

ZONING ORDINANCE

VILLAGE OF MERTON
WAUKESHA COUNTY, WISCONSIN
JANUARY 2011

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SECTION 17.100 INTERPRETATION AND PURPOSES

17.101 AUTHORITY

These regulations are adopted under the authority granted by Sections 61.35, 61.351, 62.23(7), 87.30, 144.26 and 144.266 of the Wisconsin Statutes.

17.102 PURPOSE

The purpose of this Ordinance is to promote the health, safety, morals, prosperity, aesthetics, and general welfare of this community. Among other purposes, such provisions are intended to provide for, restrict, and govern the use of all structures, lands, and waters; to regulate and control the size and location of all structures, lot coverage, and population density; and to provide for the healthy and prosperous growth of the community. In addition, the floodland zoning regulations and wetland zoning regulations set forth in this Ordinance have been adopted to prevent and control erosion, sedimentation, and other pollution of surface waters; to further the maintenance of safe and healthful water conditions; to protect spawning grounds, fish and aquatic life; to prevent flood damage to persons and property; and to minimize expenditures for flood relief and flood control projects. To this end, it is further intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

17.103 ABROGATION AND GREATER RESTRICTIONS

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

17.104 INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

17.105 SEVERABILITY

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

17.106 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection provided by the Ordinance is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. On rare occasions, larger floods may occur or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings restricted by debris. Therefore, this Ordinance does not imply that areas outside of the delineated floodplain or land uses permitted within the floodplain will be totally free from flooding and the associated flood damages. Nor shall this Ordinance create a liability on the part of, or a cause of action against, the Village of Merton or any office or employee thereof for any flood damages that may result from reliance on this Ordinance.

17.107 REPEAL

All other ordinances or parts of ordinances of the Village inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are hereby repealed.

17.108 SHORT TITLE

This Ordinance shall be known as, referred to, or cited as the “Zoning Ordinance, Village of Merton, Wisconsin,” and is herein after referred to as the “Ordinance”.

SECTION 17.200 DEFINITIONS

17.201 GENERAL INTERPRETATION

For the purposes of this Ordinance, when not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, and words in the plural number include the singular. The word “person” may be taken for persons, associations, co-partnerships, corporations, trusts, or companies. The word “structure” includes buildings. The word “occupied” includes designed or intended to be occupied. The word “used” includes designed or intended to be used. The word “shall” is always mandatory and not merely permissive. The word “should” is advisory, and the word “may” is permissive.

17.202 SPECIFIC WORDS AND PHRASES

For the purpose of this Ordinance, certain words and phrases shall have meanings that either vary somewhat from their customary dictionary meaning, or are interpreted to have a specific meaning. Any words not defined in this section shall be presumed to have their customary dictionary definitions.

- (1) **ACCESSORY BUILDING, STRUCTURE, OR USE.** A structure, building, portion of a building, or use subordinate to and customarily incidental to the permitted principal use of the property or buildings and located upon the same lot as the principal use. Outbuildings shall be considered as an accessory building.
- (2) **ANIMAL FEEDING OPERATION or AFO.** A feedlot or facility, other than a pasture, where animals have been confined, maintained or stabled for a total of 45 consecutive days or more in any twelve (12) month period.
- (3) **ANTENNA.** A device or instrument mounted on a tower, building or structure designed or used for sending or receiving electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals.
- (4) **ARTERIAL STREET.** A street used, or intended to be used, primarily for fast or heavy through traffic, whose function is to convey traffic between municipalities and activity centers. Arterial streets are designated in the Regional Transportation System Plan prepared and adopted by the Southeastern Wisconsin Regional Planning Commission.
- (5) **BASEMENT.** That portion of a building below the first floor or groundfloor with its entire floor below grade.
- (6) **BED AND BREAKFAST ESTABLISHMENT.** An owner occupied residence where lodging for paying guests is offered and which has five (5) or fewer sleeping rooms and which offers breakfast to these guests as its only meal.

- (7) **BEEF FARM.** A tract of land devoted principally to the raising of beef cattle and calves for commercial purposes.
- (8) **BOAT.** Any vehicle designed for traveling on water, not exceeding thirty-five (35) feet in body length and eight feet in width.
- (9) **BOAT HOUSE.** Any structure designed for the purpose of protecting or storing of boats used in conjunction with a residence, for noncommercial purposes, located on the same lot as the principal building and not for human habitation.
- (10) **BUILDING.** Any structure used, designed, or intended for the protection, shelter, or enclosure of persons, animals, or property (also see “Accessory Building” and “Principal Building”).
- (11) **BULLETIN BOARDS.** Any sign that is characterized by changeable copy, letters, or symbols regardless of method of attachment.
- (12) **CHURCH.** A building or structure within which persons regularly assemble for religious worship, which is used only for such purpose, and for those customarily associated accessory activities.
- (13) **COLLECTOR STREET.** A collector street is designed for the moderately rapid movement of traffic and the collection of traffic from residential areas and conveyance of this traffic to the arterial street and highway system.
- (14) **CO-LOCATION.** The location of wireless communication facilities of more than one provider on a single site.
- (15) **COMMUNICATION TOWER.** A guyed or un-guyed, monopole, lattice or other self-supporting tower, constructed as a free standing structure in association with a permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, paging, wireless internet, data, or similar forms of electronic communication.
- (16) **COMMUNICATIONS FACILITY.** An appurtenance supporting antennas and/or microwave dishes that sends and/or receives radio frequencies signals. Communications facilities include structures towers and accessory buildings.
- (17) **CONDITIONAL USE.** A use, which because of its unique characteristics, cannot be properly classified in any particular district or districts without consideration in each case of the impact of the use upon neighboring land and of the public need for the particular uses in the particular location.
- (18) **CORNER LOT.** A lot abutting two (2) or more streets at their intersection where the interior angle formed by the street intersection is less than one-hundred thirty-five (135) degrees.
- (19) **CUL-DE-SAC.** A cul-de-sac is a local street designed to have one end permanently closed and terminates in a circular turnabout.
- (20) **DEVELOPMENT.** Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation;

mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

- (21) **DISTRICT, BASIC.** A part or parts of the Village for which the regulations of this Ordinance governing the use and location of land and buildings are uniform (such as the Residential, Commercial, and Industrial District classifications).
- (22) **DISTRICT, OVERLAY.** Overlay districts provide for the possibility of superimposing certain additional requirements upon a basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict of the conflicting requirements shall apply.
- (23) **DOMESTIC ANIMAL.** Means any of the following:
 - (a) An animal that is a member of a species that has been domesticated by humans.
 - (b) A farm-raised deer, farm-raised game bird, or farm-raised fish.
 - (c) An animal that is listed as a domestic animal by rule of the Wisconsin Department of Agriculture, Trade and Consumer Protection or its successor agency.
- (24) **DONATION DROP-OFF.** Any container, storage unit or structure, other than an accessory building or shed complying with all building codes and land use requirements, that can be or is used for the holding of charitable or for-profit donations with collection of these donations made at a later date or time and which is located for such purposes outside an enclosed building.
- (25) **DUPLEX.** See Two-family Dwelling.
- (26) **ENVIRONMENTAL CONTROL FACILITY.** Any facility, temporary or permanent, which is reasonably expected to abate, reduce, or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste or thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
- (27) **ESTABLISHED STREET GRADE.** The elevation of the finished street at the centerline or curb as fixed by the Village Engineer or by such authority as shall be designated by the Village Board to determine such an elevation.
- (28) **FAMILY.** The body of persons related by blood, marriage, or adoption, or up to four (4) unrelated persons who live together in one dwelling unit as a single housekeeping entity, as distinguished from a group occupying a club, fraternity, or hotel.
- (29) **FEED LOT, COMMERCIAL.** A lot or facility used or proposed to be used for the confined feeding and/or holding of animals, exceeding twenty-five (25) animal units per acre, for thirty (30) or more continuous days per year on a twenty-four (24) hours per day basis. One animal unit is equivalent to 1,000 pounds of live animal weight.

The intent of this definition is to clearly distinguish the feed lot type of farming situation which concentrates large numbers of livestock on small acreage from the

more general kind of farm operation in which cultivation and livestock grazing or feeding is conducted on a smaller scale.

- (30) **FENCE, DOG RUN.** A fence creating a complete enclosure for the purpose of allowing a dog off-leash outside. Dog runs may be constructed of open, or solid type fencing. Chain link fences are also permitted as dog run fences.
- (31) **FENCE, ORNAMENTAL.** Ornamental fences do not enclose, or are part of any enclosure that acts as a retaining structure. Ornamental fences are intended to decorate, accent or frame a feature of the landscape; to identify a lot corner or a lot line; or frame a driveway, walkway or planting bed and are often of the rail, split rail, or wrought iron type. Chain link and picket fences are not permitted as ornamental fences.
- (32) **FENCE, OPEN.** A substantially constructed fence made of picket, rail, wrought iron or a similar material that creates an enclosed area. .
- (33) **FENCE, SOLID.** A substantially constructed fence that creates an enclosed area and is more than sixty percent (60%) opaque.
- (34) **FLAGS.** A device generally made of flexible materials, such as cloth, paper, or plastic. They may or may not include text or lettering.
- (35) **FLOODLANDS.** For the purpose of this Ordinance, the floodlands are all lands contained in the “regional flood” or 100-year recurrence interval flood.
- (36) **FLOOR AREA.** The total area on all floors, excluding crawl spaces, and attics without floors, as measured to the outside surfaces of exterior walls, and also excluding garages, carports, breezeways, open porches, balconies, and terraces.
- (37) **FRONT LOT LINE.** A line dividing a lot from any public street except a limited access street to which the lot has no access.
- (38) **GARAGE.** See “Private Garage,” “Gas Station,” “Motor Vehicle, Body Shop,” “Motor Vehicle, General Repair and Service” and “Storage Garage.”
- (39) **GAS STATION.** An establishment limited to the retail sales of motor vehicle fuels, oils and accessories, where repair service, if any, is incidental. May include the sale of propane or kerosene as accessory uses.
- (40) **GAS STATION MINI-MART.** A retail store with a floor area of less than 2,500 square feet that sells groceries and motor vehicle fuels, oils and accessories, where repair service, if any, is incidental. May include the sale of propane or kerosene as accessory uses.
- (41) **GENERAL FARM.** A tract of land devoted principally to the raising of crops that may or may not be associated with livestock grazing.
- (42) **GROUND FLOOR.** That level of a dwelling, below the first floor, located on a site with a sloping or multilevel grade and which has a portion of its floor line at grade.
- (43) **GUYED TOWER.** A communications tower that is supported, in whole or in part, by guy wires and ground anchors.
- (44) **HEIGHT OF BUILDING OR STRUCTURE.** The vertical distance from the average established street grade in front of the lot, or the finished grade at the building or structure line, whichever is highest, to the highest point of the structure,

the coping of a flat roof, the deck line of a mansard roof, or the average height of the highest gable of gambrel, hip, or pitch roof.

- (45) **HOME OCCUPATION.** An occupation carried out in a dwelling unit by the resident that is limited in extent and incidental and secondary to the use of the dwelling unit for residential purposes.
- (46) **HORTICULTURE.** The culture of growing and cultivating fruits, flowers, and related plant material.
- (47) **HOTEL.** A building in which lodging, with or without meals, is offered for compensation and which may have more than five (5) sleeping rooms for this purpose. Hotels include motels but do not include hospitals or nursing homes.
- (48) **KENNEL.** An establishment, structure, or premises where dogs or cats are raised, sold, bred, boarded, or groomed. The occasional raising of not more than two (2) litters of dogs or cats within a one-year period on the premises and the disposal of said litter within six (6) months of their birth shall not be considered a commercial kennel. Where one or more members of a family retain more than three (3) adult dogs or cats over six (6) months of age, the property shall be considered a commercial kennel for purposes of this Ordinance and shall be subject to the regulations established for commercial kennels.
- (49) **LATTICE TOWER.** A guyed or self-supporting three (3) or four (4) sided, open, steel frame structure used to support communications equipment.
- (50) **LEGAL NONCONFORMING LOT.** A legally recognized lot which existed at the time of passage of this Ordinance, but which does not conform to the District Regulations in the district in which it is located.
- (51) **LEGAL NONCONFORMING STRUCTURE.** A building, structure, or portion thereof, lawfully existing at the time of the passage of this Ordinance, but which does not conform in one or more respects to the regulations of this Ordinance.
- (52) **LEGAL NONCONFORMING USE.** The use of a building, structure, or land lawfully carried on at the time of passage of this Ordinance or amendments thereto, but which does not conform to the use regulations of this Ordinance.
- (53) **LIGHT INDUSTRIAL USE.** An industrial use which can be operated in a clean and quiet manner. Such uses are inoffensive to neighbors either by sight, sound, or odor.
- (54) **LIVESTOCK.** Domestic animals traditionally used in this state in the production of food, fiber or other animal products. For the purpose of this ordinance "livestock" includes equine and bovine animals, swine, poultry, sheep, goats, llamas, and alpacas. Livestock are permitted only in the A-1 Agricultural District in accordance with regulations of Section 17.303.
- (55) **LOADING AREA.** An off-street space, on the same lot with the building or group of buildings it serves, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.
- (56) **LOCAL STREET.** A local street is arranged to conform to the topography, to discourage use by through traffic, to permit the design of efficient storm and sanitary sewerage systems, and to require the minimum street area necessary to provide safe and convenient access to abutting property.

- (57) **LOT.** A parcel of land having frontage on a public street, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet lot width, lot frontage, lot area, setback, yard, parking, and other requirements of the Village Zoning Ordinance.
- (58) **LOT AREA.** The area of contiguous land bounded by lot lines, exclusive of land provided for public thoroughfares.
- (59) **LOT DEPTH.** The mean horizontal distance measured between the street right-of-way line and the opposing rear line or lines of the lot.
- (60) **LOT LINES.** The lines bounding a lot as defined herein.
- (61) **LOT WIDTH.** The horizontal distance measured between side lot lines at the building setback line.
- (62) **MONOPOLE TOWER.** A communication tower consisting of a single pole, constructed without guy wires and ground anchors.
- (63) **MOTOR VEHICLE.** A self-propelled vehicle, including a combination of two (2) or more vehicles or an articulated vehicle. "Motor vehicle" includes a snowmobile or an all-terrain vehicle. "Motor vehicle" does not include a recreational vehicle, a boat, an aircraft, a vehicle operated exclusively on rails, or an electric personal assistive mobility device.
- (64) **MOTOR VEHICLE, BODY SHOP.** An establishment for the repair or straightening of motor vehicle bodies or frames, or the painting of motor vehicles. Maintenance, service, engine repair, vehicle sales and rental, may be available as an ancillary function of the body work.
- (65) **MOTOR VEHICLE, COMMERCIAL.** Any vehicle used or designed to be used for business or commercial purposes that includes, but is not limited to: a bus, cement truck, commercial tree-trimming equipment, construction equipment, dump truck, garbage truck, panel truck, semi-tractor, semi-trailer, stake bed truck, step van, tank truck, tar truck, or other commercial type vehicle licensed as a commercial vehicle or truck.
- (66) **MOTOR VEHICLE, GENERAL REPAIR AND SERVICE.** An establishment for the maintenance, service, and engine repair of motor vehicles. Vehicle sales and rental may be available as an ancillary function of the body work.
- (67) **MOTOR VEHICLE SALES FACILITY.** An establishment, including open areas other than a street or right-of-way, for the display, rental or sale of motor vehicles.
- (68) **MULTIPLE-FAMILY DWELLING.** A residential structure designed for or occupied by three (3) or more families. The number of families shall not exceed the number of dwelling units provided.
- (69) **NAVIGABLE WATER.** Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all rivers, streams, ponds, sloughs, flowages, and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. The Wisconsin Supreme Court has declared navigable all bodies of water with a bed differentiated from adjacent uplands and with levels of flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. {Muench

v. Public Service Commission, 261 Wis. 492 (1952), and DeGaynor and Co., Inc. v. Department of Natural Resources, 70 Wis. 2d 936 (1975)}.

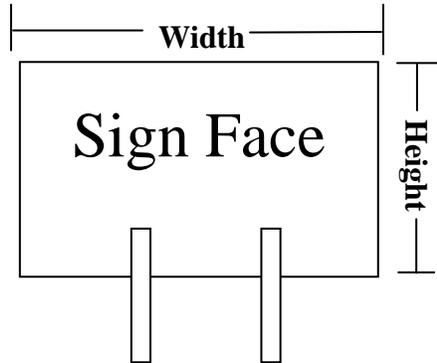
- (70) For the purpose of this Ordinance, rivers and streams will be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps until such time that the Wisconsin Department of Natural Resources has made a determination that the waterway is not, in fact, navigable.
- (71) **NONCONFORMING USES OR STRUCTURES.** Any structure, land, or water lawfully used, occupied, or erected at the time of the effective date of this Ordinance or amendments thereto which does not conform to the regulations of this Ordinance or amendment thereto. Any such structure conforming in respect to use but not in respect to frontage, width, height, area, yard, parking, loading, or distance requirements is considered a nonconforming structure and not a nonconforming use.
- (72) **OUTHOUSE.** A facility designed to accommodate the elimination of human wastes directly into a hole or earthen pit without running water. Same as privy.
- (73) **PARTIES IN INTEREST.** All abutting property owners, all property owners within one hundred (100) feet, and all property owners of opposite frontage.
- (74) **PLANTING SCREEN.** An area landscaped with natural growing plant material which effectively screens from vision, the objects it is intended to hide from view.
- (75) **PORTABLE STORAGE STRUCTURE.** Any container, storage unit, shed-like container, tent, fabric, plastic, cloth covered frames, inflatable buildings, or other portable structures other than an accessory building or shed complying with all building codes and land use requirements, that can be or is used for the storage of personal property of any kind and which is located for such purposes outside an enclosed building.
- (76) **PRIMARY FLOOR AREA.** The floor area of a building for purposes of determining required parking ratios, which area shall include only that portion of the total floor area devoted to the permitted and/or accessory uses. Utility, hallway, and similar spaces, which do not generate parking demand, shall not be included.
- (77) **PRINCIPAL BUILDING OR STRUCTURE.** The main building on a lot intended for primary use as permitted by the regulations of the district in which it is located. Any building intended to be used for human habitation shall constitute a principal building.
- (78) **PRINCIPAL USE.** The main or primary use of property or buildings as specified and permitted by the regulations of the district in which it is located.
- (79) **PRIVATE GARAGE.** A private garage is a structure or part of a structure where private vehicles are kept for storage purposes only and where such use is accessory to the principal use of the property on which it is located.
- (80) **PROFESSIONAL OFFICE.** The office of a doctor, practitioner, dentist, minister, architect, landscape architect, professional engineer, land surveyor, lawyer, author, musician, insurance agent, real estate broker, or other similarly recognized professional persons.

- (81) **PUBLIC AND SEMI-PUBLIC BUILDING.** Public and semi-public buildings and uses in the sense of this Ordinance are structures principally of an institutional nature and serving a public need such as: hospitals, rest homes, academic and nursery schools, libraries, museums, public and private utilities, and other public services; but not including the operation of a public bar, restaurant, or recreational facility as a commercial enterprise.
- (82) **PUBLIC UTILITY.** All those buildings and other facilities, excluding wireless communication facilities, employed in the distribution of public utilities, such as electric, telephone, gas, and distribution and collection systems such as water, sanitary sewer and storm sewer transmission stations; electrical substations, and the like; but excluding service yards and business offices.
- (83) **PYRAMIDING.** Shall mean, for the purposes of this Ordinance, providing riparian access to bodies of water over private lots or lands in a manner so as to increase the number of families that have access to the water greater than that permitted in the use regulations for each district. Normally such use of lake frontage shall be restricted to not more than one family for each one hundred (100) feet of lake frontage except where existing substandard lots are present which have less than one hundred (100) feet of lake frontage. Public access points shall not fall within this definition.
- (84) **REAR LOT LINE.** A rear lot line is the lot line opposite the front lot line. In the case of an irregular, triangular, or gore-shaped lot, the rear lot line is a line ten feet in length entirely within the lot, parallel to and most distant from the front lot line.
- (85) **REAR YARD.** The yard extending across the full width of the lot whose depth is measured from the rear lot line to the nearest point of the principal building or structure. This yard shall be opposite the street yard or one of the street yards on a corner lot.
- (86) **RECREATIONAL VEHICLE.** A vehicle or portable structure designed primarily to provide temporary living quarters for recreation, camping, travel or similar use; either mounted on wheels or designed to be mounted upon and carried by another vehicle. This definition is intended to include a travel vehicle, motor home, camping trailer, camp bus, house bus and truck camper unit of walk-in capacity.
- (87) **RESTAURANT.** Any building, room or place where meals are prepared or served or sold to transients or the general public, and all places used in connection with it. "Meals" does not include soft drinks, ice cream, milk, milk drinks, ices and confections. "Restaurant" does not include:
- (a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter.
- Churches, religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve or sell meals to transients or the general public.
 - Any public or private school lunchroom, or a private individual selling foods from a movable or temporary stand at public farm sales.
 - Any bed and breakfast establishment that serves breakfast only to its lodgers.

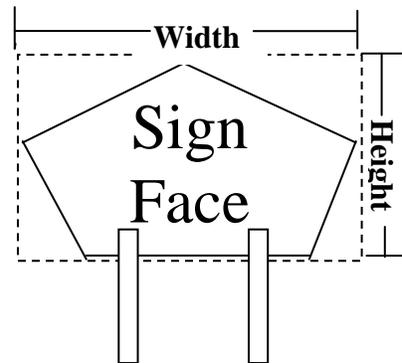
- The serving of food or beverage through a licensed vending machine.
 - Any college campus, institution, or technical college that serves meals only to the students enrolled in the college campus, institution or school or to authorized elderly person under Wisconsin State Statutes 36.51 or 38.36.
 - A concession stand at a locally sponsored civic or sporting event, such as a little league game.
- (88) **ROAD.** A public right-of-way, not less than fifty (50) feet wide, usually affording primary access to abutting property.
- (89) **ROADSIDE STAND.** A farm building used or intended to be used solely by the owner or tenant of the farm on which such building is located for the sale of the farm products raised on said farm.
- (90) **SELF-SUPPORTED TOWER.** A communication tower that is constructed without guy wires and ground anchors.
- (91) **SETBACK.** The required distance between the nearest roofed or enclosed portion of a building and any lot line for the lot on which the building is located.
- (92) **SHORELANDS.** Those lands lying within the following distances from the ordinary high water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream; or to the landward side of the floodplain, whichever distance is greater. Shorelands shall not include those lands adjacent to farm drainage ditches where (a) such lands are not adjacent to a navigable stream or river; (b) those parts of such drainage ditches adjacent to such lands were non-navigable streams before ditching or had no previous stream history; and (c) such lands are maintained in non-structural agricultural use.
- (93) **SIDE LOT LINE.** A lot line extending from a street line towards the interior of the block and separating adjoining lots.
- (94) **SIDE YARD.** An open space between the principal building or structure and the side lot line is a side yard. Side yards extend from the front or street yard to the rear yard. The width of a side yard is the horizontal distance from the nearest part of the side lot line to the nearest point of the principal building or structure.
- (95) **SIGN.** Signs are any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trade marks by which anything is made known, which are used to advertise or promote an individual, firm, association, corporation, profession, business, commodity, or product, and which are visible from any public street or highway.
- (96) **SIGN AREA.** That area of copy enclosed by one continuous line, connecting the extreme points or edges of a sign face. The area shall be determined using the largest sign area or silhouette visible at any one time from any point. This area includes ornamental attachments but does not include the main supporting sign structure.

