

ENROLLED ORDINANCE 161-3

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE TO REPEAL AND RECREATE SECTION 3.18 REGARDING LEGAL NON-CONFORMING USES, STRUCTURES AND LOTS AND SECTION 3.15 REGARDING SIGNS (ZT-1612)

WHEREAS the subject matter of this Ordinance having been approved by the Mukwonago Town Board on March 15, 2006, after Public Hearing and the giving of requisite notice of said hearing, and duly referred and considered by the Waukesha County Park and Planning Commission and a recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the Wisconsin Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Ordinance amending the text of the Town of Mukwonago Zoning Ordinance, approved by the Mukwonago Town Board on May 9, 1983, to repeal and recreate Section 3.18 regarding legal non-conforming uses, structures and lots and Section 3.15 regarding signs, and more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference (ZT-1612), is hereby approved.

BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town of Mukwonago.

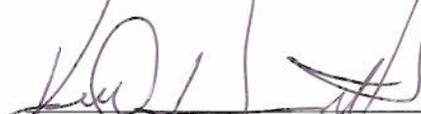
BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage, approval and publication.

BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of provisions of this Ordinance are hereby repealed.

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE TO REPEAL
AND RECREATE SECTION 3.18 REGARDING LEGAL NON-CONFORMING USES,
STRUCTURES AND LOTS AND SECTION 3.15 REGARDING SIGNS (ZT-1612)

Presented by:
Land Use, Parks, and Environment Committee


William A. Mitchell, Chair


Keith Hammitt


Keith Harenda

Absent
Pauline T. Jaske


Walter L. Kolb

Vera Stroud
Vera Stroud


Peter M. Wolff

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

Date: 5/26/06, 
Kathy Nickolaus, County Clerk

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

Approved: X
Vetoed: _____
Date: 5-26-06, 
Daniel P. Vrakas, County Executive

Exhibit A

EXHIBIT "A"

STATE OF WISCONSIN

TOWN OF MUKWONAGO

WAUKESHA COUNTY

ORDINANCE NO. 2006-2

AN ORDINANCE TO REPEAL AND RECREATE SECTION 3.18 OF THE TOWN OF MUKWONAGO ZONING CODE REGARDING LEGAL NON-CONFORMING USES, STRUCTURES AND LOTS AND TO REPEAL AND RECREATE SECTION 3.15 OF THE TOWN OF MUKWONAGO ZONING CODE REGARDING SIGNS

WHEREAS, Town of Mukwonago Town staff has recommended that the Town of Mukwonago Zoning Code be amended with regard to legal non-conforming uses, structures and lots; and

WHEREAS, subject to Section 22.01 of the Zoning Ordinance in the Town of Mukwonago, the Town Board may from time to time after first submitting a proposal to the Plan Commission for report, and after notices of public hearing and public hearing, amend, supplement, or change the regulations of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, upon referral of the matter by the Town Clerk, the Plan Commission for the Town of Mukwonago scheduled a public hearing for the Town Board of the Town of Mukwonago and the Plan Commission of the Town of Mukwonago as soon as practical; and

WHEREAS, upon publication of the required notice of the public hearing and mailing of said notice of the public hearing to all parties in interest as required by Section 23.02 of the Zoning Code for the Town of Mukwonago, the Plan Commission for the Town of Mukwonago, and the Town Board for the Town of Mukwonago held a public hearing on March 1, 2006 as required by Section 22 of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, the Plan Commission for the Town of Mukwonago has recommended to the Town Board for the Town of Mukwonago that the ordinance be amended as described herein; and

WHEREAS, the Town Board for the Town of Mukwonago, after carefully reviewing the recommendation of the Town Plan Commission of the Town of Mukwonago, having given the matter due consideration, and having based its determination on the effect of the Zoning Amendment on health, general welfare, safety and economic prosperity of the Town, and having given due consideration to the municipal problems involved, hereby determines that the use will not violate the spirit or intent of the Zoning Ordinance for the Town of Mukwonago, will not violate the Town of Mukwonago Master Plan, will not be contrary to the public health, safety, or general welfare of the Town of Mukwonago, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a potential adverse affect on property values in the Town or the general desirability of the Town.

NOW, THEREFORE, the Town Board of the Town of Mukwonago, Waukesha County, Wisconsin, DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The Town of Mukwonago Zoning Ordinance Section 3 entitled "General Provisions", subsection 3.18 entitled "Legal Non-conforming Uses, Structures, and Lots" is hereby repealed and recreated as follows:

3.18 LEGAL NON-CONFORMING USES, STRUCTURES, AND LOTS

- (1) Continuance of Use, Generally.
 - (1) Any lawfully established construction of a building or structure at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the dimensional regulations for the District in which it is located shall be deemed a legal nonconforming structure and may be continued, except as otherwise provided herein.
 - (2) Any lawfully established use of a building, structure or land at the time of the enactment of this chapter or any amendment applicable thereto that does not conform to the use regulations for the District in which it is located shall be deemed to be a legal nonconforming use and may be continued, except as otherwise provided herein.
 - (3) Any lawfully established lot or parcel of land at the time of enactment of this chapter or any amendment thereto which does not meet the requirements for the District in which it is located shall be deemed to be a legal nonconforming lot and may be used in accordance with this chapter and as provided herein.
- (2) Regulation: For the purpose of administration, legal non-conforming structures, uses and lots shall be classified and regulated as follows:
 - (A) Existing Non-conforming Structures: A lawful structure which existed at the time of the adoption or amendment of this Ordinance may be continued as a legal non-conforming structure, although the structure size or location does not conform to all the requirements of this Ordinance, however:
 - (1) A legal non-conforming structure containing conforming uses may be totally rebuilt if, and only if, such reconstruction is identical in all respects to the size, shape, height, location, footprint, style and use of the original structure.
 - (2) A legal non-conforming structure containing conforming

uses, subject to approval of the Town Plan Commission, may be reduced in size, may have its shape modified, may have its height lowered, and may have its style modified, as long as the proposed structure is identical in all respects to the location, footprint and use of the original structure.

