



**AGENDA**  
**ZONING CODE SUBCOMMITTEE**  
**RICHFIELD VILLAGE HALL**  
**4128 HUBERTUS ROAD, HUBERTUS, WISCONSIN**  
**JANUARY 9, 2020**  
**7:00 PM**

1. Call to Order/ Roll Call
2. Verification of Compliance with Open Meeting Law
3. Pledge of Allegiance
4. DISCUSSION/ACTION ITEMS
  - a. Discussion regarding Chapter 70 Zoning Code Recodification
5. ADJOURNMENT

Additional explanation of items on the agenda (Communication Forms) can be found on the village's website at [www.richfieldwi.gov](http://www.richfieldwi.gov). Notification of this meeting has been posted in accordance with the Open Meeting Laws of the State of Wisconsin. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Requests from persons with disabilities who need assistance to participate in this meeting or hearing should be made to the Village Clerk's office at 628-2260 or [www.richfieldwi.gov](http://www.richfieldwi.gov) with as much advance notice as possible.

- Draft December 26, 2019 -

**ARTICLE 5  
SPECIFIC PROCEDURAL REQUIREMENTS**

**Divisions**

1. Code amendment
2. Planned development district
3. Conditional use
4. Wireless telecommunication facility
5. Site plan and plan of operation
6. Architectural review
7. Special exception
8. Zoning permit
9. Floodplain permit
10. Berm permit
11. Temporary Use – 30 Days or Less
12. Temporary Use – More than 30 Days but Less than 90 Days
13. Termination of approval
14. Registration of a nonconforming use
15. Conversion of a nonconforming use
16. Expansion of a nonconforming building
17. Code interpretation
18. Administrative appeal
19. Variance

**DIVISION 1  
CODE AMENDMENT**

**70.500 Generally**

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

**70.501 Initiation**

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

1. a property owner in the area to be affected by the proposed amendment,
2. the zoning administrator,
3. the Plan Commission,
4. the Zoning Board of Appeals, and
5. the Village Board.

**70.502 Review procedure<sup>1</sup>**

The general steps outlined below shall be used to amend the text of this chapter and the zoning map.

1. **Submittal of application materials.** The applicant submits a complete application to the zoning administrator along with the application fee as may be established by the Village Board.

<sup>1</sup> Commentary: See s. 62.23(7)(d), Wis. Stats.

2. **Distribution to Department of Natural Resources.** If the proposed amendment would revise floodplain or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the application to the regional office of the Wisconsin Department of Natural Resources within 5 work days of receipt.
3. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Special notice to specified municipalities.** At least 10 calendar days prior to the date of the public hearing, the zoning administrator gives notice of the proposed amendment to the clerk of any municipality whose boundary are within 1,000 feet of any lands included in the proposed amendment.
6. **Special notice to Department of Natural Resources.** If the proposed amendment would revise the floodplain regulations in this chapter, the zoning administrator sends a copy of the public hearing notice to the regional office of the Wisconsin Department of Natural Resources at least 10 calendar days before the date of the public hearing.<sup>2</sup>
7. **General notice by type of application.** If a proposed amendment would revise the text of this chapter, the zoning administrator provides for class 2 public notice, distribution list notice, and meeting agenda notice consistent with Division 2 of Article 4. If a property owner initiates a proposed amendment that would revise the zoning map, the zoning administrator provides for class 2 public notice, property owner notice, distribution list notice, and meeting agenda notice consistent with Division 2 of Article 4. If the Village initiates a proposed amendment that would revise the zoning map, the zoning administrator provides for class 2 public notice, distribution list notice, and meeting agenda notice consistent with Division 2 of Article 4.
8. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and Village Board, the applicant, and any other interested person upon request.
9. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with Division 3 of Article 4. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research and to prepare such documents it deems necessary, including a preliminary decision document.
10. **Recommendation.** After considering the public comments received at the public hearing and the staff report, the Plan Commission, no more than 40 calendar days after the public hearing, makes a recommendation to the Village Board based on the decision criteria contained in this division to (i) approve the amendment, (ii) approve the amendment with conditions, or (iii) deny the amendment.
11. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
12. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
13. **Decision.** The Village Board after considering the Plan Commission's recommendation makes a decision based on the decision criteria contained in this division to (i) approve the amendment, (ii) approve the amendment with conditions, or (iii) deny the amendment.
14. **Required vote with downzoning.** An amendment must be approved by at least two-thirds of the members-elect if the amendment would decrease the development density of the land to be less dense than was allowed under its previous usage or that would reduce the number of permitted uses of the