Determining Sign Area

Rectangular Shaped Signs



Irregularly Shaped Signs



- (97) **SIGN, AWNING.** A non-illuminated identification sign affixed flat to the surface of an awning and not extending vertically or horizontally beyond the limits of such awning.
- (98) **SIGN, CANOPY.** A sign suspended from or forming part of a canopy or marquee and which does not extend horizontally beyond the limits of such canopy or marquee.
- (99) **SIGN, FREESTANDING.** Any sign that is supported by a pole or pylon and is independent from any building.
- (100) **SIGN, GROUND.** Collectively, Freestanding and Monument signs.
- (101) **SIGN, MONUMENT.** A sign independent from any building that has a structural base of not less than seventy-five percent (75%) of the width of the sign face. [Ex.: A sign with a face eight (8) feet wide would require a structural base of six (6) feet or more in length.]
- (102) **SIGN, PROJECTING.** A sign other than a wall sign, attached to or supported by a building or structure and projecting more than twelve (12) inches from the face of the building or structure.
- (103) **SIGN, ROOF.** A sign erected on or over the roof of a building.
- (104) **SIGN, WALL.** A sign that is attached to a wall of a building, projects not more than (12) inches from such wall, and does not extend above the ceiling line of the top floor of the building.
- (105) **SIGN, WINDOW.** A sign painted on or affixed to a window.
- (106) **SIGNABLE AREA.** The signable area of a building is a designated area of the façade of the building, up to the roof line, which is free of windows, doors, or major architectural detail. In computing signable area, only a building facade that faces a public street right-of-way may be utilized.
- (107) **SINGLE-FAMILY DWELLING.** A building designed for and occupied exclusively by one family.

- (108) SPECIAL EXCEPTIONS.** A special or unique situation, excluding a change in use or a use prohibited in a zoning district, which may be authorized by the Plan Commission and is specifically set forth in the ordinance as a special exception and which may justify the waiver of the regulations applicable thereto and does not necessarily require the demonstration of an unnecessary hardship or practical difficulty, but is consistent with the purpose of this ordinance, as set forth in Section 17.102.
- (109) SPECIAL USE SYSTEMS.** Accessory structures, not including wireless communication facilities, that may be mounted on the ground surface, or upon another structure for the purpose of receiving satellite communication transmissions or retransmissions; for the purpose of solar collection for heating, including those systems defined by Section 101.57(8)(D) Wis. Stats.; for the purpose of generating electrical power by use of windmills. Solar energy conversion systems shall mean only "active" solar collection systems not constructed as an integral part of a building.
- (110) STABLE.** Any building or premises where at least one draft animal or saddlehorse is equipped, rented, hired, sold, or kept for monetary gain as a business.
- (111) STORAGE GARAGE.** Any building or premises used only for the storage of motor-driven vehicles, under previous arrangements and not to transients, where no equipment, parts, fuel, oil, or grease is sold, and where vehicles are not equipped, serviced, repaired, hired, or sold for monetary gain as a business.
- (112) STORY.** That portion of a building included between the surface of a floor and the surface of the floor next above it; or, if there be no floor above it, then the space between the floor and the ceiling next above it. While a ground floor shall be deemed a story for purposes of height regulation and floor area computation, a basement shall not be.
- (113) STREET.** Same as "Road".
- (114) STREET LINE.** A dividing line between a lot, tract, or parcel of land and a contiguous street.
- (115) STREET YARD.** A street yard extends across the full width of the lot, the depth of which is measured from the existing or proposed street or highway right-of-way line to the nearest point of the principal building or structure. Corner lots shall have two such yards.
- (116) STRUCTURE.** Anything constructed or erected, permanently on or in the ground or attachment to something having a permanent location on the ground. Decks, porches, or stairways that are not roofed or enclosed, shall be considered a structure.
- (117) STRUCTURAL ALTERATIONS.** Any change in the supporting members of a building or any substantial change in the roof structure or in the exterior walls.
- (118) SUBSTANDARD LOT OF RECORD.** A lot which was in a subdivision or certified survey map recorded in the Waukesha County Register of Deeds office prior to the effective date of this Ordinance and which does not contain sufficient lot area or lot width to conform to the requirements of this Ordinance.

- (119) SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the present equalized assessed value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. The term does not however, include either: (a) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions, or (b) any alteration of a structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historic Places. Ordinary maintenance repairs are not considered structural repairs, modifications or additions, such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components.
- (120) SWIMMING POOL.** A structure, designed to hold water more than twenty-four (24) inches deep, for the purpose of swimming.
- (121) TEMPORARY STRUCTURE.** A movable structure not designed for human habitation or occupancy but for the temporary protection of goods or chattels during a period of construction, for the enclosure or screening of goods or property, or the display of signs and advertising.
- (122) TOWER.** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television towers, alternative tower structures, and the like.
- (123) TWO-FAMILY DWELLING.** A single building designed for and occupied by not more than two (2) families.
- (124) UNNECESSARY HARDSHIP.** That circumstance where special conditions, which were not self-created, affect a particular property and make strict compliance with the restrictions governing dimensional standards (such as area, setback and other yard requirements, frontage, or height) unnecessarily burdensome or unreasonable in light of the purpose of this Ordinance. Unnecessary hardship is present only where, in the absence of a variance, no reasonable use can be made of the property
- (125) VARIANCE.** An authorization granted by the Board of Zoning Appeals to construct, alter, or use a building or structure in a manner that deviates from the dimensional standards of this Ordinance. A variance may not permit a use of property that is otherwise prohibited by the Ordinance.
- (126) VISION SETBACK.** An unoccupied triangular space, at the street corner of a corner lot.
- (127) WETLAND.** An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.
- (128) WIRELESS COMMUNICATION FACILITY.** An all encompassing definition; any towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or other spectrum-based transmissions/receptions and not associated with a public utility.

(129) YARD. A yard is an open space which is unoccupied and unobstructed from the ground upward, except for vegetation, and is on the same lot or parcel with a structure. The street and rear yards extend the full width of the lot.

SECTION 17.300 ZONING DISTRICTS

17.301 ESTABLISHMENT

(1) DISTRICTS. For the purpose of this Ordinance, the Village of Merton is divided into eleven (11) basic use districts and one overlay district as follows:

A-1	Agricultural District
R-1	Residential District
R-2	Residential District
R-3	Residential District
R-4	Multi-Family Residential District
HD	Historic Downtown District
B-1	Neighborhood Business District
I-1	Limited Industrial District
P-1	Public and Semi-Public District
C-1	Wetland Conservancy Overlay District
C-2	Upland Conservancy Overlay District
Floodplain Overlay Districts (FD)	
FW	Floodway District
FF	Floodfringe District
GFP	General Floodplain District
FS	Flood Storage District

(2) BOUNDARIES

- (a) The boundaries of said Districts are hereby established as shown on the map entitled “Zoning Map-Village of Merton, Wisconsin,” dated September 2003, and as subsequently amended, which accompanies and is part of this Ordinance. All notations and references shown on the maps are as much a part of this Ordinance as though specifically described herein.
- (b) The district boundaries in all districts, except the C-1 Wetland Conservancy Overlay District, the C-2 Upland Conservancy Overlay District and the Floodplain Districts shall be construed to follow: corporate limits; U.S. Public Land Survey lines; lot or property lines; centerlines of streets, highways, alleys, easements, and railroad rights-of-way or such lines extended.

- (c) Boundaries of the Floodplain Districts shall be determined by the floodland limits shown on the federal Flood Insurance Rate Map, dated November 19, 2008 and as subsequently amended. Where a conflict exists between the floodland limits shown on the Flood Insurance Rate Map and actual field conditions, the elevations from the 100-year recurrence interval flood profile shall be the governing factor in locating the regulatory floodland limits, subject to field verification.
- (d) Boundaries of the C-1 Wetland Conservancy Overlay District were based on the Southeastern Wisconsin Regional Planning Commission's (SEWRPC) Year 2000 Land Use Inventory and include, but are not limited to, all shoreland wetlands, five (5) acres or greater in area shown on those maps. Where a conflict exists between the wetland limits shown on the SEWRPC map and actual field conditions, the limits shall be subject to field verification, confirmed by the Wisconsin Department of Natural Resources or the U.S. Army Corp of Engineers.
- (e) Boundaries of the C-2 Upland Conservancy Overlay District were based on the Southeastern Wisconsin Regional Planning Commission's (SEWRPC) Year 2000 Land Use Inventory and include, but are not limited to all wooded upland slopes located adjacent to shoreland wetlands as shown on those maps. Where a conflict exists between the wooded upland limits shown on the SEWRPC map and actual field conditions, the limits shall be subject to field verification.
- (f) District boundaries, except the C-1 Wetland Conservancy Overlay District, the C-2 Upland Conservancy Overlay District and the Floodplain Districts boundaries, may be moved to include an entire parcel in the least restrictive district provided that at the time of enactment of this Ordinance, the parcel was a single ownership parcel and that the district boundaries shall not be moved more than seventy-five (75) feet.
- (g) Vacation of public streets and alleys shall cause the vacated land to be automatically placed in the same district as the abutting side to which the vacated land reverts.
- (h) Annexations to or consolidations with the Village subsequent to the effective date of this Ordinance shall be placed in the A-1 Agricultural District, unless the annexation Ordinance temporarily places the land in another district. Within one year, the Village Plan Commission shall evaluate and recommend a permanent classification to the Village Board. Annexations containing floodlands and shorelands shall be governed in the following manner:
 - 1. Annexations containing floodlands shall be governed by the provisions of the Waukesha County Shoreland and Floodland Protection Ordinance until such time that the Wisconsin Department of Natural Resources (DNR) certifies that amendments to the Village of Merton Zoning Ordinance meet the requirements of Chapter NR 116 of the Wisconsin Administrative Code.
 - 2. Annexations Containing Shorelands. Pursuant to Section 59.971(7) of the Wisconsin Statutes, any annexation of land after May 7, 1982, which lies within shorelands, as defined herein, shall be governed by the provisions of the Waukesha County Shoreland and Floodland Protection Ordinance until such time that the Village adopts an Ordinance which is at least as restrictive

as the Waukesha County Shoreland and Floodland Protection Ordinance. Said regulations shall be administered and enforced by the Village of Merton Zoning Administrator.

17.302 ZONING MAP

- (1) A certified copy of the Zoning Map shall be adopted and approved as part of this Ordinance and shall bear upon its face the attestation of Village President and Village Clerk and shall be available to the public in the office of the Village Clerk.
- (2) Any changes to the zoning districts shall be entered and attested on the certified copy.

17.303 A-1 AGRICULTURAL DISTRICT

- (1) **INTENT.** To provide for the continuation of general farming and related uses in those areas of the Village not yet committed to urban development and to provide for the orderly transition from farming to urban-type uses.
- (2) **PERMITTED USES.** The following uses and their customary accessory uses are permitted:
 - (a) General farming including: agriculture, horticulture, floriculture, forestry, grazing, hay, orchard, truck farming, dairying, raising beef cattle and viticulture (grape growing). Animal feeding operations and commercial feed lots, as defined, are not permitted. On farm lots of less than 20 acres, not more than one head of livestock or 30 head of poultry shall be permitted for each 2.5 acres.
 - (b) Sale of agricultural products produced on the premises and roadside stands provided that:
 1. All structures meet setback requirements.
 2. Total covered sales area does not exceed 1,000 square feet in area.
 3. Off-street parking is provided as required by Section 17.500 of this Ordinance.
 - (c) Detached single-family dwellings.
 - (d) Public utilities, structures essential to public utilities and the provision of public services, and accessory structures.
- (3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers: (see Section 17.703 for application and review requirements.)
 - (a) Animal hospitals, kennels, and veterinary services.
 - (b) The sale of agricultural products not produced on the premises provided:
 1. All structures meet setback requirements.
 2. Total covered sales area does not exceed 1,000 square feet in area.
 3. Off-street parking is provided as required by Section 17.500 of this Ordinance.

- (c) The above- or below-ground storage of gasoline, diesel, and/or similar fuels not for sale provided all appropriate state administrative codes have been complied with.
 - (d) Wireless Communication Facilities in accordance with the standards and requirements of Section 17.402(8) of this Ordinance.
- (4) YARD REQUIREMENTS.** (See also Section 17.407)
- (a) All buildings, structures, or enclosures which house or confine animals, including but not limited to animal hospitals, kennels, barnyards, and stables, shall meet the following minimum setback requirements:
 - 1. Street Yard: 100 feet
 - 2. Side Yard: 100 feet
 - 3. Rear Yard: 100 feet
 - (b) All other uses shall meet the following minimum setback requirements:
 - 1. Street Yard: 50 feet
 - 2. Side Yard: 20 feet (each side yard)
 - 3. Rear Yard: 50 feet
- (5) HEIGHT REQUIREMENTS.** (See also Section 17.408)
- (a) All single-family and two-family dwellings and their accessory structures shall not exceed the following maximum heights:
 - 1. Principal Building: 35 feet
 - 2. Accessory Structures: 15 feet
 - (b) All other buildings or structures shall not exceed the following maximum height: 60 feet
- (6) AREA REQUIREMENTS.** (See also Section 17.409)
- (a) Building Area. All detached single-family dwellings shall meet the following requirements:
 - 1. Building Area: 2,000 square feet
 - 2. First Floor Area: 1,200 square feet
 - (b) Lot Requirements. All lots shall meet the following minimum requirements:
 - 1. Lot Area: 217,800 sq. feet (5 acres)
 - 2. Lot Width: 200 feet
 - 3. Lot Area Per Dwelling Unit: 217,800 sq. feet (5 acres)
- (7) PARKING AND ACCESS REGULATIONS.** (See Section 17.500)
- (8) SIGN REGULATIONS.** (See Section 17.600)

17.304 R-1 RESIDENTIAL DISTRICT

- (1) **INTENT.** To establish and preserve quiet single-family neighborhoods as desired by large numbers of people, free from uses except those which are both compatible with and convenient to the residents of such a district and which rely upon septic systems for sewage disposal.
- (2) **PERMITTED USES.** The following uses and their customary accessory uses are permitted:
 - (a) Detached single-family dwellings.
 - (b) Public utilities, structures essential to public utilities and the provision of public services, and accessory structures.
 - (c) Public and Private Parks
- (3) **CONDITIONAL USES:** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):
 - (a) Commercial swimming pools and similar recreational facilities
 - (b) Schools
 - (c) Churches
- (4) **YARD REQUIREMENTS.** (See also Section 17.407) All uses shall meet the following minimum setback requirements:
 - (a) Street Yard: 50 feet
 - (b) Side Yard: 20 feet (each side yard)
 - (c) Rear Yard: 50 feet
- (5) **HEIGHT REQUIREMENTS.** (See also Section 17.408)
 - (a) All single-family dwellings and their accessory structures shall not exceed the following maximum heights:
 - (b) Principal Building: 35 feet
 1. Accessory Structures: 15 feet
 - (c) All other buildings or structures shall not exceed the following maximum heights:
 1. Principal Buildings and Structures: 60 feet
 2. Accessory Structures: 15 feet
- (6) **AREA REQUIREMENTS.** (See also Section 17.409)
 - (a) Building Area.
 - (b) Single-family dwellings shall meet the following minimum requirements:
 1. Building area: 2,000 square feet
 2. First floor area: 1,200 square feet

(c) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than twenty percent (20%) of the lot.

(d) Lot Requirements.

Lots in the R-1 district shall meet the following minimum requirements:

1. Residential
 - a. Lot Area: 40,000 square feet
 - b. Lot Width: 140 feet
2. Non-Residential
 - a. Lot Area: 3 acres
 - b. Lot Width: 140 feet
3. Parks and outlots: No minimum

(7) PARKING AND ACCESS REGULATIONS. (See Section 17.500)

(8) SIGN REGULATIONS. (See Section 17.600)

17.305 R-2 RESIDENTIAL DISTRICT

(1) INTENT. The intent is the same as the R-1 District, except that this district is for areas where conditions allow a higher density of housing.

(2) PERMITTED USES. The following uses and their customary accessory uses are permitted:

- (a) Detached single-family dwellings.
- (b) Public utilities, structures essential to public utilities and the provision of public services, and accessory structures.
- (c) Public and private parks.

(3) CONDITIONAL USES. The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):

- (a) Commercial swimming pools and similar recreational facilities
- (b) Schools
- (c) Churches

(4) YARD REQUIREMENTS. (See also Section 17.407)

(a) All uses shall meet the following minimum setback requirements:

1. Street Yard: 50 feet
2. Side Yard: 20 feet (each side yard)
3. Rear Yard: 40 feet

(5) HEIGHT REQUIREMENTS. (See also Section 17.408)

(a) All single-family dwellings and their accessory structures shall not exceed the following maximum heights:

1. Principal Building: 35 feet
2. Accessory Structures: 15 feet

(b) All other buildings or structures shall not exceed the following maximum heights:

1. Principal Building and Structures: 60 feet
2. Accessory Structures: 15 feet

(6) AREA REQUIREMENTS. (See also Section 17.409)

(a) Building Area.

Single-family dwellings shall meet the following minimum requirements:

1. Building area: 1,300 square feet
2. First floor area: 1,000 square feet

(b) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than thirty percent (30%) of the lot.

(c) Lot Requirements.

Lots in the R-2 District shall meet the following minimum requirements:

1. Residential
 - a. Lot area: 30,000 square feet
 - b. Lot width: 120 feet
2. Non-residential
 - a. Lot area: 3 acres
 - b. Lot width: 140 feet
3. Parks and outlots: No minimum

(7) PARKING AND ACCESS REGULATIONS. (See Section 17.500)

(8) SIGN REGULATIONS. (See Section 17.600)

17.306 R-3 RESIDENTIAL DISTRICT

(1) **INTENT.** To recognize the existing small lot residential development in Merton and to establish and preserve quiet single-family neighborhoods as desired by large numbers of people, free from other uses except those which are both compatible with and convenient to the residents of such a district.

(2) **PERMITTED USES.** The following uses and their customary accessory uses are permitted:

(a) Detached single-family dwellings.

(b) Public utilities, structures essential to public utilities and the provision of public services, and accessory structures.

- (c) Public and private parks.
- (3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):
 - (a) Commercial swimming pools and similar recreational facilities
 - (b) Schools
 - (c) Churches
- (4) **YARD REQUIREMENTS.** (See Section 17.407) All uses shall meet the following minimum setback requirements:
 - (a) Street Yard: 50 feet
 - (b) Side Yard: 20 feet (each side yard)
 - (c) Rear Yard: 40 feet
- (5) **HEIGHT REQUIREMENTS.** (See also Section 17.408)
 - (a) All single-family dwellings and their accessory structures shall not exceed the following maximum heights:
 - 1. Principal Building: 35 feet
 - 2. Accessory Structures: 15 feet
 - (b) All other buildings or structures shall not exceed the following maximum heights:
 - 1. Principal Building or Structure: 60 feet
 - 2. Accessory Structure: 15 feet
- (6) **AREA REQUIREMENTS.**(See also Section 17.409)
 - (a) Building Area. All single-family dwellings shall meet the following minimum requirements:
 - 1. Building Area: 1,300 Square feet
 - 2. First Floor Area: 1,000 Square feet
 - (b) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than thirty percent (30%) of the lot.
 - (c) Lot Requirements.
 - Lots in the R-3 District shall meet the following minimum requirements:
 - 1. Residential
 - a. Lot area: 20,000 square feet
 - b. Lot width: 100 feet
 - 2. Non-residential
 - a. Lot Area 3 acres

b. Lot Width: 140 feet

3. Parks and outlots: No minimum

(7) **PARKING AND ACCESS REGULATIONS.** (See Section 17.500)

(8) **SIGN REGULATIONS.** (See Section 17.600)

17.307 R-4 MULTI-FAMILY RESIDENTIAL DISTRICT

(1) **INTENT.** To establish and preserve medium density residential developments where central sanitary sewerage and water systems are available. Nothing in this section is intended to change land in another zoning district to R-4 by the installation of central sanitary sewerage and water systems. Such change shall require that the procedures set forth in Section 17.707 be followed.

(2) **PERMITTED USES.** The following uses and their customary accessory uses are permitted:

- (a) Two-family and multiple-family dwellings and their customary accessory uses.
- (b) Public utilities, structures essential to public utilities and the provision of public services, and accessory structures.
- (c) Public and private parks.

(3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):

- (a) Commercial swimming pools and similar recreational facilities
- (b) Schools
- (c) Churches

(4) **YARD REQUIREMENTS.** (See also Section 17.407) All uses shall meet the following minimum setback requirements:

- (a) Street Yard: 50 feet
- (b) Side Yard: 15 feet (each side yard)
- (c) Rear Yard: 30 feet

(5) **HEIGHT REGULATIONS.** (See also Section 17.408)

(a) All two-family and multiple-family dwellings and their accessory structures shall not exceed the following maximum heights:

- 1. Principal Building: 35 feet
- 2. Accessory Structures: 15 feet

(b) All other buildings or structures shall not exceed the following maximum heights:

- 1. Principal Buildings or Structures: 60 feet
- 2. Accessory Structures: 15 feet

(6) AREA REQUIREMENTS.(See also Section 17.409)

(a) Building Area. All two-family and multiple-family dwellings shall meet the following minimum requirements.

1. Building Area: 2,000 square feet
2. First Floor Area: 1,000 square feet
3. Building Area Per Dwelling Unit: 800 square feet for a one-bedroom unit, the minimum to be increased 250 square feet for each additional bedroom.

(b) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than thirty percent (30%) of the lot.

(c) Lot Requirements.

Lots in the R-4 district shall meet the following minimum requirements:

1. Residential
 - a. Lot area: 15,000 square feet
 - b. Lot width: 85 feet
2. Non-residential
 - a. Lot area: 3 acres
 - b. Lot width: 140 feet
3. Parks and outlots: No minimums
4. Lot Area Per Dwelling Unit: 7,500 square feet

(7) PARKING AND ACCESS REGULATIONS. (See Section 17.500)

(8) SIGN REGULATIONS. (See Section 17.600)

17.308 HD HISTORIC DOWNTOWN DISTRICT

(1) INTENT. The HD District encompasses the mix of late nineteenth and early twentieth century single-family houses and older, small-scale commercial buildings with active businesses on narrow lots fronting Main Street that has long served as the heart of the Village. Many of the lots sizes, lot widths and building setbacks are legally nonconforming, reflecting the age of the area. There is some mixing of uses and some of the older commercial structures contain residential apartments on the upper floors. Shade trees, sidewalks and streetlights complement the residential and commercial uses along Main Street and add to its traditional character. The Village of Merton has determined that preserving and maintaining this area is vital for enhancing the Village's economy and small-town character. As such, the purposes of this district are as follows:

- (a) To maintain the distinctive mix of small-scale residential and commercial uses along Main Street, and
- (b) To prevent the creation of additional non-conforming uses, structures, buildings and lots.

- (2) **PERMITTED USES.** The following uses and their customary accessory uses are permitted:
- (a) Detached single-family dwellings.
 - (b) Public utilities and accessory structures essential to public utilities and the provision of public services.
- (3) **CHANGE IN OWNERSHIP.** Those existing uses which are classified as conditional uses in the HD Historic Downtown District at the time of adoption of this ordinance require no action by the Village Board for them to continue as valid conditional uses. With the exception of residential properties that remain in residential use, at the time any business or property changes ownership, it shall be necessary to obtain a conditional use permit whether or not there is a change in use.
- (4) **ADDITIONS TO EXISTING BUILDINGS.** Prior to obtaining a building permit for any addition to an existing building in the HD District it shall be necessary to obtain a conditional use permit. Additions to existing single-family and two-family dwellings that increase the floor area by less than fifty (50) percent are exempt from this requirement provided that all setbacks and other dimensional requirements can be met without obtaining a variance.
- (5) **CONDITIONAL USES.** The Plan Commission may conditionally permit the following uses after review and approval provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):
- (a) Non-Residential
 - 1. General retail and service-type business uses such as barber and beauty shops, food and beverage stores, drug stores, clothing and dry goods stores, bakeries without additional sales outlets, dry-cleaning and laundry pickup stations, funeral homes and travel agents(excluding adult-oriented businesses).
 - 2. Business, professional, financial and general offices.
 - 3. Public and semi-public uses such as municipal offices, public libraries, schools, museums, post offices, and similar uses.
 - 4. Places of entertainment and accommodation such as hotels, restaurants, taverns, theaters, clubs and lodges, provided adult-oriented businesses as herein defined are prohibited.
 - 5. Parsonage, rectories, convents, and monasteries.
 - 6. Gas stations provided:
 - 7. All service islands and pumps meet all setback requirements.
 - 8. Lighting installations shall not create a traffic hazard or be a nuisance to surrounding property.
 - 9. Motor Vehicle, Body Shop provided:
 - a. All service and repair work is carried on within a completely enclosed building.