- (3) A legal non-conforming structure containing conforming uses, subject to the grant of a variance from the Board of Adjustment, may be increased in size, may be increased in shape, may be increased in height, and the location and footprint may be modified.
 - (4) Regardless of the foregoing provisions in this subsection, the footprint of a legal non-conforming primary residence with conforming uses, subject to the Town Plan Commission approval, may be expanded into areas of the lot where the expansion fully complies with all offset and setback requirements of the district in which it is located, provided that the expansion is otherwise in compliance with all other applicable laws. In passing upon such matter, the Town Plan Commission shall consider all of the following factors: the size of the lot; the size and location of the existing legal non-conforming structure; the size and location of any other structure on the lot; the size and location of the proposed expansion; the impact, if any, that the expansion may have upon neighboring properties; whether the proposed expansion would violate the intent of the Zoning Ordinance and such other matters as the Town Plan Commission finds to be relevant in the interest of the public health, safety, welfare, and be compatible with other properties in the area of the Town.
- (B) Non-conforming Use of Structures and Lands: A lawful use which existed at the time of the adoption or amendment of this chapter may be continued as a legal non-conforming use, although the use of the structure and land does not conform with the provisions of this chapter, however:
1. No such use shall be expanded or enlarged.
 2. Upon petition to and approval of the Town Board, such use may be changed to another use provided the Town Board determines that the new use would not result in a greater degree of non-conformity than the current use.
 3. When any such use is discontinued for twelve (12) consecutive

months or eighteen (18) cumulative months during a three (3) year period, any future use of the land or structure shall conform to the use regulations of the applicable district. Seasonal uses shall be excluded from this provision.

4. When a structure which houses such non-conforming use is damaged beyond 50% of its present equalized assessed value, it shall be restored for any use in conformity with the applicable district regulations.
5. Total structural repairs or alterations to a structure housing a non-conforming use shall not exceed, on an accumulative percentage basis, 50% of the present equalized assessed value of the structure.

(C) Non-Conforming Lots: The size and shape of such lots shall not be altered in any way which would increase the degree of such non-conformity to the applicable district regulations.

- (3) Conditional Use Status: Subject to the provisions of Section 3.08, Conditional Use Status may be granted to existing legal non-conforming uses, structures or lots upon petition of the owner and where such use, structure or lot is determined by the Plan Commission and Town Board to be: not adverse to the public health, safety, or welfare; not in conflict with the spirit or intent of the Ordinance; and not otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the recommendation of the Plan Commission and approval of the Town Board following a joint public hearing in the manner provided in Section 23.02.
- (4) State Law: Any applicable restriction in this Ordinance which prohibits restoration of a damaged or destroyed nonconforming structure shall not apply to the extent that 2005 Wisconsin Act 112 applies to such restoration, including such amendments and renumbering of the applicable statutes referred to therein as may be made from time to time.

SECTION 2: The Zoning Code for the Town of Mukwonago Section 3 entitled "General Provisions", subsection 3.15 entitled "Signs", subsection (1) entitled "Use Restricted" is hereby repealed and recreated as follows:

Use Restricted: Signs are prohibited in all zoning districts in the Town except:
(A) One or more sign may be specifically authorized by a duly issued conditional use permit; (B) One or more sign is permitted to the extent specifically authorized by the applicable zoning district regulations.

SECTION 3: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

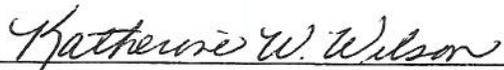
Dated this 15th day of March, 2006.

TOWN OF MUKWONAGO



David Dubey, Town Chair

ATTEST:



Katherine W. Wilson, Town Clerk

Published and/or posted this 23rd day of March, 2006.



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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/23/06

(ORD) NUMBER-1610003

- 1 K. HERRO.....AYE
- 3 T. ROLFS.....NAY
- 5 J. MARCHESE.....AYE
- 7 J. JESKEWITZ.....AYE
- 9 P. HAUKOHL.....AYE
- 11 K. HARENDA.....AYE
- 13 J. MORRIS.....AYE
- 15 D. SWAN.....AYE
- 17 J. BEHREND.....AYE
- 19 W. MITCHELL.....AYE
- 21 W. KOLB.....AYE
- 23 J. TORTOMASI.....AYE
- 25 K. CUMMINGS.....AYE
- 27 D. PAULSON.....AYE
- 29 T. BULLERMANN.....AYE
- 31 V. STROUD.....AYE
- 33 K. HAMMIT.....AYE
- 35 P. MEYER.....AYE

- 2 R. THELEN.....AYE
- 4 R. HUTTON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 T. SCHELLINGER....AYE
- 14 A. KALLIN.....NAY
- 16 R. STEVENS.....AYE
- 18 B. MORRIS.....AYE
- 20 P. WOLFF.....AYE
- 22 G. BRUCE.....AYE
- 24 B. KRAMER.....AYE
- 26 F. RUF.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....AYE
- 34 R. SINGERT.....AYE

TOTAL AYES-33

TOTAL NAYS-02

CARRIED X

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-35