs to existing features of a historic structure or site or the replacement of elements of a structure with pieces identical in appearance and provided that the work does not change the exterior appearance of the structure or site and does not require the issuance of a building permit.
- (2) Construction of a new improvement on a property with a historic structure or site.
- (3) Demolition in whole or in part of any historic structure or site.
- (4) Any project undertaken by a City department, or by a public utility and transportation company that affects historic structures, historic sites or historic overlay districts including street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements, or streets owned or franchised by the City.

The Building Inspector may not issue a permit for any work, if otherwise required, without a certificate of appropriateness.

#### 490-526 Review procedure

The general steps outlined below describe the process for reviewing an application for a certificate of appropriateness.

1. **Pre-application meeting.** Before submitting an application, the applicant or their agent may meet with City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Historic Preservation Commission.
6. **Meeting.** Allowing for proper notice, the Historic Preservation Commission considers the application at a regular or special meeting.
7. **Decision.** After considering ~~all~~ the information submitted by the applicant and the staff report, if any, the Historic Preservation Commission makes a decision within 45 day of the filing of the application to (i) approve the proposed work, (ii) approve the proposed work with conditions, or (iii) deny the proposed work.
8. **Preparation of decision document.** Based on the action of the Historic Preservation Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Commission.
9. **Applicant notification.** Within a reasonable time following the Historic Preservation Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

#### 490-527 Basis of decision

The Historic Preservation Commission must approve the application unless:

- (1) In the case of a designated historic structure or historic site, the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement or site upon which such work is to be done;
- (2) In the case of the construction of a new improvement upon a historic site, or within a historic overlay district, the exterior of such improvement would adversely affect or not harmonize with

the external appearance of the other neighboring improvements on such site or within the district;

- (3) In the case of any property located in a historic overlay district, the proposed construction, reconstruction, exterior alteration or demolition does not conform to the purpose and intent of this chapter and to the objectives and design criteria of the historic preservation plan for such district;
- (4) The building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and state;
- (5) The building or structure is of such old and unusual or uncommon design, texture, and/or material that it could not be reproduced without great difficulty and/or expense;
- (6) In the case of a request for a demolition permit, the denial of the permit would result in the loss of all reasonable and beneficial use of or return from the property;
- (7) In the case of a request for the demolition of a deteriorated building or structure, any hardship or difficulty claimed by the owner is self-created or is the result of any failure to maintain the property in good repair;
- (8) The owner of the historic property submits information that the denial of the certificate of appropriateness will deprive the owner of all reasonable use of, or economic return on, the property.

In addition, in determining whether to issue a certificate of appropriateness, the Commission must consider and may give decisive weight to any or all of the following standards:

- (1) A property must be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of a property must be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- (3) Each property must be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, may not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right must be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property must be preserved.
- (6) Deteriorated historic features must be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features must be substantiated by documentary, physical, or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials may not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by a project must be protected and preserved. If such resources must be disturbed, mitigation measures must be undertaken.
- (9) New additions and adjacent or related new construction must be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

#### 490-528 Imposition of conditions

- A. Generally.** When approving a certificate of appropriateness, the Historic Preservation Commission may impose conditions it deems necessary to support the intent and purpose of this chapter.
- B. Effect on contracts with another party.** The Historic Preservation Commission may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-529 Consultation

If the Historic Preservation Commission does not approve a petitioner's application, the Commission should offer to work with the applicant in an attempt to modify the application such that the applicant may obtain a certificate of appropriateness within the established guidelines.

#### 490-530 Content of decision document

- A. Approval.** If the proposed work is approved, the decision document should include the following:
- (1) a statement that the proposed work is approved;
  - (2) a description of the project;
  - (3) reasons for the decision based on the criteria listed in this division;
  - (4) conditions of approval, if any;
  - (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (6) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  - (7) any other information the Historic Preservation Commission or Zoning Administrator deems appropriate; and
  - (8) the date of the decision.
- B. Denial.** If the proposed work is denied, the decision document should include the following:
- (1) a statement that the proposed work is denied,
  - (2) a description of the proposed work,
  - (3) reasons for the decision based on the criteria listed in this division,
  - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
  - (5) a statement that the decision may be appealed as provided for in this division,
  - (6) any other information the Historic Preservation Commission or Zoning Administrator deems appropriate, and
  - (7) the date of the decision.

**490-531 Effect of approval**

An approval of a certificate of appropriateness runs with the land and is binding on all ~~subsequent~~ future property owners.

**490-532 Expiration of an approval**

- A. Commencement of work.** An approved certificate of appropriateness automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced. Upon petition and with cause, the Zoning Administrator may grant a one-time extension of up to 12 additional months if (1) the property owner submits a written request to the Administrator before the original approval expires; (2) the property owner demonstrates that the failure to commence substantial work was due primarily to circumstances beyond their control; and (3) the project is in compliance with the zoning regulations in effect at the time the extension is requested.
- B. Completion of work.** If substantial work, as authorized by the approval, begins within the initial time period but fails to progress in good faith toward completion, the Zoning Administrator should initiate the process to terminate the approval as outlined in Division **19** of this article.

**490-533 Amendment of an approval**

- A. Generally.** The property owner may submit an application to propose a change to a previously issued certificate of appropriateness.
- B. Minor ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a minor alteration~~, the Administrator is authorized to review and act on the petition with notice to the Historic Preservation Commission and Plan Commission.
- C. Major ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a major alteration~~, the review procedure in effect at the time of submittal must be followed.

**490-534 Appeal**

- A. ~~Administrative decision.~~** An aggrieved person may appeal a final decision made by the Zoning Administrator as authorized in § 490-533 (B) by filing an appeal with the Plan Commission within 30 calendar days of the date of that decision.
- B. Historic Preservation Commission's decision.** An aggrieved person may appeal the Historic Preservation Commission's decision by filing an appeal with the Common Council within 30 calendar days of the date of the Historic Preservation Commission's decision.
- C. Common Council's decision.** If the Historic Preservation Commission's decision is appealed to the Common Council, an aggrieved person may appeal the Council's decision ~~may be appealed~~ to a court of competent jurisdiction within 30 calendar days of the date of ~~the~~ that decision.

**490-535 through 490-549 reserved**

**DIVISION 11****SITE PLAN BUILDING, SITE AND OPERATIONAL PLAN REVIEW****490-550 Generally**

~~The operational characteristics of a land use and the way in which a land use occupies a lot has a direct effect on the overall functionality of the site, the extent to which the land use can be expanded on the site in the future, effects of the land use on nearby properties, and impacts on existing and anticipated public and private infrastructure. This division describes the requirements and procedures~~

~~for reviewing a site plan.~~ The primary purpose of a building, site, and operational plan review is to evaluate: (1) the proposed building or addition, if any; (2) the design and layout of existing and proposed site improvements, including landscaping and outdoor lighting; and (3) the nature of the proposed operations, including hours of operation, anticipated impacts, and compliance with applicable zoning, development, and performance standards.

#### **490-551 Use by right not infringed**

The review of a building, site, and operational plan does not address the basic permissibility of a use when the use is allowed by right

#### **490-552 Applicability**

Those land uses designated as requiring building, site, and operational plan (BSOP) site plan review ~~(SP)~~ in the land use matrix (Appendix A) must comply with the review requirements in this division.

#### **490-553 Review procedure**

The general steps outlined below describe the process for reviewing an application for a building, site, and operational plan (BSOP) site plan.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures. During the Zoning Administrator's initial review, the administrator can request an in-person or virtual meeting with the applicant or the applicant's agent to discuss the application.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Design Review Board, if required, and the Plan Commission consistent with the commission's meeting schedule.
5. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Design Review Board/Plan Commission, and any person upon request.
6. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.

- 7. **Plan Commission Decision.** After considering ~~all of~~ the information submitted by the applicant, the staff report, if any, ~~and the recommendation of the Design Review Board~~, the Plan Commission makes a decision to (i) approve the ~~site plan~~project, (ii) approve the ~~site plan~~project with conditions, or (iii) deny the ~~site plan~~project.
- 8. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission.
- 9. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

General Flowchart for ~~building, site, and operational plan (BSOP) site plan~~ Review



**490-554 Basis of decision**

The Plan Commission, in making its decision, should consider the following factors, as applicable:

- (1) effects of the project on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
- (2) effects of the project on the natural environment;
- (3) effects of the project on surrounding properties;
- (4) actions the applicant will undertake to mitigate the negative effects, if any, of the proposed land use;
- (5) ~~compliance with the architectural standards in Article 20;~~
- (6) compliance with the general site design principles and requirements in Article 21;
- (7) compliance with the landscaping requirements in Article 22;
- (8) compliance with the parking requirements in Article 23;
- (9) compliance with the outdoor lighting requirements in Article 24;
- (10) compliance with other applicable requirements in this chapter; and
- (11) any other factor that relates to the purposes of this chapter set forth in § 490-05 or as allowed by state law.

**490-555 Imposition of conditions**

**A. Generally.** In approving a ~~building, site, and operational plan (BSOP) site plan~~, the Plan Commission may impose one or more conditions deemed necessary to further the intent and

purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, and revisions to the site design.

- B. Effect on contracts with another party.** The Plan Commission may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-556 Staff report content

The staff report should include the following:

- (1) a description of the proposed project,
- (2) preliminary findings for the decision criteria listed in this division,
- (3) a preliminary recommendation for approval or denial,
- (4) a preliminary list of conditions whether the preliminary staff recommendation is for approval or denial, and
- (5) other information deemed necessary.

