

CHAPTER 20

ZONING

20.01 APPLICABILITY AND PURPOSE.

(1) **Applicability.** The Town Board of the Town of Auburn, Fond du Lac County, Wisconsin, having been granted village powers pursuant to Wis. Stats. § 60.10, declares this ordinance is adopted under the authority granted by Wis. Stats. §§ 60.62, 61.35, 62.23(7) and Amendments thereto. This ordinance shall be known as the Zoning Ordinance for the Town of Auburn, Fond du Lac County, Wisconsin, and shall apply to:

- (a) The regulation and restriction of the height, number of stories and size of buildings and other structures.
- (b) The percentage of lot that may be occupied.
- (c) The size of yards, courts, and other open spaces.
- (d) The density of population.
- (e) The regulation of nonconforming uses.
- (f) The location and use of buildings, structures and land for trade, industry, residence or other purposes provided that there shall be no discrimination against temporary structures.

(2) **Purpose.** The purpose of this ordinance is to promote the public health, safety and general welfare of the community through provisions designed to:

- (a) Encourage the most appropriate use of the land.
- (b) Conserve the value of land and buildings.
- (c) Prevent the overcrowding of land and the congestion of streets.
- (d) Provide for adequate light and air.
- (e) Secure safety from fire, panic and other dangers.
- (f) Avoid undue concentration of population.
- (g) Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

20.02 GENERAL PROVISIONS.

(1) **Establishment of Districts.** For the purpose of this ordinance, the Town of Auburn is hereby divided into the following districts:

- (a) FP – Farmland Preservation District
- (b) RD - Rural District
- (c) RR - Rural Residential District

(2) **Establishment of Zoning Map.** The location and boundaries of the districts established shall be as shown on the map entitled the Official Zoning Map of the Town of Auburn, Fond du Lac County, Wisconsin. The Official Zoning Map with all notations, dimensions, designations, references and other data shall accompany and be part of this ordinance, and upon adoption shall be signed by the Town Board Chairman and attested to by the Town Clerk. Amendments to the Official Zoning Map shall be approved by the town Board of Supervisors and shall promptly be portrayed on the Official Zoning Map. Said map shall be available for public inspection in the town hall.

(3) **Interpretation of District Boundaries.** Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- (a) Boundaries as indicated as approximately following the center lines of streets, highways, alleys or a railroad right-of-way shall be construed to follow such center lines.
- (b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- (c) Where boundaries do not follow property lines and distances are not specified on the Official Zoning Map, boundaries shall be determined by the use of the scale on the Official Zoning Map.

(4) **Application of Regulations.** The regulations set by this ordinance shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

- (a) No land, building, or structure shall hereafter be used or occupied, and no building, structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.

- (b) No part of a yard, open space, or off-street parking space required about or in connection with any building for the purpose of complying with this ordinance shall be included as part of a yard, open space, or off-street parking space similarly required for any other building.
- (c) No lot or yard existing at the effective date of adoption of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Lot or yards created after the effective date of adoption of this ordinance shall meet the minimum requirements established by this ordinance.

(5) **Interpretation of Regulations.** In their interpretation and application, the provisions of this ordinance shall be considered minimum requirements. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this ordinance, the provisions of such statute, other regulation, ordinance or covenant shall prevail.

(6) **Severability of Regulations.** It is hereby declared to be the legislative intent that should any provision of this ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance in its entirety or any part thereof, other than that so declared to be invalid.

(7) **County Shoreland Regulations.** In addition to the regulations established herein, no land, water, building or structure shall hereafter be used or occupied and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with the regulations established in the Fond du Lac County Shoreland Zoning Ordinance, Fond du Lac County, Wisconsin adopted pursuant to Wis. Stats. §§ 59.692 and 87.30.

20.03 DEFINITION OF TERMS.

(1) **General.** For the purpose of this ordinance, the following shall apply as indicated throughout the ordinance:

- (a) The word "**person**" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
- (b) The present tense includes the future tense and the singular includes the plural.
- (c) The word "**shall**" is mandatory, the word "**may**" is permissive.
- (d) The words "**used**" or "**occupied**" also mean intended, designed or arranged to be used or occupied.

(2) **Definition of Terms.** For the purpose of this ordinance, the following terms are defined:

- (a) Accessory Use or Structure: A use or structure on the same lot with the principal use or structure, and of a nature customarily incidental and subordinate to the principal use or structure.
- (b) Alteration: A change or rearrangement in the structural parts of a structure, an enlargement of a structure, whether by extending on the side or by increasing the height, or the movement of a structure from one location to another.
- (c) Automobile Salvage Yard: A place where more than two unlicensed motor vehicles are stored outside.
- (d) Base Farm Tract: All land, whether one parcel or two or more contiguous parcels, that is in the farmland preservation zoning district and that is part of a single farm on March 25, 2011 regardless of any subsequent changes in the size of the farm.
- (e) Building: A structure having one or more stories and a roof which is used or intended to be used for the shelter or enclosure of persons, property or animals.
- (f) Common Ownership: Ownership by the same person or persons, or by a legal entity that is wholly owned by the same person or persons.
- (g) Contiguous: Adjacent to or sharing a common boundary. Contiguous land includes land that is separated only by a river, stream, section line, public road, private road, railroad, pipeline, transmission line, or transportation or transmission right-of-way. Parcels are not contiguous if they meet only at a single point.
- (h) Convalescent Home, Children's Home, Nursing Home: A place where regular care is provided to two or more infirmed persons, children, or aged persons who are not members of the family which resides on the premises.
- (i) DATCP: An acronym referring to the Wisconsin Department of Agriculture, Trade and Consumer Protection.
- (j) Development: Any man-made change to improved or unimproved real estate, including but not limited to construction of or additions or

substantial improvements to buildings, other structures, or accessory uses, mobile homes, mining, dredging, filling, grading, paving, excavation or drilling operations, and deposition of materials.