- b. Lighting installations shall not create a traffic hazard or be nuisance to surrounding property.
 - 10. Motor Vehicle, General Repair and Service, provided:
 - a. All service and repair work is carried on within a completely enclosed building.
 - b. Lighting installations shall not create a traffic hazard or be a nuisance to surrounding property.
 - 11. Machine shops provided all work is carried on within a completely enclosed building.
 - a. Residential Uses
 - 12. Two-family dwellings.
 - 13. Accessory residential quarters on a non-ground floor level.
- (6) YARD REQUIREMENTS.** (See also Section 17.407)
- (a) All gasoline service stations shall meet the following minimum setback requirements:
 - 1. Street Yard: 15 feet
 - 2. Side Yard: 10 feet (each side yard)
 - 3. Rear Yard: 30 feet
 - (b) All other uses shall meet the following minimum setback requirements:
 - 1. Street Yard: 5 feet
 - 2. Side Yard: 10 feet
 - 3. Rear Yard: 30 feet
- (7) HEIGHT REGULATIONS.** (See also Section 17.408) All buildings or structures shall not exceed the following maximum heights:
- (a) Principal Buildings or Structures: 35 feet
 - (b) Accessory Structures: 15 feet
- (8) AREA REQUIREMENTS.** (See also Section 17.409)
- (a) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than forty percent (40%) of the lot.
 - (b) Minimum Lot Requirements. All uses shall meet the following minimum lot requirements:
 - 1. Lot Area: 20,000 square feet
 - 2. Lot Width: 85 feet
 - 3. Lot Area Per Dwelling Unit: 7,500 square feet, where upper story residential uses are furnished, provided only half the lot area will be used in determining the number of such units that can be supplied.

(9) PARKING, LOADING, AND ACCESS REGULATIONS. (See Section 17.500)

(10) SIGN REGULATIONS. (See Section 17.600)

17.309 B-1 NEIGHBORHOOD BUSINESS DISTRICT

(1) INTENT. To establish and preserve auxiliary business districts that primarily serve a small area or neighborhood of the Village and to minimize undesirable impacts of such uses on the residential neighborhood they serve.

(2) PERMITTED USES. Public utilities and accessory structures essential to public utilities and the provision of public services are permitted.

(3) CONDITIONAL USES. The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):

(a) General retail and service-type business uses such as barber and beauty shops, food and beverage stores, drug stores, clothing and dry goods stores, bakeries without additional sales outlets, dry-cleaning and laundry pickup stations, funeral homes and travel agents (excluding adult-oriented businesses).

(b) Business, professional, financial, and general offices.

(c) Public and semi-public uses such as municipal offices, public libraries, museums, post offices, and similar uses.

(d) Places of entertainment and accommodation such as hotels, restaurants, taverns, theaters, clubs and lodges, provided adult-oriented businesses as herein defined are prohibited.

(e) Schools provided the type of school is compatible with nearby residential uses.

(f) Parsonage, rectories, convents, monasteries.

(g) Animal hospitals, veterinary services and kennels that are accessory to veterinary services provided they are completely within an enclosed building.

(h) Gas Stations provided:

1. All service islands and pumps meet setback requirements.

2. Lighting installations shall not create a traffic hazard or be a nuisance to surrounding property.

(i) Motor Vehicle, Body Shop, provided:

1. All service and repair work is carried on within a completely enclosed building.

2. Lighting installations shall not create a traffic hazard or be nuisance to surrounding property.

(j) Motor Vehicle, General Repair and Service, provided:

1. All service and repair work is carried on within a completely enclosed building.

- 2. Lighting installations shall not create a traffic hazard or be a nuisance to surrounding property.
- (k) New and used motor vehicle sales and rental.
- (l) Drive-in Establishments Serving Food or Beverages, provided all driveway access is to an arterial street.
- (m) The above- or below-ground storage of gasoline, diesel, and/or similar fuels not for sale provided all appropriate state administrative codes have been complied with.
- (4) **YARD REQUIREMENTS.** (See also Section 17.407) All uses shall meet the following minimum setback requirements:
 - (a) Street Yard: 50 feet
 - (b) Side Yard: 20 feet (each side yard)
 - (c) Rear Yard: 30 feet
- (5) **HEIGHT REGULATIONS.** (See also Section 17.408) All buildings or structures shall not exceed the following maximum heights:
 - (a) Principal Buildings or Structures: 35 feet
 - (b) Accessory Structures: 15 feet
- (6) **AREA REQUIREMENTS.** (See Section 17.409)
 - (a) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than twenty-five percent (25%) of the lot.
 - (b) Minimum Lot Requirements. All lots shall meet the following minimum requirements:
 - 1. Lot Area: 43,560 square feet (1 acre)
 - 2. Lot Width: 100 feet
- (7) **PARKING, LOADING, AND ACCESS REGULATIONS.** (See Section 17.500)
- (8) **SIGN REGULATIONS.** (See Section 17.600)

17.310 I-1 LIMITED INDUSTRIAL DISTRICT

- (1) **INTENT.** To establish and preserve areas for industrial and related uses that do not create serious problems of compatibility with other kinds of land uses and to provide for certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses or which service the immediate needs of people in these industrial areas.
- (2) **PERMITTED USES.** Public utilities and essential accessory structures are permitted.
- (3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other

nuisances and dangers: (See Section 17.703 for application and review requirements)

- (a) Light industrial uses such as, but not limited to, packaging industries, wholesaling, warehousing, transshipment depots, and lumber yards, provided the type of industrial use is compatible with nearby uses.
- (b) Business, financial, professional and general offices.
- (c) General repair and service of automobiles, trucks, and construction equipment.
- (d) Motor vehicle body shop.
- (e) Commercial uses such as gas stations, restaurants, new and used motor vehicle sales and rental, and sales of construction equipment, campers, mobile homes, and recreational vehicles.
- (f) Outside storage and manufacturing provided the site is surrounded by a solid fence or evergreen planting screen that prevents a view from any other property or public right-of-way.
- (g) The above- or below-ground storage of gasoline, diesel, and/or similar fuels not for sale provided all appropriate state administrative codes have been complied with.
- (h) Wireless Communication Facilities, in accordance with the standards and requirements of Section 17.402(8) of this Ordinance.

(4) SPECIAL REGULATIONS

- (a) Where a use in this district adjoins or is opposite a Residential, Conservancy, or Public and Semi-Public District, a landscaped open area, screen planting, or a solid decorative fence shall be required.
- (b) No merchandise shall be stored or displayed in any street yard.
- (c) Any uses authorized above do not include any that emit any fumes, vibration, smoke, or noise (except the noise of vehicles coming or going) which is detectable from off the premises by the senses of normal human beings.

(5) YARD REQUIREMENTS. (See also Section 17.407). All uses shall meet the following minimum setback requirements:

- (a) Street Yard: 50 feet
- (b) Side yard: 10 feet (each side yard)
- (c) Rear yard: 30 feet

(6) HEIGHT REGULATIONS. (See also Section 17.408). All buildings or structures shall not exceed the following maximum heights:

- (a) Principal buildings or structures: 45 feet
- (b) Accessory Structures: 25 feet

- (7) **AREA REQUIREMENTS.** (See also Section 17.409)
 - (a) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than thirty percent (30%) of the lot.
 - (b) Minimum Lot Requirements. All lots shall meet the following minimum requirements:
 - 1. Lot Area: 87,120 square feet (two acres)
 - 2. Lot Width: 150 feet
- (8) **PARKING, LOADING AND ACCESS REGULATIONS.** (See Section 17.500)
- (9) **SIGN REGULATIONS.** (See Section 17.600)

17.311 P-1 PUBLIC AND SEMI-PUBLIC DISTRICT

- (1) **INTENT.** To establish and preserve areas for certain public and institutional uses.
- (2) **PERMITTED USES.** The following uses and their customary accessory uses are permitted:
 - (a) Public and private schools, colleges and universities.
 - (b) Churches, parsonage, rectories, convents, and monasteries.
 - (c) Libraries and museums.
 - (d) Public administrative offices, and public service buildings including well pump houses and police and fire stations.
 - (e) Public utilities, structures essential to public utilities and the provision of public services, and accessory structures.
 - (f) Parks, playgrounds, playfields, swimming pools and beaches, and historic or archaeological sites or structures.
- (3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (see Section 17.703 for application and review requirements):
 - (a) Above ground water storage tanks and towers provided that the height is below the maximum specified for this district, or is in compliance with Section 17.408(2) of this Ordinance.
 - (b) Municipally operated sewage treatment plants if screened from any adjacent Residential or Conservancy districts.
 - (c) Golf Courses and Driving Ranges provided:
 - 1. No such use shall be permitted on a lot less than three (3) acres in area.
 - 2. No building shall be closer than fifty (50) feet to the lot line of an adjoining lot in a district permitting residential use.
 - 3. Off-street parking shall be provided as required by Section 17.500 of this Ordinance.

4. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- (d) Cemeteries.
- (e) Wireless Communication Facilities in accordance with the standards and requirements of Section 17.402(8) of this Ordinance.
- (4) **YARD REQUIREMENTS.** (See also Section 17.407). All uses shall meet the following minimum setback requirements:
 - (a) Street Yard: 50 feet
 - (b) Side Yard: 20 feet (each side yard)
 - (c) Rear Yard: 30 feet
- (5) **HEIGHT REGULATIONS.** (See also Section 17.408). All buildings or structures shall not exceed the following maximum heights:
 - (a) Principal Buildings or Structures: 60 feet
 - (b) Accessory Structures: 15 feet
- (6) **AREA REQUIREMENTS.** (See also Section 17.409)
 - (a) Maximum Ground Coverage. The cumulative footprint area of all principal and accessory buildings shall occupy no more than twenty-five percent (25%) of the lot.
 - (b) Minimum Lot Requirements. All lots shall meet the following minimum requirements:
 1. Lot Area: 20,000 square feet
 2. Lot Width: 85 feet
 3. Lot Area Per Dwelling Unit: 10,000 square feet
- (7) **PARKING AND ACCESS REGULATIONS.** (See Section 17.500)
- (8) **SIGN REGULATIONS.** (See Section 17.600)

17.312 C-1 WETLAND CONSERVANCY OVERLAY DISTRICT

- (1) **INTENT.** To preserve, protect, and enhance the ponds, streams, and wetland areas of the Village of Merton. The preservation, protection, and enhancement of these areas will serve to maintain safe and healthful conditions; maintain and improve water quality, both ground and surface; prevent flood damage; control storm water runoff; protect stream banks from erosion; protect groundwater recharge and discharge areas; protect wildlife habitat; protect native plant communities; avoid the location of structures on soils which are generally not suitable for use; and protect the water-based recreation resources of the Village.

- (2) **PERMITTED USES.** The following uses are permitted:
- (a) Hiking, fishing, trapping, swimming, and boating, unless prohibited by other ordinances and laws.
 - (b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops.
 - (c) The practice of silviculture, including the planting, thinning, and harvesting of timber.
 - (d) Construction and maintenance of fences.
 - (e) Agricultural cultivation and pasturing provided they do not involve extension of or creation of new drainage systems, and further provided they do not substantially disturb or impair the natural fauna, flora, topography, or water regimen.
 - (f) Ditching, tiling, dredging, excavating, or filling done to maintain or repair an existing drainage system only to the extent necessary to maintain the level of drainage required to continue the existing use.
 - (g) The construction and maintenance of pier, docks, and walkways, including those built on pilings.
 - (h) Forest and Game Management.
 - (i) The maintenance, repair, replacement, and reconstruction of existing streets, roads, and bridges.
- (3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (See Section 17.703 for application and review requirements):
- (a) The construction of streets which are necessary for the continuity of the Village street system, necessary for the provision of essential utility and public safety services, or necessary to provide access to permitted open space uses in the C-1 District, provided that:
 - 1. The street cannot as a practical matter be located outside the conservancy district;
 - 2. The street is designed and constructed to minimize adverse impact upon the natural functions of the wetland as listed in Section 17.707(9)(b) of this Ordinance;
 - 3. The street is designed and constructed with the minimum cross-section practical to serve the intended use;
 - 4. The street construction activities are carried out in the immediate area of the roadbed only; and
 - 5. Any filling, flooding, draining, dredging, ditching, tiling, or excavating that is done must be necessary for the construction or maintenance of the street.

- (b) The construction and maintenance of non-residential buildings used solely in conjunction with raising of waterfowl, minnows, or other wetland or aquatic animals or used solely for some other purpose which is compatible with wetland preservation, provided that:
 - 1. The building cannot as a practical matter be located outside the conservancy district;
 - 2. The building is not designed for human habitation and does not exceed 500 square feet in area; and
 - 3. Only limited filling or excavating necessary to provide structural support is conducted.
- (c) The establishment and development of public and private parks and recreation areas, recreation trails, public boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves, and private habitat areas, provided that:
 - 1. Any private recreation or wildlife habitat area must be exclusively for that purpose;
 - 2. No filling is to be done; and
 - 3. Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game preserves, and private wildlife habitat areas, but only for the purpose of improving wildlife habitat or to otherwise enhance the value of a wetland or other natural resource.
- (d) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, provided that:
 - 1. The transmission and distribution lines and related facilities cannot as a practical matter be located outside the conservancy district; and
 - 2. Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the utility, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.
- (e) The construction and maintenance of railroad lines, provided that:
 - 1. The railroad lines cannot as a practical matter be located outside the conservancy district; and
 - 2. Any filling, draining, dredging, ditching, or excavation that is done must be necessary for the construction or maintenance of the railroad, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.

(4) PROHIBITED USES.

- (a) Any use not listed as a permitted use or a conditional use is prohibited unless the C-1 District lands concerned are first rezoned into another district.

- (b) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high water mark of any navigable water are prohibited.

17.313 C-2 UPLAND CONSERVANCY OVERLAY DISTRICT

- (1) **INTENT.** To preserve, protect, enhance, and restore areas of steep topography adjacent to navigable bodies of water. Regulation of these areas will serve to protect unique topographic features from encroachment by urban development, control erosion and sedimentation, and promote and maintain the natural beauty of the Village.
- (2) **PERMITTED USES.** The following uses are permitted:
 - (a) Riverbank and lakeshore protection
 - (b) Soil rebuilding
 - (c) Forest and game management
 - (d) Hunting
 - (e) Preservation of scenic, historic, and scientific areas
 - (f) Sustained yield forestry
 - (g) Harvesting of wild crops
 - (h) Wildlife preserves
 - (i) Hiking and nature trails.
- (3) **CONDITIONAL USES.** The following uses may be conditionally permitted after review and approval by the Plan Commission provided they have adequate street access and are located, planned and designed to avoid undue noise or other nuisances and dangers (See Section 17.703 for application and review requirement):
 - (a) Agricultural uses when conducted in accordance with County Soil and Water Conservation District Standards
 - (b) Park and recreation uses
 - (c) Utility poles
 - (d) Towers
 - (e) Wireless Communication Facilities in accordance with the standards and requirements of Section 17.402(8) of this Ordinance.
 - (f) Underground conduits for transmitting electricity, telephone, cable television, natural gas, and similar products and services.
- (4) **PROHIBITED USES.** Dumping; filling; mineral, soil, or peat removal; clear-cutting of woodlands; buildings or structures; or any other use that would disturb the natural flora, water regimen, or topography.
- (5) **PARKING AND ACCESS REGULATION:** (See Section 17.500)
- (6) **SIGN REGULATIONS:** (See Section 17.600)

17.314 FLOODPLAIN DISTRICTS AND STANDARDS

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(1) **STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS**

(a) **STATUTORY AUTHORIZATION**

This ordinance is adopted pursuant to the authorization in ss. 61.35 and 62.23 and the requirements in s. 87.30, Stats.

(b) **FINDING OF FACT**

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

(c) **STATEMENT OF PURPOSE**

This ordinance is intended to regulate floodplain development to:

1. Protect life, health and property;
2. Minimize expenditures of public funds for flood control projects;
3. Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
4. Minimize business interruptions and other economic disruptions;
5. Minimize damage to public facilities in the floodplain;
6. Minimize the occurrence of future flood blight areas in the floodplain;
7. Discourage the victimization of unwary land and homebuyers;
8. Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
9. Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

(d) **TITLE**

This ordinance shall be known as the Floodplain Districts for the Village of Merton, Wisconsin.

(e) **GENERAL PROVISIONS**

1. **AREAS TO BE REGULATED**

This ordinance regulates all areas that would be covered by the regional flood or base flood.

Note: Base flood elevations are derived from the flood profiles in the Flood Insurance Study. Regional flood elevations may be derived from other studies. Areas covered by the base flood are identified as A-Zones on the Flood Insurance Rate Map.

2. **OFFICIAL MAPS & REVISIONS**

The boundaries of all floodplain districts are designated as floodplains or A-Zones on the maps listed below and the revisions in the Village of Merton Floodplain Appendix. Any change to the base flood elevations

(BFE) in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Village Clerk of the Village of Merton. If more than one map or revision is referenced, the most restrictive information shall apply.

OFFICIAL MAPS : Based on the FIS:

- a. Flood Insurance Rate Map (FIRM), panel number **55133C0064F, 55133C0066F, and 55133C0068F**, dated **November 19, 2008**; with corresponding profiles that are based on the Flood Insurance Study (FIS) for Waukesha County and Incorporated Areas, study number 55133CV001A-003A;

3. ESTABLISHMENT OF DISTRICTS

The regional floodplain areas are divided into three districts as follows:

- a. The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters.
- b. The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway.
- c. The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood.
- d. The Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

4. LOCATING FLOODPLAIN BOUNDARIES

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in paragraphs (a) or (b) below. If a significant difference exists, the map shall be amended according to Section 17.314 (8). The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to Section 17.314 (7)(c) and the criteria in (a) and (b) below.

- a. If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- b. Where flood profiles do not exist, the location of the boundary shall be determined by the map scale, visual on-site inspection and any information provided by the Department.

Note: Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must also approve any map amendment pursuant to Section 17.314 (8).

5. REMOVAL OF LANDS FROM FLOODPLAIN

Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to Section 17.314 (8).

Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a Letter of Map Change (LOMC).

When a property owner receives a LOMC, it shall be the responsibility of property owner to submit an application to the Village of Merton requesting a zoning district change to the Floodplain Zoning Map, in accordance with the procedures of Section 17.707 and this Section 17.314.

6. COMPLIANCE

Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.

7. MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies.

8. ABROGATION AND GREATER RESTRICTIONS

a. This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under ss. 59.69, 59.692 or 59.694 for Waukesha County; or s. 61.35 for the Village of Merton; or s. 87.30, Stats., which relate to floodplains. If another ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

b. This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

9. INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards 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.

10. WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

11. SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

12. ANNEXED AREAS FOR CITIES AND VILLAGES

The Waukesha County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and the National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

13. GENERAL DEVELOPMENT STANDARDS

The Zoning Administrator shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance.

(2) **GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

(a) **HYDRAULIC AND HYDROLOGIC ANALYSES**

1. Except as allowed in par. (3) below, no floodplain development shall:
 - a. Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or
 - b. Increase regional flood height due to floodplain storage area lost, which equals or exceeds 0.01 foot.
2. The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or increase regional flood heights 0.01 foot or more, based on the officially adopted FIRM or other adopted map, unless the provisions of sub. (3) are met.
3. Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 17.314 (8).

Note: This section refers to obstructions or increases in base flood elevations as shown on the officially adopted FIRM or other adopted map. Any such alterations must be reviewed and approved by FEMA and the DNR.

(b) **WATERCOURSE ALTERATIONS**

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation, the zoning administrator shall notify FEMA of the changes by submitting appropriate technical or scientific data in accordance with NFIP guidelines that shall be used to revise the FIRM, risk premium rates and floodplain management regulations as required.

(c) **CHAPTER 30, 31, WIS. STATS., DEVELOPMENT**

Development which requires a permit from the Department, under chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodway lines, water surface profiles, BFE's established in the FIS, or other data from the officially adopted FIRM, or other floodplain zoning maps or the floodplain zoning ordinance are made according to Section 17.314 (8).

(d) **PUBLIC OR PRIVATE CAMPGROUNDS**

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

1. The campground is approved by the Department of Health Services.

2. A land use permit for the campground is issued by the zoning administrator.
3. The character of the river system and the elevation of the campground is such that a 72-hour warning of an impending flood can be given to all campground occupants.
4. There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation.
5. This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state Department of Health Services and all other applicable regulations.
6. Only camping units are allowed.
7. The camping units may not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours.
8. All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section.
9. The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
10. All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either Section 17.314 (3) or Section 17.314 (4) for the floodplain district in which the structure is located.
11. The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.
12. All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

(3) FLOODWAY DISTRICT (FW)

(a) APPLICABILITY

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to Section 17.314 (5) (a) (4).

(b) PERMITTED USES

The following open space uses are allowed in the floodway district and the floodway areas of the general floodplain district, if:

- they are not prohibited by any other ordinance;
 - they meet the standards in Section 17.314 (3) (c) and Section 17.314 (3) (d);
and
 - all permits or certificates have been issued according to Section 17.314 (7):
1. Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
 2. Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
 3. Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of Section 17.314 (3) (c) (4).
 4. Uses or structures accessory to open space uses, or classified as historic structures that comply with Section 17.314 (3) (c) and 17.314 (3) (d).
 5. Extraction of sand, gravel or other materials that comply with Section 17.314 (3) (c) (4).
 6. Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30, 31, Stats.
 7. Public utilities, streets and bridges that comply with Section 17.314 (3) (c).

(c) STANDARDS FOR DEVELOPMENTS IN FLOODWAY AREAS

1. GENERAL

- a. Any development in floodway areas shall comply with Section 17.314 (2) and have a low flood damage potential.
- b. Applicants shall provide the following data to determine the effects of the proposal according to Section 17.314 (2) (a):
 - (i) A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
 - (ii) An analysis calculating the effects of this proposal on regional flood height.

- c. The zoning administrator shall deny the permit application if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for par. (b) above.

2. STRUCTURES

Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- a. The structure is not designed for human habitation and does not have a high flood damage potential;
- b. The structure must be anchored to resist flotation, collapse and lateral movement;
- c. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
- d. The Structure must not obstruct the flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

3. PUBLIC UTILITIES, STREETS AND BRIDGES

Public utilities, streets and bridges may be allowed by permit, if:

- a. Adequate floodproofing measures are provided to the flood protection elevation; and
- b. Construction meets the development standards of Section 17.314 (2) (a).

4. FILLS OR DEPOSITION OF MATERIALS

Fills or deposition of materials may be allowed by permit, if:

- a. The requirements of Section 17.314 (2) (a) are met;
- b. No material is deposited in the navigable channel unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met;
- c. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
- d. The fill is not classified as a solid or hazardous material.

(d) PROHIBITED USES

All uses not listed as permitted uses in Section 17.314 (3) (b) are prohibited, including the following uses:

1. Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
2. Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
3. Uses not in harmony with or detrimental to uses permitted in the adjoining districts;

4. Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. COMM 83, Wis. Adm. Code.
5. Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
6. Any solid or hazardous waste disposal sites;
7. Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code;
8. Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

(4) FLOODFRINGE DISTRICT (FF)

(a) APPLICABILITY

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to Section 17.314 (5) (a).

(b) PERMITTED USES

Any structure, land use, or development is allowed in the floodfringe district if the standards in Section 17.314 (4) (c) are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in Section 17.314 (7) have been issued.

(c) STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS

Section 17.314 (2) shall apply in addition to the following requirements according to the use requested.

1. RESIDENTIAL USES

Any habitable structure, including a manufactured home, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area, shall meet or exceed the following standards;

- a. The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation on fill. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance impractical;
- b. The basement or crawlway floor may be placed at the regional flood elevation if it is floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;
- c. Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in par. (d).

- d. In developments where existing street or sewer line elevations make compliance with par. (c) impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:
 - (i) The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
 - (ii) The municipality has a natural disaster plan approved by Wisconsin Emergency Management and the Department.