#### 490-557 Content of decision document

- A. Approval.** If the application for a building, site, and operational plan (BSOP) site plan is approved, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the building, site, and operational plan (BSOP) site plan is approved;
- (2) a description of the land use along with operational characteristics;
- (3) reasons for the decision based on the criteria listed in this division;
- (4) conditions of approval, if any;
- (5) ~~a statement indicating that the property owner and operator, if different, must sign the decision document and return it to the Zoning Administrator to acknowledge acceptance of the same;~~
- (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (8) other information the Plan Commission or Zoning Administrator deems appropriate;
- (9) the signature of the Plan Commission chairperson; and
- (10) the date of the decision.

- B. Denial.** If the application for a building, site, and operational plan (BSOP) site plan is denied, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the building, site, and operational plan (BSOP) site plan is denied,
- (2) a description of the land use,
- (3) reasons for the decision based on the criteria listed in this division,

- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Plan Commission or Zoning Administrator deems appropriate,
- (7) the signature of the Plan Commission chairperson, and
- (8) the date of the decision.

#### 490-558 Effect of approval

The approval of a building, site, and operational plan (BSOP) site plan runs with the land and is binding on all future subsequent property owners.

#### 490-559 Expiration of an approval

An approval of a building, site, and operational plan (BSOP) site plan automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced and continues in good faith to completion. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her their control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

#### 490-560 Amendment of an approved building, site, and operational plan (BSOP) site plan

~~Following approval of a site plan, the Zoning Administrator is authorized to determine if a proposed change constitutes a minor revision. The Zoning Administrator is authorized to review and act on minor amendments. A proposed change that is not determined to be a minor revision must be reviewed by the Plan Commission following the review procedure in effect at the time of submittal.~~

- A. Generally. The property owner may submit an application to propose a change to a previously issued building, site and operational plan approval.
- B. Minor change. If the Zoning Administrator determines the proposed change to the approval is minor, the Administrator is authorized to review and act on the petition with notice to the Plan Commission.
- C. Major change. If the Zoning Administrator determines the proposed change to the approval is major, the review procedure in effect at the time of submittal must be followed.

#### 490-561 Appeal

- A. Administrative decision.** An aggrieved person may appeal a final decision made by the Zoning Administrator as authorized in § 490-**560 (B)** by filing an appeal with the Plan Commission within 30 calendar days of the date of ~~the final~~ that decision.
- B. Plan Commission decision.** An aggrieved person may appeal a final decision made by the Plan Commission pursuant to this division by filing an appeal with the Common Council within 30 calendar days of the date of ~~the final~~ that decision.
- C. Common Council decision.** If the Plan Commission's decision is appealed to the Common Council, an aggrieved person may appeal the Common Council's decision to a court of competent jurisdiction within 30 calendar days of the date of ~~the final~~ that decision.

**490-562 through 490-599 reserved****DIVISION 12  
ADMINISTRATIVE ADJUSTMENT****490-600 Generally**

Upon written petition, the Zoning Administrator may, on a case-by-case basis, approve an administrative adjustment, but only for development standards identified in this chapter as eligible for an administrative adjustment.

**490-601 Review procedure**

The general steps outlined below describe the process for reviewing an application for an administrative adjustment.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Decision.** When the Zoning Administrator determines the application is complete, they will make a decision to (i) approve the administrative adjustment, (ii) approve the administrative adjustment with conditions, or (iii) deny the administrative adjustment.
5. **Applicant notification.** Within a reasonable time following ~~his or her~~their decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

**490-602 Basis of decision**

The Zoning Administrator, in making their final decision, should consider the following factors, as applicable:

- (1) the size of the property in comparison to other properties in the area;
- (2) the extent to which the issuance of the administrative adjustment would be in keeping with the overall intent of this chapter;
- (3) whether there are any unique circumstances and the nature of those circumstances that warrant the issuance of the administrative adjustment;
- (4) the nature and extent of anticipated impacts to the natural environment that could potentially occur if the administrative adjustment was granted;
- (5) the nature and extent of anticipated positive and negative effects on properties in the area;

- (6) actions the applicant will undertake to mitigate the negative effects, if any, of the proposed administrative adjustment;
- (7) a factor specifically listed under a section of this chapter authorizing the issuance of a administrative adjustment; and
- (8) any other factor that relates to the purposes of this chapter set forth in § 490-05 or as allowed by state law.

#### 490-603 Imposition of conditions

- A. Generally.** In approving an administrative adjustment, the Zoning Administrator may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. Effect on contracts with another party.** The review authority may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

##### Editorial notes:

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-604 Expiration of an approval

- A. Project involving construction.** For a project involving any construction, an administrative adjustment automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced and continues in good faith to completion. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond ~~his or her~~their control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. Change in use.** For a change in use, the administrative adjustment automatically expires 6 months after the date of issuance if the applicant does not move into the vacant space.

#### 490-605 Appeal

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with the Plan Commission within 30 calendar days of the date of ~~the final~~that decision.

#### 490-606 through 490-624 reserved

### DIVISION 13 SPECIAL EXCEPTION

#### 490-625 Generally

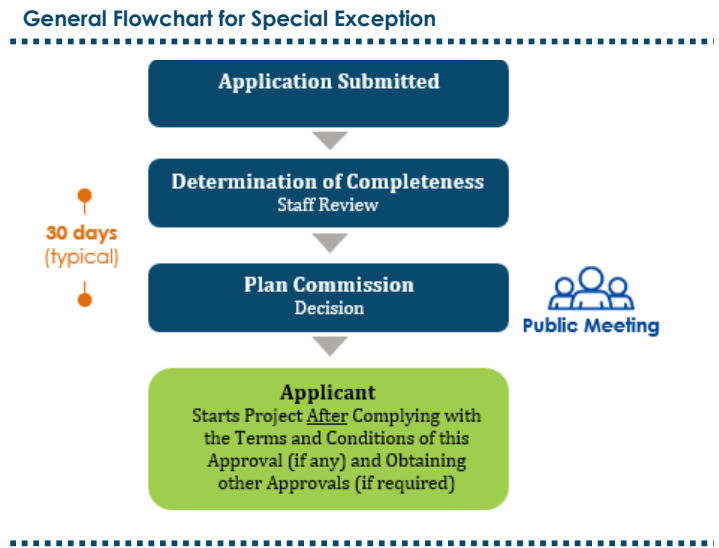
Upon written petition, the Plan Commission may, on a case-by-case basis, approve a special exception, but only for development standards identified in this chapter as eligible for a special exception.

#### 490-626 Review procedure

The general steps outlined below describe the process for reviewing an application for a special exception.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.

3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.



4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.
7. **Plan Commission meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
8. **Decision.** After considering ~~all of~~ the information submitted by the applicant, the staff report, if any, and the Plan Commission makes a decision to (i) approve the special exception, (ii) approve the special exception with conditions, or (iii) deny the special exception.
9. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission.
10. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

#### 490-627 Basis of decision

The Plan Commission in making its final decision should consider the following factors, as applicable:

- (1) the size of the property in comparison to other properties in the area;
- (2) the extent to which the issuance of the special exception would be in keeping with the overall intent of this chapter;
- (3) whether there are any unique circumstances and the nature of those circumstances that warrant the issuance of the special exception;
- (4) the nature and extent of anticipated impacts to the natural environment that could potentially occur if the special exception was granted;
- (5) the nature and extent of anticipated positive and negative effects on properties in the area;
- (6) actions the applicant will undertake to mitigate the negative effects, if any, of the proposed special exception;
- (7) a factor specifically listed under a section of this chapter authorizing the issuance of a special exception; and
- (8) any other factor that relates to the purposes of this chapter set forth in § 490-05 or as allowed by state law.

#### 490-628 Imposition of conditions

- A. Generally.** In approving a special exception, the Plan Commission may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. Effect on contracts with another party.** The review authority may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-629 Limitations on issuing a special exception

A special exception can only be approved in those instances where issuance is specifically authorized in this chapter.

#### 490-630 Staff report content

The staff report should include the following:

- (1) a description of the requested special exception,
- (2) preliminary findings for the decision criteria listed in this division,
- (3) a preliminary recommendation for approval or denial,
- (4) a preliminary list of conditions whether the preliminary staff recommendation is for approval or denial; and
- (5) other information deemed necessary.

#### 490-631 Content of decision document

- A. Approval.** If the application for a special exception is approved, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the special exception is approved;
- (2) a description of the special exception;
- (3) reasons for the decision based on the criteria listed in this division;
- (4) conditions of approval, if any;
- (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (6) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (7) other information the Plan Commission or Zoning Administrator deems appropriate;
- (11) the signature of the Plan Commission chairperson; and
- (8) the date of the decision.

**B. Denial.** If the application for a special exception is denied, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the special exception is denied,
- (2) a description of the special exception,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Plan Commission or Zoning Administrator deems appropriate,
- (7) the signature of the Plan Commission chairperson, and
- (8) the date of the decision.

#### **490-632 Effect of approval**

An approval of a special exception runs with the land and is binding on all ~~future subsequent~~ property owners.