- (k) Dog Kennel: Any establishment where 3 or more dogs or puppies of any age or other animals are kept for the purposes of boarding, training or sporting purposes, all or in part as a service for hire to persons other than or in addition to the kennel owner, or for breeding or sale, whether by and for the owner or for other persons.
- (l) Dwelling Unit: A room or rooms connected together, constituting a separate, independent housekeeping establishment or one family only, for owner occupancy or for rental, lease, or other occupancy on a weekly or longer basis, physically separated from any other rooms or dwelling units, and containing independent cooking and sleeping facilities.
- (m) Dwelling, Single-Family Detached: One building containing not more than one dwelling unit, entirely separated from structures on adjacent lots. The term "detached dwelling" may include forms of manufactured housing other than mobile homes.
- (n) Dwelling, Two Family: One building containing not more than two dwelling units or two buildings, attached at the side, with not more than one dwelling unit per building. The term "two family dwelling" is intended to imply single-family semi-detached buildings and duplexes or any form which conforms to this definition.
- (o) Dwelling, Manufactured Home: A dwelling structure or component thereof fabricated in an off site manufacturing facility for installation or assembly at the building site which is certified and labeled as a manufactured home under 42 USC Secs. 5401-5426, which, when placed on the site:
 - (i) Is set on an enclosed continuous foundation in accordance with Wis. Stats. § 70.43(i), and ILHR 21, Subchapters 111, IV and V, Wis. Adm. Code, or is set on a comparable enclosed continuous foundation system approved by the Building Inspector, who may require a plan for such foundation to be certified by a registered architect or engineer to ensure proper support for such structure;
 - (ii) Is installed in accordance with the manufacturer's instructions;

- (iii) Is properly connected to utilities; and
 - (iv) Meets other applicable standards of this Chapter.
- (p) Dwelling, Mobile Home: A transportable factory built structure designed for long term occupancy built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976, and which is, or was as originally constructed, designed to be transported by any motor vehicle upon a public highway, and designed, equipped and used primarily for sleeping, eating and living quarters, or is intended to be so used; including any additions, attachments, annexes, foundations and appurtenances. In the purpose of this Section, a mobile home shall remain classified as a mobile home regardless of whether its wheels or other rolling devices have been removed or not, and even though assessable value of additions, attachments, annexes, foundations and appurtenances or other added investments to the mobile home equal or exceed fifty percent (50%) of the assessable value of the mobile home. Excluded from this definition are "manufactured homes" as defined above. Mobile homes can be required to be located in a mobile home park. Manufactured homes cannot be required to be located in a mobile home park. (*See Section 20.06(8) for Mobile Home requirements.*)
- (q) Family: One or more persons occupying a single dwelling unit provided that unless all members are related by blood or marriage, no such family shall contain over five persons, but further provided that workers employed on the premises may be housed on the premises without being counted as family.
- (r) Farm: All land under common ownership that is primarily devoted to agricultural use.
- (s) Farm Acreage: The combined total acreage of farms and open space parcels on a base farm tract. "Farm acreage" excludes all nonfarm residential acreage.
- (t) Farm Residence: Any of the following structures located on a farm:
- (i) A single-family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:
 1. An owner or operator of the farm.

2. A parent or child of an owner or operator of the farm.
 3. An individual who earns more than 50% of his or her gross income from the farm.
- (ii) A migrant labor camp that is certified under Wis. Stat. § 103.92, as amended.
- (u) Fence: An enclosed barrier consisting of wood, stone, or metal intended to prevent ingress or egress. No fence shall be constructed of unsightly or dangerous materials which would constitute a nuisance. *See Chapter 14, Town of Auburn Fence Ordinance.*
- (v) Height, Building: A building's vertical measurement, from the mean level of the finished grade in front of the building to the highest point on the roof line of a flat roof or of a roof having a slope of less than 15 degrees from the horizontal, and to a point midway between the peak and the eaves of a roof having a slope of 15 degrees or more.
- (w) Home Occupation: Any occupation customarily incidental to the use of the dwelling as a residence such as crafts, dressmaking, tailoring, handicrafts and other occupations which are not detrimental to the health, safety and general welfare of, or annoying or offensive to, neighbors or the community, provided, however, that there is compliance with the following conditions:
- (i) The occupation is conducted within the dwelling unit by family members only;
 - (ii) Not more than 25 percent of the floor area of only one story of the dwelling unit shall be used for such occupation;
 - (iii) No stock in trade is kept or sold except that which is made in connection with such occupation; and
 - (iv) A home occupation does not include the display of any goods, nor such occupations as barbering, beauty shops, dance schools, real estate brokerage, photographic studios, etc.

- (x) Horse Stables: (Private) A building or premises where more than one horse, under one ownership, is kept on a recurrent basis for non-agricultural purposes. Notwithstanding district dimensional requirements, horse stable in RD District allows only one horse on the first two acres and one horse on each full acre thereafter.
- (y) Horse Stables: (Commercial) A building or premises used for the boarding, riding, driving, jumping or training of horses.
- (z) Hotel: An establishment where lodging is provided for compensation other than in dwelling units. Hotels may serve meals to both occupants and others. The term hotel is also intended to imply motel, motor court, motor lodge, tourist court or any form which conforms to this definition.
- (aa) Livestock: Bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.
- (ab) Lot: A parcel of land used or set aside and available for use as the site for one or more buildings and buildings accessory thereto or for any other purpose, in one ownership and not divided by a street nor including any land within the limits of a public or private street right-of-way. The term "record lot" shall mean land designated as a distinct and separate parcel on a legally recorded deed or plat in the County Clerk's Office.
- (ac) Lot Area: The total horizontal area within the lot lines of the lot.
- (ad) Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purposes of determining yard requirements on corner lots, all sides of a lot adjacent to street shall be considered frontage.
- (ae) Lot Line: The line on the official map that indicates lot boundaries provided any street right-of-way line shall be considered lot lines for the purposes of this ordinance.
- (af) Lot Width: Width of a lot shall be considered the measurement at the front yard line.
- (ag) Nonfarm Residence: A single-family or multi-family residence other than a farm residence.
- (ah) Nonfarm Residential Acreage: The total acreage of all parcels on which nonfarm residences are located.

- (ai) Open Space Parcel: A parcel on which no buildings, other than hunting blinds or small sheds, have been constructed or approved for construction.
- (aj) Prime Farmland: Any of the following:
 - (i) An area with a class I or class II land capability classification as identified by the Natural Resources Conservation Service of the Federal Department of Agriculture.
 - (ii) Land, other than land described in (i), that is identified as prime farmland in a certified farmland preservation plan.
- (ak) Protected Farm Land: Land that is located in a farmland preservation zoning district, is covered by a farmland preservation agreement, or is otherwise legally protected from nonagricultural development.
- (al) Reconstruction: Repairs or the replacement of structural components of a structure exceeding 50 percent of the replacement cost of the structure.
- (am) Service Station: Buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail and where, in addition, minor repair work may be performed.
- (an) Special Exception: A use or structure that would not generally be appropriate in a zoning district but which, if controlled as to number, area, or location or relation to neighborhood would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, property or general welfare. Such uses or structures may be permitted in a zoning district if they meet the requirements of this ordinance.
- (ao) Structure: Anything constructed or erected with a fixed location on the ground, or attached to something with a fixed location on the ground. Among other things, structures include mobile homes and parking lots that charge a fee for parking.
- (ap) Variance: A relaxation of the terms of the ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.
- (aq) Yard: An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward provided, however, that fences, walls, poles, posts and other customary yard accessory ornaments and

furniture may be permitted in any yard subject to the height limitations and requirements limiting obstruction of visibility.