2. ACCESSORY STRUCTURES OR USES

- a. Except as provided in par. (b), an accessory structure which is not connected to a principal structure may be constructed with its lowest floor at or above the regional flood elevation.
- b. An accessory structure which is not connected to the principal structure and which is less than 600 square feet in size and valued at less than \$10,000 may be constructed with its lowest floor no more than two feet below the regional flood elevation if it is subject to flood velocities of no more than two feet per second and it meets all of the provisions of Section 17.314 (3) (c) and Section 17.314 (4) (c) (5) below.

3. COMMERCIAL USES

Any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of Section 17.314 (4) (c). Subject to the requirements of Section 17.314 (4) (c) (5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

4. MANUFACTURING AND INDUSTRIAL USES

Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall be protected to the flood protection elevation using fill, levees, floodwalls, or other flood proofing measures in Section 17.314 (7) (e). Subject to the requirements of Section 17.314 (4) (c) (5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

5. STORAGE OF MATERIALS

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with Section 17.314 (7) (e). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

6. PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

- a. When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction of and substantial improvements to such facilities may only be permitted if they are floodproofed in compliance with Section 17.314 (7) (e) to the flood protection elevation;
- b. Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

7. SEWAGE SYSTEMS

All on-site sewage disposal systems shall be floodproofed, pursuant to Section 17.314 (7) (e), to the flood protection elevation and shall meet the provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.

8. WELLS

All wells shall be floodproofed, pursuant to Section 17.314 (7) (e), to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

9. SOLID WASTE DISPOSAL SITES

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

10. DEPOSITION OF MATERIALS

Any deposited material must meet all the provisions of this ordinance.

11. MANUFACTURED HOMES

- a. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
- b. In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - (i) have the lowest floor elevated to the flood protection elevation; and
 - (ii) be anchored so they do not float, collapse or move laterally during a flood.
- c. Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in Section 17.314 (4) (c) (1).

12. MOBILE RECREATIONAL VEHICLES

All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in Section 17.314 (4) (c). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

(5) OTHER FLOODPLAIN DISTRICTS

Other floodplain districts may be established under the ordinance and reflected on the floodplain zoning map. These districts may include general floodplain districts and flood storage districts.

(a) GENERAL FLOODPLAIN DISTRICT (GFP)

1. APPLICABILITY

The provisions for this district shall apply to all floodplains for which flood profiles are not available or where flood profiles are available but floodways have not been delineated. Floodway and floodfringe districts shall be delineated when adequate data is available.

2. PERMITTED USES

Pursuant to Section 17.314 (5) (a) (4), it shall be determined whether the proposed use is located within a floodway or floodfringe area. Those uses permitted in floodway (Section 17.314 (3) (b)) and floodfringe areas (Section 17.314 (4) (b)) are allowed within the general floodplain district, according to the standards of Section 17.314 (5) (c), provided that all permits or certificates required under s. 7.1 have been issued.

3. STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT

Section 17.314 (3) applies to floodway areas, Section 17.314 (4) applies to floodfringe areas. The rest of this ordinance applies to either district.

4. DETERMINING FLOODWAY AND FLOODFRINGE LIMITS

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

- a. Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures;
- b. Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries:
 - (i) A typical valley cross-section showing the stream channel, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development, and all historic high water information;
 - (ii) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;

- (iii) Profile showing the slope of the bottom of the channel or flow line of the stream;
 - (iv) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.
- c. Transmit one copy of the information described in pars. (1) and (2) to the Department Regional office along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of Section 17.314 (7) (a) (2) apply, the applicant shall provide all required information and computations to delineate floodway boundaries and the effects of the project on flood elevations.

(b) **FLOOD STORAGE DISTRICT**

The flood storage district delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.

1. **APPLICABILITY**

The provisions of this section apply to all areas within the Flood Storage District (FSD), as shown on the official floodplain zoning maps.

2. **PERMITTED USES**

Any use or development which occurs in a flood storage district must meet the applicable requirements in Section 17.314 (4) (c).

3. **STANDARDS FOR DEVELOPMENT IN FLOOD STORAGE DISTRICTS**

- a. Development in a flood storage district shall not cause an increase equal or greater than 0.01 of a foot in the height of the regional flood.
- b. No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost, (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.
- c. If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district – on this waterway – is rezoned to the floodfringe district. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without flood plain storage, as per Section 17.314 (8) (a) of this ordinance.
- d. No area may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.

(6) NONCONFORMING USES

(a) GENERAL

1. APPLICABILITY

If these standards conform with s. 59.69(10), Stats., for counties or s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

2. The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

- a. No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.
- b. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.
- c. If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- d. The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- e. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Section 17.314 (4)(c)(1). The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;

- f. 1. Except as provided in subd. 2., if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.
- g. 2. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under applicable FEMA regulations (44 CFR Part 60), or the regulations promulgated thereunder.
- h. A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with Section 17.314 (3)(c)(1), flood resistant materials are used, and construction practices and floodproofing methods that comply with Section 17.314 (7) (e) are used.

(b) FLOODWAY AREAS

- 1. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
 - a. Has been granted a permit or variance which meets all ordinance requirements;
 - b. Meets the requirements of Section 17.314 (6) (a);
 - c. Will not increase the obstruction to flood flows or regional flood height;
 - d. Any addition to the existing structure shall be floodproofed, pursuant to Section 17.314 (7) (e), by means other than the use of fill, to the flood protection elevation;
 - e. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
 - (i) The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
 - (ii) The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
 - (iii) Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
 - (iv) The use must be limited to parking or limited storage.

2. No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. COMM 83, Wis. Adm. Code.
3. No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.

(c) **FLOODFRINGE AREAS**

1. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in Section 17.314 (4) (c) and Section 17.314 (7) (e), except where Section 17.314 (6)(c)(2) is applicable.
2. Where compliance with the provisions of par. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in Section 17.314 (7) (c), may grant a variance from those provisions of par. (1) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
 - a. No floor is allowed below the regional flood elevation for residential or commercial structures;
 - b. Human lives are not endangered;
 - c. Public facilities, such as water or sewer, will not be installed;
 - d. Flood depths will not exceed two feet;
 - e. Flood velocities will not exceed two feet per second; and
 - f. The structure will not be used for storage of materials as described in Section 17.314 (4)(c)(5).
3. If neither the provisions of par. (1) or (2) above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe, if the addition:
 - a. Meets all other regulations and will be granted by permit or variance;
 - b. Does not exceed 60 square feet in area; and
 - c. In combination with other previous modifications or additions to the building, does not equal or exceed 50% of the present equalized assessed value of the building.

4. All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.
5. All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance and ch. NR 811 and NR 812, Wis. Adm. Code.

(d) **FLOOD STORAGE AREAS**

No modifications or additions shall be allowed to any nonconforming structure in a flood storage area unless the standards outlined in Section 17.314 (5)(b)(3) are met.

(7) **ADMINISTRATION**

The zoning administrator, Plan Commission, and Board of Zoning Appeals has already been appointed to administer the Zoning Ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this Section 17.314.

(a) **ZONING ADMINISTRATOR**

1. The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:
 - a. Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
 - b. Issue permits and inspect properties for compliance with provisions of this ordinance; and issue certificates of compliance where appropriate.
 - c. Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.
 - d. Keep records of all official actions such as:
 - (i) All permits issued, inspections made, and work approved;
 - (ii) Documentation of certified lowest floor and regional flood elevations for floodplain development;
 - (iii) Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
 - (iv) All substantial damage assessment reports for floodplain structures.
 - e. Submit copies of the following items to the Department Regional office:
 - (i) Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
 - (ii) Copies of any case-by-case analyses, and any other information required by the Department including an annual summary of the number and types of floodplain zoning actions taken.

- (iii) Copies of substantial damage assessments performed and all related correspondence concerning the assessments.
- f. Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.
- g. Submit copies of text and map amendments and biennial reports to the FEMA Regional office.

2. LAND USE PERMIT

A land use permit shall be obtained before any new development or any repair or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

a. GENERAL INFORMATION

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

b. SITE DEVELOPMENT PLAN

- (i) A site plan drawn to scale shall be submitted with the permit application form and shall contain:
 - (ii) Location, dimensions, area and elevation of the lot;
 - (iii) Location of the ordinary highwater mark of any abutting navigable waterways;
 - (iv) Location of any structures with distances measured from the lot lines and street center lines;
 - (v) Location of any existing or proposed on-site sewage systems or private water supply systems;
 - (vi) Location and elevation of existing or future access roads;
 - (vii) Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
 - (viii) The elevation of the lowest floor of proposed buildings and any fill using vertical datum from the adopted study - either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
 - (ix) Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of s. 3.0 or 4.0 are met; and
 - (x) Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to Section 17.314 (2) (a). This may include any of the information noted in Section 17.314 (3)(c)(1).

c. DATA REQUIREMENTS TO ANALYZE DEVELOPMENTS

- (i) The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as "subdivision" is defined in s. 236, Stats., and other proposed developments exceeding 5 acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide:
 - (a) An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity;
 - (b) A map showing location and details of vehicular access to lands outside the floodplain; and
 - (c) A surface drainage plan showing how flood damage will be minimized.
- (ii) The estimated cost of the proposal shall include all structural development, landscaping, access and road development, utilities, and other pertinent items, but need not include land costs.

d. EXPIRATION

All permits issued under the authority of this ordinance shall expire 180 days after issuance.

3. CERTIFICATE OF COMPLIANCE

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- a. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- b. Application for such certificate shall be concurrent with the application for a permit;
- c. If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- d. The applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or registered architect that floodproofing measures meet the requirements of Section 17.314 (7) (e).

4. **OTHER PERMITS**

The applicant must secure all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

(b) **ZONING AGENCY**

1. The Plan Commission shall:
 - a. oversee the functions of the office of the zoning administrator; and
 - b. review and advise the Village Board on all proposed amendments to this ordinance, maps and text.
2. This Plan Commission shall not:
 - a. grant variances to the terms of the ordinance in place of action by the Board of Zoning Appeals; or
 - b. amend the text or zoning maps in place of official action by the Village Board.

(c) **BOARD OF ZONING APPEALS**

The Board of Zoning Appeals, created under s. 62.23(7)(e), Stats., for the Village of Merton, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board of Zoning Appeals shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator may not be the secretary of the Board of Zoning Appeals.

1. **POWERS AND DUTIES**

- a. The Board of Zoning Appeals shall:
 - (i) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
 - (ii) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
 - (iii) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

2. **APPEALS TO THE BOARD OF ZONING APPEALS**

- a. Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

b. NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES

(i) Notice - The board shall:

- (a) Fix a reasonable time for the hearing;
- (b) Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
- (c) Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

(ii) Hearing - Any party may appear in person or by agent. The Board of Zoning Appeals shall:

- (a) Resolve boundary disputes according to Section 17.314 (7)(c)(3).
- (b) Decide variance applications according to Section 17.314 (7)(c)(4).
- (c) Decide appeals of permit denials according to Section 17.314 (7)(d).

c. DECISION: The final decision regarding the appeal or variance application shall:

- (i) Be made within a reasonable time;
- (ii) Be sent to the Department Regional office within 10 days of the decision;
- (iii) Be a written determination signed by the chairman or secretary of the Board;
- (iv) State the specific facts which are the basis for the Board's decision;
- (v) Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;
- (vi) Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board of Zoning Appeals proceedings.

3. BOUNDARY DISPUTES

The following procedure shall be used by the Board of Zoning Appeals in hearing disputes concerning floodplain district boundaries:

- a. If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
- b. In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board of Zoning Appeals.

- c. If the boundary is incorrectly mapped, the Board of Zoning Appeals should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to Section 17.314 (8).

4. VARIANCE

- a. The Board of Zoning Appeals may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:
 - (i) Literal enforcement of the ordinance provisions will cause unnecessary hardship;
 - (ii) The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
 - (iii) The variance is not contrary to the public interest; and
 - (iv) The variance is consistent with the purpose of this ordinance in Section 17.314 (1) (c).
- b. In addition to the criteria in par. (a), to qualify for a variance under FEMA regulations, the following criteria must be met:
 - (i) The variance may not cause any increase in the regional flood elevation;
 - (ii) Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the Regional Flood Elevation;
 - (iii) Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
- c. A variance shall not:
 - (i) Grant, extend or increase any use prohibited in the zoning district.
 - (ii) Be granted for a hardship based solely on an economic gain or loss.
 - (iii) Be granted for a hardship which is self-created.
 - (iv) Damage the rights or property values of other persons in the area.
 - (v) Allow actions without the amendments to this ordinance or map(s) required in Section 17.314 (8) (a).
 - (vi) Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
- d. When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

(d) **TO REVIEW APPEALS OF PERMIT DENIALS**

1. The Board of Zoning Appeals shall review all data related to the appeal. This may include:
 - a. Permit application data listed in Section 17.314 (7)(a)(2).
 - b. Floodway/floodfringe determination data in Section 17.314 (5)(a)(4).
 - c. Data listed in Section 17.314 (3)(c)(1) where the applicant has not submitted this information to the zoning administrator.
 - d. Other data submitted with the application, or submitted to the Board with the appeal.
2. For appeals of all denied permits the Board of Zoning Appeals shall:
 - a. Follow the procedures of Section 17.314 (7) (c);
 - b. Consider Plan Commission recommendations; and
 - c. Either uphold the denial or grant the appeal.
3. For appeals concerning increases in regional flood elevation the Board shall:
 - a. Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners.
 - b. Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

(e) **FLOODPROOFING**

1. No permit or variance shall be issued until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation.
2. Floodproofing measures shall be designed to:
 - a. Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - b. Protect structures to the flood protection elevation;
 - c. Anchor structures to foundations to resist flotation and lateral movement; and
 - d. Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention.
3. Floodproofing measures could include:
 - a. Reinforcing walls and floors to resist rupture or collapse caused by water pressure or floating debris.
 - b. Adding mass or weight to prevent flotation.

- c. Placing essential utilities above the flood protection elevation.
- d. Installing surface or subsurface drainage systems to relieve foundation wall and basement floor pressures.
- e. Constructing water supply wells and waste treatment systems to prevent the entry of flood waters.
- f. Putting cutoff valves on sewer lines or eliminating gravity flow basement drains.

(f) **PUBLIC INFORMATION**

- 1. Place marks on structures to show the depth of inundation during the regional flood.
- 2. All maps, engineering data and regulations shall be available and widely distributed.
- 3. All real estate transfers should show what floodplain zoning district any real property is in.

(8) **AMENDMENTS**

(a) **GENERAL**

The governing body may change or supplement the floodplain zoning district boundaries and this ordinance in the manner provided by law. Actions which require an amendment include, but are not limited to, the following:

- 1. Any change to the official floodplain zoning map, including the floodway line or boundary of any floodplain area.
- 2. Correction of discrepancies between the water surface profiles and floodplain zoning maps.
- 3. Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.
- 4. Any fill or floodplain encroachment that obstructs flow, increasing regional flood height 0.01 foot or more.
- 5. Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.
- 6. All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

(b) **PROCEDURES**

Ordinance amendments may be made upon petition of any interested party according to the provisions of s. 62.23, Stats. Such petitions shall include all necessary data required by Section 17.314 (5)(a)(4) and Section 17.314 (5)(a)(2).

1. The proposed amendment shall be referred to the Plan Commission for a public hearing and recommendation to the Village Board. The amendment and notice of public hearing shall be submitted to the Department of Natural Resources Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats.
2. No amendments shall become effective until reviewed and approved by the Department of Natural Resources.
3. All persons petitioning for a map amendment that obstructs flow, increasing regional flood height 0.01 foot or more, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the Village Board.
4. For amendments in areas with no water surface profiles, the Plan Commission shall consider data submitted by the Department of Natural Resources, the zoning administrator's visual on-site inspections and other available information. (See Section 17.314 (1)(e)(4).)

(9) ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than \$ 10 and not more than \$ 200, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

(10) DEFINITIONS

- (a) Unless specifically defined, words and phrases in this Section 17.314 shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.
 1. **A ZONES.** Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
 2. **ACCESSORY STRUCTURE OR USE.** A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.
 3. **BASE FLOOD.** Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
 4. **BASEMENT.** Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.
 5. **BUILDING.** See **STRUCTURE.**

6. **BULKHEAD LINE.** A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
7. **CAMPGROUND.** Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
8. **CAMPING UNIT.** Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.
9. **CERTIFICATE OF COMPLIANCE.** A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
10. **CHANNEL.** A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
11. **CRAWLWAYS OR CRAWL SPACE.** An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
12. **DECK.** An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
13. **DEPARTMENT.** The Wisconsin Department of Natural Resources.
14. **DEVELOPMENT.** Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.
15. **DRYLAND ACCESS.** A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
16. **ENCROACHMENT.** Any fill, structure, equipment, building, use or development in the floodway.
17. **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).** The federal agency that administers the National Flood Insurance Program.

18. **FLOOD INSURANCE RATE MAP (FIRM).** A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
19. **FLOOD or FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
 - a. The overflow or rise of inland waters,
 - b. The rapid accumulation or runoff of surface waters from any source,
 - c. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
20. **FLOOD FREQUENCY.** The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.
21. **FLOODFRINGE.** That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
22. **FLOOD HAZARD BOUNDARY MAP.** A map designating approximate flood hazard areas. Flood Hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
23. **FLOOD INSURANCE STUDY.** A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
24. **FLOODPLAIN.** Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.
25. **FLOODPLAIN MANAGEMENT.** Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
26. **FLOOD PROFILE.** A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

27. **FLOODPROOFING.** Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage, such as the following; reinforcing of basement walls; underpinning of floors; permanent sealing of all exterior openings; use of masonry construction; erection of permanent watertight bulkheads, shutters, and doors; treatment of exposed timbers; elevation of flood vulnerable utilities; use of waterproof cement; adequate fuse protection; sealing of basement walls; installation of sump pumps; placement of automatic swing check valves; installation of seal-tight windows and doors; installation of wire reinforced glass; relocation and elevation of valuable items; waterproofing, disconnecting, elevation, or removal of all electrical equipment; avoidance of the use of flood vulnerable areas; temporary removal or waterproofing of merchandise; operation of emergency pump equipment; closing of backwater sewer valves; placement of plugs and flood drain pipes; placement of movable watertight bulkheads; erection of sand bag levees; and the shoring of weak walls or structures. .
28. **FLOOD PROTECTION ELEVATION.** An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: FREEBOARD.)
29. **FLOOD STORAGE.** Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
30. **FLOODWAY.** The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
31. **FREEBOARD.** A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
32. **HABITABLE STRUCTURE.** Any structure or portion thereof used or designed for human habitation.
33. **HEARING NOTICE.** Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
34. **HIGH FLOOD DAMAGE POTENTIAL.** Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

35. **HISTORIC STRUCTURE.** Any structure that is either:
- a. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
 - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
36. **INCREASE IN REGIONAL FLOOD HEIGHT.** A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
37. **LAND USE.** Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
38. **MUNICIPALITY** or **MUNICIPAL.** The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
39. **NAVD** or **NORTH AMERICAN VERTICAL DATUM.** Elevations referenced to mean sea level datum, 1988 adjustment.
40. **NGVD** or **NATIONAL GEODETIC VERTICAL DATUM.** Elevations referenced to mean sea level datum, 1929 adjustment.
41. **NEW CONSTRUCTION.** For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.
42. **NONCONFORMING STRUCTURE.** An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)

43. **NONCONFORMING USE.** An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
44. **OBSTRUCTION TO FLOW.** Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
45. **OFFICIAL FLOODPLAIN ZONING MAP.** That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.
46. **OPEN SPACE USE.** Those uses having a relatively low flood damage potential and not involving structures.
47. **ORDINARY HIGHWATER MARK.** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
48. **PERSON.** An individual or group of individuals, corporation, partnership, association, municipality or state agency.
49. **PRIVATE SEWAGE SYSTEM.** A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
50. **PUBLIC UTILITIES.** Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
51. **REASONABLY SAFE FROM FLOODING.** Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
52. **REGIONAL FLOOD.** A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year; this means that in any given year, there is a one (1) percent chance that the regional flood may occur or be exceeded, and if depicted on the FIRM, the regional flood elevation is equivalent to the base flood elevation.
53. **START OF CONSTRUCTION.** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and

filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

54. **STRUCTURE.** Anything constructed or erected with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, decks, porches, stairways, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
55. **SUBDIVISION.** Has the meaning given in s. 236.02(12), Wis. Stats.
56. **SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
57. **UNNECESSARY HARDSHIP.** Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance. Unnecessary hardship is present only where, in the absence of a variance, no reasonable use can be made of the property.
58. **VARIANCE.** An authorization by the Board of Zoning Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance. A variance may not permit a use of property that is otherwise prohibited by the Ordinance.
59. **VIOLATION.** The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
60. **WATERSHED.** The entire region contributing runoff or surface water to a watercourse or body of water.
61. **WATER SURFACE PROFILE.** A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
62. **Well.** An excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

17.315 USE TABLE

The Village of Merton Use Table lists the uses allowed within each of the zoning districts in the Village of Merton. Each zoning district is listed on the top of the table and each use is listed in the rows. A "P" in the box indicates that a use is permitted by right in the respective zoning district. A "C" in the box indicates that a use is conditional and is allowed only under specific conditions outlined in the Ordinance under the respective district and in Section 17.703. If the box is blank, it indicates that a specific use is not permitted in that zoning district.

This use table is generalized and is not a substitute for reading the contents of this Ordinance. The text of this Ordinance controls in the case of any discrepancy. Where indicated by asterisk (), refer to District text for additional information.*

VILLAGE OF MERTON USE TABLE

	A-1	R-1	R-2	R-3	R-4	B-1	HD	I-1	P-1	C-1	C-2	FD
Accessory apartments, not first floor							C					
Agricultural cultivation and pasturing, limited*	P									P	C	*
Animal hospitals, veterinary services	C					C						
Bakeries, limited*						C	C					
Barber and beauty shops						C	C					
Cemeteries									C			
Churches		C	C	C	C		C		P			
Clothing and dry goods stores						C	C					
Colleges and universities									P			
Construction equipment general repair, service and sale								C				
Convenience and service-type businesses*						C	C					
Department stores							C					
Drive-in establishments serving food or beverages						C						
Drug stores						C	C					
Dry cleaning and laundry pick-up						C	C					
Food and beverage stores						C	C					
Forest and game management*										P	P	
Forestry, sustained yield										P	P	
Fraternal organizations						C	C					
Fuel storage, not for sale	C					C		C				

	A-1	R-1	R-2	R-3	R-4	B-1	HD	I-1	P-1	C-1	C-2	FD
Funeral homes						C	C					
Gas station						C	C	C				
Gas station mini-mart						C	C	C				
General farming*	P											*
Golf courses and driving ranges									C			
Hardware stores						C	C					
Hiking and nature trails*	P	P	P	P	P	P	P	P	P	P	P	P
Historic or archaeological sites or structures									P			
Hotels							C					
Kennels	C											
Libraries						C	C		P			
Light industrial uses*								C				
Machine shops							C	C				
Mobile home sales								C				
Motor vehicle body shop						C	C	C				
Motor vehicle general repair and service						C	C	C				
Motor vehicle sales						C		C				
Multi-family residential					P							
Municipal offices						C	C		P			
Museums						C	C		P			
Offices, business, professional and financial						C	C	C				
Offices, general						C		C				
Outside storage and manufacturing								C				
Parks, playgrounds, playfields, swimming pools and beaches*									P			
Parsonage, rectory, convent, monastery						C	C		P			
Places of entertainment						C	C					
Post offices						C	C					
Propagation of wetland and aquatic animals*										C		
Public offices and facilities*						C	C		P			
Public parks, recreation areas, etc. limited*									P	C	C	

	A-1	R-1	R-2	R-3	R-4	B-1	HD	I-1	P-1	C-1	C-2	FD
Public utilities and essential accessory structures	P	P	P	P	P	P	P	P	P	C	C	*
Recreational vehicle sales								C				
Restaurants						C	C	C				
Roadside stands	P											
Sale of agricultural products	P											
Schools		C	C	C	C	C	C					
Sewage treatment plants, municipal									C			
Single-family, detached	P	P	P	P			P					
Specialty shops						C	C					
Taverns						C	C					
Travel agencies						C	C					
Two-family residential					P		C					
Unlighted private parks, commercial swimming pools, and similar recreational facilities*		C	C	C	C							
Uses which benefit from a central location*						C	C					
Water towers*									C			
Wildlife Preserves										C	P	*
Wireless Communication Facilities	C							C	C		C	

SECTION 17.400 GENERAL PROVISIONS

17.401 COMPLIANCE

- (1) **COMPLIANCE.** Except as may be otherwise specifically provided, the use, size, height, and location of buildings now existing or hereafter erected, moved, converted, extended, enlarged, or structurally altered, the provisions of open spaces, and the use of land, water, or structures shall be in compliance with the regulations established herein for the district in which such land, water, or building is located. Conditional uses are allowed only on permit granted by the Plan Commission. Where a lot is devoted to a permitted use, customary accessory uses and structures are authorized except as prohibited specifically or by necessary implication.
- (2) **MUNICIPALITIES AND STATE AGENCIES REGULATED.** Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Ordinance and obtain all required permits. State agencies are required to comply if Section 13.48(13) of the Wisconsin Statutes applies. The construction, reconstruction, maintenance, and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt from compliance when Section 30.12(4)(a) of the Wisconsin Statutes applies.