#### **490-633 Expiration of an approval**

An approval for a special exception automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced and continues in good faith to completion. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond ~~his or her~~~~their~~ control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

#### **490-634 Appeal**

**A. Plan Commission decision.** An aggrieved person may appeal a final decision made by the Plan Commission pursuant to this division by filing an appeal with the Common Council within 30 calendar days ~~of the date of the final~~~~that~~ decision.

- B. Common Council decision.** If the Plan Commission's decision is appealed to the Common Council, an aggrieved person may appeal the Common Council's decision to a court of competent jurisdiction within 30 calendar days of the date of the final~~that~~ decision.

**490-635 through 490-649 reserved**

## DIVISION 14 EXPANSION OF A NONCONFORMING BUILDING

### 490-650 Generally

A nonconforming building (e.g., a building built too close to a lot line) with a conforming use may be expanded in compliance with all requirements of the zoning code and with the procedures and requirements of this division.

### 490-651 Review procedure

The general steps outlined below describe the process for reviewing an application to expand a nonconforming building.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed building, site and operation plan application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.
7. **Plan Commission meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
8. **Decision.** The Plan Commission makes a decision to (i) approve the expansion, (ii) approve the expansion with conditions, or (iii) deny the expansion.

9. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division.
10. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.
11. **Recording of decision document.** When approval is granted, the decision document is recorded in the register of deeds office for Ozaukee County.

#### 490-652 Basis of decision

The Plan Commission in making its final decision should consider the following factors, as applicable:

- (1) the degree of the existing nonconformity (i.e., 1 foot into the setback or 1 foot from the property boundary line),
- (2) the size and configuration of the lot,
- (3) whether the lot conforms to the dimensional standards of the zoning district in which it is located,
- (4) the size and location of the existing nonconforming building,
- (5) the size and location of other existing structures and those structures reasonably anticipated on the lot,
- (6) the impact, if any, that the expansion may have on adjoining properties,
- (7) whether the proposed expansion would violate the intent of this chapter, and
- (8) any other factor that relates to the purposes of this chapter set forth in § 490-05 or as allowed by state law.

#### 490-653 Imposition of conditions

- A. **Generally.** In approving an expansion of a nonconforming building, the Plan Commission may impose one or more conditions of approval deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping, screening, and the maximum size of the building(s), or impose limitations on additional buildings otherwise allowed on the subject property under the applicable zoning district regulations.
- B. **Effect on contracts with another party.** The Plan Commission may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### 490-654 Content of decision document

- A. **Approval.** If the application for an expansion of a nonconforming building is approved, the decision document may include, but not necessarily be limited to, the following:
  - (1) a statement that the building expansion is approved;
  - (2) a description of the building project;
  - (3) reasons for the decision based on the criteria listed in this division;
  - (4) conditions of approval, if any;

- (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (6) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (7) other information the Plan Commission or Zoning Administrator deems appropriate;
- (8) the signature of the Plan Commission chairperson; and
- (9) the date of the decision.

**B. Denial.** If the application for expansion of a nonconforming building is denied, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the building expansion is denied,
- (2) reasons for the decision based on the criteria listed in this division,
- (3) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (4) a statement that the applicant may appeal the decision to a court of competent jurisdiction,
- (5) other information the Plan Commission or Zoning Administrator deems appropriate,
- (6) the signature of the Plan Commission chairperson, and
- (7) the date of the decision.

#### **490-655 Effect of decision**

An approval of an expansion of a nonconforming building runs with the land and is binding on all ~~future subsequent~~ property owners.

#### **490-656 Expiration of an approval**

An approval to expand a nonconforming building automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced and continues in good faith to completion. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond ~~his or her~~their control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

#### **490-657 Appeal**

- A. Plan Commission decision.** An aggrieved person may appeal a final decision made by the Plan Commission pursuant to this division by filing an appeal with the Common Council within 30 calendar days of the date of ~~the final~~that decision.
- B. Common Council decision.** If the Plan Commission's decision is appealed to the Common Council, an aggrieved person may appeal the Common Council's decision to a court of competent jurisdiction within 30 calendar days of the date of ~~the final~~that decision.

**490-658 through 490-674 reserved**

## DIVISION 15 REGISTRATION OF A NONCONFORMING USE

### 490-675 Generally

Some existing land uses may not comply with current zoning regulations but were legally established under regulations in effect at the time. These are known as nonconforming uses and, under Article 26, may continue to operate within defined parameters.

To confirm the legal status of these uses and help prevent future disputes, property owners are encouraged to register their nonconforming use. Registration creates a record that shows (1) when the use was first established; (2) that the use was established consistent with the rules and regulations in effect at the time, if any; (3) that the use has operated continuously, without cessation of more than 12 continuous months; and (4) the nature of the use.

### 490-676 Initiation

Any of the following may submit an application to determine whether a use should be registered as a nonconforming use:

- (1) a person having a financial interest in the property or in the use occurring on the property;
- (2) the Common Council, or any member of the council;
- (3) the Plan Commission, or any member of the commission; and
- (4) the Zoning Administrator.

### 490-677 Review procedure

The general steps outlined below describe the process for reviewing an application to register a nonconforming use.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.
6. **Special notice to property owner.** If the application process is not initiated by the property owner, the Zoning Administrator sends a written notice to the property owner by regular and certified

mail at least 60 calendar days prior to the date of the Plan Commission meeting. The notice shall invite the property owner to submit evidence relating to the pending determination. In addition, the notice should state (i) the reasons why the application has been submitted; (ii) the date and time of the meeting; (iii) contact information for the Zoning Administrator; and (iv) other information deemed appropriate by the Zoning Administrator.

7. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
8. **Plan Commission decision.** The Plan Commission determines whether it has sufficient evidence to make a final decision, and if so whether the use should or should not be classified as a nonconforming use.
9. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission.
10. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the property owner by regular mail and/or email.
11. **Inclusion in registry.** If the use is determined to be a nonconforming use, the Zoning Administrator will include the nonconforming use in the registry authorized in Article 6.
12. **Recording of decision document.** The decision document is recorded, at the applicant's expense, in the register of deeds office for Ozaukee County.

#### 490-678 Basis of decision

In making its decision, the Plan Commission will determine whether there is sufficient evidence to show that (1) the use in question was legally established; (2) the use does not now comply with one or more of the requirements of this chapter; and (3) the use has continued from the date, or approximate date, of establishment to the current date without an interruption of more than 12 continuous months.

#### 490-679 Content of decision document

- A. **Approval.** If the application for registering a nonconforming use is approved, the decision document may include, but not necessarily be limited to, the following:
  - (1) a statement that the application is approved,
  - (2) a description of the use,
  - (3) reasons for the decision based on the criteria listed in this division,
  - (4) a statement that the applicant may appeal the decision as provided for in this division,
  - (5) other information the Plan Commission or the Zoning Administrator deems appropriate,
  - (6) the signature of the Plan Commission chairperson, and
  - (7) the date of the decision.
- B. **Denial.** If the application for registering a nonconforming use is denied, the decision document may include, but not necessarily be limited to, the following:
  - (1) a statement that the application is denied,
  - (2) a description of the use,
  - (3) reasons for the decision based on the criteria listed in this division,
  - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,

- (5) a statement that the applicant may appeal the decision as provided for in this division,
- (6) other information the Plan Commission or the Zoning Administrator deems appropriate,
- (7) the signature of the Plan Commission chairperson, and
- (8) the date of the decision.

#### **490-680 Effect of decision**

If the Plan Commission determines that a land use meets the criteria for a nonconforming use, such decision constitutes documentary evidence establishing the legitimacy and nature of the use as a nonconforming use.

#### **490-681 Appeal**

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of the final ~~the final~~ that decision.

#### **490-682 through 490-699 reserved**

### **DIVISION 16 CONVERSION OF A NONCONFORMING USE**

#### **490-700 Generally**

An existing nonconforming use (e.g., a tavern in a residential district) which has been registered as a nonconforming use, pursuant to Division 15 of this article, may be converted to another nonconforming use provided the new use is less nonconforming (e.g., from a tavern to a restaurant).

#### **490-701 Review procedure**

The general steps outlined below describe the process for reviewing an application for the conversion of a nonconforming use.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.

4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Plan Commission consistent with the commission's meeting schedule.
5. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.
6. **General notice.** Consistent with Article 4, the Zoning Administrator provides for ~~(i) a class 2 public notice,~~ (ii) property owner notice, and ~~(iii)~~ meeting agenda notice.
7. **Public hearing.** ~~Allowing for proper notice, the Plan Commission conducts a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct City staff to conduct additional research and prepare such documents it deems necessary, including a preliminary decision document.~~
8. **Decision.** After considering ~~all of~~ the information submitted by the applicant, public comments received at the public hearing, the Plan Commission makes a decision, based on the decision criteria in this division, to (i) approve the conversion, (ii) approve the conversion with conditions, or (iii) deny the conversion.
9. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission. ~~If approved, the Zoning Administrator shall also prepare a conversion order.~~
10. **Applicant notification.** If the application is denied, the Zoning Administrator, within a reasonable time following the Plan Commission's decision, sends the decision document to the applicant by regular mail and/or email.
11. **Acceptance by property owner.** ~~If the application is approved, the property owner must sign the conversion order to acknowledge the terms of the approval and return the same to the Zoning Administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the Zoning Administrator requesting an extension and the Zoning Administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall automatically become null and void without any further action by the City at the expiration of such time limit.~~
12. **Recording of decision document.** ~~If the property owner signs the approved conversion order, the conversion order is recorded, at the applicant's expense, in the register of deeds office for Ozaukee County.~~

#### 490-702 Basis of decision

The Plan Commission in making its final decision should compare the known and anticipated impacts of the existing nonconforming use on properties in the area and those of the proposed nonconforming use. The Plan Commission may not approve a conversion when the proposed nonconforming use would be more of a nonconformity than the existing nonconforming use.