- (ar) Yard, Front: A yard extending across the front of a lot between the side lot lines and extending from the street right-of-way to the nearest principal structure or projection of the principal structure.
- (as) Yard, Rear: A yard extending across the rear of a lot between the side lot lines, and extending from the rear lot line to the nearest principal structure or projection of the principal structure.
- (at) Yard, Side: A yard extending between the nearest building or projection thereto and the side lot line, and extending from the front yard to the rear yard.
- (au) Building, Accessory: A building or portion of a building subordinate to the principal building and used for a purpose customarily incidental to the permitted use of the principal building or the use of the premises. No transportation vehicle, or parts thereof, can be used as accessory buildings or structures.
- (av) Building Inspector: As used in this ordinance the words "Building Inspector" shall also mean Zoning Administrator and/or Land Use Administrator.

20.04 NONCONFORMITIES.

(1) **Applicability and Intent.** Any use of land or structures, or any lot or structure which lawfully existed at the effective date of adoption or amendment of this ordinance which would not be permitted or permissible by the provisions of this ordinance as adopted or amended, shall be deemed a nonconforming use, lot or structure, respectively. It is the intent of this ordinance to permit such nonconformities to continue subject to certain restrictions. No use, lot, or structure will receive nonconforming status under this section unless it lawfully existed at the effective date of adoption or amendment of this ordinance.

(2) **Nonconforming Uses of Land and Structures.** No such nonconforming use of any land or structure shall be extended or enlarged. If such nonconforming use is discontinued for a period of twelve months, any future use of such land or structure shall conform to the ordinance.

(3) **Nonconforming Structures.** No such structure may be altered in any manner that would increase the degree of nonconformity. If such structure is destroyed or damaged due to violent wind, vandalism, fire, flood, ice, snow, mold, or infestation, the structure may be restored

to the size and use that it had immediately before the damage or destruction occurred or to a larger size if necessary for the structure to comply with applicable state or federal requirements.

(4) Nonconforming Characteristics of Use. If characteristics of use such as lighting, parking or other matters pertaining to the use of land, structures and premises are made nonconforming by the provisions of this ordinance as adopted or amended, no change shall thereafter be made in such characteristics of use which increases the nonconformity; provided, however, that changes may be made which do not increase, or which decrease, such nonconformity.

(5) Repairs and Maintenance. Nothing in this ordinance shall be deemed to prevent normal maintenance or repair of any structure or to prevent restoring to a safe condition any structure declared to be unsafe.

(6) Existing Special Exceptions. Any use or structure existing at the effective date of adoption or amendment of this ordinance which is classified as a special exception in the district in which it is located shall be deemed to have been granted approval by the Plan Commission, subject to maintaining the character and extent of such use or structure existing on that date. Any extension or enlargement or change in such use or structure shall require approval of the Plan Commission as provided in this ordinance. Plan Commission approval shall be required for extension or enlargement of resource extraction uses to any properties not devoted to such use at the effective date of adoption or amendment of this ordinance.

20.05 SCHEDULE OF DISTRICT REGULATIONS.

(1) Establishment of Districts. For the purpose of this ordinance, the Town of Auburn is hereby divided into the following districts:

- (a)** FP Farmland Preservation District
- (b)** RD Rural District.
- (c)** RR Rural Residential District.

(2) Interpretation and Organization.

- (a)** District regulations shall be as set out in this section.
- (b)** Permitted principal and accessory uses and structures listed for any district shall be permitted by right, subject to conditions as specified.
- (c)** Special exception uses and structures listed for any district are permissible only upon approval by the Plan Commission subject to the conditions as

specified and any other conditions as may be imposed by the Plan Commission as provided by this ordinance.

- (d) All uses and structures and dimensional requirements shall be subject to Section 6 Supplementary District Regulations as applicable.

(3) FP Farmland Preservation District

- (a) **Purpose.** The intent of this district is to maintain highly productive agricultural lands in food and fiber production by effectively limiting encroachment of non-agricultural development, minimizing land use conflicts among incompatible uses and minimizing public service and facility costs normally associated with non-agricultural development. This district is intended to comply with standards contained in Chapter 91, Wisconsin Statutes, to permit eligible landowners to receive tax credits for farming and includes lands generally identified for agricultural preservation in the Fond du Lac County Farmland Preservation Plan.

(b) Permitted Uses

- (i) Agricultural Uses: Any of the following activities conducted for the purpose of producing an income or livelihood:
 1. Crop or forage production.
 2. Keeping livestock.
 3. Beekeeping.
 4. Nursery, sod, or Christmas tree production.
 5. Floriculture.
 6. Aquaculture.
 7. Fur farming.
 8. Forest management.
 9. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

10. Any other use that DATCP, by rule, identifies as a agricultural use.

(ii) Accessory Uses

1. A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use, including, but not limited to:
 - a. A facility used to store or process raw agricultural commodities, all of which are produced on the farm.
 - b. A facility used to keep livestock on the farm.
 - c. A facility used to store or process inputs primarily for agricultural uses on the farm.
 - d. A facility used to keep or service vehicles or equipment primarily employed in agricultural uses on the farm.
 - e. A manure digester, bio-fuel facility, or other facility that produces energy primarily from materials grown or produced on the farm, primarily for use on the farm.
 - f. A waste storage or processing facility used to store or process animal waste produced solely from livestock kept on the farm.
2. An activity or business operation that is an integral part of, or is incidental to, an agricultural use.
3. A farm residence.
4. A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of the farm, that requires no buildings, structures, or improvements other than those described in sections 20.05(3)(b)(ii)1 and 20.05(3)(b)(ii)3, that employs no more than four-full time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.