17.402 USE REGULATIONS

- (1) **USES RESTRICTED.** In any district no land shall be used and no building shall be erected, structurally altered, or relocated except for one or more of the uses as permitted in that district, and in compliance with the regulations established for that district.
- (2) **CORRECTION OF NUISANCES.** Any use, in any district, which becomes hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood may be required to correct or improve such condition by such measures as are directed by the Village Board consistent with reasonable technological and economic practicality.
- (3) **ACCESSORY USES.** In any district, buildings and uses customarily accessory to the permitted uses in that district shall be permitted subject to all applicable requirements of the district. In all cases, the principal building shall be under construction prior to the construction of any accessory buildings or the commencement of any accessory uses. With the exception of the R-1, R-2, and R-3 districts, off-street parking facilities are a permitted accessory use in all districts. With the exception of the Business, Industrial and Historic Downtown districts, accessory uses may not involve the conduct of any business, trade or industry other than Home Occupations subject to 17.402(4).

- (4) **HOME OCCUPATIONS** are permitted provided:
- (a) The home occupation shall be conducted entirely within the principal residential building.
 - (b) Such home occupation shall not occupy more than twenty (20) percent of the floor area of the principal building.
 - (c) Such home occupation shall not employ more than one person not residing on the premises.
 - (d) The home occupation shall be clearly secondary to use of the premises as a dwelling unit.
 - (e) No alteration of the principal building shall be made which changes its character as a dwelling.
 - (f) There shall be no outside storage of equipment or materials used in the home occupation.
 - (g) No home occupation shall create a public nuisance. No home occupation shall create any offensive noise, vibration, smoke, dust, electronic interference, odors, heat or glare spilling over the property line.
 - (h) Adequate off-street parking facilities shall be provided adjacent, or reasonably adjacent, to the building served.
 - (i) No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood.
 - (j) The primary function of the occupation shall not be the sales or rentals of goods from the site.
 - (k) Not more than one home occupation may be operated from any one dwelling unit.
 - (l) No more than one customer may be present at a time.
- (5) **PUBLIC UTILITIES.** Transmission lines, power lines, communication lines, and supporting structures associated with public utilities shall be permitted in any district.
- (6) **PYRAMIDING.** Pyramiding, as defined in this Ordinance, shall not be permitted on any lands fronting on any body of water.
- (7) **SPECIAL USE SYSTEMS (SOLAR, WIND AND COMMUNICATIONS).** Special use systems, are permitted as accessory uses in any district other than C-1, when used solely by the occupants of the principal use subject to the requirements of this section and all other applicable local, state and federal requirements.
- (a) Permit required. No special use system with the exception of dish antennas less than three (3) feet in diameter, shall be installed or erected in the Village of Merton without an approval from the Plan Commission and permit from the Building Inspector. The Plan Commission shall determine if the Special Use System conforms with the requirements of this Ordinance, is aesthetically harmonious with the principal use and will not adversely affect the

neighborhood. The Plan Commission may consider written opinions of the owners of the neighboring properties in making their determination.

1. The permit application shall include the name and address of the applicant, a site plan, details for the system to be installed, and any additional information deemed necessary by the Building Inspector for proper review of the application.
2. The Building Inspector shall refer all applications for permits to the Plan Commission for review and approval.
3. An application for permit to install or erect a Special Use System shall be accompanied by a cash deposit in the amount of three hundred dollars (\$300.00). This deposit shall be retained by the Village Clerk until final inspection and approval. If any person shall use the Special Use System prior to final inspection and approval, said bond shall be forfeited. The bond shall be returned upon compliance by permittee of all requirements of this Ordinance.

(b) Locational and Installation Requirements. Special Use Systems shall be located in a manner which conforms with the applicable locational and height requirements for accessory structures in the district in which the system is to be located, except as may be modified by the following:

1. There shall be no separation distance requirement between the Special Use System and the principal building.
2. Special Use Systems shall be located not closer to the base setback line than the existing building setback or the required setback whichever is greater.
3. Setbacks of all Special Use Systems shall be equal to, or greater than, the setback requirements of the particular zoning district, and not less than the total vertical height of the system structure.
4. In a commercial or manufacturing district where the parcel abuts directly a parcel that is residentially zoned, the more restrictive requirements of the residential district shall apply.
5. Earth satellite stations, commonly referred to as disks or dishes, shall have a maximum diameter of no more than ten (10) feet.
6. Earth satellite stations shall have a maximum total height of no more than twelve (12) feet.
7. Portable or trailer mounted satellite earth stations are not allowed. Exception: temporary installations for on-site testing and demonstration purposes may be allowed for periods not to exceed two (2) days.
8. More than one Solar Energy Conversion System, Wind Energy Conversion system or dish antenna subject to permit requirements, can be permitted on a lot or parcel.
9. Earth station dish antennas shall be of mesh construction and be located and designed to reduce their visual impact on surrounding properties. The Building Inspector may require adequate screening and unit color that

harmonizes with such screening and the improvements already located on the premises. Neutral inconspicuous earth-tone colors shall be required.

10. All Special Use systems shall be installed according to manufacturer's specifications so as to withstand anticipated wind velocities. The design velocity shall be a minimum of eighty (80) mph.

11. Priority of location of all Special Use Systems shall be the rear yard.

12. Electrical installations in connection with special use systems, including grounding of the system shall be in accordance with National Electrical Code Standards. All cable used to conduct current or signals from the satellite earth station to the receivers shall be installed underground.

(c) Special authorization may be required. Any installation of Special Use Systems which cannot meet the size, locational or installation requirements set forth above, may be authorized only by the Zoning Board of Appeals in accordance with the procedures outlined for such appeals in this Ordinance.

(d) Termination. When any Special Use System is no longer functional and ceased to be used by the property owner or occupant, said system shall be removed upon written order of the Building Inspector.

(8) WIRELESS COMMUNICATION FACILITIES

(a) Purpose and Intent

1. To ensure the provision of personal wireless service within the corporate boundaries of, and for the benefit of, the residents of the Village of Merton.
2. To protect the public health, safety, and general welfare of the community, public and private property, and community aesthetics.
3. To minimize the visual impact of wireless communication facilities, including antennas, guyed, lattice, self-supported and monopole towers and associated buildings and structures through design and siting standards.
4. To maximize the use of existing and approved wireless communication facilities, towers and buildings to accommodate multiple antennas in order to reduce the number of towers needed to serve the community.
5. To avoid damage to adjacent properties from tower failure through structural standards and setback requirements.

(b) Conditional Use Permit Required

A conditional use permit shall be required from the Plan Commission for wireless communication facilities in those zoning districts in which wireless communications facilities are allowed as conditional uses. Wireless communications facilities are allowed as conditional uses in the A-1 Agricultural, I-1 Limited Industrial District, P-1 Public and Semi-Public District and C-2 Upland Conservancy Overlay District.

(c) Application

At the time of application for a conditional use permit, the applicant shall submit the following information:

1. A site plan showing the location of the proposed tower as well as the location of the proposed equipment storage building. The site plan shall include any equipment storage buildings that shall be designed to accommodate other potential carriers that may locate on the tower and accommodate expansion.
2. A written statement signed by the applicant that Federal Aviation Administration (FAA) and Wisconsin Department of Transportation, Division of Aeronautics, approval are not required, or a copy of the FAA and Wisconsin Department of Transportation, Division of Aeronautics, application if such approval is required.
3. An application for Department of Commerce approval or a statement submitted by the applicant as to why Department of Commerce approval is not required.
4. An explanation describing how the proposal is in concert with zoning and land use requirements of the particular zoning district.
5. A visual impact statement, including a site photo, drawing of the proposed structure, and setting forth the location of the structure plotted on an official zoning map. The site shall be plotted on an aerial map of a scale of 1 inch equals 300 feet or finer, showing adjacent land uses within a radius of 2,500 feet of the structure.
6. A statement describing the access to the facility. In addition, applicant shall submit a horizontal plan of the facility, showing the relationship of all major components of the facility, including a tower, fence, buildings on site, lot lines and nearest residences and access roads.
7. A statement describing the impact on utility services at the proposed facility.
8. An engineering analysis, conducted by a registered professional engineer familiar with the structure, which considers the following:
 - a. Structural capacity
 - b. Antenna aperture
 - c. Space and equipment building
 - d. FCC, FAA, and/or Department of Commerce limitations.
 - e. The analysis shall include a written report from the engineer in the application describing strengthening methods to be used along with a statement that the proposed facility meets the latest Electrical Industrial Association requirements for the southeast Wisconsin area wind loading zoning.

9. A detailed statement of how arcing, spurious emissions, inter-modulation, and distortion will be minimized by RF transmitter filtering, secure bonding of waveguide, transmissions lines and other tower and guy attachments and the use of corrosion resistant hardware.
10. If the application proposes a new tower structure instead of co-location, the applicant must also submit documentation outlining the reasons for not co-locating.

(d) Co-Location Requirements

No proposal for the construction of a new wireless communication tower shall be approved unless the applicant documents to the satisfaction of the Village Plan Commission that the antenna planned for the proposed tower cannot reasonably be accommodated on an existing, conforming co-location tower or structure, or on a utility pole within the applicant's search ring due to one or more of the following:

1. The antenna would exceed the structural capacity of the existing or approved tower or building.
2. The antenna would cause interference with other existing or planned equipment at the tower or building.
3. Existing or approved towers and buildings cannot reasonably accommodate the antenna at a height necessary for the proposed antenna to provide services to the residents and businesses of the Village.
4. Existing or approved towers and commercial buildings are outside of the documented search area.
5. The owners or lessors of the existing or approved towers and buildings are unwilling to allow co-location upon their facilities.

(e) Plan Commission Review

The Plan Commission shall consider the following criteria in granting a conditional use permit:

1. Whether the wireless communications facility complies with pertinent FCC regulations and federal requirements concerning RF emissions.
2. Whether or not municipal sites are available for a wireless communication facility.
3. Whether Federal Aviation Administration (FAA) and Wisconsin Department of Transportation Division of Aeronautics approval is required.
4. Whether Department of Commerce approval is required.
5. The design of the existing structures and new towers or appurtenances to be placed on buildings or to be ground mounted must be approved by a registered professional engineer familiar with the requirements of such structures. The professional engineer's analysis shall include:

- a. Tower "free fall" zone based upon tower break points; radius for falling tower appurtenances, hardware and ice; windscatter of paint, general public safety with respect to load capacity; percentage of ultimate tower capacity reserved for future use.
 - b. The configuration, design and size of any equipment storage buildings shall be consistent with buildings in the particular zoning district and will comply with the requisite setback requirements in the district.
6. Whether the proposal is in concert with the zoning and land use requirements of the particular zoning district.
7. Whether there is a visual impact of the wireless communications facility and the appurtenant buildings upon the adjacent area including distance from residences, scenic vistas, and whether any appropriate landscaping is in place or proposed which would act as a screen such as trees, berms or buildings. A surface paint or finish shall be used on all towers, antennas, and equipment that reduces the visibility of the tower and equipment. Equipment on an existing structure shall be painted to match the structure. Free standing towers and equipment shall have a flat white finish, or other color as approved by the Plan Commission, to harmonize with the surrounding environment.
8. The access to the facility and:
 - a. Whether the facility is restricted by fence or locked rooftop
 - b. Who possesses keys
 - c. Whether there are anti-climbing provisions at the facility.
9. The impact of utility services at the proposed facility.
10. Whether there is adequate provision for maintaining the facility in good repair and condition, including painting and grass trimming.
11. Whether the proposed facility is the best alternative within a radius of 1 mile.
12. The number of users that could be accommodated on the proposed structure based upon an engineering analysis, conducted by a registered professional engineer familiar with the requirements of the structure, which considers the following:
 - a. Structural capacity
 - b. Antenna aperture
 - c. Space and equipment building
13. In determining whether to grant a conditional use permit, the Plan Commission may impose conditions to the extent the Plan Commission concludes such conditions are necessary to minimize any adverse effect of the proposed facility on adjoining properties.

14. In the event additional equipment is required for reasons such as new technologies or a greater number of carriers than anticipated, then the existing storage building shall be expanded to accommodate such equipment. Where, based on the site configuration, it is not practical to design one equipment storage building to accommodate the needs of the total number of carriers on the tower, the Plan Commission may allow more than one equipment storage building on a site.

(f) Setbacks

1. The minimum setback from any property line, public right-of-way, building, or structure shall be equal to 110% of the height of the tower.
2. Setbacks for accessory buildings and structures incidental to the use of the tower or antenna shall comply with the requirements of the zoning district in which the structure is located.

(g) Abandonment

Any wireless communication facility that is not operated for a continuous period of six (6) months shall be considered abandoned and the owner of such facility shall remove the same within ninety (90) days of receipt of notice from the Village notifying the owner of abandonment.

(9) SWIMMING POOLS

(a) Use Permitted. Above and below ground swimming pools, capable of containing water to a depth of twenty-four (24) inches or more, including adjustable depth pools, are permitted in any district other than C-1 district, subject to the following:

1. The pool must be intended to be used solely by the occupants of the principal use of the property on which the pool is intended to be located, and their guests.
2. Any pool, together with its surrounding walks, patios, diving platforms, bathhouses, and accessory structures, shall be located only within the rear yard so that the parts of said complex are in conformity with the setback requirements of the applicable districts and meet the distance requirements established in the State and County Sanitary Code.
3. All swimming pool walls less than forty-eight (48) inches above surrounding grade shall be enclosed with a fence. The grade must extend four (4) feet horizontally from the pool wall. The fence shall be of the non-climbable nature and have a self-closing gate with a self-latching locking device placed at the top of the gate. The fence shall be a minimum of forty-eight (48) inches above grade. The fence must be located a minimum of four (4) feet from the pool wall.
4. All above ground pools which do not require a fence must have the ladder removed when the pool is not attended.

(b) Permit Required. No swimming pool shall be constructed unless a Zoning Permit has been issued pursuant to Section 17.702 of this Ordinance.

1. An application for a permit to construct a pool shall be accompanied by a cash deposit in the amount of three hundred dollars (\$300.00). This deposit shall be retained by the Village Clerk until final inspection and approval. If any person shall use the pool prior to final inspection and approval, said bond shall be forfeited. The bond shall be returned upon compliance by permittee of all requirements of this Ordinance.
2. No pool shall be used until the Building Inspector has made his final inspection and has approved all phases of construction, including the erection of necessary fencing. Water in the pool, except for minimal amounts for purposes of testing, shall be considered evidence of use.

(10) TEMPORARY USES AND STRUCTURES. Temporary uses and structures, such as temporary signs, real estate sales field offices, or shelters for materials and equipment being used in construction of a permanent structure, may be permitted by the Village Plan Commission for a period not to exceed one year.

(11) UNCLASSIFIED USES. Unclassified or unspecified uses shall not be permitted until the Board of Zoning Appeals has reviewed and approved an application in accordance with the requirements of Section 17.705 of this Ordinance.

(12) PORTABLE STRUCTURES. Portable structures are prohibited, except as permitted below, or unless permitted by the Village Plan Commission after considering the purpose of the Zoning Code, for a period not to exceed one year.

(a) Portable storage structures. The use of portable storage structures are allowed under the following conditions.

1. There must be no more than one portable storage structure per property.
2. The portable storage structure must be no larger than ten feet wide, 20 feet long and ten feet high.
3. A portable storage structure must not remain at a property in any zoning district in excess of 30 consecutive days, and must not be placed at any one property in a zoning district in excess of 30 days in any calendar year.
4. The portable storage structure must be set back a minimum of five feet from all property lines.
5. The portable storage structure must be set back a minimum of five feet from the nearest wall of a building.
6. The portable storage structure must be placed on an asphalt or concrete surface.
7. Portable storage structures associated with construction at a site where a building permit has been issued are permitted for the duration of construction and shall be removed from the site within 14 days of the end of construction. Portable storage structures associated with construction are exempt from the aforementioned conditions.

(b) Donation drop-off boxes. Donation drop-off boxes are prohibited on all public and private property in the village except under the following conditions.

1. Donation drop-off boxes are allowed on property where the primary structure is used by a not-for-profit organization, as defined by the state statutes, and the box is used exclusively to support said organization.
2. The drop boxes must be places within the buildable area of the lot in an interior side or rear yard and screened from view of any public right-of-way.
3. There must be no more than two drop boxes per property.
4. The drop box must be no larger than six feet wide, six feet deep and eight feet high.
5. All donations must be fully enclosed in a donation drop-off box. Donations that are not fully enclosed in a donation drop-off box are considered a public nuisance and subject to removal by the village at the owner's expense.

17.403 LEGAL NONCONFORMING STRUCTURES, USES AND LOTS

(1) EXISTING USE PERMITTED. The existing lawful use of a lot, building, or premises at the time of the enactment of this Ordinance or any amendment thereto may be continued although such use does not conform with the provisions of this Ordinance for the District in which it is located, subject to conditions hereinafter stated.

(2) CLASSIFICATION AND REGULATIONS. For the purposes of administration, legal nonconformity shall be classified and regulated as follows:

(a) Nonconforming Structures

1. No structure shall be modernized, expanded, or enlarged during its life, except in conformity with the applicable district regulations, if such total repairs exceed fifty (50) percent of the current fair market valuation of the structure.
2. Where such structure is damaged beyond (fifty) 50 percent of its current fair market valuation, it shall not be restored except in conformity with the applicable district regulations.

(b) Nonconforming Use of Structures and Land

1. No such use shall be expanded, enlarged, or extended.
2. Upon petition to and approval by the Village Board of Zoning Appeals, such use may be changed to another use provided the Village determines that the new use would not result in a greater degree of nonconformity than the current use.
3. When any such use is discontinued for twelve (12) consecutive months or eighteen (18) cumulative months during a three-year period, any future use of the land or structure shall conform to the use regulations of the applicable district. A business of a seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (for example, summer camps, snowmobile courses, ski areas, marina, etc.).

4. When a structure which houses such nonconforming use is damaged to the extent of more than fifty (50) percent of its current fair market valuation, it shall not be restored for any use except in conformity with the applicable district regulations.
 5. Total structural repairs or alterations to a structure housing a nonconforming use, but not including additions to the use, shall not, during the life, exceed fifty (50) percent of the fair market valuation of the structure.
- (c) Nonconforming Lots. The size and shape of such lots shall not be altered in any way that would increase the degree of such nonconformity to the applicable district regulations. Existing adjacent nonconforming lots held in common ownership shall be treated as a single lot for the purposes of this ordinance including, but not limited to, the determination of setbacks and lot coverage for new construction and additions.
- (3) **FAIR MARKET VALUATION.** In case a question arises concerning what is the current fair market valuation of a structure, as applied to the above provisions, an appraisal of the property shall be made by an appraiser mutually agreed upon by the Village and the property owner in question. Any costs incurred shall be shared equally by the Village and the property owner in question.
 - (4) **WETLAND NONCONFORMING USES.** Notwithstanding Section 62.23(7)(h) of the Wisconsin Statutes, the repair, reconstruction, renovating, remodeling or expansion of a legal nonconforming structure, or any environmental control facility related to a legal nonconforming structure, located in the C-1 Wetland Conservancy District and in existence at the time of adoption or subsequent amendment of this Ordinance is permitted pursuant to Section 61.351(5) of the Wisconsin Statutes.
 - (5) **FLOODLAND NONCONFORMING USES.** Floodland nonconforming uses repaired or altered under the nonconforming use provisions of this Ordinance shall provide for floodproofing to those portions of the structures involved in such repair or alteration. Certification of floodproofing shall be made to the Building Inspector and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the 100-year recurrence interval flood.

17.404 SITE REGULATIONS

- (1) **BUILDING MUST BE ON A LOT.** Every building hereafter erected, structurally altered, or relocated shall be located on a lot as defined herein. In no case shall there be more than one principal building on a lot. No accessory buildings shall be constructed until the principal building is under construction or complete.
- (2) **BUILDING LOTS MUST FRONT ON A PUBLIC STREET.** All lots shall abut upon a public street, and each lot shall have a minimum frontage of sixty (60) feet at the right-of-way. Half streets shall not be platted unless necessary to provide the full width of an existing street that has already been platted to half width. All newly platted streets shall be platted to the required full width. Where a

proposed half street exists adjacent to a proposed land division, the subdivider shall endeavor to acquire and dedicate the remaining half street.

- (3) **GRADE.** Every building, hereafter erected, structurally altered, or relocated, shall be at a grade approved by the Zoning Administrator or Village Engineer as being in satisfactory relationship with the established street grades or with the existing street grade where one is established. This determination shall be based upon consideration of proper drainage, safe vehicular access, and relationship to stream and lake levels.
- (4) **PRESERVATION OF TOPOGRAPHY.** In order to protect the property owner from possible damage due to changes in the existing grade of adjoining lands and to aid in preserving and protecting the natural beauty and character of the landscape, no change in the existing topography of any land shall be made which would adversely affect the adjoining property. In all cases, any slope shall be protected against erosion.
- (5) **BUILDING PERMIT AND MASTER GRADING PLAN.** No work, including but not limited to earth moving, filling, excavating, or tree removal shall be conducted on any Village of Merton lot without first obtaining a Building Permit unless the work is consistent with an approved master grading plan.
- (6) **PROHIBITED BUILDINGS OR STRUCTURES.**
 - (a) For the purpose of promoting compatible development, stability of property values, and to prevent impairment or depreciation of property values, no person shall use, erect, construct, alter, or enlarge any structure, nor shall any substantial changes be made to any site improvements in any district, and the Zoning Administrator may deny a permit, if any of the following apply:
 1. The design or exterior appearance of the structure is incompatible with its surroundings or is of such unorthodox or abnormal character in relationship to its surroundings as to be unsightly or offensive.
 2. The design or exterior appearance of the structure is so similar to those within a reasonable proximity as to create excessive monotony or drabness.
 3. Any exposed facade of the structure is constructed or faced with a finished material that is aesthetically incompatible with the other facades and presents an unattractive appearance to the public and to surrounding properties.
 4. The structure or use would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse effect on the beauty and general enjoyment of existing structures on adjoining properties.
 5. The structure or use would have a negative impact on the maintenance of safe and healthful conditions in the Village.

(b) The decision of the Zoning Administrator under sub. (a) of this Section may be appealed to the Plan Commission. The administrative procedures found in Section 17.706(5) of the Zoning Code shall apply with the Plan Commission acting where Board of Zoning Appeals is otherwise specified.

(7) In a A-1 Agricultural District, the Plan Commission may grant a special exception to Section 17.404 (1), pursuant to the authority granted the Plan Commission under Section 17.706 (7), to permit a second principal building or structure as defined in Section 17.202 (77), provided both buildings are situated on the property in such a manner that the property could be divided into separate lots meeting the requirements of the zoning code. Neither building may be sold separately, unless the property is subsequently divided so that each principal building or structure as defined in Section 17.202 (77) is located on a separate lot as required by Section 17.404 (1) and each property fronting a public street as required by Section 17.404 (2).