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<sup>2</sup> Commentary: See s NR 116.20(2)(c) and ch. NR 117, Wis. Admin. Code

land to fewer uses than were allowed under its previous usage. If a person requests or agrees to such downzoning, the ordinance may be enacted by a simple majority of the members-elect.<sup>3</sup>

15. **Required vote with a protest by qualified property owners.** Prior to January 1, 2019, an amendment to the zoning map may not become effective except upon a favorable vote of three-quarters of the Village Board members voting on the proposed change when (i) those owning 20 percent or more of the land area within the proposed map amendment file a written protest, (ii) those owning 20 percent or more of the land area within 100 feet of the proposed map amendment file a written protest, or (iii) those owning 20 percent or more of the land directly opposite of the proposed map amendment but within 100 feet of the street frontage file a written protest.<sup>4</sup>
16. **Required vote with protest of airport.** If a proposed amendment would make any change in an airport affected area, as defined under s. 62.23(6)(am)1.b., Wis. Stats., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment, no ordinance which makes such change may be approved except by the affirmative vote of two-thirds of the members of the Village Board present and voting.<sup>5</sup>
17. **Preparation of decision document.** If the Village Board approves the proposed amendment, the zoning administrator prepares a final ordinance.
18. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
19. **Notification to Department of Natural Resources.** If the proposed amendment is approved and modifies the floodplain regulations in this chapter, the zoning administrator sends a copy of the ordinance to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email within 10 calendar days of the date of decision.
20. **Preparation of new zoning map.** If the proposed amendment is approved and modifies the zoning map, the zoning administrator shall cause a new zoning map to be prepared consistent with Article 6.

#### 70.503 Effective date of adopted ordinance

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

#### 70.504 Basis of decision

- A. **Text amendment.** If a proposed amendment would revise the text of this chapter, the Plan Commission in making its recommendation and the Village Board in making its decision shall consider the following factors:
  1. whether the amendment is consistent with the Village's comprehensive plan;
  2. whether the amendment is consistent with other planning documents adopted by the Village Board;
  3. whether this chapter with the amendment is internally consistent;
  4. whether the amendment is the least restrictive approach to address issues of public health, safety, and welfare;
  5. the extent to which the text amendment will likely create new nonconforming uses and structures;
  6. if the proposed amendment relates to floodplain regulations, whether the chapter as amended complies with ss. 62.23 and 87.30, Wis. Stats., ch. NR 116, Wis. Admin. Code, and other state laws;
  7. if the proposed amendment relates to shoreland-wetland regulations, whether the chapter as amended complies with s. 62.231, Wis. Stats.; ch. NR 117, Wis. Admin. Code; and other state laws;

<sup>3</sup> Commentary: See s. 66.10015(3), Wis. Stats.

<sup>4</sup> Commentary: See s. 62.23(7)(d)(2m)(a), Wis. Stats.

<sup>5</sup> Commentary: See s. 62.23(7)(d)(2m)(b), Wis. Stats.

8. whether the proposed amendment is needed to comply with a new or revised state or federal law; and
  9. any other factor not specifically or generally listed, but deemed appropriate by the Plan Commission or Village Board given the particular circumstances.
- B. **Zoning map amendment.** If a proposed amendment would revise the zoning map, the Plan Commission in making its recommendation and the Village Board in making its decision shall consider the following factors:
1. whether the amendment is consistent with the Village's comprehensive plan, including future land use maps or similar maps;
  2. whether the amendment is consistent with other planning documents adopted by the Village Board;
  3. the extent to which the amendment will or will likely increase or decrease the number of nonconforming uses and structures; and
  4. any other factor not specifically or generally listed, but deemed appropriate by the Plan Commission or Village Board given the particular circumstances.
- C. **Special review criteria for amendments to the shoreland-wetland overlay district boundary.** To ensure this chapter remains consistent with the shoreland protection objectives of s. 144.26, Wis. Stats., the Village Board shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
1. storm and flood water storage capacity;
  2. maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
  3. filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  4. shoreline protection against erosion;
  5. fish spawning, breeding, nursery, or feeding grounds;
  6. wildlife habitat; or
  7. areas of special recreational, scenic, or scientific interest, including scarce wetland types and habitat of endangered species.