#### 490-703 Imposition of conditions

- A. **Generally.** In approving a conversion, the Plan Commission may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, outdoor lighting, and hours of operation.
- B. **Effect on contracts with another party.** The Plan Commission may not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying,

extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>[1]</sup>

**Editorial notes:**

[1] See § 62.23 (7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

#### **490-704 Staff report content**

The staff report should include the following:

- (1) a description of the requested conversion,
- (2) preliminary findings for the decision criteria listed in this division,
- (3) a preliminary recommendation for approval or denial,
- (4) a preliminary list of conditions whether the preliminary staff recommendation is for approval or denial; and
- (5) other information deemed necessary.

#### **490-705 Content of decision document**

**A. Approval.** If the application for a conversion is approved, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the conversion is approved;
- (2) a description of the new nonconforming use;
- (3) a statement indicating that the property owner must sign the conversion order and return it to the Zoning Administrator;
- (4) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (5) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (6) other information the Plan Commission or Zoning Administrator deems appropriate;
- (7) the signature of the Plan Commission chairperson;
- (8) the date of the decision; and
- (9) the copy of the conversion order ~~described in § 490-646~~.

**B. Denial.** If the application for a conversion is denied, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the application is denied,
- (2) a description of the proposed conversion,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Plan Commission or Zoning Administrator deems appropriate,
- (7) the signature of the Plan Commission chairperson, and
- (8) the date of the decision.

**490-706 Content of conversion order**

~~If the conversion is approved, a conversion order must be prepared and adopted. The conversion order must include (1) a description of the subject property's location (e.g., address, parcel number, reference to a parcel in a certified survey map or subdivision plat); (2) a description of the existing and of the new nonconforming use; (3) conditions of approval, if any; and (4) other provisions deemed necessary given the nature of the conversion.~~

**490-706 Effect of approval**

An approval of a conversion runs with the land and is binding on all ~~future subsequent~~ property owners.

**490-707 Expiration of an approval**

If the Zoning Administrator determines that substantial work as authorized by a conversion approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, they must initiate the process to terminate the approval pursuant to Division 19 of this article. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 6 months.

**490-708 Amendment of an approved conversion**

- A. **Generally.** The property owner may submit an application to propose a change to a previously issued approval of a conversion.
- B. **Minor ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a minor alteration~~, the Administrator is authorized to review and act on the petition with notice to the Plan Commission.
- C. **Major ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a major alteration~~, the review procedure in effect at the time of submittal must be followed.

**490-709 Appeal**

- A. **Plan Commission decision.** An aggrieved person may appeal a final decision made by the Plan Commission pursuant to this division by filing an appeal with the Common Council within 30 calendar days of the date of ~~the final~~that decision.
- B. **Common Council decision.** If the Plan Commission's decision is appealed to the Common Council, an aggrieved person may appeal the Common Council's decision to a court of competent jurisdiction within 30 calendar days of the date of ~~the final~~that decision.

**490-710 through 490-724 reserved**

## DIVISION 17 ZONING PERMIT

**490-725 Generally**

A zoning permit is administrative in nature and is intended to ensure that certain types of land uses are in compliance with this chapter and any precedent approvals (e.g., conditional use approval).

#### 490-726 Applicability

Those land uses designated as requiring a zoning permit in the land use matrix (Appendix A) must comply with the requirements in this division when a new use is being established ~~and when there is a change in occupancy of an existing non-residential building.~~

#### 490-727 Review procedure

The general steps outlined below describe the process for reviewing an application for a zoning permit.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Decision.** When the Zoning Administrator determines the application is complete, they will make a decision to (i) approve the zoning permit, (ii) approve the zoning permit with conditions, or (iii) deny the zoning permit.
5. **Applicant notification.** Within a reasonable time following ~~his or her~~their decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

#### 490-728 Basis of decision

In determining whether to issue a zoning permit or deny the permit, the Zoning Administrator must determine whether the proposed use is consistent with (1) any prior approvals, such as a conditional use approval, (2) this chapter, and (3) other provisions of the municipal code.

#### 490-729 Expiration of an approval

- A. **Project involving construction.** For a project involving any construction, a zoning permit automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced and continues in good faith to completion. Upon petition and with cause, the Zoning Administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond ~~his or her~~their control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Change in use.** For a change in use, the zoning permit automatically expires 6 months after the date of issuance if the applicant does not move into the vacant space.

**490-730 Appeal**

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with the Plan Commission within 30 calendar days of the date of ~~the final~~that decision.

**490-731 through 490-749 reserved****DIVISION 18  
OCCUPANCY PERMIT****490-750 Generally**

No new building, and no existing building which has been remodeled to more than 50 percent of its value, and no existing building which has been relocated, shall be occupied or used until an occupancy permit has been issued certifying that any such building complies with the provisions of this chapter. A like permit must be obtained before any legal nonconforming use is resumed, changed, extended or granted conditional use status.

**490-751 Procedure**

- A. Submittal.** An application for an occupancy permit must be submitted to the Building Inspector prior to or at the same time as the application for a building permit, or prior to the commencement of any use not involving a building permit.
- B. Inspection.** Within 10 days after the notification of the completion of erection, alteration, or relocation of the building or intent to commence a use, the Building Inspector will make an inspection of the premises and any building thereon, and if the building and the intended use thereof and the proposed use of the premises comply with the requirements of this chapter, an occupancy permit will be issued.

**490-752 Application requirements**

An application for an occupancy permit must include the following as applicable:

- (1) A statement by the applicant as to the intended use of the premises and buildings thereon.
- (2) An accurate map of the property, in duplicate, drawn to reasonable scale and properly dimensioned showing:
  - [a] The boundaries of the property involved.
  - [b] The location of the center line of any abutting streets.
  - [c] The location on the lot of any existing buildings, additions, or proposed new buildings, including the measured distances between such buildings and from the lot lines and from the center line of any abutting street to the nearest portion of such building.
  - [d] The proposed floor elevation of any proposed buildings in relation to the existing and/or established grade of any abutting streets and the general direction of surface drainage on the lot, including the defined location of any defined drainageway.
  - [e] The base or regional flood level and ordinary high-water line of any stream, flowage, wetland or lake on or abutting the property, as well as the defined boundaries of any wetlands as shown on the Wetland Inventory Map of the Wisconsin Department of Natural Resources and of any floodplains as shown on the FEMA floodplain map for the City or where appropriate for an adjacent municipality.

- [f] Where an occupancy permit application includes lands within a designated floodplain, the applicant shall provide all computations required to show the effects, if any, of the project on flood heights, velocities and floodplain storage. This requirement may be waived by the Building Inspector where there appears to be insignificant measurable effect and the project is minor in nature, that is, involving no building and no earthmoving.
- [g] Where an occupancy permit application shows that the applicant's intended activity will raise the regional flood level by 0.01 foot or more on another property, the applicant shall present flooding easements or other appropriate legal arrangements from all such affected owners before the occupancy permit shall be issued.
- (3) Where a legal nonconforming use involves human use or occupancy, such use is to continue or resume, and connection is not required to be made to the public sewer system and facilities, a plan of the proposed system for sewage disposal, which shall be in compliance with all City ordinances and other governmental laws and regulations then applicable to such system.
- (4) Where a legal nonconforming use involves human use or occupancy, such use is to continue or resume, and connection is not required to be made to the public water service and facilities, evidence satisfactory to the Building Inspector that a safe and adequate supply of pure water is available to be provided, and the location of any well for that purpose shall be shown on the map of the property.

#### **490-753 Expiration**

If within 12 months of the date of application no occupancy permit has been issued, any building permit related thereto shall lapse and the Building Inspector shall make immediate investigation to ascertain that no use or occupancy has in fact commenced without proper authority. Upon showing of valid cause, the Building Inspector may grant an extension of such permit for a period not to exceed 6 months.

#### **490-754 Temporary permit**

Pending the issuance of a regular permit, a temporary permit for nonresidential use may be issued for a period not exceeding 6 months during the completion of alterations or during partial occupancy of a building pending its permanent occupation. Such temporary permit shall not be issued except under such restrictions and provisions as will adequately ensure the safety of the occupants. A temporary permit shall be voided if the building fails to conform to the provisions of this chapter to such a degree as to render it unsafe for the occupancy proposed.

#### **490-755 Appeal**

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with the Plan Commission within 30 calendar days of the date of ~~the final~~that decision.

**490-756 through 490-774 reserved**

### **DIVISION 19 TERMINATION OF APPROVAL**

#### **490-775 Generally**

There are certain situations when the approval for a land use may be terminated. This division describes the procedures for terminating an approved use.