17.405 DRAINAGE REGULATIONS

- (1) **ADEQUATE DRAINAGE REQUIRED.** No principal building shall be erected, structurally altered, or placed on land which is not adequately drained at all times nor which is subject to periodic flooding.
- (2) **OBSTRUCTION TO DRAINAGE PROHIBITED.** The damming, filling, relocating, or otherwise interfering with the natural flow of surface water along any surface water drainage channel or natural water course shall not be permitted except with approval of the Plan Commission and, where necessary, the Department of Natural Resources.
- (3) **BUILDING RESTRICTED ADJACENT TO DRAINAGE CHANNELS OR WATERCOURSES.** No building or structure, other than a bridge, dam, boathouse, or revetment subject to the aforesaid approval, shall be erected, structurally altered or placed within twenty (20) feet of the ordinary high water mark of such surface water drainage channel or natural water course. The lowest floor of said building shall be not less than three (3) feet above the ordinary high water mark. If the land lies in a Floodplain District, the regulations of such district shall apply.

17.406 SANITARY AND WATER SUPPLY

- (1) **SAFE SEWAGE AND DISPOSAL.** No principal building shall be erected, structurally altered, or placed on a lot having no public sewer available unless it has been certified by the Building Inspector that the sanitary plans have received all necessary permits and approvals and conform with all applicable laws and ordinances which pertain to such systems, including but not limited to, the issuance of a Sanitary Permit from the Wisconsin Department of Commerce to serve the building. No occupancy permit shall be issued prior to the installation of a sewage disposal system that conforms to the approved plans.

- (2) **OUTHOUSES PROHIBITED.** No outhouse or privy as defined shall hereafter be erected. Sealed vaults, portable chemical toilets, and similar facilities, when used in conjunction with park and open space land uses or with ongoing construction, may be permitted subject to approval of the Waukesha County Department of Parks and Land Use and the Village Plan Commission.
- (3) **WATER SUPPLY REQUIRED.** No Occupancy/Use Permit shall be issued for a principal building or structure unless provision is made for a safe and adequate supply of water or connection is to be made to an approved municipal or community water system.

17.407 BUILDING LOCATION

- (1) **PRINCIPAL BUILDING OR STRUCTURE.** No principal building or structure shall be erected, altered, or placed so that any roofed or enclosed portion encroaches into the street, side, and rear yards as established by the street, side, and rear setback regulations for the district in which such building or structure is located. The Plan Commission may grant special exceptions if consistent with the purpose of this ordinance as set forth in Section 17.102.
- (2) **ABUTTING LOTS IN DIFFERENT DISTRICTS.**
 - (a) Where lots in two different districts, one of which is in an “A” agricultural district, abut the yard regulations of each district shall apply within the separate districts.
 - (b) Where lots in two (2) different districts, neither of which is in an “A” agricultural district:
 - 1. Abut along their rear lot lines, the rear yard depth required in the more restrictive district shall apply to both districts.
 - 2. Abut along their side lot line, the side and street yard setbacks required in the more restrictive district shall apply to both lots.
- (3) **VISION SETBACK AREA.** To protect the visibility of motorists, cyclists, riders, and pedestrians at the intersection of any two (2) streets, or of any street and any alley or driveway, no substantial impediment to visibility shall be created or maintained between the heights of two and one-half feet (2-1/2') and ten feet (10') above the mean curb grades within the triangular area described as follows:
 - (a) At the intersection of two (2) public streets, beginning at the intersection of the right-of-way edges (Projected if corners are rounded), thence fifty (50) feet along the edges of both right-of-ways, thence along a line connecting these points; or
 - (b) At the intersection of a public street and a private driveway, alley, or similar use beginning at the intersection of the edges of driving surfaces (projected if corners are rounded), thence fifteen (15) feet along the edges of both driving surfaces, thence along a line connecting these points.

A substantial impediment to visibility is defined as any fence, wall, hedge, planting or other obstacle, which substantially blocks the view of approaching vehicular,

cyclist, or pedestrian traffic. Necessary highway and traffic signs, public utility lines, and open fences through which there is clear vision shall not be considered substantial impediments to visibility.

- (4) **CORNER LOTS.** Corner lots shall have two (2) street yards, and a rear yard shall be provided opposite the street yard of the street from which the building or structure obtains its primary access.
- (5) **SETBACK MODIFICATIONS.** After review, the Plan Commission may permit certain yard requirements to be modified, but such modifications shall be in accord with the following:
 - (a) Uncovered stairs, landings, and fire escapes may project into any required yard but not more than six (6) feet and not closer than three (3) feet to any lot line.
 - (b) Architectural projections such as chimneys, flues, sills, eaves, belt courses, and ornaments, may project into any required yard but such projection shall not exceed three (3) feet.
 - (c) In any street yard, additions to existing structures may be permitted but shall not project beyond the average of the existing street yards on the abutting lots.
 - (d) Substandard lots of record shall be subject to the provisions of 17.409(2).
- (6) **MAINTENANCE AND USE OF SETBACK AREAS.** Any such required setback area shall be landscaped and kept clean and free from the accumulation of debris and refuse. Such required setback areas shall not be used for the storage or display of equipment, products, vehicles, or other materials.

17.408 HEIGHT REGULATIONS

- (1) **MAXIMUM HEIGHT.** In any district, no buildings or structures shall be erected or structurally altered to a height in excess of that specified by the regulations for that district.
- (2) **EXCEPTIONS.** The following shall be excepted from the height regulation of all districts:
 - (a) Chimneys and flues.
 - (b) Electric power and communication transmission lines.
 - (c) Exception to the height regulation is subject to the approval of the Plan Commission for the following: Cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, wireless communication or broadcasting towers, masts, aerials, wind powered generating units, and necessary mechanical appurtenances.

- (3) **INCREASE PERMITTED.** Subject to the approval of the Plan Commission:
- (a) The maximum height of silos and windmills in Agricultural district and water towers and tanks in the Public and Semi-Public district may be increased above the maximum allowed in the district, however, all required setbacks for such structures shall be increased by one foot for each foot by which such structures exceed the height limit.
 - (b) The maximum height of all other structures may be increased by not more than ten (10) feet above the maximum allowed in the district. All required setbacks for the structures shall be increased by one foot for each foot by which such structures exceed the height limit.

17.409 AREA REGULATIONS

(1) FLOOR AREA

- (a) Minimum Required. Any building intended in whole or part for residential purposes shall provide a minimum floor area and ground floor or other above grade utility area as specified by the regulations for the district in which such building is located.
 - 1. In the case of a single-family detached residential building that has only a single floor level, the total of all livable floor area that is not over any other livable floor area shall be called the First Floor Area, and shall conform to the required minimum total floor area. In the case of a building with more than one floor level, the minimum required First Floor Area shall be as specified for the district in which the building is located.
 - 2. Total floor area must be increased by 200 sq. ft. if at least 300 sq. ft. of basement or above grade utility area is not provided for each dwelling unit.
 - 3. In the case of any lot of record on May 15, 1980, where at least five (5) dwellings of less than the minimum required floor area exist within a radius of 500 feet of such lot, a reduction in the required minimum floor area shall be permitted to conform to the average of all dwellings within said radius, but in no case to be less than 1,200 square feet of total livable floor area.
- (b) Maximum Ground Coverage Permitted. The maximum total ground coverage of the principal building and all accessory buildings and structures shall not exceed that permitted under the maximum ground coverage as specified by the regulations for the district in which such buildings are located.

(2) LOT SIZE

- (a) No building shall be erected on a lot of less area or width than specified by the regulations of the district in which such building is located with the exception of substandard lots of record existing as of May 15, 1980. Construction on substandard lots of record is subject to the following:

1. A substandard lot of record which is at least sixty (60) feet wide and 9,000 square feet in area, shall be required to meet the following setback requirements, although those in the HD District may follow the district setback requirements:
 - a. Street Yard: 35 feet
 - b. Side Yard: 10 feet (each side yard)
 - c. Rear yard: 35 feet
2. A substandard lot of record which has a lot width of less than sixty (60) feet or a lot area of less than 9,000 square feet shall require a variance issued by the Board of Zoning Appeals before a zoning permit can be issued. (See Sections 17.702 and 17.705).

(b) No lot area shall be reduced so as to create a lot of less than the required size or so that the existing setbacks, open space, or lot area would be reduced below that required by the regulations for the district in which such lot is located.

17.410 RESIDENTIAL GARAGES REQUIRED

One private garage at least twenty (20) feet by twenty-two (22) feet is required for each dwelling unit in a residential district and residential properties in the HD Historic Downtown District built subsequent to the effective date of this code. In the case of single-family detached dwellings such garages must be attached to the principal building except for those located in subdivisions or certified survey maps recorded prior to May 15, 1980, or located in the HD Historic Downtown District.

17.411 LANDSCAPING

Any parcel of land upon which a structure is built, shall be cleaned up and all piles of debris removed before occupancy or Village acceptance of roads, whichever is first. Rough grading and soil piles shall be cleared within six (6) months of occupancy and grading shall be completed and bare spots seeded within twelve (12) months of occupancy.

17.412 OUTDOOR STORAGE OF MATERIALS AND VEHICLES

- (1) **PURPOSE.** For the purposes of maintaining a satisfactory visual appearance within the Village, promoting harmony between residential neighbors, preventing an adverse effect on property values and public health and safety, and preventing the accumulation of materials and inoperable vehicles which may be unsightly, outdoor storage shall be regulated as described in this section.
- (2) **UNSIGHTLY OR UNSANITARY MATERIALS.** No unsightly or unsanitary materials such as manure, rubbish, salvage material or miscellaneous refuse may be stored in the open within any district.
- (3) **FIREWOOD STORAGE.** In all districts, firewood for personal use shall be stored only in rear yards and shall be neatly stacked not higher than four (4) feet from grade and located not closer than three (3) feet to any lot line. Woodpiles containing diseased wood that may transmit disease to healthy trees, or woodpiles inhabited by rats or other vermin are public nuisances and shall be abated.

- (4) **UNLICENSED, UNREGISTERED VEHICLES. (OPERABLE OR INOPERABLE)** A motor vehicle that is no longer licensed or is abandoned, disassembled, non-operative, disabled, junked, or wrecked shall not be stored anywhere on any premises unless it is completely enclosed in a structure.
- (5) **RECREATIONAL VEHICLES, BOATS.** One recreational vehicle, camping trailer, boat on a trailer, or similar vehicle, not exceeding thirty (30) feet in length, may be stored outdoors on a residential lot in the driveway, or immediately off the driveway, but shall not be stored in front of the residential dwelling. One additional vehicle of this type, providing that it is owned or used by occupants of the premises, may be stored in the rear yard, or in an interior side yard, and parked not closer than five (5) feet from any lot line, or stored inside a garage.
- (6) **YARD MAINTENANCE.** All yard areas shall be maintained in a clean and sanitary condition, free from debris, brush, severed tree limbs, felled trees, rubbish or garbage, and physical hazards.
 - (a) No interior household items, such as appliances, furniture, furnishings, or parts or components thereof, may be stored or used on any private property unless within a building.
 - (b) No litter, garbage, junk or other refuse shall be allowed to accumulate on a property so that there is a risk of insect or rodent problems.
 - (c) No yard areas shall be used for vehicle parking on a regular basis unless such areas are surfaced as legal driveways or parking areas.
 - (d) Driveways, walks, and parking areas shall be maintained in a safe and well-maintained condition.

17.413 ACCESSORY BUILDINGS, STRUCTURES, AND FENCES

- (1) **PURPOSE.** The intent of this section is to provide for and regulate the location and construction of accessory buildings, structures, and fences to ensure that they are compatible with surrounding land uses and the community as a whole.
- (2) **ACCESSORY BUILDINGS OR STRUCTURES**
 - (a) No detached accessory building or structure shall be erected, structurally altered, or placed other than in a rear yard except as provided in 17.413(2)(e) and any roofed or enclosed portion shall be no closer than ten (10) feet to a lot line.
 - (b) Any accessory building or structure which is attached to a principal building or structure shall comply with setbacks established by the district regulations for principal buildings and structures.
 - (c) No detached accessory building over 400 feet in area shall be erected on any lot in any district without prior approval of the Plan Commission. In residential districts and residential properties in the HD Historic Downtown District, detached accessory building shall not exceed 1,200 square feet in area, and may be limited to a smaller size at the discretion of the Plan Commission. The Plan

Commission in making its decision shall consider its intended use, its relation to other buildings, the proposed building location, the materials of which the building is to be built, any proposed landscaping, the harmony with surrounding buildings and the effect thereof upon other buildings in the neighborhood. The decision of the Plan Commission shall be stated in writing including reasons for not approving or any conditions of approval.

- (d) All detached accessory buildings, regardless of size, shall be constructed on concrete foundations as approved by the Building Inspector.
- (e) Accessory buildings and structures are permitted as follows in all residential districts:

	Front Yard	Rear Yard	Side Yard	Street Side of a Corner Lot
Arbor	P	P	P	P
Basketball Hoop	P	P	P	P
Basketball/Tennis/Volleyball Courts		P		
Carport				
Children’s Playhouse		P		
Communication antenna				
Deck		P	P	
Flagpole	P	P	P	P
Fountain	P	P	P	P
Garage, detached		P		
Gazebo		P		
Greenhouse, detached		P		
Handicap Ramp	P	P	P	P
Hot tub/spa		P		
Laundry posts		P		
Play equipment/Swing sets		P		
Pool & Pool Accessory Building		P		
Porch	P	P	P	P
Satellite dish, 24” or less	P	P	P	P
Satellite dish, over 24”		P		
Skateboard ramp				
Solar collector		P		
Storage shed		P		

P = Permitted

Blank = Not permitted

(3) FENCES.

- (a) No fences or walls projecting above grade of any height shall be permitted on any lot with exception of those permitted under the provisions of sub. (b) through sub.(g). All fences shall comply with the vision setback area requirements of Section 17.407 (3).

- (b) For the purposes of this Section 17.413 (3), corner lots or lots abutting more than one street shall have a street yard for each street the lot abuts. The following fences shall be permitted in any street yard that is not of the street from which the building or structure obtains its primary access:
 - 1. Ornamental fences as described in 17.413 (3) (c).
 - 2. An open or solid fence may be permitted at a distance not closer than fifty (50) feet from the property line abutting the street.
- (c) At no time is any fence permitted in the road right-of-way.
- (d) All fences shall be constructed with the finished or decorated side facing the right-of-way or adjacent or abutting properties.
- (e) Ornamental fences are permitted as follows:
 - 1. Location: Ornamental fences are permitted in all Zoning Districts.
 - 2. Installation: Along any property line or in any yard.
 - 3. Height: Shall not exceed a height of three (3) feet.
 - 4. Opacity: Shall have more than sixty percent (60%) of their surface area open for free passage of light and air.
 - 5. Does not enclose, or is part of any enclosure that acts as a retaining structure.
 - 6. Ornamental fences are often of the rail, split rail, or wrought iron type.
- (f) Open fences are permitted as follows:
 - 1. Location: Open fences are permitted in all Zoning Districts.
 - 2. Installation: Open fences are permitted in the rear yard.
 - 3. Height: Fence height is determined by distance from property line.
 - a. Open fences along the property line or within twenty (20) feet of the property line shall not exceed four (4) feet in height.
 - b. Open fences greater than twenty (20) feet from the property line shall not exceed five (5) feet in height.
 - 4. Opacity: Open fences shall have a minimum of forty percent (40%) of their surface area open for free passage of light and air.
 - 5. Open fences are often of the picket, rail, or wrought iron type. Hardware cloth, chicken wire, and chain link are not permitted.
- (g) Solid fences are permitted as follows:
 - 1. Location: Solid fences in all districts are only permitted in the rear yard.

2. Installation: Solid fences shall be located a minimum of twenty (20) feet from property line and a minimum of fifty (50) feet from property lines abutting a street.
 3. Height: Solid fences shall not exceed five (5) feet in height.
 4. Opacity: Solid fences are constructed to be a minimum of sixty (60) percent opaque.
- (h) Dog runs are permitted as follows:
1. Location: Dog runs are permitted in the rear yard.
 2. Installation: Dog runs shall be located at least twenty (20) feet from the property line and not closer than fifty (50) feet from any property line abutting a street.
 3. Height: Dog runs shall not exceed six (6) feet in height.
 4. Size: No property shall have more than 480 square feet of designated dog run.
 5. Dog run fencing may be constructed of open, solid, or chain link type fencing.
- (i) All swimming pool walls less than forty-eight (48) inches above surrounding grade shall be enclosed with a fence. The fence must extend four (4) feet horizontally from the pool wall. The fence shall be of the non-climbable nature and have a self-closing gate with a self-latching locking device placed at the top of the gate. The fence shall be a minimum of forty-eight (48) inches above grade. The fence must be located a minimum of four (4) feet from the pool wall. Fencing for swimming pools may be constructed of open or solid type fencing materials. Fencing associated with swimming pools shall be located within the buildable area of the lot as per Section 17.402 (9) of this Ordinance.
- (j) The Plan Commission may grant a special exception to allow the construction of a fence or wall not permitted under sub. (a). To grant the special exception there must be exceptional, extraordinary, or unusual circumstances or conditions that do not apply generally to other properties in the same district. The granting of the special exception should not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed. The application process for a special exception shall include a Public Hearing as defined in Section 17.705 (5) and 17.705 (6) of this Ordinance.

SECTION 17.500 LOADING, PARKING, AND ACCESS

17.501 OFF-STREET LOADING AREA REQUIREMENTS

- (1) **REQUIRED.** On every lot on which a business, trade, or industrial use exists, adequate loading space, in addition to the defined off-street parking area, shall be provided so that all vehicles loading, maneuvering, or unloading are completely off public streets and so that no vehicles will back onto public streets.

- (2) **AREA.** Each such loading space shall be a minimum of ten (10) feet wide by forty-five (45) feet long and have a minimum height clearance of fourteen (14) feet.
- (3) **EXCEPTIONS.** The Plan Commission may grant special exceptions to off-street loading area requirements if consistent with the purpose of this ordinance Section 17.102.

17.502 OFF-STREET PARKING REQUIREMENTS

- (1) **REQUIRED.** In all districts and in connection with every use, there shall be provided, at the time any use or building is erected, enlarged, extended, or increased, off-street parking in accordance with the following provisions. The Plan Commission may grant special exceptions to off-street parking requirements if consistent with the purpose of this ordinance Section 17.102.
 - (a) Adequate access to a public street shall be provided for each parking space, and driveways shall be as required by Section 17.500.
 - (b) Each parking space shall be not less than nine (9) feet wide and 180 square feet in area. Where parking for more than two (2) automobiles is to be provided, the area and width specified does not include the space required for driveways.
 - (c) Required off-street parking shall be on the same lot as the use it serves or on a lot not more than 400 feet distant. No parking stall or driveway, except in the HD Historic Downtown District and residential districts, shall be closer than twenty-five (25) feet to a residential district line or to the street line opposite a residential district.
 - (d) All off-street parking areas for more than five (5) vehicles and all driveways shall be graded and surfaced to provide a durable and dust-free surface; shall be graded and drained to dispose of all surface water accumulated within the area; and shall be arranged and marked to provide for orderly and safe loading or unloading, parking, and storage of vehicles.
 - (e) Curbs or barriers shall be installed to prevent the parked vehicles from extending over and lot lines.

(2) NUMBER OF PARKING STALLS REQUIRED

Use	Minimum Parking Requirements.
Single-family dwellings	Two spaces for each dwelling unit
Two-family and multiple-family dwellings	One and one-half spaces for each dwelling unit
Motels, Hotels and Bed and Breakfasts	One space for each guest room plus one space for each three employees
Fraternity and sorority houses, dormitories, and rectories	One space for each bed plus one for each employee

Use	Minimum Parking Requirements.
Retirement homes, orphanages, convents, monasteries	One space for each 1,000 feet of primary floor area
Hospitals, sanatoriums, institutions, rest and nursing homes	One space for each three beds plus one space for each three employees plus one space for each staff physician
Medical and Dental clinics	One space for each 100 sq. ft. of waiting room
Churches, theaters, auditoriums, community centers, vocational and night schools, and other places of public assembly	One space for each three seats
Colleges and secondary schools	One space for each employee plus one space for each five students 16 years of age or more
Elementary schools	One space for each employee plus five visitor spaces
Restaurants, bars, and similar places of entertainment	One space for each 150 sq. ft. of primary floor area, plus one space for each two employees
Manufacturing and processing plants (including meat and food processing), laboratories and warehouses	One space for each 500 sq. ft. of primary floor area
Financial institutions and business, government, and professional offices	One space for each 200 sq. ft. of primary floor area, plus one space for each two employees
Funeral Homes	Twenty spaces for each viewing room
Bowling alleys	Five spaces for each alley
Lodges and clubs	One space for each five members
Motor vehicle repair and service garages	One space for each regular employee plus one space and service garages for each 250 sq. ft. of primary floor area used for repair work
Motor vehicle sales (new and used)	One space for each 500 sq. ft. of primary floor area and for each 300 sq. ft. of outdoor display area on which motor vehicles are to be displayed. (This requirement does not include service garages – see above.)

Use	Minimum Parking Requirements.
Gas stations	Three spaces for each grease rack or similar facility plus one space for each attendant
Repair shops, retail and service stores	One space for each 800 sq. ft. of gross leasable area
Golf courses	Seven spaces per hole
Barber and beauty shops	Two spaces plus one-half space per chair
Offices	One space for each 300 sq. ft. of primary floor area
Uses not listed	The provisions for a similar use shall apply
Combinations of any of the above uses	The sum of the number of stalls required for each individual use shall be provided

17.503 DRIVEWAYS

All driveways installed, altered, changed, replaced, or extended shall meet the following requirements:

- (1) Islands between driveway openings shall be a minimum of six (6) feet wide.
- (2) Driveways shall be placed a minimum of three (3) feet from side or rear lot lines.
- (3) Driveways shall not exceed twenty-four (24) feet
- (4) Driveway openings shall not exceed the following:
 - (a) For all residential uses, twenty-four (24) feet at the right-of-way line and twenty (28) feet at the roadway.
 - (b) For all other uses, thirty (30) feet at the right-of-way line and thirty-five (35) feet at the roadway.
- (5) Vehicular entrances and exits to drive-in banks, motels, funeral homes, vehicular sales, service, washing, and repair stations, garages, or public parking lots shall not be less than 200 feet from any pedestrian entrances or exit to a school, college, university, church, hospital, park, playground, library, public emergency shelter, or other place of public assembly.

17.504 HIGHWAY ACCESS

- (1) **DIRECT ACCESS.** No direct public or private access shall be permitted within 125 feet of the existing or proposed intersection of the right-of-way lines of a arterial street and another arterial street.
- (2) **ACCESS BARRIERS.** Access barriers, such as curbing, fencing, ditching, landscaping, or other topographic barriers, shall be erected to prevent unauthorized vehicular access to the above specified streets or highways.

- (3) **TEMPORARY ACCESS.** Temporary access to the above right-of-ways may be granted by the Village Board after review and recommendation by the highway agencies having jurisdiction. Such access permit shall be revocable, subject to any conditions required, and shall be issued for a period not to exceed twelve (12) months.

17.505 PARKING OF COMMERCIAL VEHICLES AND TRAILERS

- (1) Commercial vehicles and commercial trailers shall not be parked on any street, driveway, lot, parcel, or other public or private property in any residential district, except as permitted under sub. (2).
- (2) The prohibitions in sub (1) are subject to the following exceptions:
 - (a) A commercial vehicle or commercial trailer may be parked in a residential district when engaged in a business activity which requires its presence for a temporary time and for a specific purpose, such as: lot mowing, product delivery, residential relocation, or construction.
 - (b) One commercial vehicle of less than 6,000 pounds net weight may be parked on a lot or parcel whose principal use is residential provided the commercial vehicle is customarily used by a resident of the premises in his or her business, trade, or profession. This exception does not apply to commercial trailers of any weight or commercial vehicles over 6,000 pounds net weight.
 - (c) A commercial vehicle or commercial trailer may be parked in an enclosed garage on a lot or parcel whose principal use is residential provided the commercial vehicle or trailer is customarily used by a resident of the premises in his or her business, trade, or profession.