#### 70.505 Imposition of conditions

- A. **Generally.** The Plan Commission may recommend and the Village Board may impose one or more conditions of approval as may be necessary to grant approval.
- B. **Mandatory conditions of approval relating to certain existing land uses.** If a proposed amendment would revise the zoning map and is initiated by a property owner and the subject property hosts a land use that at the time of application is not permitted in the proposed zoning district, such use shall be removed as a condition of approval. If the subject property hosts a land use that at the time of application is classified as a conditional use in the proposed zoning district, the property owner shall as a condition of approval submit a conditional use application and obtain approval for that land use or, if conditional use approval is not granted, remove such use.

#### 70.506 Application content

- A. **Landowner-initiated map amendment.** An application for a landowner-initiated zoning map amendment shall include the following:
1. an application form as may be used by the Village,
  2. a project map prepared at an appropriate scale depicting the information listed in **Appendix F**, and
  3. other supporting information the applicant deems appropriate.
- B. **Other amendments.** For all other types of amendments, the application shall include the following:
1. an application form as may be used by the Village, and

2. other supporting information the applicant deems appropriate.

**70.507 Staff report content**

The staff report should contain the following:

1. preliminary findings for the decision criteria listed in this division;
2. proposed revisions, if appropriate; and
3. other information deemed necessary.

**70.508 Appeal**

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

**70.509 to 70.510 Reserved****DIVISION 2  
PLANNED DEVELOPMENT DISTRICT****70.511 Generally**

A planned development district allows for more flexibility in the development of land while ensuring substantial compliance with the intent of this chapter and the Village's comprehensive plan.

**70.512 Initiation**

The owner of the subject property may submit an application for the establishment of a planned development district.

**70.513 Where allowed**

A planned development district may be established in those area listed in Exhibit 6-1.

**70.514 Ownership**

At the time of establishment, all land within a planned development district shall be under single ownership or control.

**70.515 Minimum size**

To qualify for consideration as a planned development district, the area shall include at least 5 acres.

**70.516 Development agreement**

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

**70.517 Allowable uses**

Land uses allowed in the underlying zoning district(s) may be allowed in a planned development district as specified in a general development plan. When the underlying zoning district is a residential or commercial district, a combination of residential, recreational, institutional, and/or commercial uses may be allowed. When the underlying zoning is an industrial district, a combination of commercial and industrial uses may be allowed. A planned development district with a mix of residential and industrial uses is prohibited.

**70.518 Review procedure**

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

**Step One – General Development Plan**

1. **Pre-submittal meeting with zoning administrator.** The applicant or the applicant's agent meets with the zoning administrator to review (i) applicable regulations and procedures; (ii) applicable sections of the Village's comprehensive plan an applicable neighborhood plans, if any; and (iii) the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the Village's zoning requirements.
2. **Pre-application conference with Plan Commission.** The applicant meets with the Plan Commission for an informal discussion relating to the proposed project. At that meeting, the applicant shall provide the Plan Commission with materials that describe the proposed project in sufficient detail for a preliminary, non-binding review.
3. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
4. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
5. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
6. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator provides for class 2 public notice, property owner notice, and meeting agenda notice.
7. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and Village Board, the applicant, and any other interested person upon request.
8. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with Division 3 of Article 4. If the public hearing is adjourned, the Plan Commission may direct the zoning administrator to conduct additional research related to the proposed district.
9. **Staff follow-up.** After the close of the public hearing, the Plan Commission may direct the zoning administrator, village engineer, and/or the village attorney to prepare a preliminary decision document.
10. **Recommendation.** No more than 60 calendar days after the public hearing, the Plan Commission makes a recommendation to the Village Board based on the decision criteria contained in this division to (i) approve the general development plan, subject to approval of a precise implementation plan; (ii) approve the general development plan with conditions, subject to approval of a precise implementation plan; or (iii) deny the general development plan.
11. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
12. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
13. **Decision.** The Village Board after considering the Plan Commission's recommendation makes a decision based on the decision criteria contained in this division to (i) approve the general development plan,

subject to approval of a precise implementation plan; (ii) approve the general development plan with conditions, subject to approval of a precise implementation plan; or (iii) deny the general development plan.