#### 490-776 Initiation

- A. **Voluntary termination of a conditional use.** The property owner ~~is authorized to~~may submit an application to terminate a conditional use approval for ~~his or her~~their property.
- B. **Involuntary termination of conditional use approval due to cessation.** The Zoning Administrator ~~is authorized to~~may submit an application to terminate a conditional use approval when they determine the land use authorized by such approval has ceased to operate for more than 12 months.
- C. **Involuntary termination of a conditional use approval due to violation.** The Zoning Administrator ~~is authorized to~~may submit an application to terminate a conditional use approval when they determine that the property owner has violated one or more conditions of approval and satisfactory action has not been taken to correct the violation.
- D. **Involuntary termination of a specified land use due to cessation.** The Zoning Administrator ~~is authorized to~~may submit an application to terminate an approved land use when they determine that such use is no longer in use for the time period specified for such use.
- E. **Involuntary termination due to stoppage of work.** The Zoning Administrator may submit an application to terminate an approval if work authorized by the approval has commenced but has not continued in good faith to completion
- F. **Involuntary termination of a nonconforming use.** The Zoning Administrator ~~is authorized to~~may submit an application to terminate a nonconforming use when they determine that such use is having a significant harmful effect on the public health, safety, and welfare or the nonconforming use has ceased to operate for the period of time required by this chapter to retain designation as a nonconforming use.

#### 490-777 Review procedure for voluntary termination

The general steps outlined below describe the process for reviewing an application to voluntarily terminate an approval of a land use authorized under this chapter.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.
5. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.

6. **Decision.** The Plan Commission makes a decision to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
7. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Plan Commission.
8. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.
9. **Administrative steps.** If the application is approved, the Zoning Administrator updates any City records to indicate that the use as specified in the application has been terminated.

#### 490-778 Review procedure for involuntary termination

The general steps outlined below describe the process for reviewing an application to involuntarily terminate an approval of a land use authorized under this chapter.

1. **Report.** The Zoning Administrator prepares a report describing the reasons why the approval should be terminated.
2. **Review date.** The Zoning Administrator schedules the review with the Plan Commission consistent with the commission's meeting schedule.
3. **Special notice to property owner.** The Zoning Administrator sends a written notice to the property owner by regular **and certified mail** at least 30 calendar days prior to the date of the public hearing. The notice should state (i) the reasons why the Zoning Administrator has submitted an application to terminate the specified use; (ii) the date and time of the public hearing; (iii) contact information for the Zoning Administrator, including telephone number; and (iv) other information deemed appropriate by the Zoning Administrator. If the action is intended to terminate an approval for a violation, the notice should also state the alleged violation along with supporting evidence. If the action is intended to terminate an inactive land use, the notice should also state the time period when the land use was not in use along with any supporting evidence.
4. **General public notice.** Consistent with Article 4, the Zoning Administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
5. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance. If the public hearing is adjourned, the Plan Commission may direct City staff to conduct additional research and prepare such documents it deems necessary, including a preliminary decision document.
6. **Plan Commission recommendation.** After considering ~~all of~~ the information submitted by the applicant, public comments received at the public hearing, the Plan Commission makes a recommendation to the Common Council based on the decision criteria in this division to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
7. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Common Council.
8. **Common Council meeting.** Allowing for proper notice, the Common Council considers the application at a regular or special meeting.
9. **Decision.** After considering ~~all of~~ the information submitted by the applicant, public comments received at the public hearing, the Common Council makes a decision, based on the decision

criteria in this division, to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.

10. **Preparation of decision document.** Based on the action of the Common Council, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Common Council.
11. **Applicant notification.** Within a reasonable time following the Common Council's decision, the Zoning Administrator sends the decision document to the property owner by regular mail and/or email.
12. **Administrative steps.** If the application is approved, the Zoning Administrator updates any City records to indicate that the use as specified in the application has been terminated.

#### 490-779 Basis of decision

The Plan Commission in making their recommendation and the Common Council in making their decision should consider the following factors, as applicable:

- (1) the nature of those buildings or other structures, if any, on the subject property that relate to the use and the extent to which they are or are not otherwise permitted in the district in which the subject property is located;
- (2) effects of the existing use on surrounding properties, including detriment to the full and complete use of such properties and potential for concerns related to possible nuisances;
- (3) effects of the existing use on the normal and orderly development and improvement of the surrounding property for those uses permitted in the zoning district in which they are located; and
- (4) any other factor that relates to the purposes of this chapter as set forth in § 490-05 or as allowed by state law.

#### 490-780 Content of decision document

**A. Approval.** If the application to terminate an approval is approved, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the specified use is terminated;
- (2) a description of the land use being terminated;
- (3) reasons for the decision based on the criteria listed in this division;
- (4) requirements for the removal of any building or other structure, if any, on the subject property that are related to the terminated use and that are not otherwise permitted in the zoning district in which the subject property is located;
- (5) a statement that the decision may be appealed as provided for in this division;
- (6) other information the Common Council or Zoning Administrator deems appropriate;
- (7) the signature of the Mayor; and
- (8) the date of the decision.

**B. Denial.** If the application to terminate an approval is denied, the decision document may include, but not necessarily be limited to, the following:

- (1) a statement that the specified use continues to be an approved use,
- (2) a description of the land use,
- (3) reasons for the decision based on the criteria listed in this division,

- (4) a statement that the decision may be appealed as provided for in this division,
- (5) other information the Common Council or Zoning Administrator deems appropriate,
- (6) the signature of the Mayor, and
- (7) the date of the decision.

#### **490-781 Compliance with requirements of zoning district**

If the Common Council terminates an approval as allowed under this division, the property owner must bring the subject property into compliance with the permitted use regulations of the applicable zoning district. The Council will establish a timeframe it considers appropriate for achieving compliance. In setting this timeframe, the Commission should consider (1) the nature of the required actions, (2) the estimated time needed to complete the work, (3) any relevant weather conditions, and (4) any other relevant consideration. The compliance period must be no less than 30 calendar days and no more than 12 months.

#### **490-782 Appeal**

An aggrieved person may appeal the City Council's decision by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of the final ~~that~~ decision.

#### **490-783 through 490-799 reserved**

### **DIVISION 20 CODE INTERPRETATION**

#### **490-800 Generally**

When there is uncertainty or disagreement as to the intent or meaning of a provision in this chapter, a person can ask for a code interpretation. For example, the question may relate to (1) the zoning map, (2) a specific provision in the code, (3) how a specific provision in the code is applied in a specific instance, or (4) terms and conditions of an approval. This division describes the procedures and requirements to issue such interpretations.

#### **490-801 Initiation**

Any person, including the Zoning Administrator, may submit a question for interpretation.

#### **490-802 Limitations on interpretations**

The responsibility for issuing an interpretation may not be construed as overriding the responsibilities specifically given to any commission, board, or official named in any other part of this chapter.

#### **490-803 Review procedure**

**A. Zoning administrator review.** The general steps outlined below describe the process for reviewing an application for a code interpretation.

1. **Submittal of question.** The individual requesting the interpretation submits the question in writing to the Zoning Administrator and the application fee as may be established by the Common Council.
2. **Decision.** The Zoning Administrator makes a written decision within 60 calendar days of when the petition was submitted.

3. **Notification of decision.** Within a reasonable time following completion of the interpretation, the Zoning Administrator sends a copy of the interpretation by regular mail and/or email to the individual requesting the interpretation and provides a copy of the same to the Plan Commission, the City Attorney, and those City employees and agents involved in the administration of this chapter, as appropriate.
- B. Plan Commission review on appeal.** If a final decision of the Zoning Administrator is appealed as provided for in this division, the general steps outlined below apply.
1. **Submittal of application materials.** The Zoning Administrator forwards the application and other materials ~~submitted by~~ the applicant ~~submitted~~ to the Plan Commission, ~~along together~~ with the administrator's interpretation.
  2. **General notice.** Consistent with Article 4, the Zoning Administrator places the matter on the meeting agenda of the Plan Commission.
  3. **Meeting.** Allowing for proper notice, the Plan Commission considers the appeal at a regular or special meeting.
  4. **Decision.** In consultation with the City Attorney, the Plan Commission makes a written decision within 60 calendar days of when the Zoning Administrator's decision was appealed.
  5. **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division and any direction provided by the Commission.
  6. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

#### 490-804 Basis of decision

- A. General.** In consultation with the City Attorney and others as appropriate, the ~~review authority~~Zoning Administrator should (1) evaluate the section of this chapter in question and those that are related, (2) consider the purposes of this chapter set forth in § 490-05 and other parts of the chapter along with applicable legislative findings in this chapter, and (3) consider other applicable interpretations that have previously been made and make a decision consistent with this division giving this chapter its most reasonable application. If the review authority cannot make a reasonable interpretation, a determination will not be issued.
- B. Shoreland-wetland zoning.** If an unclear provision relates to the shoreland-wetland regulations and is required by Ch. NR 117, Wis. Admin. Code, the provision must be interpreted in light of the standards in Ch. NR 117 in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- C. Similarity of land uses.** When deciding if a proposed land use is similar to one already allowed under this code, the Zoning Administrator should consider (1) the nature of the proposed use; (2) whether the proposed use is consistent with the City's comprehensive plan; (3) whether the proposed use is consistent with the purposes of each of the zoning districts where the similar use is allowed either by right or as a conditional use; and (4) any other factor deemed appropriate.

#### 490-805 Repeal or revision of an interpretation

The Zoning Administrator may rescind or modify a previously issued interpretation if it is later found to be incorrect, either in whole or in part. An interpretation may also be rescinded if this chapter is amended in a manner that addresses the issue or subject matter covered by the interpretation.