SECTION 17.600 SIGNS

17.601 PURPOSE AND INTENT

The intent of this section is to provide for and regulate the location and construction of signs and to ensure that they are compatible with surrounding land uses and that signs express the identity of individual proprietors and the community as a whole.

17.602 SIGN PERMIT REQUIRED

All signs, to be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered, shall conform to the requirements of this Ordinance. All such signs shall require a permit (see Section 17.607 for permit procedures) except those signs specifically exempted by Section 17.603. The authority to approve, deny or conditionally approve sign permits rests with the Plan Commission, following receipt of a recommendation from the Zoning Administrator. The Plan Commission may grant special exceptions to the dimensional requirements of Section 17.604 if consistent with the purpose of this ordinance as set forth in Section 17.102.

17.603 EXEMPT SIGNS

The following signs are permitted in all zoning districts without a permit, subject to the following regulations:

- (1) Real estate ground or wall signs not exceeding eight (8) square feet in areas that advertise the sale, rental, or lease of the premises upon which the signs are temporarily located. Such signs may be placed at the right-of-way line.
- (2) Ground signs identifying the name and address or occupation of the resident, not exceeding two (2) square feet in area, and located on the premises. Such signs may be placed at the right-of-way line.
- (3) Home occupation and professional home office wall signs not exceeding two square feet in area and mounted flush against the dwelling.
- (4) Bulletin boards on ground or wall signs not exceeding fifty (50) square feet in area, located on the premises, and used by public, charitable, or religious institutions. Such signs shall be set back a minimum of five (5) feet from all lot lines.
- (5) Memorial signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure.
- (6) Official ground signs, such as traffic control, parking restrictions, information, and notices. Such signs may be placed at the curb line or pavement edge.
- (7) Signs containing political messages during the election campaign period, as defined by state statute, provided permission has been obtained from the property owner, renter, or lessee and the following provisions are met:
 - (a) No sign shall be erected prior to the start of the pertinent election campaign period.
 - (b) All signs shall be removed within twenty-four (24) hours after the close of the pertinent election campaign period.
 - (c) No more than two (2) signs shall be permitted per non-residential property.
 - (d) No sign shall exceed eleven (11) square feet in area, other than those affixed to a permanent structure as exempted by Wisconsin Statutes 12.04(4)(b) and as subsequently amended.
 - (e) No sign shall impair traffic or pedestrian safety.
 - (f) No sign shall be placed in any public right-of-way.
 - (g) Signs having an electrical or mechanical auxiliary shall require a permit and be subject to the provisions of 17.605(2).
- (8) Authorized signs displayed at athletic fields.
- (9) Flags of any government.

17.604 SPECIFIC DISTRICT SIGN REQUIREMENTS

- (1) **AGRICULTURAL DISTRICT SIGNS.** In the A-1 Agricultural District, wall or ground signs that pertain to the agricultural products produced on the premises are permitted provided that the combined area of all such signs for any one farm shall not exceed thirty (30) square feet.
- (2) **RESIDENTIAL DISTRICT SIGNS.** In all residential districts (R-1, R-2, R-3, and R-4), the following signs are permitted:

- (a) Ground signs whose area shall not exceed fifty (50) square feet for any one side or 100 square feet for all sides, that identify a residential neighborhood, a subdivision, or a housing development, and the sign therefore:
 - 1. Is to be placed at the entrance to the area.
 - 2. Will not create a traffic hazard.
 - 3. Is in keeping with the character of the area.
 - 4. Will not depreciate property value of the area.
 - 5. Has been approved by the Plan Commission.
 - (b) A wall sign not exceeding two (2) feet in height and ten (10) feet in length that announces, without display or elaboration, the name and occupation of the proprietor of a legal nonconforming business. Such sign shall be placed only over a show window or door.
- (3) **B-1 NEIGHBORHOOD BUSINESS DISTRICT SIGNS.** In all B-1 Business Districts, the following signs are permitted:
- (a) Temporary signs when permitted by the Plan Commission. The Plan Commission shall, in each case, determine the structural type of sign permitted, the maximum size permitted, and the time period the sign may remain in place.
 - (b) Wall signs placed against the exterior walls of buildings and, for any one premises, not exceeding 200 square feet in area or twenty (20) percent of the signable area of the building, whichever is smaller.
 - (c) Projecting, awning, and canopy signs shall not exceed 100 square feet in area for any one premises, shall not extend more than six (6) feet into any required yard, shall be at least ten (10) feet from all side lot lines, shall not exceed a height of twenty (20) feet above the mean centerline street grade, and shall be at least ten (10) feet above the sidewalk or fifteen (15) feet above a driveway or an alley.
 - (d) Ground signs shall not exceed twenty (20) feet in height above the mean centerline street grade, shall be set back a minimum of five (5) feet from all lot lines, and shall not exceed sixty (60) square feet on one side or 120 square feet on all sides for any one premises. No ground sign shall be placed closer than eighty (80) feet to another ground, projecting, awning, or canopy sign.
 - (e) Window signs shall not exceed twenty-five (25) percent of the glass area of the pane upon which the sign is displayed. To eliminate scattering of copy by wind action, all window signs are to be affixed to the inside surface of the window.
 - (f) The total area of all signs, except window signs, erected or placed on any one premises shall not exceed sixty (60) percent of the signable area of a building or 400 square feet, whichever is smaller.
- (4) **HD DOWNTOWN DISTRICT SIGNS.** In the HD District, the following signs are permitted:

- (a) Temporary signs when permitted by the Plan Commission. The Plan Commission shall, in each case, determine the structural type of sign permitted, the maximum size permitted, and the time period the sign may remain in place.
 - (b) Wall signs placed against the exterior walls of buildings and, for any one premises, not exceeding thirty (30) square feet in area.
 - (c) Projecting, awning, and canopy signs shall not exceed twenty (20) square feet in area for any one premises, shall not extend more than six (6) feet into any required yard, shall not extend more than three (3) feet into any public right-of-way, shall be at least ten (10) feet from all side lot lines, shall not exceed a height of twenty (20) feet above the mean centerline street grade, and shall be at least ten (10) feet above a sidewalk or fifteen (15) feet above a driveway or an alley.
 - (d) Ground signs shall not exceed five (5) feet in height above the mean centerline street grade, shall be set back a minimum of five (5) feet from all lot lines, and shall not exceed thirty (30) square feet per side. No ground sign shall be placed closer than 80 feet to another ground, projecting, awning, or canopy sign.
 - (e) Window signs shall not exceed twenty-five (25) percent of the glass area of the pane upon which the sign is displayed. All window signs are to be affixed to the inside surface of the window.
 - (f) The total area of all signs, except window signs, erected or placed on any one premises shall not exceed thirty (30) percent of the signable area.
- (5) **I-1 LIMITED INDUSTRIAL DISTRICT SIGNS.** In all I-1 Industrial Districts the following signs are permitted:
- (a) Temporary signs when permitted by the Plan Commission. The Plan Commission shall, in each case, determine the structural type of sign permitted, the maximum size permitted, and the time period the sign may remain in place.
 - (b) Wall signs placed against the exterior walls of buildings and, for any one premises, not exceeding 500 square feet in area or thirty (30) percent of the signable area of the building, whichever is smaller.
 - (c) Ground signs shall not exceed twenty (20) feet in height above the mean centerline street grade, shall be set back a minimum of five (5) feet from all lot lines, and shall not exceed eighty (80) square feet on one side or 160 square feet on all sides for any one premises. No ground sign shall be placed closer than eighty (80) feet to another ground, projecting, awning, or canopy sign.
 - (d) Roof signs shall not exceed ten (10) feet in height above the roof, shall meet the height requirements for the district in which they are located, and shall not exceed 300 square feet on all sides for any one premises.
 - (e) Window signs shall not exceed twenty-five (25) percent of the glass area of the pane upon which the sign is displayed. To eliminate scattering of copy by wind action, all window signs are to be affixed to the inside surface of the window.
 - (f) The total area of all signs, except window signs, erected or placed on any one premises shall not exceed sixty (60) percent of the signable area of a building or 500 square feet, whichever is smaller.

- (6) **CONSERVANCY AND PUBLIC AND SEMI-PUBLIC DISTRICT SIGNS.** All signs are prohibited in C-1 Conservancy and P-1 Public and Semi-Public Districts except those specifically exempted by Section 17.603.

17.605 SIGN RESTRICTIONS

- (1) **FACING.** No sign, except those exempted by Section 17.603, and those approved for construction in the HD Historic Downtown District shall be permitted to face any residential district within sixty (60) feet of its boundary or to face any residential property in the HD Historic Downtown District.
- (2) **LIGHTING AND COLOR.** Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. Signs shall not be erected, relocated, or maintained so as to prevent free ingress or egress to any door, window, or fire escape and no sign shall be attached to a standpipe or fire escape. Signs shall not be placed so as to obstruct or interfere with traffic visibility, nor be lighted in such a way as to cause glare otherwise impair driver visibility upon public streets. Signs may be illuminated but shall not be flashing.
- (3) **AUDIBLE COMPONENT.** No sign shall be permitted to contain any audible component.
- (4) **OFF PREMISES SIGNS.** Only signs which carry advertisements strictly incidental to a lawful use of the premises on which they are located are permitted. Permitted signs indicate the business transacted, services rendered, or goods sold or produced on the premises, or the name of business, person, firm, or corporation occupying the premises.
- (5) **ADVERTISING OF INTOXICANTS.** No sign advertising intoxicating beverages or an establishment for the sale thereof, shall be permitted within 500 feet of the property line of a school or church.

17.606 SIGN MAINTENANCE

The owner of any sign shall keep it in good maintenance and repair including restoring, repainting, or replacing a worn or damaged legally existing sign to its original condition. Dilapidated signs may be ordered removed or repaired by the Zoning Administrator.

17.607 SIGN PERMIT PROCEDURES

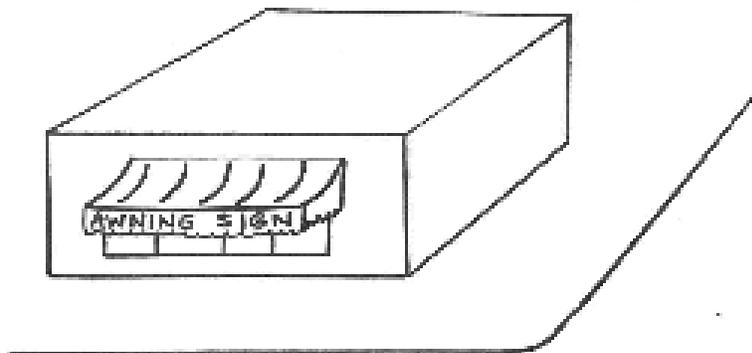
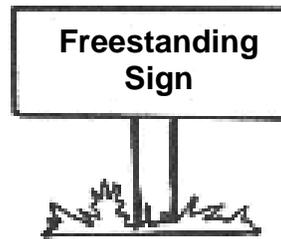
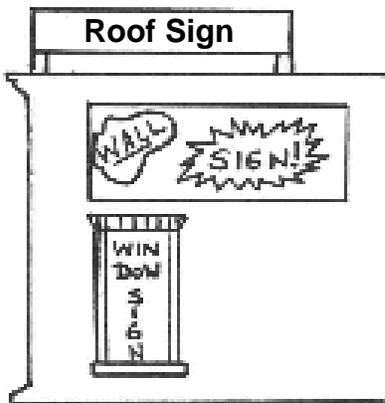
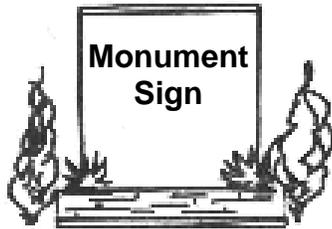
- (1) **APPLICATION.** Applications for sign permits shall be made on forms provided by the Zoning Administrator and shall contain or have attached the following information, unless the need for the item is waived in writing by the Zoning Administrator:
- (a) Name, address, and telephone number of the applicant.
 - (b) Location of the building, structure, or lot where the sign will be located.
 - (c) Name of the person, firm, corporation, or association erecting the sign.
 - (d) Written consent of the owner or lessee of the building, structure, or land to which or upon which the sign is to be affixed.

- (e) A scale drawing of the sign indicating the dimensions, the materials to be used, the type of illumination, if any, and the method of construction and attachment.
 - (f) A scale drawing indicating the location and position of the sign in relation to nearby buildings or structures.
 - (g) A fee of in accordance with the Village fee schedule shall be payable to the Village Treasurer to defray the Village's cost of administration, investigation, and review.
 - (h) Additional information as may be required by the Zoning Administrator or Village Plan Commission.
- (2) **FILING.** Sign permit applications shall be filed with the Zoning Administrator who shall review the application for its completeness and accuracy. The Zoning Administrator shall make a recommendation to the Plan Commission and forward the application for their consideration. The Plan Commission shall approve, conditionally approve, or deny the application within sixty (60) days of receipt, unless the time is extended by written agreement with the applicant. A sign permit shall become null and void, if work authorized under the permit has not been completed within six (6) months of the date of issuance.

17.608 EXISTING SIGNS

Signs lawfully existing at the time of the adoption of or amendment to this Ordinance may be continued although their size or location does not conform to this Ordinance. Nonconforming signs shall be kept in good repair. The Plan Commission shall approve all repair and reconstruction of signs authorized under this section, and in each case, determine the structural type of sign permitted, and the maximum sign permitted, and the time period said sign may remain in place.

17.609 SIGN ILLUSTRATIONS



SECTION 17.700 ADMINISTRATION, ORGANIZATION, AND ENFORCEMENT

17.701 BUILDING PERMIT

- (1) **REQUIRED.** No building or other structure shall be erected, structurally altered, or moved from one location to another in this Village, unless a Building Permit shall first be secured from the Building Inspector, certifying that such building complies with the provisions of the Building Code.
- (2) **APPLICATION.** An application for a Building Permit shall be made to the Building Inspector, and shall be in conformity with the requirements of the Building Code.
- (3) **ISSUANCE.** No Building Permit shall be issued by the Village until a Zoning Permit has been issued.

17.702 ZONING REVIEW PERMITS AND OCCUPANCY/ USE PERMITS

- (1) **PERMITS REQUIRED.**
 - (a) Zoning and Occupancy/Use Permit. No vacant land shall be occupied or used, except for agricultural purposes; and no building or premises shall be erected, altered, or moved, or changed in use; and no nonconforming use shall be maintained, renewed, changed, or extended until Zoning and Occupancy/Use Permits have been issued by the Zoning Administrator. Such permit shall show that the building or premises or part thereof is in compliance with the provisions of this Ordinance.
 - (b) Certificate of Compliance. No land within the Floodplain Districts shall be developed, occupied or used, and no structure hereafter erected, altered, or moved shall be occupied, until the applicant submits to the Zoning Administrator a certification by a registered Professional Engineer or land surveyor that the floodland regulations set forth in this Ordinance have been fully complied with. Such certification shall include the lowest floor elevation of any structure erected on the site.
- (2) **APPLICATIONS.** Such permits shall be applied for from the Zoning Administrator. Application shall be made prior to or at the same time as the application for a Building Permit, and shall be prepared in duplicate and shall include, for the purpose of proper enforcement of this Ordinance, the following:
 - (a) Names and addresses of the applicant, owner of the site, architect, professional engineer, and/or contractor.
 - (b) Description of the subject site by lot, block, and recorded subdivision, certified survey map, or by metes and bounds, address of the subject site, type of structure, existing and proposed operation or use of the structure or site, number of employees, and the zoning district within which the subject site lies.
 - (c) Plat of survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing the location, boundaries, dimensions, elevations, uses, and size of the following:
 1. Subject site.

2. Existing and proposed structures.
3. Existing and proposed easements, streets, and other public ways.
4. Off-street parking, loading areas, and driveways.
5. Existing highway access restrictions.
6. Existing and proposed street, side, and rear yard.
7. The high water line of any stream or lake on which the property abuts.
8. The location of any existing and/or proposed septic system and well, including those within fifty (50) feet of the property lines.
9. The location and results of any percolation tests and soil borings on the individual property.

In addition, the plat of survey shall show the location, elevations, zoning and use of any abutting lands and their structures within forty (40) feet of the subject site.

- (d) Where the use involves human occupancy and the structure will not be connected to an approved municipal sewerage system, a plan of the proposed sewage disposal system shall be provided. The Building Inspector shall certify that it conforms to all Village and County ordinances and other governmental laws or regulations then applicable to sewage disposal systems including, but not limited to, the design requirements necessary for issuance of a Waukesha County Sanitary Permit.
 - (e) Satisfactory evidence that a safe and adequate supply of water is to be provided, and the location of any well for that purpose on the property.
 - (f) A fee shall be paid by all persons, firms, or corporations. The fee for a Zoning Review Permit shall be \$50.00 and for an Occupancy/Use Permit shall be paid in accordance with the Village fee schedule. Such fees shall be payable to the Village Treasurer and are to defray costs incurred by the Village for administration, investigation, and processing of such applications.
 - (g) Additional information as may be required by the Zoning Administrator or Plan Commission.
- (3) **ISSUANCE.** Zoning and Occupancy/Use Permits shall be issued by the Zoning Administrator after adequate investigation as to compliance or upon recommendation of the deputy where he has made the necessary investigation.
- (a) Zoning Permit. Provided the application is in order and any building, occupancy, or use as proposed would be in compliance with the provisions of this Ordinance, a Zoning Permit shall be issued upon such application, and a certification that such permit has been issued shall be posted in a prominent place on the premises during the period of any construction or other activity involved in readying the land or buildings for use occupancy.
 - (b) Occupancy/Use Permit. Within ten (10) days after the notification of the completion of the erection, alteration, or relocation of the building, or of intent to commence a use, the Zoning Administrator shall make an inspection of the

premises and any buildings thereon, and if such buildings, use, or occupancy complies with the requirements of this Ordinance, an Occupancy/Use Permit shall be issued.

- (4) **EXPIRATION.** If, within six (6) months of the date of issuance of a Zoning Permit, the proposed construction or preparation of land for use has not commenced, or if within eighteen (18) months an Occupancy/Use Permit has not been issued, said Zoning Permit shall expire. Upon showing of valid cause the Zoning Administrator may grant an extension of such permit for a period not to exceed six (6) months.
- (5) **TEMPORARY OCCUPANCY/USE PERMIT.** Pending the issuance of a regular permit, a temporary permit may be issued for a period not exceeding six (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 Ordinance to such a degree as to render it unsafe for the occupancy proposed, according to the judgment of the Zoning Administrator.

17.703 CONDITIONAL USES

- (1) **APPROVAL REQUIRED.** Certain uses and situations which are of a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in this Ordinance of specific standards, regulations, or conditions which would permit such determination in each individual situation, may be permitted as Conditional Uses in districts subject to such requirements as specified for each situation.
- (2) **APPLICATION.** Applications for Conditional Use permits shall be made in duplicate to the Village Clerk on forms furnished by the Clerk, and shall include the following where pertinent and necessary for proper review by the Plan Commission.
 - (a) Names and addresses of the applicant, owner of the site, architect, professional engineer, and/or contractor.
 - (b) Description of the subject site by lot, block, and recorded subdivision or Certified Survey Map or by metes and bounds, address of the subject site, type of structure, existing and proposed operation or use of the structure or site, number of employees, and zoning district within which the subject site lies.
 - (c) Plat of survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing the location, boundaries, dimensions, elevations, uses and size of the following:
 - 1. Subject site.
 - 2. Existing and proposed structures.
 - 3. Existing and proposed easements, streets, and other public ways.
 - 4. Off-street parking, loading areas, and driveways.

5. Existing highway access restrictions.
6. Existing and proposed street, side, and rear yards.
7. The high water line of any stream or lake on which the property abuts.
8. The location of any existing and/or proposed septic system and well, including those within fifty (50) feet of the property lines.
9. The location and results of any percolation tests and soil borings on the individual property.

In addition, the plat of survey shall show the location, elevations, zoning and use of any abutting lands and their structures within forty (40) feet of the subject site.

- (d) The names and addresses of all owners of property within 300 feet of any part of the land included in the proposed change.
 - (e) Additional information as may be required by the Plan Commission.
 - (f) A fee of \$200.00 payable to the Village Treasurer to defray the cost incurred by the Village for official notification of public hearing, investigation, and processing.
- (3) **PUBLIC HEARING.** Upon receipt of the application, the foregoing data and fees, the Clerk shall establish a date for a public hearing by the Plan Commission, and shall publish a notice of said hearing once each week for two (2) consecutive weeks in a newspaper of general circulation in the area of the proposed Conditional Use. Notice of public hearing shall be mailed by certified mail to all property owners within 300 feet of any part of the land included in the Conditional Use at least ten (10) days before such public hearing is held. A copy of the application and other pertinent data shall be transmitted to the Plan Commission at least ten (10) days prior to the date of the public hearing. Testimony of all interested parties will be recorded in the minutes of the hearing and the Plan Commission will subsequently formulate the conditions to be placed upon the proposed use. The Plan Commission shall within sixty (60) days from the date of the hearing, take action to approve or disapprove the application and attach any conditions as deemed necessary.
- (4) **FINAL REVIEW AND APPROVAL.** Any conditions deemed necessary by the Plan Commission shall be made an integral part of the permit. These conditions shall be complied with by the applicant and any deviation or alteration of those conditions set forth in the permit shall constitute a violation of the terms of the Conditional Use Permit. Such violation shall constitute a violation of this Ordinance and will be subject to prosecution and penalties under the terms of this Ordinance.
- (5) **APPLICATION FOR CHANGE OF CONDITIONAL USE PERMIT.** If any holder of a Conditional Use Permit wishes to extend or alter the terms of said permit, he must apply for such extension or alteration through the procedure of application for Conditional Use permits detailed herein.

- (6) **EXPIRATION OF CONDITIONAL USE STATUS.** Conditional Use Status will terminate when, after public hearing, the Plan Commission determines any of the following:
- (a) The Conditional Use has not continued in conformity with the conditions of the permit.
 - (b) A change in the character of the surrounding area or in the Conditional Use itself causes such use to be no longer compatible with surrounding uses.
 - (c) The Conditional Use has been discontinued for a period of twelve (12) consecutive months, or, in a three (3) year period, eighteen (18) cumulative months. A business of a seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (for example, summer camps, snowmobile courses, ski area, marinas, etc.).

Upon such determination, the Owner of the premises shall be required to bring all such land and buildings into conformity with the district regulations of the District in which such former Conditional Use is located and all other provisions of this Ordinance within ninety (90) days from such determination. The Commission may, based upon the evidence at said hearing, waive strict restoration requirements if such restoration would cause a hardship to the property owner.

- (7) **CONDITIONAL USES PERMITTED.** Subject to the foregoing, the Conditional Uses specified for each district in Sections 17.303 through 17.314 may be permitted by the Plan Commission after review and public hearing. Conditional uses in the C-1 Wetland Conservancy Overlay District are also subject to the following provisions 17.703(8).
- (8) **NOTICE TO DNR.** The Village Plan Commission shall transmit a copy of each application for a conditional use in the C-1 Wetland Conservancy Overlay District to the Wisconsin Department of Natural Resources (DNR) for review and comment at least ten (10) days prior to the public hearing at which the matter is to be considered. Final action on the application shall not be taken for thirty (30) days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions relating to conditional uses in the wetland and floodland districts shall be transmitted to the DNR within ten (10) days of the effective date of such decision.

17.704 PRIOR PERMIT

- (1) **CONSTRUCTION PERMITTED.** Nothing herein contained shall require any change in the plans, construction, size, or designated use of any building or part thereof for which a building permit has been issued before the effective date of this Ordinance and the construction of which shall have been substantially started within six (6) months from the date of such permit.
- (2) **SUBSEQUENTLY NONCONFORMING.** Any such use that does not conform to the use regulations of the District in which it is located, subsequently, shall be considered a legal nonconforming use.