5. Any other use that DATCP, by rule, identifies as an accessory use.
- (iii) Nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster as a special exception under section 20.05(3)(c)(iii).
 - (iv) Undeveloped natural resource and open space areas.
 - (v) A transportation, utility, communication, or other use that is required under state or federal law to be located in a specific place or that is authorized to be located in a specific place under a state or federal law that preempts the requirement of a special use permit for that use.
 - (vi) Other uses identified by DATCP rule.
- (c) **Special Exception Uses**
- (i) Agricultural-related uses:
 1. An agricultural equipment dealership, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes.
 2. Any other use that DATCP, by rule, identifies as an agricultural-related use.
 - (ii) Creation of a nonfarm residence or conversion of a farm residence to a nonfarm residence through a change in occupancy, subject to the following requirements.
 1. The ratio of nonfarm residential acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1:20 after the residence is constructed or converted to a nonfarm residence.
 2. There will not be more than four dwelling units in nonfarm residences, nor more than five dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.

3. The location and size of the proposed nonfarm residential parcel, and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel, will not do any of the following:
 - a. Convert prime farmland from agricultural use or convert land previously used as crop land, other than a woodlot, from agricultural use if on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or a nonfarm residence.
 - b. Significantly impair or limit the current or future agricultural use of other protected farmland.
- (iii)** Creation of a nonfarm residential cluster that covers more than one nonfarm residence if all of the following apply:
1. The parcels on which the nonfarm residences would be located are contiguous.
 2. Each nonfarm residence constructed in the nonfarm residential cluster must satisfy the requirements of section 20.05(3)(c)(ii).
- (iv)** Transportation, communication, pipeline, electric transmission, utility, or drainage uses, if all of the following apply:
1. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 2. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
 3. The use is reasonably designed to minimize conversion of land at and around the site of the use, from agricultural use or open space use.
 4. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

5. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.
- (v) Governmental, institutional, religious, or nonprofit community uses, if all of the following apply:
1. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 2. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
 3. The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
 4. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
 5. Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.
- (vi) Nonmetallic mineral extraction, if all of the following apply:
1. The operation complies with Subchapter I of Chapter 295, Wisconsin Statutes, and rules promulgated under that subchapter, with applicable provisions of local ordinances under Wis. Stat. § 295.13 or Wis. Stat. § 295.14 (including all applicable provisions of this ordinance), and with any applicable requirements of the department of transportation concerning the restoration of nonmetallic mining sites.
 2. The operation and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.

3. The operation and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations outside the farmland preservation zoning district, or are specifically approved under state or federal law.
4. The operation is reasonably designed to minimize the conversion of land around the extraction site from agricultural use or open space use.
5. The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
6. The owner agrees to restore the land to agricultural use, consistent with any required reclamation plan, when extraction is completed.

(vii) Oil and gas exploration or production that is licensed by the department of natural resources under Subchapter II of Chapter 295, Wisconsin Statutes.

(d) Dimensional Requirements.

- (i) **All Uses and Structures.** Minimum lot area - 1 acre, minimum lot width - 150 feet, minimum road frontage-150 feet, minimum front and rear yard depth - 40 feet, minimum side yard width - 25 feet. There are no height limitations.

(4) RD Rural District.

(a) **Purpose.** This district is generally composed of lands which are currently developed or used for non-agricultural purposes or which may be devoted to agriculture but because of location, existing development, ownership patterns or physical characteristics are not highly suited to intense long term agricultural use. Because of the rural character of the town, the absence of distinct development patterns and moderate growth anticipated, this district provides for a wide range of permissible uses.

(b) Permitted Principal Uses and Structures.

- (i) Permitted uses and structures in the FP District, excluding nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster under Section 20.05(3)(b)(iii).

- (ii) Single-family detached dwellings. (Single story - 1,000 sq. ft. minimum; two story - 750 sq. ft. minimum; 1 1/2 story 980 sq. ft. for first story and 280 sq. ft. for second story; bi-level/split level - 1,400 sq. ft. minimum; tri-level - 1,500 sq. ft. minimum.)
- (iii) Two family dwellings (840 sq. ft. per unit minimum).
- (iv) Public and semi-public non-profit institutional uses including churches, schools, libraries and uses of a similar nature.
- (v) Horse Stables (Private)

(c) Permitted Accessory Uses and Structures

- (i) Uses and structures customarily accessory and clearly incidental to permissible principal uses and structures.
- (ii) One roadside stand per farm of not more than 200 square feet in area used solely for the sale of products produced on the premises.
- (iii) Home occupations.

(d) Special Exception Uses and Structures

- (i) Parks, playgrounds and golf courses.
- (ii) Eating and drinking establishments.
- (iii) Hotels.
- (iv) Farm equipment sales and service.

- (v) Convenience establishments including grocery stores, drug stores and beauty and barber shops.
- (vi) Warehouse and building supply establishments, farm co-ops, feed mills, storage and distribution facilities for agricultural products and uses of a similar nature.
- (vii) Repair shops.
- (viii) Service stations and auto salvage yards.
- (ix) Light industrial uses relating to the processing of agricultural products such as cheese factories, milk plants, canneries and uses of a similar nature.
- (x) Manufacturing uses including production, processing, cleaning, testing and the distribution of materials.
- (xi) Resource extraction uses including the removal for sale or processing of timber, topsoil, fill, sand, gravel, rock or any mineral. *See Section 20.06(5).*
- (xii) Commercial recreation uses including driving ranges, archery and rifle ranges, camps, campgrounds and uses of a similar nature.
- (xiii) Offices for professional services.
- (xiv) Public and quasi-public uses including compactors, utilities, and storage, but excluding landfills.
- (xv) Convalescent, children's and nursing homes.
- (xvi) Dog Kennels
- (xvii) Horse Stables (Commercial)
- (xviii) Craft, antique, souvenir shops, auction barns, and uses of a similar nature.
- (xix) Mobile homes. *See Section 20.06(8).*
- (xx) Churches, schools, and cemeteries.

(e) Dimensional Requirements.

- (i) **All Permissible Agricultural Uses and Structures.** Minimum lot area - 5 acres, minimum lot width - 200 feet, minimum front yard - 40 feet, minimum rear yard - 25 feet, and minimum side yards - 20

feet each. There are no height limitations.

- (ii) **Other Permissible Principal Uses and Structures.** Minimum lot area - 1 acre, minimum lot width - 150 feet, minimum road frontage-150 feet, minimum front and rear yard depth - 40 feet, minimum side yards - 25 feet each. There are no height limitations provided, however, that for any structure over 50 feet in height the side yards shall be increased by 1 foot for every 2 feet in height.

(5) RR Rural Residential District.