**490-806 Interpretation content**

An interpretation must be in writing and should include the following:

- (1) the name of the person posing the question,
- (2) the section number of this chapter in question,
- (3) the question or alleged ambiguity,
- (4) the factors that were considered in making the interpretation,
- (5) the interpretation,
- (6) other information the review authority deems appropriate,
- (7) the signature of the Zoning Administrator, and
- (8) the date of decision.

**490-807 Effect of interpretation**

Once an interpretation is made, it carries the same weight as if it were written into this chapter. If the Zoning Administrator decides that it is not possible to make a reasonable interpretation, that decision does not affect the validity of any part of this chapter. When appropriate, interpretations should be handled through the amendment process.

**490-808 Compilation of interpretations**

The Zoning Administrator must keep a written record of all interpretations made after [REDACTED], 2026 (~~the effective date of this code rewrite~~) and make them available for public inspection during normal office hours.

**490-809 Appeal**

- A. Zoning administrator's decision.** An aggrieved person may appeal an interpretation made by the Zoning Administrator by filing an appeal with the Plan Commission without time constraint if the Zoning Administrator determines the interpretation applies broadly and is not specifically related to a particular development project or within 30 calendar days of the date of the decision if the Zoning Administrator determines the interpretation applies specifically to a particular development project.
- B. Plan Commission's decision.** If the Zoning Administrator's decision is appealed to the Plan Commission, ~~an aggrieved person may appeal~~ the Plan Commission's decision ~~may also be appealed~~ to a court of competent jurisdiction within 30 calendar days of the date of ~~the that~~ decision.

**490-810 through 490-824 reserved**

**DIVISION 21  
ADMINISTRATIVE APPEAL****490-825 Generally**

In situations where a property owner or another aggrieved party believes the Zoning Administrator has made an error in making an administrative decision, they may submit an administrative appeal as set forth in this division unless otherwise specified in this chapter.

#### 490-826 Review procedure

The general steps outlined below describe the process for reviewing an application for an administrative appeal.

1. **Submittal of appeal.** The applicant submits a written appeal to the City Clerk within 30 calendar days of the date of the administrative decision being appealed, unless a different timeframe is established.
2. **Notification of appeal.** The City Clerk provides a copy of the appeal to the Zoning Board of Appeals and the Zoning Administrator.
3. **Compilation and submittal of record.** The Zoning Administrator compiles a complete and accurate record relating to the action being appealed and transmits it to the Zoning Board of Appeals in a timely manner.
4. **Special notice to parties in interest.** The chairperson of the Zoning Board of Appeals gives notice for the public hearing to the parties in interest, including the applicant and the Zoning Administrator.
5. **Special notice to Wisconsin Department of Natural Resources.** If the administrative appeal relates to a decision relating to the shoreland-wetland regulations in this chapter, the Zoning Administrator sends a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources by regular mail and/or email at least 10 calendar days before the date of the public hearing.
6. **General notice.** The chairperson of the Zoning Board of Appeals provides for (i) a class 2 public notice and (ii) meeting agenda notice consistent with Article 4.
7. **Public hearing.** Allowing for proper notice, the Zoning Board of Appeals conducts a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or the Zoning Board of Appeals may request a continuance consistent with Article 4.
8. **Decision.** After the public hearing has been closed, the Zoning Board of Appeals makes a decision to (i) affirm the Zoning Administrator's decision, (ii) set aside the decision, or (iii) modify the decision.
9. **Notification of decision.** Within a reasonable time following the Zoning Board of Appeals' decision, the City Clerk sends the decision document to the applicant by regular mail and/or email and provides a copy of the same to the Zoning Administrator and the Plan Commission.
10. **Notification to Department of Natural Resources.** If the administrative appeal relates to a decision relating to the shoreland-wetland regulations in this chapter, the City Clerk sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources by regular mail and/or email.

#### 490-827 Basis of decision

- A. **Generally.** The Zoning Board of Appeals must determine whether the Zoning Administrator made an error in judgment as applied to the instance being appealed.
- B. **Historic property.** In an action involves a historic property, as defined in § 44.31(3), Wis. Stats., the Zoning Board of Appeals must consider any suggested alternatives or recommendations submitted by the landmarks commission, if one has been established, or the Plan Commission.

#### 490-828 Effect of appeal

If an appeal involves an alleged violation of this code, it pauses all legal proceedings related to the action being appealed. However, if the Zoning Administrator certifies in writing to the Zoning Board of Appeals that, in their opinion, staying the proceedings would pose an imminent threat to life or property, the pause does not take effect unless a restraining order is issued. A restraining order may be

granted by the Zoning Board of Appeals or a court of record, upon application and with notice to the Zoning Administrator

#### 490-829 Appeal

An aggrieved person may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the final~~that decision.

#### 490-830 through 490-849 reserved

## DIVISION 22 VARIANCE

#### 490-850 Generally

Recognizing that certain zoning regulations may cause unnecessary hardship to individual landowners if enforced strictly, the state legislature has established a mechanism allowing municipalities to issue a variance. This allows for a minor deviation from the regulations to alleviate the hardship, without undermining the overall intent of the municipality's zoning laws. This division outlines the procedures and requirements for reviewing variance applications related to dimensional standards

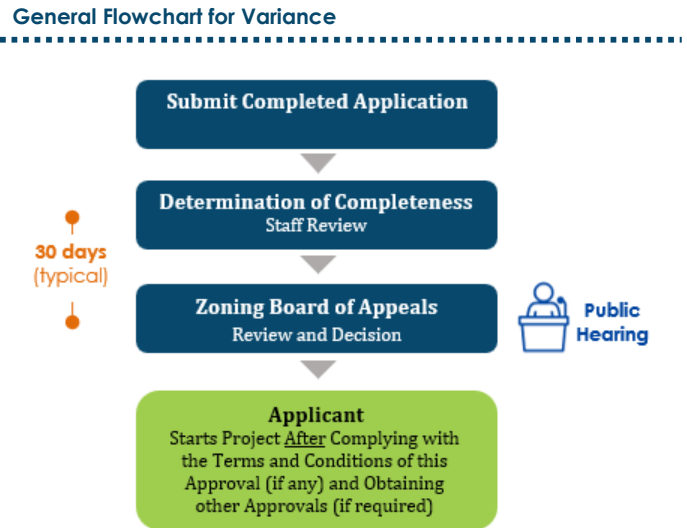
#### 490-851 Review procedure

The general steps outlined below describe the process for reviewing an application for a variance.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the Zoning Administrator and other City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the Zoning Administrator along with the application fee as may be established by the Common Council.
3. **Determination of completeness.** The Zoning Administrator reviews the submittal to make sure it is complete and ready for further review. If it is not complete, the Zoning Administrator will notify the applicant in writing not more than 10 working days after submitting the application. The written notice must describe the nature of the noncompliance and state that the application will expire 3 months from the date of the notice if the noncompliance is not remedied. If the applicant submitted an application fee with their application, the fee is forfeited on the date the application expires. The Zoning Administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record. A determination that an application is complete means the application is ready for formal review and does not suggest the applicant has provided sufficient information in all regards or preclude the reviewing authority from requesting additional information it deems appropriate.
4. **Review date.** When the Zoning Administrator determines the application is complete, they will schedule the review with the Zoning Board of Appeals consistent with the board's meeting schedule.
5. **Special notice to Department of Natural Resources.** If the application relates to shoreland-wetland regulations in this chapter, the Zoning Administrator sends a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email at least 10 calendar days before the date of the public hearing.
6. **General notice.** Consistent with Article 4, the Zoning Administrator provides for (i) a class 2 public notice, (ii) property owner notification, and (iii) meeting agenda notice.

- 7. **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as described in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Zoning Board of Appeals, and any person upon request.
- 8. **Public hearing.** Allowing for proper notice, the Zoning Board of Appeals holds a public hearing consistent with Article 4. Prior to the close of the public hearing, the applicant or the board may request a continuance. If the public hearing is adjourned, the Zoning Board of Appeals may direct City staff to conduct additional research and prepare such documents it deems necessary, including a preliminary decision document.

9. **Decision.** After the public hearing has been closed, the Zoning Board of Appeals after considering the comments and the staff report, if any, makes a decision, based on the decision criteria in this division, to (i) approve the variance, (ii) approve the variance with conditions, or (iii) deny the variance. The Zoning Board of Appeals may render its decision at the same meeting the public hearing is conducted or at a future subsequent meeting.



10. **Preparation of decision document.** Based on the action of the Zoning Board of Appeals, the Zoning Administrator and/or the City Attorney prepares a decision document consistent with this division.

11. **Applicant notification.** Within a reasonable time following the Board of Zoning and Appeals' decision, the Zoning Administrator sends the decision document to the applicant by regular mail and/or email.

12. **Notification to Department of Natural Resources.** If the application relates to the shoreland-wetland regulations in this chapter, the Zoning Administrator sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email.

13. **Additional procedural steps.** If the Zoning Board of Appeals grants the variance, the applicant shall then follow other review procedures as may be required.

**490-852 Basis of decision**

The Zoning Board of Appeals must base its decision on the standards for granting a variance as outlined in § 62.23(7)(e)(7), Wis. Stats., as well as relevant judicial interpretations of the statute.