14. **Preparation of decision document.** If the general development plan is approved, the zoning administrator prepares a final ordinance.
15. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
16. **Acceptance by property owner.** If the general development plan is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 2 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all of the property owner signatures have been obtained and the original signature copy is returned to the zoning administrator.

#### **Step Two – Precise implementation plan**

1. **Submittal of precise implementation plan.** The applicant submits a precise implementation plan and other required materials to the zoning administrator along with the application fee as may be established by the Village Board. At the discretion of the applicant, such materials may be submitted concurrently with the review of the general development plan.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator shall provide for a meeting agenda notice.
5. **Staff report preparation and distribution.** The zoning administrator prepares a staff report that evaluates whether the precise implementation plan is consistent with the approved general development plan and the suitability of the proposed plan given the additional information provided in the plan and supplemental materials. The zoning administrator provides a copy of it to each member of the Plan Commission and Village Board, the applicant, and any other interested person upon request.
6. **Meeting.** Allowing for proper notice, the Plan Commission reviews the precise implementation plan and the staff report.
7. **Determination of consistency.** The Plan Commission determines whether the precise implementation plan is generally consistent with the approved general development plan with respect to density/intensity and permissible land uses. If the Plan Commission determines that the precise implementation plan is not generally consistent, the Plan Commission shall render that decision in writing and take no further action on the precise implementation plan.
8. **Recommendation.** If the precise implementation plan is deemed to be consistent with the general development plan, the Plan Commission makes a recommendation to the Village Board based on the decision criteria contained in this division to (i) approve the precise implementation plan, (ii) approve the precise implementation plan with conditions, or (iii) deny the precise implementation plan.
9. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
10. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.

11. **Decision.** The Village Board after considering the Plan Commission's recommendation makes a decision based on the decision criteria contained in this division to (i) approve the precise implementation plan, (ii) approve the precise implementation plan with conditions, or (iii) deny the precise implementation plan.
12. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.
13. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
14. **Acceptance by property owner.** If an approval includes one or more conditions of approval, the property owner must sign the decision document to acknowledge the imposition of such condition or conditions and return the same to the zoning administrator within 2 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.

#### **70.519 Basis of decision**

In the review of a general development plan and the precise implementation plan, the Plan Commission in making its recommendation and the Village Board in making its decision shall consider the following factors:

1. whether development in the proposed project is in keeping with the spirit and intent of this chapter;
2. whether development in the proposed project is consistent with the Village's comprehensive plan;
3. whether development in the proposed district is consistent with a neighborhood plan or other subarea plan that may have been prepared for land in or near the proposed district;
4. the effects of development in the proposed project on traffic safety and efficiency, both within and outside of the district;
5. whether the proposed plan for development in the proposed project is properly planned and is properly coordinated with the existing and anticipated land uses on properties in the immediate and surrounding area;
6. the extent to which the natural features, open space, and/or farmland on the site are preserved;
7. whether development in the proposed project complies with provisions of this chapter and other land development regulations of the Village that may apply;
8. the effects of development in the proposed project on public services and facilities;
9. whether adequate water and sanitary sewer facilities can be provided;
10. the proposed means of maintaining any undeveloped areas of the proposed project for the purpose for which it was set aside;
11. effects of the proposed use on surrounding properties, including existing and anticipated uses;
12. effects of the proposed use on the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district and adjoining districts;
13. whether the plan for development is clearly superior to development that is permitted based on the design and development standards of the underlying zoning district; and
14. any other factor that relates to the purposes of this chapter set forth in s. 70.05 or as allowed by state law.