17.705 BOARD OF ZONING APPEALS

- (1) **ESTABLISHMENT.** There is hereby established a Board of Zoning Appeals for the Village of Merton to hear appeals and applications and to grant variances and exceptions to the provisions of this Ordinance in harmony with the general purpose and intention of the Zoning Ordinance.
- (2) **MEMBERSHIP.** The Board of Zoning Appeals shall consist of five (5) members appointed by the Village President and confirmed by the Village Board.

 - (a) Compensation shall be as set by the Village Board in their yearly appropriations ordinance.
 - (b) Terms shall be for staggered three-year periods.
 - (c) The chairman shall be designated by the Village President.
 - (d) One member shall be a Village Plan Commissioner.
 - (e) Two (2) alternate members shall be appointed by the Village President for three-year terms. An alternate member shall only vote when a regular member is absent or refuses to vote because of conflict.
 - (f) Vacancies shall be filled for the unexpired term in the same manner as appointments for the full term.
 - (g) The secretary for the Board shall be the Village Clerk.
 - (h) The Zoning Administrator shall attend all meetings for the purpose of providing technical assistance when requested by the Board.
 - (i) Official oaths shall be taken by all members in accordance with Section 19.01 Wisconsin Statutes, within ten days of receiving notice of their appointment.
- (3) **PROCEDURE.**

 - (a) The Board of Zoning Appeals shall organize and adopt rules for its own government in accordance with the provisions of this Ordinance.
 - (b) Meetings shall be held at the call of the chairman, and shall be open to the public.
 - (c) Minutes shall be kept by the Secretary showing the vote of each member upon each question, the reasons for the Board's determination, and its findings of fact. The minutes shall be filed in the Office of the Secretary and shall be a public record.
 - (d) A concurring vote of four (4) members of the Board shall be necessary to reverse any requirement, permit a substitution, or grant a variance to this Ordinance.
- (4) **POWERS.** The Board of Zoning Appeals shall have the following powers:

 - (a) Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator.

- (b) Substitutions. To hear and decide applications for substitutions of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
- (c) Variances. To hear and decide appeals for variances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this Ordinance shall be observed and the public safety, welfare, and justice secured. Use variances shall not be granted.
- (d) Permits. This Board may reverse, affirm, wholly or partly, and may modify the requirements appealed from, and may issue or direct the issuance of a permit.
- (e) Interpretation. To hear and decide applications for interpretations of the zoning regulations and the boundaries of the zoning districts.
- (f) Unclassified Uses. To hear and decide applications to allow unclassified and unspecified uses provided that such uses are similar in character to uses permitted in the District.
- (g) Assistance. This Board may request assistance from other Village officers, departments, commissions, and boards.
- (h) Oaths. The chairman may administer oaths and compel the attendance of witnesses.

(5) APPEALS AND APPLICATIONS. Appeals from the decision of the Zoning Administrator concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by any officer, department, board, or bureau of the Village. Appeals shall be filed with the Secretary within thirty (30) days of the date of the written decision or order of the Zoning Administrator. Applications for interpretation, substitution, or unclassified use, may be made by the Owner or lessee of the structure, land, or water to be affected and shall be filed with the Secretary. Such appeals and applications shall include the following:

- (a) Name and address of the appellant or applicant and all abutting and opposite property owners of record.
- (b) Plat of survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing all of the information required under Section 17.702(2)(c) of this Ordinance.
- (c) Specify the grounds for appeal or application.
- (d) A receipt from the Village Treasurer indicating that the required fee of \$200.00 has been paid.
- (e) Additional information as required by the Village Plan Commission, Board of Zoning Appeals, or Zoning Administrator.

An appeal stays all legal proceedings in furtherance of the action except by the certification of the officer or a restraining order by the Board or the Court of Record.

- (6) **HEARING.** The Board of Zoning Appeals shall fix a reasonable time and place for the hearing, give public notice thereof at least ten (10) days prior and shall give due notice to the parties in interest including the Village Attorney and the Village Plan Commission. At the hearing the appellant or applicant may appear in person, by agent, or by attorney.
- (7) **NOTICE TO DNR.** The Zoning Board of Appeals shall transmit a copy of each application for a variance to conservancy regulations in the C-1 Wetland Conservancy Overlay District and a copy of all wetland and floodland appeals, to the Wisconsin Department of Natural Resources (DNR) for review and comment at least ten (10) days prior to any public hearings. Final action on the application shall not be taken for thirty (30) days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions relating to variance to wetland regulations or to floodland regulations, and a copy of all decisions to wetland and floodland appeals, shall be transmitted to the DNR within ten (10) days of the date of such decision.
- (8) **VARIANCE FINDINGS.** No variance to the provisions of this Ordinance shall be granted by the Board unless it finds by a preponderance of the evidence that all of the following facts and conditions exist and so indicates in the minutes of its proceedings:
- (a) Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying that do not apply generally to other properties in the same district, and the granting of the variance should not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.
 - (b) Preservation of Property Rights. The variance must be necessary in order to allow the property owner to preserve and enjoy substantial property rights that are possessed by other properties in the same district and same vicinity.
 - (c) Absence of Detriment. No variance shall be granted that will create substantial detriment to adjacent property or that will materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.
 - (d) Preservation of Intent. No variance shall be granted that is inconsistent with the purpose and intent of the regulations for the district in which the development is located.
 - (e) Economic Hardship and Self-Imposed Hardship Not Grounds For Variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
- (9) **UNCLASSIFIED USE INTERPRETATIONS**
- (a) Need and Authority for Unclassified Use Interpretations
Where a proposed unclassified or unspecified use is similar in character to a permitted or conditional use in a given district the Zoning Board of Appeals is authorized to make Unclassified Use Interpretations. The standards contained in this section shall guide Unclassified Use Interpretations.

(b) Standards for Unclassified Use Interpretations

1. No Unclassified Use Interpretation shall permit any use in any zoning district unless evidence shall be presented demonstrating that it will comply with all applicable use standards and all other applicable requirements and standards of this Ordinance.
2. If the proposed use is more similar to a use allowed only as a Conditional Use in the zoning district in which it is proposed to be located, then any Unclassified Use Interpretation permitting that use shall require a Conditional Use Permit.

(c) Additional Considerations Used in Making Unclassified Use Interpretations

The following additional considerations shall be used to determine what category a use is in and whether the activities are to be considered principal or accessory uses:

1. The similarity of the proposed or projected use or activity to already-permitted uses and activities
2. The relative amount of site area or floor space and equipment devoted to the activity
3. Relative amounts of sales from each activity
4. The type of customer for each activity
5. The relative number of employees in each activity
6. Hours of operation
7. Building and site arrangement
8. Vehicles used in the activity
9. The relative number of vehicle trips generated by the use or activity
10. Signage
11. How the use or activity advertises itself
12. Whether the use or activity is likely to be found independent of the other uses or activities on the site

(10) WETLAND MAPPING DISPUTES

- (a) Wetland Disputes. Whenever the Board of Appeals is asked to interpret a C-1 Wetland Conservancy Overlay District boundary where an apparent discrepancy exists between the Village's Zoning Map and actual field conditions, the Village shall contact the Wisconsin Department of Natural Resources (DNR) to determine if the wetland inventory map is in error. If the DNR staff concurs that the particular area was incorrectly mapped as a wetland, the Board of Appeals shall direct the Village Plan Commission to initiate appropriate action to rezone the property within a reasonable amount of time.

- (11) **DECISION.** The Zoning Board of Appeals shall decide all appeals and applications within thirty (30) days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Administrator, Plan Commission and Village Board.
- (a) Conditions may be placed upon any building permit ordered or authorized by this Board.
- (b) Variances, Substitutions, or Use Permits granted by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.
- (12) **REVIEW BY COURT OF RECORD.** Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Zoning Board of Appeals.

17.706 PLAN COMMISSION

- (1) **CREATION.** A Village Plan Commission is hereby established to consist of the Village President, who shall be its presiding officer, a Village Trustee, and three (3) citizens, and until such time as the Village has a Village Engineer or Park Board, two (2) additional citizen members, so that the Board has at all times seven (7) members. Citizen members shall be persons of recognized experience and qualifications. They may receive compensation for services on the Commission. The Village Trustee member of the Commission shall be elected by the Village Board upon the creation of the Commission, and during each April thereafter. The three (3) citizen members shall be appointed by the Village President subject to confirmation by the Village Board upon the creation of the Commission, to hold office for a period ending one, two (2), and three (3) years, respectively, from the succeeding first day of May, and thereafter annually during April one such member shall be appointed for a term of three (3) years. The additional citizen members, if any, shall be appointed by the Village President and confirmed by the Village Board to hold office for a period ending one year from the succeeding first day of May, and thereafter annually during the month of April. Whenever a Park Board is created, or a Village Engineer appointed, the President of such Board shall succeed to a place on the said Commission or such engineer shall succeed to a place on the said Commission when the term of an additional citizen member shall expire.
- (2) **EXPENSES.** The Plan Commission shall have power and authority to employ experts and a staff, and to pay their wages and such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made for such Commission by the Village Board, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the Village Board.
- (3) **RULES OF PROCEDURE.** The Plan Commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record.

(4) **MASTER PLAN.** It shall be the function and duty of the Commission to make and adopt a master plan and from time to time amend, extend, or add to the master plan as provided in Section 62.23(3) of the Wisconsin Statutes.

(5) **SITE PLAN AND ARCHITECTURAL REVIEW**

- (a) Purpose. For the purpose of promoting compatible development, stability of property values, and to prevent impairment or depreciation of property values, no person shall use, erect, construct, alter, or enlarge any structure, other than single-family and two-family dwellings and A-1 agricultural buildings and structures, nor shall any substantial changes be made to any site improvements in any district, without first obtaining the approval of detailed site and architectural plans as set forth in this section. This section shall not apply to interior remodeling work that has no effect on the exterior design or appearance of such building or structure.
- (b) Plan Commission Review. The Plan Commission shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, loading and unloading, highway access, traffic generation and circulation, drainage, sewerage and water systems, other utilities, utilization of landscaping and open space, and the proposed operation.
- (c) Standard of Review. In determining whether to approve site and architectural plans for new structures, uses and changes or additions to existing structures and uses, the Plan Commission shall consider the following:
1. Whether the design or exterior appearance of the structure is compatible with its surroundings or is of such unorthodox or abnormal character in relationship to its surroundings as to be unsightly or offensive with the surrounding area.
 2. Whether the design or exterior appearance of the structure is identical with those adjoining as to create excessive monotony or drabness.
 3. Whether any exposed facade of the structure is constructed or faced with a finished material which is aesthetically incompatible with the other facades or presents an unattractive appearance to the public and to surrounding properties.
 4. Whether the structure or use would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse effect on the beauty and general enjoyment of existing structures on adjoining properties.
 5. Whether the structure and use would have a negative impact on the maintenance of safe and healthful conditions in the Village.
 6. Whether the structure and use shall maintain existing topography, drainage patterns, and vegetative cover insofar as is practical. The Plan Commission may require that drainage easements be executed. Property owners shall comply with existing subdivision or development grading plans.

7. Whether there shall be adequate provision for safe traffic circulation and safe driveway locations. In considering the location of driveways, the Commission shall consider those factors set forth elsewhere in the Code.
 8. Whether there shall be adequate provision for parking and loading areas.
 9. Whether lighting shall be installed in accordance with all applicable ordinances.
 10. Whether there shall be adequate provision for public services.
 11. Whether the structure and uses shall make appropriate use of open spaces and shall provide appropriate landscaping and planting screens.
 12. Whether appropriate erosion control measures are being utilized.
- (d) Sureties. The Plan Commission may impose time schedules for the completion of buildings, parking areas, open space utilization, and landscaping. The Plan Commission may require appropriate sureties to guarantee that improvements will be completed on schedule.
- (e) Appeals. Any person or persons aggrieved by any decisions of the Plan Commission or Building Inspector related to plan review may appeal the decision to the Board of Zoning Appeals. Such appeal shall be filed with the Zoning Administrator within twenty (20) days after the decision.
- (6) ADDITIONAL MATTERS TO BE REFERRED TO THE VILLAGE PLAN COMMISSION.** In addition to matters specifically required by the Ordinance to be referred to the Village Plan Commission, the Village Board shall refer to the Plan Commission for its consideration and report, before a final action is taken by it, the following matters:
- (a) The location and architectural design of any public building.
 - (b) The location of any statue or other memorial.
 - (c) The location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land, or lease of land for any street, alley or other public way, park, playground, area for parking vehicles, or other memorial or public grounds.
 - (d) The location, extension, abandonment, or authorization for any public utility, whether publicly or privately owned.
 - (e) All plats of land in the Village or within the territory over which the Village is given platting jurisdiction by Chapter 236 of Wisconsin Statutes.
 - (f) The location, character and extent of acquisition, leasing, or sale of lands for public or semi-public housing, slum clearance, relief of congestion, or vacation camps for children.
 - (g) The amendment or repeal of any Ordinance adopted pursuant to Section 62.23 of the Wisconsin Statutes.
 - (h) Unless such report is made within thirty (30) days, or such longer period as may be stipulated by the Village Board, the Village Board may take final action without it.

- (7) **SPECIAL EXCEPTIONS.** The Plan Commission shall have the power and authority to grant special exceptions when specifically set forth in the ordinance, and the application procedure shall be as set forth in 17.705(5) and 17.705(6).
- (8) **MISCELLANEOUS POWERS OF THE COMMISSION.** The Commission may make reports and recommendations relating to the plan and development of the Village to public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens. It may recommend to the Village Board programs for public improvements and the financing thereof. All public officials shall, upon request, furnish to the Commission, within a reasonable time, such available information as it may require for its work. The Commission, its members and employees, in the performance of its functions, may enter upon any land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. In general, the Commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

17.707 CHANGES AND AMENDMENTS

- (1) **AUTHORITY.** Whenever the public necessity, convenience, general welfare, or good zoning practice record, the Village Board may, by Ordinance, change the district boundaries or amend, change, or supplement the regulations or classifications established by this Ordinance or amendments thereto. Such change or amendment shall be subject to the review and recommendation of the Village Plan Commission.
- (2) **INITIATION.** A change or amendment may be initiated by the Village Board, Village Plan Commission or by a verified petition of one or more of the owners or lessees of the property within the area proposed to be changed.
- (3) **PETITIONS.** For any change to the district boundaries or classifications or amendments to the regulations, petitions shall be submitted to the Village Clerk describing the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, specify the proposed use and be accompanied by the following information:
 - (a) Property owners' names and addresses of all properties lying within 300 feet of the area proposed for change.
 - (b) Plot plan drawn to a scale of one-inch equating not more than 100 feet showing the area to be rezoned, its location and dimension, the location of existing district boundaries, and the location zoning and existing use of all properties within 300 feet of the area.
 - (c) The fee for such application shall be \$200.00 payable to the Village Treasurer.
 - (d) Proposed use of the area petitioned to be rezoned and any other information required by the Village Plan Commission or Village Board.

- (4) **RECOMMENDATIONS.** The Village Plan Commission shall review and study all amendments and changes and may recommend that the petition be granted as requested, modified, or denied. The recommendation shall be made at a meeting subsequent to the meeting where the petition is first submitted. These recommendations shall be made in writing to the Village Board.
- (5) **HEARING.** The Village Board shall hold a public hearing upon each recommendation giving at least fourteen (14) days' notice by a Class 2 Publication under Ch. 985, Wisconsin Statutes, listing the time, place, and changes or amendments proposed. The Village Board shall also give at least ten (10) days' written notice to the Clerk of any municipality within 1,000 feet of any land included in the change or amendment.
- (6) **VILLAGE BOARD'S ACTION.** Following such hearings and after reviewing the Village Plan Commission's recommendation, the Village Board shall vote on the passage of the proposed amendment to the regulations or change to the district boundaries. The Village Board may only overrule the Village Plan Commission's recommendations by a three-quarters vote of the full Village Board membership.
- (7) **PROTEST.** In the event of a protest against such district change or amendment to the regulations of this Ordinance, duly signed and acknowledged by the owners of twenty (20) percent or more either of the areas of the land included in such proposed amendment, or by the owners of twenty (20) percent or more of the land immediately adjacent extending 100 feet there from or by the owners of twenty (20) percent or more of the land directly opposite thereto extending 100 feet from the street frontages of such opposite land, such amendments or changes shall not become effective except by the favorable vote of three-quarters of the full Village Board membership.
- (8) **C-1 WETLAND CONSERVANCY OVERLAY DISTRICT AMENDMENTS.**
- (a) Notice to DNR. The Village shall transmit a notice of any change (text or map) in the C-1 District to the Wisconsin Department of Natural Resources (DNR). Notice requirements shall be as follows:
1. A copy of every petition for a text or map change mailed within five (5) days of filing with the Village Clerk.
 2. At least ten (10) days prior notice of any public hearing on a C-1 zoning amendment.
 3. Notice of a Village Plan Commission recommendation no later than ten (10) days following the recommendation.
 4. Notice of a Village Board decision no later than ten (10) days following the decision.
- (b) Review Standards. No wetland in a C-1 Wetland Conservancy Overlay District shall be rezoned if the rezoning may result in a significant adverse impact on storm or floodwater storage capacity; maintenance of dry season stream flow, the discharge of groundwater from the wetland to another area, or the flow of groundwater through a wetland; filtering or storage of sediments, nutrients, heavy metals, or organic compounds that would otherwise drain into navigable waters; shoreline protection against soil erosion; fish spawning, breeding,

nursery or feeding grounds; wildlife; habitat; or areas of special recreational, scenic or scientific interest, including scarce wetland types.

- (c) DNR Objections. If the DNR has notified the Village Plan Commission that an amendment to the C-1 Wetland Conservancy Overlay District may have a significant adverse impact upon any of the criteria listed in Paragraph (b) above, that amendment, if approved by the Village Board, shall contain the following provision:

"This amendment shall not take effect until more than thirty (30) days have elapsed since written notice of the Village Board's approval of this amendment was mailed to the Department of Natural Resources. During that 30 (thirty) day period, the Department of Natural Resources may notify the Village Board that it will adopt a superseding shoreland ordinance for the Village pursuant to Section 61.351 of the Wisconsin Statutes. If the Department does so notify the Village Board, the effect of this amendment shall be stayed until the Section 61.351 adoption procedure is completed or otherwise terminated."

17.708 PUBLIC HEARINGS

- (1) **NOTICE.** In order that the owners of property involved and other legitimately interested parties may have fair opportunity to be heard, adequate notice shall be given of any public hearing required by the provision of this Ordinance stating the time and place of such hearing and the purpose for which the hearing is being held.

(2) **PROCEDURE.**

(a) Posting and Publishing

1. Except as may be otherwise herein specifically provided, Notice of Public Hearing shall be given by posting pursuant to Sec. 985.02(2) Statutes.
2. When the hearing involves a proposed change in the zoning district classification of any property, or the granting of a Conditional Use, one of the notices shall be posted in the vicinity of such proposed change or Conditional Use where practical, and notice of the public hearing shall be mailed by Certified Mail to the owners of all lands within 300 feet of any part of the land included in such proposed change or Conditional Use at least ten days before such public hearing. The failure of such notice to reach any property owner, provided such failure not be intentional, shall not invalidate any amending ordinance or grant of Conditional Use.

- (b) Petitions Not Involving Amendment. Where a hearing is required by the provisions of this Ordinance for a matter not involving an amendment to this Ordinance, such petition shall be presented in writing to the Village Clerk and shall be accompanied, in addition to the data required under this Ordinance, by a fee of \$50.00 payable to the Village to defray the cost of notification and holding of a public hearing.

17.709 ZONING ADMINISTRATOR

- (1) **DESIGNATION.** The Village Plan Commission designates the Village Building Inspector as "Zoning Administrator" for the administration and enforcement of the provisions of this Ordinance under its direction.
- (2) **DUTIES.** In the administration and enforcement of this Ordinance, the Zoning Administrator shall perform the following duties:

 - (a) Accept and issue the necessary Zoning and Occupancy/Use Permits, provided the provisions of this Ordinance and of any applicable building code have been complied with, and make or cause to be made the necessary inspections.
 - (b) Maintain records of all permits issued, inspections made, work approved, and other official actions.
 - (c) Record the first floor and lowest floor (basement or ground floor) elevations of all structures erected, moved, altered, or improved in the Floodplain Overlay Districts.
 - (d) Prohibit the use or erection of any structure, land or water until he has inspected and approved such use or erection.
 - (e) Make available to the public, to the fullest extent possible, all reports and documents concerning the Village's Comprehensive Plan and ordinances. In addition, information in the form of reports, bulletins, maps, and engineering data shall be readily available and widely distributed. The Plan Commission may set fees necessary to recover the cost of providing information to the public. Where useful, the Zoning Administrator, or his agent, may set marks on bridges or buildings or other markers which show the depth of the 100-year recurrence interval flood; or may set marks delineating the boundaries of wetlands.
- (3) **AUTHORITY.** In the enforcement of this Ordinance, the Zoning Administrator shall have the power and authority for the following:

 - (a) Upon reasonable cause or question as to proper compliance, to revoke any Zoning or Occupancy/Use Permit and issue cease and desist orders requiring the cessation of any building, moving, alteration, or use which is in violation of the provisions of this Ordinance, such revocation to be in effect until reinstated by the Zoning Administrator or the Board of Zoning Appeals.
 - (b) Investigate all complaints made relating to the location of structures and the use of structures, lands, and waters, give notice of all violations of this Ordinance to the Owner, resident, agent, or occupant of the premises, and report uncorrected violations to the Village Attorney in a manner specified by him.
 - (c) Be permitted access to premises and structures during reasonable hours to make inspections to ensure compliance with this Ordinance. The Building Inspector may procure a special inspection warrant in accordance with Section 66.122 of the Wisconsin Statutes, if refused entry.

- (d) In the name of the Village (and with authorization of the Village Board) commence any legal proceedings necessary to enforce the provisions of this Ordinance, including the collection of forfeitures provided for herein.

17.710 VIOLATIONS

- (1) **DOUBLE FEES.** If any work, for which a permit is required by this Ordinance, is begun before a permit is applied for and issued, a double fee shall be charged by the Zoning Administrator. Such double fee shall not release the applicant from full compliance with this Ordinance nor from prosecution for violation of this Ordinance.
- (2) **PENALTIES.** Any person, firm, company, or corporation who violates, disobeys, omits, neglects, refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance or any lawful cease or desist order, sometimes referred to as a stop order, issued by the Zoning Administrator, shall be subject to a fine of not less than \$10.00 and not to exceed the sum of \$200.00 for each offense, together with the costs of action and in default of the payment thereof shall be imprisoned in the County Jail of Waukesha County for a period not to exceed six (6) months, or until such fine and the subsequent costs have been paid. Each day that a violation is permitted to exist shall constitute a separate violation and be punishable as such.
- (3) **ENFORCEMENT BY INJUNCTION.** Compliance with the provisions of this Ordinance may also be enforced by an injunction order at the suite of the Village or one or more owners of real estate situated within an area affected by the regulations of this Ordinance. It shall not be necessary to prosecute for fine imprisonment before resorting to injunction proceedings.
- (4) **DECLARED NUISANCES.** Any building erected, structurally altered, or placed on a lot, or any use carried on in violation of the provisions of this Ordinance is hereby declared to be a nuisance per se, and the Village may apply to any court of competent jurisdiction to restrain or abate such nuisance.

SECTION 17.800 VALIDITY

17.801 REPEAL OF CONFLICTING ORDINANCES

All other Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

17.802 DECLARATION OF SEVERABILITY

The several sections, subsections and paragraphs of this Ordinance are hereby declared to be severable. If any section, subsection, or paragraph or subparagraph of this Ordinance shall be declared by a decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of the Ordinance, or of the section of which the invalid portion or paragraph may be a part.

17.803 EFFECTIVE DATE

Following passage and publication or posting by the Village Board, this Ordinance shall be in full force and effect in this Village.

17.804 ADOPTION

Passed and approved by the Village Board of the Village of Merton, Waukesha County, Wisconsin, this 16th day of September 2010.