- (a) **Purpose.** This district is intended to maintain the character of existing residential areas and to provide for other areas of the town where residential development may be established as the primary use.
- (b) **Permitted Principal Uses and Structures.**
 - (i) Single-family detached dwellings. (Single story - 1,000 sq. ft. minimum; two story - 750 sq. ft. minimum; 1 1/2 story 980 sq. ft. for first story and 280 sq. ft. for second story; bi-level/split level - 1,400 sq. ft. minimum; tri-level - 1,500 sq. ft. minimum.) Minimum lot area - One (1) acre.
 - (ii) Two family dwellings. (840 square feet per unit minimum).
 - (iii) Public and semi-public non-profit institutional uses including churches, schools, libraries and uses of a similar nature.
- (c) **Permitted Accessory Uses and Structures.**
 - (i) Uses and structures customarily accessory and clearly incidental to permissible principal uses and structures.
 - (ii) Home occupations.
- (d) **Special Exception Uses and Structures.**
 - (i) Parks, playgrounds and golf courses.
 - (ii) Convalescent, children's and nursing homes.
 - (iii) Clubs and organizations not conducted as a gainful business.
 - (iv) Utilities.
 - (v) Mobile homes. *See Section 20.06(8).*

(e) **Dimensional Requirements.**

- (i) **All Permissible Principal Uses and Structures.** Minimum lot area - one acre, minimum lot width - 150 feet, minimum road frontage-150 feet, minimum front yard - 40 feet, minimum rear yard - 25 feet, minimum side yards - 10 feet each. Maximum height - 35 feet.

20.06 SUPPLEMENTARY DISTRICT REGULATIONS.

(1) **General Application.** The regulations set forth herein shall supplement or modify the regulations set forth in Section 20.05 Schedule of District Regulations.

(2) **Lots and Yards.**

- (a) No More Than One Building on a Lot. In any district, no more than one building housing a principal use may be erected on a single lot.
- (b) Through Lots. On through lots or lots with double frontage, the required front yard shall be provided on each street. On corner lots the street side yard shall equal the required front yard for lots fronting on that street.
- (c) Development in Mapped Streets. Where an official line has been established for the future widening or opening of a street, the depth of a front yard or the width of a side yard shall be measured from such official line to the nearest line of the building.
- (d) Access. Every building housing a principal use hereafter erected or moved shall be on a lot with direct access to a public or private street and all such buildings shall be so located as to provide safe and convenient access for servicing and off-street parking.
- (e) Building Groups. In any non-residential district a group of buildings separated only by common or party walls shall be considered as one building.
- (f) Building Setback Lines. Minimum front yard setback requirements contained in this ordinance shall be measured from the outside edge of the dedicated road right-of-way.

(3) **Accessory Uses and Structures.**

- (a) Attached Accessory Buildings. All accessory buildings which are attached to the principal building shall comply with the yard requirements of the principal building.

- (b) Detached Accessory Buildings. No detached accessory building shall occupy any portion of the required front or side yard in any district where the principal use is residential. No detached accessory building or buildings shall occupy more than 25 percent of the required rear yard, or be located within fifteen feet of any other accessory buildings, principal building or lot line. No swimming pool as a permanent accessory structure shall be located within fifteen feet of any lot line.
- (c) Corner Visibility. On any corner residential lot, nothing shall be erected, planted, or allowed to grow within 30 feet of the street line that will obscure visibility over the height of two and one half feet above the street grade.

(4) **Height**. The height limitations contained in Section 5 do not apply to belfries, cupolas, antennas, water tanks, elevator bulkheads, chimneys, spires, flagpoles or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

(5) **Resource Extraction.**

- (a) Location. Location shall be appropriate to existing development and development which may reasonably be expected within the time period specified herein. The site shall be so located as to make it unnecessary to conduct trucking operations on town roads through established residential areas and unnecessary for special improvement or maintenance of public facilities at public expense.
- (b) Area. The tract shall consist of a minimum of five acres with dimensions sufficient to adequately accommodate the proposed use with minimum adverse affects on adjacent land.
- (c) Plan for Development and Plan for Rehabilitation. In addition to a site plan, each applicant shall submit a plan for development and a plan for rehabilitation. The plan for development shall show the proposed operation as planned and staged over a ten year period in relation to the entire tract. The plan for development shall include the following information: present topography, drainage, and soils and features to be altered in connection with the operation; the feasibility of the proposed operation without hazards or damage to other properties by reason of flooding, rises in groundwater, erosion or other reasons; where and how traffic on and from the development is to be handled; and where equipment will be operating and stored. The plan for rehabilitation shall include the following information: fill methods, materials and depths; measures to be taken to replace topsoil; topography and treatment of

slopes to prevent erosion; and the delineation of drainage-ways.

- (d) Time Limitations. No special exception shall be issued for a period exceeding 12 years consisting of not more than 10 years for the development phase and not more than two years for the rehabilitation phase. Upon expiration of the development phase, the applicant may request extensions of this phase on a four year basis thereafter unless changing conditions indicate the extensions will be detrimental to adjacent land or the public interest. Any extension shall require the submission of a development plan and plan for rehabilitation. If such an extension is denied, the applicant shall complete the rehabilitation phase as proposed.
- (e) Financial Capability. To insure completion of the rehabilitation phase as proposed and within the two year time period specified, the applicant shall submit a performance bond sufficient in amount to cover the rehabilitation expense.

(6) Landscaped Buffer. The use of properly planted and maintained buffer areas may reduce and ease potential incompatibility between or among different uses of land in proximity to each other.

- (a) Requirements. Where these zoning regulations require a landscaped buffer area, the following requirements shall be met:
 - (i) The landscaped buffer area shall not be less than six feet in width measured at right angles to property lines and shall be established along the entire length of and contiguous to the designated property line or lines.
 - (ii) The area shall be so designated, planted and maintained as to be seventy-five percent or more opaque between two and six feet above average ground level when viewed horizontally.
 - (iii) Types and numbers of plantings for landscaped buffers shall be submitted with application for a building permit or special exception, along with plans and statements demonstrating how the buffer will be maintained in the future.
 - (iv) Plantings shall be of a size and type which will insure the meeting of the seventy-five percent opacity requirement within no longer than twelve months of the date of first planting.
 - (v) Failure to maintain the landscaped buffer area as set out above shall be a violation of these zoning regulations.
- (b) Substitution for Landscaped Buffer Area. Except when otherwise specifically provided by these regulations, a six foot high opaque structure

set in a five foot wide landscaped buffer area may be substituted for the six foot high planted buffer above. If such opaque structure is of non-living material, for each ten feet thereof, an average of one shrub or vine shall be planted abutting such barrier. The remainder of the required landscaped areas shall be landscaped with grass, ground cover or other landscaping.