#### **70.520 Imposition of conditions**

- A. **Generally.** The Plan Commission may recommend and the Village Board may impose conditions as may be necessary to grant approval. Such conditions may relate to any of the factors it considered in reaching its decision. In addition, the Plan Commission may recommend and the Village Board may require the provision of off-site exactions that may be necessary to approve the establishment of the planned development district project.

- B. **Effect on contracts with another party.** The Village Board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>6</sup>

#### **70.521 Application form and content**

- A. **General development plan.** The application submittal for a general development plan shall include the following:
1. an application form as may be used by the Village;
  2. a general development plan prepared at an appropriate scale depicting the information listed in Appendix F;
  3. a preliminary draft of covenants if any are to be imposed; and
  4. a development schedule, if the project is to be constructed in phases, which includes the anticipated beginning date and ending date of each phase and a description of those project-related elements to be completed in each phase.
- B. **Precise implementation plan.** The application submittal for a precise implementation plan shall include the following:
1. an application form as may be used by the Village;
  2. a precise implementation plan prepared at an appropriate scale depicting the information listed in Appendix F;
  3. a final draft of covenants if any are to be imposed;
  4. homeowners association documents, if proposed or required;
  5. a development agreement, if proposed or required; and
  6. a development schedule, if the project is to be constructed in phases, which includes the anticipated beginning date and ending date of each phase and a description of those project-related elements to be completed in each phase.

#### **70.522 Staff report content**

The staff report should contain the following:

1. preliminary findings for the decision criteria listed in this division;
2. a preliminary list of recommended conditions of approval; and
3. other information deemed necessary.

#### **70.523 Effect of approval**

If the Village Board approves a planned development district, the approval shall run with the land and is binding on all subsequent property owners.

#### **70.524 Effect of approved planned development district on land division standards**

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

#### **70.525 Review of actual development within an approved planned development district**

If the Village Board approves a planned development district, proposed development in the district is reviewed consistent with the requirements of this article as may apply (e.g., building, site, and plan of operation).

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<sup>6</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

**70.526 Amendment of an approved planned development district**

If the Village Board approves a planned development district, the Plan Commission and Village Board shall review all proposed changes to the project plan that was approved at the time of approval. If in the opinion of the Village Board, the proposed change constitutes a minor alteration, the Village Board may approve the requested change at a regular or special meeting of the Village Board. If the proposed change constitutes a major alteration, the review procedure in this division must be followed.

**70.527 Expiration of an approval**

If any portion of a planned development district that can be developed remains substantially undeveloped 3 years after final approval, the Village Board may rescind the approval, in whole or in part, following a public hearing. Upon petition and with cause, the Village Board may grant a one-time extension, not to exceed 4 years. In the event the Village Board rescinds an approval, the Village Board shall at that time reclassify undeveloped lands in the district based on the zoning regulations in effect at that time. Developed portions of the planned development district may either be allowed to retain the planned development district designation or reclassified based on the zoning regulations in effect at that time.

**70.528 Appeal**

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

**70.529 to 70.530 Reserved**

**DIVISION 3  
CONDITIONAL USE**

**70.531 Generally**

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

**70.532 Applicability and limitations**

- A. **General applicability.** Those land uses designated as a conditional use in the land-use matrix (Appendix A) must comply with the requirements in this division.
- B. **Limitation due to nonconforming lot.** In the event a parcel is classified as nonconforming (e.g., lot area, lot width), the Village may not process an application for a conditional use as set forth in s. 70.534, unless the Plan Commission makes a determination that the nature of the nonconformity does not affect the appropriateness of the parcel for the conditional use.
- C. **Limitation due to a nonconforming use on the lot.** In the event a parcel has a nonconforming use, the Village may not process an application for a conditional use as set forth in s. 70.534, unless the Plan Commission makes a determination that the nonconforming use and proposed conditional use are compatible.
- D. **Limitation due to existing conditional use on the lot.** In the event a parcel has an approved conditional use, the Village may not process an application for another conditional use as set forth in s. 70.534, unless the Plan Commission makes a determination that the existing and proposed conditional uses are compatible.

**70.533 Initiation**

The owner of the subject property may submit an application for the establishment of a conditional use.