**490-853 Limitations on issuing a variance**

**A. Prohibitions.** The following actions may not be allowed by a variance:

- (1) expansion of a nonconforming use (e.g., expansion of area, increase in operational characteristics, etc.), or
- (2) modification to lot size requirements so as to increase the permitted density or intensity of use.

- B. Use variance.** The Zoning Board of Appeals may not issue a variance to allow a use not otherwise permitted under this chapter except upon proof that there can be no reasonable use of the property absent a variance as described in § 62.23(7)(e), Wis. Stats.<sup>[1]</sup>
- C. Variance type.** In the event there is a question as to whether a requested variance constitutes a dimensional variance or a use variance, the Zoning Board of Appeals has the authority to make a final determination. If a provision contains a number that is the basis for a variance application, the board should consider whether the number is used to control the scope of a land use (i.e., use variance) or to control the location of an otherwise permissible improvement on a property (i.e., dimensional variance).

**Editorial notes:**

[1] Although a municipality in Wisconsin may have the implicit authority to issue a use variance, the City has determined that use variances should not be issued.

**490-854 Imposition of conditions**

When approving a variance, the Zoning Board of Appeals may impose such conditions and restrictions it deems necessary to further the intent and purposes of this chapter.

**490-855 Staff report content**

The staff report should include the following:

- (1) preliminary findings for the decision criteria listed in this division,
- (2) a preliminary recommendation for approval or denial,
- (3) a preliminary list of conditions for approval whether the preliminary staff recommendation is for approval or denial, and
- (4) other information deemed necessary.

**490-856 Content of decision document**

- A. Approval.** If an application for a variance is approved, the decision document may include, but not necessarily be limited to, the following:
- (1) a statement that the variance is approved;
  - (2) a description of the variance;
  - (3) reasons for the decision based on the criteria listed in this division;
  - (4) conditions of approval, if any;
  - (5) a statement that the approval will automatically expire 12 months after the date of approval unless substantial work as authorized by the approval has commenced and continues in good faith to completion and that the Zoning Board of Appeals may, with cause, grant a one-time extension, not to exceed 6 months;
  - (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
  - (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  - (8) other information the Zoning Board of Appeals or Zoning Administrator deems appropriate;
  - (9) the signature of the chairperson of the Zoning Board of Appeals; and
  - (10) the date of the decision.

**B. Denial.** If the application for a variance is denied, the decision may include, but not necessarily be limited to, the following:

- (1) a statement that the variance request is denied,
- (2) a description of the proposed variance,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration provided there is a substantial change in the circumstances relating to the application,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) other information the Zoning Board of Appeals or Zoning Administrator deems appropriate,
- (7) the signature of the chairperson of the Zoning Board of Appeals, and
- (8) the date of the decision.

#### 490-857 Effect of approval

**A. Generally.** An approved variance merely sets aside the rule or regulation from which relief is sought. All other rules and regulations not part of the variance decision must be followed. An approval of a variance runs with the land and is binding on all ~~future subsequent~~ property owners.

**B. Creation of nonconformity.** If a variance is granted and creates a nonconforming situation, the premises is subject to all applicable provisions relating to nonconformities set forth in Article 26.

#### 490-858 Effect of denial

If the Zoning Board of Appeals denies a variance application, the board may not rehear the same, or essentially the same, application unless there has been substantial change in the circumstances relating to the application.

**Editorial notes:**

[1] See *Tateoka v City of Waukesha Bd. of Zoning Appeals*, 220 Wis.2d 656, 583 N.W. 2d 871 (Ct. App. 1998).

#### 490-859 Expiration of an approval

**A. Commencement of work.** A variance approval automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced. Upon petition and with cause, the Zoning Administrator may grant a one-time extension of up to 6 additional months if (1) the property owner submits a written request to the Administrator before the original approval expires; (2) the property owner demonstrates that the failure to commence substantial work was due primarily to circumstances beyond their control; and (3) the project is in compliance with the zoning regulations in effect at the time the extension is requested.

**B. Completion of work.** If substantial work, as authorized by the approval, begins within the initial time period but fails to progress in good faith toward completion, the Zoning Administrator should initiate the process to terminate the approval as outlined in Division 19 of this article.

#### 490-860 Appeal

An aggrieved person may appeal the Zoning Board of Appeal's decision by filing an appeal with a court of competent jurisdiction within 30 calendar days of the date of ~~the that~~ decision, pursuant to § 62.23 (7)(e) 10, Wis. Stats.

**490-861 through 490-874 reserved****DIVISION 23  
REASONABLE ACCOMMODATION****490-875 Legislative findings**

The Common Council makes the following legislative findings relating to reasonable accommodations for persons with disabilities:

- (1) The federal government has adopted laws with respect to various rights afforded persons with disabilities.
- (2) Some of these laws, most notably the Fair Housing Act and the Americans with Disabilities Act, affect how local zoning rules and regulations are administered by municipalities.
- (3) Under the Fair Housing Act, reasonable accommodations must be made with respect to local zoning laws so that a person with a disability has an equal opportunity to use and enjoy a dwelling unit.
- (4) Under Title II of the Americans with Disabilities Act, reasonable accommodations must be made with respect to local zoning laws to avoid discrimination as provided in the act.
- (5) If a local municipality can demonstrate that a requested modification would fundamentally alter the nature of its service, program, or activity (in this instance zoning requirements) it is not required to grant the modification.
- (6) Requests for wheelchair ramps in setback areas as authorized in this section do not fundamentally alter the nature of this zoning code.
- (7) Requests for all other types of reasonable accommodations will be reviewed individually to determine if the requested accommodation fundamentally alters the nature of this zoning code.

**490-876 Reviews**

- A. Wheelchair ramps in setback areas.** The building inspector is authorized to approve the construction of wheelchair access ramps in setback areas pursuant to § 490-\_\_\_\_ (1007).
- B. Other reasonable accommodations.** The general steps outlined below describe the process for other requests for reasonable accommodations.
  - (1) **Pre-application meeting.** Before submitting an application, the applicant or their agent must meet with City staff, as appropriate, to review the proposal, along with applicable regulations and review procedures. The Zoning Administrator may waive the requirement to hold a pre-application meeting when they determine the meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the City's zoning requirements. (verify if needed)
  - (2) **Submittal of application materials.** The applicant or their agent must meet with the Zoning Administrator to confirm that all required application materials are complete and ready for formal review. (verify if needed)
  - (3) **General notice.** Consistent with Article 3, the Zoning Administrator provides property owner notice and meeting agenda notice.
  - (4) **Staff report preparation and distribution.** The Zoning Administrator may prepare a staff report as set forth in this division. If one is prepared, the Zoning Administrator provides a copy to the applicant, each member of the Plan Commission, and any person upon request.

- (5) **Decision.** After considering the information submitted by the applicant and the Zoning Administrator's staff report, if any, the Plan Commission makes a decision, based on the decision criteria in this division, to (i) approve the requested accommodation, (ii) approve the requested accommodation with conditions, or (iii) deny the requested accommodation.
- (6) **Preparation of decision document.** Based on the action of the Plan Commission, the Zoning Administrator prepares a decision document consistent with this division, subject to the direction given by the Plan Commission.
- (7) **Applicant notification.** If the application is denied, the Zoning Administrator, within a reasonable time following the Plan Commission's decision, sends the decision document to the applicant by regular mail and/or email.
- (8) **Acceptance by property owner.** If the requested accommodation is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return it to the Zoning Administrator within six months of the decision date. Before the end of this period, the property owner may submit a written request for an extension. The Zoning Administrator may, for good cause, grant a one-time extension. If the signed decision document is not returned within the initial or extended period, the approval will automatically become null and void without further action by the City. (verify if needed)
- (9) ~~Recording of decision document. If the property owner signs the decision document, it is recorded, at the applicant's expense, in the register of deeds office for Rock County.~~

#### 490-877 Basis of decision

The Plan Commission, in making its decision, should consider the following factors:

- (1) whether the individual(s) for whom the requested accommodation is sought has a disability as defined by applicable federal law,
- (2) whether the requested accommodation is necessary to afford the person(s) with a disability an equal opportunity to use and enjoy a dwelling or housing opportunity,
- (3) whether the requested accommodation would fundamentally alter the nature of this zoning code,
- (4) whether the requested accommodation would impose an undue financial or administrative burden on the City,
- (5) whether the requested accommodation would result in a significant adverse impact on surrounding properties or land uses that cannot be mitigated,
- (6) whether there are alternative accommodations that would be equally effective in meeting the needs of the individual(s) while imposing a lesser impact on the City's zoning regulations or policies,
- (7) whether the requested accommodation would pose a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others, and whether the threat can be reduced or eliminated,
- (8) whether the requested accommodation is the minimum needed to comply with federal law, and
- (9) any other factor allowed under state or federal law.

#### 490-878 Confidentiality of applicant information

In reviewing petitions for reasonable accommodations, the reviewing authority will attempt to balance the privacy rights and reasonable request of an applicant for confidentiality, with normal

procedural requirements relating to public notice, public hearings, written decision documents that may include findings of fact and conclusions of law, and maintaining adequate records. Any document identifying the disability or medical condition of any specific person will be treated as confidential and is not subject to disclosure by the City for any reason, including Wisconsin's Open Records law, unless ordered to do so by a court of competent jurisdiction and notice is given to the person who provided the document to the City. Specifically, any medical records regardless of source, including statements of medical providers, is not subject to disclosure. For any other type of document, such as an application or determination, the document may be subject to disclosure, but only after the nature or description of the person's disability or medical condition has been redacted by the City Attorney. A statement regarding the City's handling of information subject to this provision should be included in the decision document.