- (c) Sight Distance. When an access way intersects a public right-of-way, all landscaping or structures shall provide unobstructed cross visibility at a level between two and one half to six feet.

(7) **Campgrounds.** Campgrounds designed and used for the purposes of temporary occupancy by tourists and campers for vacation camping by the use of recreational vehicles, tents or shelter cottages shall be subject to the following restrictions:

- (a) No such campground shall be located within 300 feet of any residential lot line. The minimum lot area for any campground shall be five acres. The maximum number of camping sites shall be fifteen per gross acre.
- (b) Minimum dimensions for a camp site shall be 25 feet in width and 40 feet in length. Each unit shall be separated from other units by a side yard of at least 15 feet in width and a rear yard of at least 40 feet in depth. All units shall provide a minimum setback of 40 feet.
- (c) Each site shall provide a minimum of 1 1/2 spaces for parking.
- (d) Unless adequately screened by existing vegetation such campgrounds may be subject to the landscaped buffer requirements of Section 16.06(6).
- (e) All campgrounds shall conform to the requirements for Developed Campgrounds specified in Chapter HFS178 Wisconsin Administrative Code.
- (f) No land shall be used for a campground which is held unsuitable by the Plan Commission for reasons of flooding or potential flooding, inadequate drainage, adverse soil or rock conditions, unfavorable topography or any other condition likely to be harmful to the health, safety or welfare of the occupants.
- (g) Definitions.
 - (i) **Recreational vehicle** means any of the following:
 1. Travel Trailer. A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses and permanently

identified as a travel trailer by the manufacturer.

2. Pick-up Coach. A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation or vacation.

- (ii) **Temporary Occupancy**. Occupancy of a site or sites for a cumulative period not to exceed 60 days in any 12 months, provided, however, that occupancy by employees, owners or operators is not limited.
- (iii) **Developed Campground**. Any privately or municipally owned parcel or tract of land accessible by automobile or other engine driven vehicle designed, maintained, intended or used for the purpose of supplying accommodations for overnight use by recreational vehicle, open to the public and designated as a developed camp area and set aside for free or paying camping purposes.

(8) **Mobile Homes**. Mobile Homes require a Special Exception to be located in the FP, RD, RR Districts and must comply with Chapter 15, Parking, Locating, Use and Assessing of Mobile Homes. A mobile home must meet the definition of “farm residence” in Section 20.03(2)(s) or must meet the requirements of Section 20.05(3)(c)(ii) to be placed in the FP District.

- (a) Requirements. Except as provided in this ordinance, it shall be unlawful for any person, firm or corporation to place, keep or maintain any mobile home within the town.
 - (i) Any mobile Home brought into the Town of Auburn after 5-2-1983 shall not be more than four (4) years old and shall have a minimum floor area of 1000sq. ft. excluding additions attachments and annexes.
 - (ii) The mobile Home shall be located on (1) acre of land, owned by the mobile home owner.
 - (iii) The mobile home shall be set on a concrete or concrete block foundation, set on a footing below frost level.
 - (iv) The mobile home shall be provided with the same sewage disposal and water facilities on the site as are required for a normal three (3) bedroom single family dwelling.

- (v) The mobile home shall be so located and situated as to comply with all applicable requirements of the Town and County Zoning Ordinances.
- (vi) Adequate parking facilities for two (2) automobiles shall be provided on site.
- (vii) Written approval of the Plan Commission must be obtained before any mobile home shall be moved into or within the Town for any purpose.

20.07 PERMITS.

(1) **Applicability.** No structure and no building shall be erected, constructed, reconstructed, altered, moved or enlarged until a building permit has been obtained from the Building Inspector.

- (a) Definition. The term "Building" as used in this section shall include any building, structure, or use of land which is governed by the requirements of this ordinance.
- (b) Exceptions. No building permit shall be required in any of the following cases; however all other zoning regulations are still applicable:
 - (i) Moving any building or structure that is not permanently attached to the ground and/or a foundation.
 - (ii) For an accessory building 150 sq. ft. or less in area which has no foundation or slab.
 - (iii) For accessory agricultural building under 400 sq. ft. in area in agricultural zoning districts on operating farms, which are not permanently fixed to the ground and are readily removable in their entirety.
 - (iv) For non-structural maintenance and repairs.

(2) **Application for Building Permit.** Application for a building permit shall be made in writing upon a form furnished by the Building Inspector and shall include the following information:

- (a) Name and address of the owner of the land or the owner of the building or structure if different.

- (b) Statement as to the proposed use of the building, structure or land.
- (c) Site layout drawn to scale showing the location and dimensions of all proposed buildings, structures or uses, open spaces, yards, and methods to be used for screening shall be included where applicable.
- (d) Other information as required by this ordinance or necessary for the Building Inspector to enforce the provisions of this ordinance.

(3) Building Permit for Unsewered Lands. Before issuing a building permit for construction of any building or structure on property not served by a municipal sewage treatment plant, the Building Inspector shall determine that the proposed construction does not interfere with a functioning private domestic sewage treatment and disposal system. The Building Inspector may require the applicant to submit a detailed plan of the owner's existing private domestic treatment and disposal system. The Building Inspector may not issue a building permit for construction of any building or structure requiring connection to a private domestic sewage treatment and disposal system unless a system satisfying all applicable regulations already exists to serve the proposed building or structure or all permits necessary to install such system have been obtained.

(4) Approval of Building Permit. If the Building Inspector determines that the proposed building, structure or use will comply with the provisions of this ordinance and all applicable laws and orders of the State of Wisconsin, he shall officially approve and sign one set of plans and return it to the owner, and shall issue a permit which shall be kept on display at the building site.

(5) Use as Provided in Application and Plans. Building permits issued on the basis of plans and applications approved by the Building Inspector authorizes only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance.

(6) Prior Permits. No building permit lawfully issued by the Building Inspector prior to the effective date of adoption or amendment of this ordinance shall be invalidated by the adoption or amendment of this ordinance. Such permit shall remain valid and subsisting subject only to its own terms for a period not to exceed six months after the effective date of adoption or amendment of this ordinance.

(7) Improper Issuance. A building permit which was improperly issued or not issued in accordance with the standards and procedures as set forth in this ordinance shall not create any right in said permit and the town shall be entitled to revoke said permit.