**70.534 Review procedure**

- A. **Review and approval.** The Plan Commission and Village Board shall review existing and proposed site conditions, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway

locations, highway access, traffic generation and circulation, drainage, sewerage and water systems, the proposed operation, and other factors the Plan Commission and/or Village Board determines are appropriate when considering a conditional use application.

- B. **Steps in the review process.** The general steps outlined below shall be used in the review of a conditional use application.
1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent must meet with the zoning administrator to review applicable regulations and procedures and the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the Village's zoning requirements.
  2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
  3. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
  4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Village Board and the Plan Commission consistent with its adopted calendar.
  5. **Special notice to Department of Natural Resources.** If the application relates to the floodplain regulations in this chapter, the zoning administrator shall send a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources at least 10 calendar days before the date of the public hearing.
  6. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator shall provide for a class 2 public notice, property owner notice, and meeting agenda notice.
  7. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and Village Board, the applicant, and any other interested person upon request.
  8. **Public hearing.** Allowing for proper notice, the Village Board and the Plan Commission conduct a joint public hearing to review the application consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant, Village Board, or the Plan Commission may request a continuance consistent with Division 3 of Article 4. If the public hearing is adjourned, the Village Board and/or Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research. In addition, the Plan Commission may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.
  9. **Staff follow-up.** After the close of the public hearing, the Plan Commission may direct the zoning administrator to prepare a preliminary decision document.
  10. **Plan Commission recommendation.** After the public hearing has been closed, the Plan Commission will make a recommendation to the Village Board for approval or denial. The recommendation shall state the terms of the approval or reasons for denial as set forth in a draft conditional use order. The burden of proof is on the applicant to prove they have met the standards of the chapter and those set forth by the Plan Commission/Village Board during the process. The Plan Commission shall render its recommendation within 35 days from the close of the public hearing unless an extension is consented to in writing by the applicant.
  11. **Village Board meeting.** Allowing for proper notice, the Village Board shall consider the application at a regular or special meeting.
  12. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the staff report, and the Plan Commission's recommendation, the Village Board makes a decision to (i) approve the conditional use, (ii) approve the conditional use with conditions, or (iii) deny the conditional use.

13. **Preparation of final decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division.
14. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
15. **Notification to Department of Natural Resources.** If the application relates to the floodplain regulations in this chapter, the zoning administrator sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email within 10 calendar days of the date of decision.
16. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
17. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
18. **Recording of decision document.** If the property owner returns the decision document within the required time period with the required signatures, the zoning administrator records the decision document against the subject property in the office of the Washington County register of deeds.
19. **Administrative steps.** If the conditional use is approved and the zoning administrator has created a map showing conditional uses, the zoning administrator adds the conditional use to that map.

#### **70.535 Basis of decision**

The Plan Commission in making its recommendation and the Village Board in making its final decision shall consider whether the proposal complies with (1) each of the special conditions of approval set forth in s. 70.536, (2) each of the performance standards set forth in s. 70.537, (3) each of the development standards prescribed for the requested conditional use, (4) all other applicable sections of the zoning code, and (5) all other applicable sections of the municipal code, including the Village's groundwater regulations. The recommendation of the Plan Commission and the decision by the Village Board must be based on substantial evidence.

#### **70.536 Special conditions of approval**

- A. **Generally.** Based on substantial evidence, the Plan Commission may recommend and the Village Board may impose one or more conditions of approval as may be necessary to grant approval. Such conditions and restrictions may relate to the establishment, location, construction, maintenance, operation of the use, off-site impacts, and any other aspect of the use that impacts the public health, safety, or general welfare. Examples of such conditions are listed below.

Issue	Potential Condition
1. Hours of operation	Limit hours of operation to hours to be more compatible with surrounding uses.
2. Buffering	Require more of a buffer than what is otherwise required by this chapter. Buffering may include landscaping, walls or fences, berms, and other features to physically separate adjoining uses.
3. Maximum floor area	Establish a maximum floor area that may be less than what is otherwise allowed.
4. Maximum number of patrons	Limit the size of the use by establishing maximum patron loads, often by seats and/or tables
5. Uses within buildings	Limit commercial uses to the first floor of a multistory building.
6. Number and/or location of entrances	Design the site and building so that entrances are located in areas away from adjoining properties.
7. Outdoor activity	Restrict locations and/or times of outdoor activity.
8. Outdoor storage	Establish a maximum area for outdoor storage that may be less than what is otherwise allowed.
9. Take-out food service	Prohibit drive-up service windows and/or walk-up service windows in certain areas of the property (e.g., near a residential use). If these are allowed, limitations could be set.
10. Delivery services	Prohibit deliver services that entail frequent trips or establish upper limits on the activity.
11. Signage	Prohibit signage in areas of the property that may cause an impact on surrounding areas.