#### **490-879 Nature of approval**

An accommodation approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.

#### **490-880 Imposition of conditions**

When approving a reasonable accommodation, the Plan Commission may impose conditions it deems necessary to uphold the overall intent of this chapter. Typical conditions of approval include the following:

- (1) periodic inspection of the property to verify compliance with this section and any conditions of approval;
- (2) removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
- (3) time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
- (4) recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
- (5) measures to reduce the impact on surrounding properties and uses;
- (6) measures in consideration of the physical attributes of the property and structures; and
- (7) other conditions necessary to protect the public health, safety, and welfare.

#### **490-881 Staff report content**

The staff report may include the following:

- (1) preliminary findings for the decision criteria listed in this division,
- (2) a preliminary recommendation for approval or denial,
- (3) a preliminary list of conditions for approval whether the preliminary staff recommendation is for approval or denial, and
- (4) any other information deemed necessary.

#### **490-882 Content of decision document**

**A. Approval.** If the application for a reasonable accommodation is approved, the decision document may include the following:

- (1) a statement that the reasonable accommodation is approved;
- (2) a description of the reasonable accommodation;

- (3) reasons for the decision based on the factors listed in this division;
- (4) conditions of approval, if any;
- (5) a statement that the approval will automatically expire 12 months after the date of approval unless substantial work, as authorized by the approval, has commenced and continues in good faith to completion and that the Zoning Administrator may, with cause, grant a one-time extension, not to exceed of up to 6 or 12 additional months;
- (6) a statement that the applicant may appeal the decision to a court of competent jurisdiction;
- (7) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
- (8) any other information the Plan Commission or Zoning Administrator deems appropriate;
- (9) the signature of the Zoning Administrator; and
- (10) the date of the decision.

**B. Denial.** If the application for a reasonable accommodation is denied, the decision may include the following:

- (1) a statement that the reasonable accommodation is denied,
- (2) a description of the reasonable accommodation,
- (3) reasons for the decision based on the factors listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration provided there is a substantial change in the circumstances relating to the application,
- (5) a statement that the decision may be appealed as provided for in this division,
- (6) any other information the Plan Commission or Zoning Administrator deems appropriate,
- (7) the signature of the Zoning Administrator, and
- (8) the date of the decision.

#### **490-883 Expiration of approval**

- A. Commencement of work.** An approval of a reasonable accommodation automatically expires 12 months after the date of the decision unless substantial work, as authorized by the approval, has commenced. Upon petition and with cause, the Zoning Administrator may grant a one-time extension of up to 6 additional months if (1) the property owner submits a written request to the Administrator before the original approval expires; (2) the property owner demonstrates that the failure to commence substantial work was due primarily to circumstances beyond their control; and (3) the project is in compliance with the zoning regulations in effect at the time the extension is requested.
- B. Completion of work.** If substantial work, as authorized by the approval, begins within the initial time period but fails to progress in good faith toward completion, the Zoning Administrator should initiate the process to terminate the approval as outlined in Division 19 of this article.

#### **490-884 Amendment of approval**

- A. Generally.** The property owner may submit an application to propose a change to a previously issued approval of a reasonable accommodation.

- B. Minor ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a minor alteration~~, the Administrator is authorized to review and act on the petition with notice to the Plan Commission.
- C. Major ~~alteration~~change.** If the Zoning Administrator determines the proposed change to the approval is ~~a major alteration~~, the review procedure in effect at the time of submittal must be followed.

**490-885 through 490-899 reserved**

## DIVISION 24 DETERMINATION OF NAVIGABILITY

### 490-900 Generally

Shoreland regulations in this code only apply to navigable waterbodies. As set forth in Articles 12 and 13, those waterbodies that are navigable are depicted on the zoning map. It is possible a waterbody, or part thereof, that is mapped as navigable may, in fact, not be navigable. Similarly, there may be an unmapped waterbody that is, in fact, navigable.

### 490-901 Initiation

A request for a determination of navigability can be made by any of the following:

- (1) a property owner in the area to be affected by the determination;
- (2) the Zoning Administrator;
- (3) the Plan Commission, or any member of the commission;
- (4) the Zoning Board of Appeals, or any member of the board;
- (5) the Common Council, or any member of the council; and
- (6) any other interested party.

### 490-902 Basis of decision

In determining whether a waterbody is navigable or not, the Zoning Administrator should consult guidance materials and other resources available from the Wisconsin Department of Natural Resources. In the event there is reasonable uncertainty, the Zoning Administrator should ask the appropriate office of the Wisconsin Department of Natural Resources for assistance.

### 490-903 Effect on pending applications

If a request for a determination is pending and could effect a pending development application, the pending development application is put on hold until a final navigability determination has been issued.

### 490-904 Zoning map amendment

If a determination affects the waterbodies depicted on the zoning map, the Zoning Administrator should initiate the process to amend the zoning map consistent with this article.

**490-905 Appeal**

- A. **Zoning administrator's decision.** An aggrieved person may appeal the Zoning Administrator's decision by filing an appeal with the Plan Commission within 30 calendar days of the date of ~~the~~ that decision.
- B. **Plan Commission's decision.** If the Zoning Administrator's decision is appealed to the Plan Commission, an aggrieved person may appeal the Plan Commission's decision ~~may also be appealed~~ to a court of competent jurisdiction within 30 calendar days of the date of ~~the~~ that decision.

**490-906 through 490-924 reserved**

**DIVISION 25  
DETERMINATION OF ORDINARY HIGH-WATER MARK**

**490-925 Generally**

- A. **Local zoning regulations that apply above the OHWM.** The ordinary high-water mark (OHWM) is used in the shoreland regulations in this code and represents the point of measurement for building setbacks and other development requirements set forth in Article 13. The Zoning Administrator is authorized to establish the ordinary high-water mark on a case-by-case basis. Such determination can be made for a property owner before they submit a development application or as part of a development application.<sup>[1]</sup>
- B. **Shoreline structures and waterway-related activities below the OHWM.** The Wisconsin Department of Natural Resources has the sole authority to establish the ordinary high-water mark when related to any project below the ordinary high-water mark, such as piers, lake rafts, shoreline erosion control structures (i.e., rip-rap), bridges, culverts, dredging, filling, or any other waterway-related activity under the jurisdiction of the department.

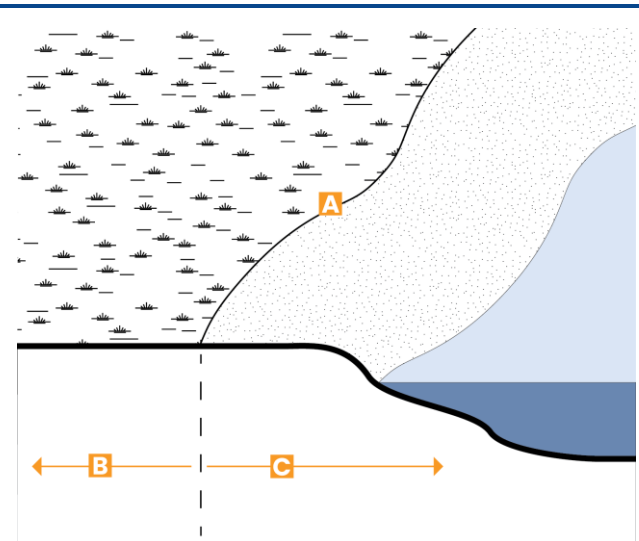
**Editorial notes:**

[1] Given the importance of establishing the point of measurement for setback standards, establishing the OHWM before development plans are drawn up is highly recommended especially when the OHWM is not readily apparent.

**490-926 Review procedure**

- A. **Pre-proposal determination.** Upon request, the Zoning Administrator may establish the ordinary high-water mark for the subject property before the property owner submits a development application. Upon determination, the property owner should work with a professional surveyor to establish the elevation and provide such documentation to the Zoning Administrator.

**Exhibit 5-1. Determination of ordinary high-water mark**



- A Ordinary high-water mark (OHWM)
- B Local determination for shoreland regulations
- C Determination by Wisconsin Department of Natural Resources for state-regulated projects and activities

- B. Determination during project review.** In the event the property owner submits development plans for review, the Zoning Administrator must establish the elevation of the ordinary high-water mark. The elevation may be derived from an elevation proposed by a professional surveyor or be based on a prior determination on the subject property or on another nearby property.

**490-927 Basis of decision**

In determining the ordinary high-water mark, the Zoning Administrator should consult guidance and other resources available from the Wisconsin Department of Natural Resources. In the event the ordinary high-water mark is not readily evident, the Zoning Administrator should ask the appropriate office of the Wisconsin Department of Natural Resources for assistance.

**490-928 Appeal**

- A. Zoning administrator's decision.** An aggrieved person may appeal the Zoning Administrator's decision by filing an appeal with the Plan Commission within 30 calendar days of the date of ~~the~~ that decision.
- B. Plan Commission's decision.** If the Zoning Administrator's decision is appealed to the Plan Commission, an aggrieved person may appeal the Plan Commission's decision ~~may also be appealed~~ to a court of competent jurisdiction within 30 calendar days of the date of ~~the~~ that decision.

**490-929 through 490-999 reserved**

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