(8) Time Limits For Permits. A building permit shall expire if construction is not commenced within six (6) months of issuance or is not completed within eighteen (18) months of

issuance. The Town Board may grant an extension of time only if extraordinary conditions such as strikes or inclement weather prevent compliance with of these limitations. The maximum extension allowed is six (6) additional months.

(9) Permit Fees. Fees for all permits shall be determined from time to time by the Town Board and set forth on a schedule of fees.

(10) Double Fee. A double fee may be charged by the Zoning Administrator if work is started before a permit is applied for and issued. Such double fee shall not release the applicant from full compliance with this ordinance nor from the prosecution for violation of this ordinance.

20.08 ENFORCEMENT, REMEDIES AND PENALTIES.

(1) Building Inspector - Duties and Powers. The provisions of this ordinance shall be administered and enforced by the Building Inspector who shall be appointed by the Town Board Chairman and confirmed by the Town Board. The Building Inspector shall:

- (a)** Examine all applications for building permits and approve such permits only where there is compliance with the provisions of this ordinance. Permits requiring a special exception shall be referred to the Plan Commission for action thereon and shall be issued only upon order of the Plan Commission.
- (b)** Conduct Inspections to determine compliance or noncompliance with the provisions of this ordinance.
- (c)** Issue stop, cease, and desist orders, and orders requiring the correction of all conditions found to be in violation of the provisions of this ordinance. Such written orders shall be served personally or by certified mail upon persons deemed by the Building Inspector to be violating the provisions of this ordinance. It shall be unlawful for any person to violate any such order issued by the Building Inspector.
- (d)** With the approval of the Town Board, or when directed by the Town Board, institute in the name of the town any appropriate action or proceedings to prevent any violation of this ordinance.
- (e)** Revoke by order any building permit approved under a misstatement of fact or contrary to the law or provisions of this ordinance.
- (f)** Maintain a map of all nonconformities and special exceptions and maintain a file on each.

- (g) Upon request of the Town Board, Town Board Chairman, or Board of Appeals, present to such persons or bodies facts, records, or reports which they may request to assist them in making decisions, or assist them in any other way as requested.

(2) **Remedies.** In the event any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained; or any building, structure or land is or is proposed to be used in violation of this ordinance, the Town Board, the Town Building Inspector, the Town Plan Commission, or any adjacent or neighboring property owners who would be damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent, restrain, correct or abate such violations; to prevent the occupancy of buildings or structures; or to prevent any illegal act, conduct, business or use in or about such premises.

(3) **Penalties.** Any person who violates any provisions of this ordinance or any other order, rule or regulations made hereunder shall, upon conviction, be subject to forfeitures of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00) for each offense, together with the costs of prosecution and attorneys' fees, and in default of payment of such amounts, shall be imprisoned in the county jail until such fine and forfeitures are paid, but not to exceed thirty (30) days. Each day that a violation continues shall be considered a separate offense. In addition to the foregoing, the Town may seek injunctive relief and abatement orders in the event of a violation of this ordinance.

20.09 BOARD OF APPEALS.

(1) **Establishment of Board.** In order that the objectives of this ordinance may be more fully and equitably achieved and a means for interpretation provided, there is established a Board of Appeals (hereinafter referred to as the Board).

(2) Membership and Terms of Office.

- (a) Board Members. The Board shall consist of five members appointed by the Town Chairman and confirmed by the Town Board. The Town Chairman shall designate one of the Board members chairman. The Town Board may appoint a Secretary of the Board. Board members shall be removable by the Town Board Chairman for cause upon written charges and after a public hearing.
- (b) Alternate Members. The Town Chairman may appoint two alternate members to the Board. Annually, the Town Board Chairman shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of the Board is absent or refuses to vote because of interest. The second alternate shall act only when the first alternate so refuses or is

absent or when more than one member of the Board refuses or is absent.

- (c) Terms. Board members shall be appointed to three year terms, except for those first appointed, in which case one member shall serve for one year, two members for two years and two members for three years. Alternate members shall serve staggered terms of two years.
- (d) Vacancies. Vacancies shall be filled for the unexpired terms of members whose terms become vacant.

(3) Procedures, Meetings, Records and Decisions.

- (a) Procedures. The Board shall be governed by the provisions of Chapter 62.23(7)(E) of the Wisconsin Statutes, the Zoning Ordinance of the Town of Auburn and the rules and procedures set forth herein, as adopted by the Board and approved by the Town Board. No rule herein shall be changed or waived without the affirmative vote of four members of the board.
- (b) Meetings. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be conducted in accordance with the Wisconsin Open Meeting Law.
- (c) Records and Decisions. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed as public records. All actions or decisions shall be taken by motion in which four members, present during the proceedings, must concur. Each decision shall contain a statement of the grounds forming the basis of such decision. The Chairman shall notify the Town Board and Town Board Chairman of all decisions.
- (d) Public Hearing. Upon filing with the Board of an application for an appeal, variance or special exception, the Board shall fix a reasonable time (not more than 60 days from the filing date) for a public hearing. A Class 2 notice pursuant to Chapter 985 Wisconsin Statutes shall be published in the official newspaper of the Town specifying the date, time and place of the hearing and the matters to come before the Board. Notice shall also be mailed to the parties at interest, as determined by the Board.

(4) Appeals.

- (a) Powers and Duties. The Board shall have the power to hear and decide appeals by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Building Inspector. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from, and issue, or direct the issuance of a permit.
- (b) Procedure. An appeal from any decision of the Building Inspector shall be made within 30 days of such decision. The appeal shall be filed with the Building Inspector on a form provided by the Board specifying the grounds for the appeal. The Building Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (c) Preliminary Review. The secretary of the Board shall as promptly as possible, inform the Board concerning the appeal, and the Board may either discuss the matter with the applicant if the applicant desires or proceed directly to order public notice of a hearing.

If the applicant elects to withdraw the appeal any time before final determination is made by the Board, this fact shall be noted on the application, with the signature of the applicant, attesting withdrawal. Copies of the withdrawn application shall be returned to the secretary for the files of the Board, to the Building Inspector and to the applicant. If the appeal is not withdrawn, the Board may request the applicant to provide such additional information as may be needed to determine the case and shall instruct the secretary to proceed with public notice of a hearing on the case.

- (d) Amendments. Amendment of an appeal by the applicant may be permitted at any time prior to or during the public hearing, provided that no such amendment shall be such as to make the case different from its description in the notice of public hearing. If the amendment is requested by the applicant after public notice of the hearing has been given, and such amendment is at variance with the information set forth in the public notice the applicant shall pay an additional fee to cover the cost of amending the public notice. If the amended notice can be published within the time frame specified for the public hearing, the hearing on the amended appeal may be held on that date, otherwise the Chairman shall announce that the hearing originally scheduled on the case will be deferred to a future meeting, before which appropriate public notice will be given, and will state the reasons for the deferral.

(5) Variances.

- (a) Powers and Duties. The Board shall have the power to authorize upon appeal a variance from the terms of the ordinance where a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship.
- (b) Requirements for a Variance. In general the power to authorize a variance from the requirements of the ordinance shall be sparingly exercised and only under peculiar and exceptional circumstances. No variance shall be granted for actions which require an amendment to this ordinance. Variances shall only be granted when the Board finds that:
 - (i) The variance is not contrary to the public interest and that such variance will be in general harmony with the purposes and intent of this ordinance.
 - (ii) Special circumstances and conditions exist which are peculiar to the land, structure or building involved and which are not generally applicable to other lands, structures, or buildings in the same district.
 - (iii) The variance will not permit the establishment of a use which is not permitted in the district.
 - (iv) The hardship results from the strict application of this ordinance and is not the result of self-created or self-imposed circumstances.
 - (v) Greater profitability, lack of knowledge of restrictions and other variances granted under similar circumstances are not being considered as sufficient cause for a variance.

20.10 PLAN COMMISSION.

(1) Special Exceptions.

- (a) Powers and Duties. The Plan Commission shall have the power to hear and decide special exceptions for any use or structure specified by the terms of this ordinance and for no other use, structure or purpose.
- (b) Procedures. Application for a special exception shall be made in writing to the Plan Commission.
- (c) Requirements for a Special Exception. In granting a special exception, the Plan Commission shall make findings of fact consistent with the provisions of this ordinance. The Plan Commission shall not grant a

special exception except in conformance with the conditions and standards outlined in this ordinance. In addition to the requirements and conditions specified in this ordinance, the Plan Commission may impose additional conditions as deemed necessary to insure the proposed use or structure will secure the objectives of this ordinance and promote the public health, safety, comfort, convenience and general welfare. No special exception shall be approved unless the Plan Commission shall find:

- (i) That the establishment, maintenance or operation of the special exception use or structure will not be detrimental or injurious to the use and enjoyment of adjacent properties or properties in the immediate vicinity;
 - (ii) That the special exception is compatible with adjacent existing uses and structures or uses and structures likely to develop which are permitted in the district;
 - (iii) That adequate measures are taken to provide for drainage;
 - (iv) That adequate public facilities and services are available to the development;
 - (v) That ingress and egress to the property is provided in such a manner as to minimize traffic hazards and congestion;
 - (vi) That adequate parking loading facilities are provided.
- (d) In all cases in which special exceptions are granted, the Plan Commission shall require such evidence and guarantees as it deems necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such conditions may include specifications for, without limitation because of specific enumeration:
- (1) Landscaping;
 - (2) Type of construction;
 - (3) Construction commencement and completion dates;
 - (4) Sureties;
 - (5) Lighting;
 - (6) Fencing;
 - (7) Operational control;
 - (8) Hours of operation;
 - (9) Traffic circulation;
 - (10) Deed restrictions;
 - (11) Access restrictions;

- (12) Setback and yards;
- (13) Type of shore cover;
- (14) Specified sewage disposal and water supply system;
- (15) Planting screens;
- (16) Piers and docks;
- (17) Increased parking; or
- (18) Any other requirements necessary to fulfill the purpose and intent of this ordinance.

- (e) Public Hearing. Upon filing an application for a special exception, the Plan Commission shall fix a reasonable time (not more than 60 days from the filing date) for a public hearing. A Class 2 notice pursuant to Chapter 985 Wisconsin Statutes shall be published in the official newspaper of the town specifying the date, time and place of the hearing and the matters to come before the Plan Commission. Notice shall also be mailed to the parties at interest, as determined by the Plan Commission.

(2) **Amendments.** The Plan Commission shall make recommendations to the Town Board concerning amendments to the zoning ordinance in accordance with Section 11 of this ordinance.

20.11 AMENDMENTS.

(1) **Power of Amendment.** The Town Board may from time to time on its own motion or on petition, amend, supplement or change this ordinance, including the Official Zoning Map.

(2) **Procedures.** The Town Board shall refer every proposed amendment to the Plan Commission for a report and recommendation. If the Town Board does not receive a report and recommendation from the Plan Commission within 60 days of submitting the proposed amendments, the Town Board may proceed with the necessary hearing.

(3) **Public Hearing and Notice.**

- (a) Required Hearing. No amendment of this ordinance shall become effective until a public hearing is held before the Town Board where parties in interest and citizens shall have the opportunity to be heard.
- (b) Notice of Hearing. A Class 2 notice in accordance with Chapter 985 of the Wisconsin Statutes shall be published in the Town's official newspaper once during each of the two weeks prior to such hearing. At least 10 days before the public hearing, a written notice of such hearing shall also be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed amendment. Failure to give

such notice shall not invalidate such amendment. If the proposed amendment changes the allowable use of any property, the notice shall contain either a map of the affected property or a description of it and a statement that a map may be obtained from a designated Town official or the Town attorney.

(4) Final Approval by Town Board. An amendment shall become effective upon a majority vote of the members of the Town Board voting on the proposed change. However, in the case of a protest against such amendment, duly signed and acknowledged by the owners of 20 percent or more of the land included in such proposed amendment or by the owners of 20 percent or more of the area immediately adjacent extending 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by a favorable vote of a majority of the members of the Board.

(5) Rezoning of Land Out of the Farmland Preservation District. The Town may rezone land out of the farmland preservation zoning district if the Town finds all of the following, after a public hearing:

- (a)** The land is better suited for a use not allowed in the farmland preservation zoning district.
- (b)** The rezoning is consistent with any applicable comprehensive plan.
- (c)** The rezoning is substantially consistent with the county certified farmland preservation plan.
- (d)** The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(6) Reporting of Land Rezoned out of Farmland Preservation District. The Town shall, by March 1 of each year, provide to the Wisconsin Department of Agriculture, Trade & Consumer Protection and to Fond du Lac County a report of the number of acres that the Town has rezoned out of the Farmland Preservation Zoning District during the previous year and a map that clearly shows the location of those areas.