- B. **Limitation on imposing conditions.** A condition of approval shall not lessen a development standard or other requirement contained in this chapter.
- C. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>7</sup>
- D. **Special condition for business as property owner.** As a condition of approval of a conditional use, the property owner if it is a business entity, such as a limited liability company or a corporation, shall for the life of the conditional use continuously maintain a registered office in the state of Wisconsin as evidenced by registration with the Wisconsin Department of Financial Institutions.

**70.537 Conditional use performance standards**

- A. **Generally.** This section describes performance standards for the regulation of uses and to establish an objective and equitable basis for control and to ensure that the community is adequately protected from potential hazardous and nuisance-like effects. These performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or zoning district. In addition, these performance standards are intended to comply with other applicable local, state and federal codes and standards. All structures, lands, air, and water shall hereafter comply with the performance standards set forth in this section.
- B. **Odors.** No operation or activity shall emit any substance or combination of substances in such quantities that create an objectionable odor. The Plan Commission and/or Village Board reserves the right to request an odor control plan from the applicant to identify potential odors and implement recommendations from the plan.
- C. **Fire and explosive hazards.**

<sup>7</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

1. All uses involving the manufacturing, utilization, processing, or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with adequate firefighting and fire suppression equipment and devices as may be required by the Fire Prevention Code.
  2. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have noncombustible exterior walls and an automatic fire extinguishing system.
  3. The storage of fuels and other materials that produce flammable or explosive vapors shall be permitted only after review and approval by the village fire department and in accord with their requirements to minimize fire and explosive hazards.
- D. Glare, heat and external lighting.**
1. No operation or activity shall produce any intense lighting, glare or heat with the source directly visible beyond the boundary of the property line. Operations producing light, glare, or heat shall be conducted within an enclosed building.
  2. External lighting shall be shielded so that light rays do not adversely affect adjacent uses.
- E. Water quality.**
1. No activity shall locate, store, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might runoff, seep, percolate, or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant, or aquatic life.
  2. No activity shall withdraw water or discharge any liquid or solid materials so as to exceed or contribute toward exceeding the minimum standards and those other standards and the application of those standards set forth in Wis. Adm. Code NR 102 or in other applicable Chapters which regulate water quality.
- F. Noise.** No operation or activity shall transmit any noise beyond the boundaries of the property so that it becomes a nuisance.
- G. Vibration.** No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects. Vibrations not directly under the control of the property user and vibrations from temporary construction or maintenance activities are exempt from this standard.
- H. Traffic impact.** The Plan Commission and/or the Village Board reserves the right to require a traffic impact study in order to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study. The traffic study shall be prepared by a registered professional engineer in accordance with the following standards:
1. Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
  2. Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
  3. Manual on Uniform Traffic Control Devices (Federal Highway Administration)
  4. Trip Generation Manual (Institute of Transportation Engineers)
  5. Other local, county or state standards

**70.538 Standard terms for an approved conditional use**

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

1. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
2. No use is hereby authorized unless the use is conducted in a lawful, orderly, and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the Washington County of, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by Village ordinance or other law.
3. The approved conditional use shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Plan Commission as being in compliance with all pertinent ordinances.
4. All buildings and grounds shall be maintained in a neat, attractive and orderly way.
5. The property shall comply with all rules and regulations of the Village of Richfield and the local fire department, including submission to routine inspections by the village staff and fire department staff.
6. Prior to the execution of the conditional use permit, the applicant must obtain any and all approvals that must be obtained before the use may be established or the commencement of any land-disturbing activity related to the approved conditional use.
7. Should the permitted conditional use be abandoned in any manner, or discontinued in use for 12 months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to the Village, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Plan Commission, pursuant to the enforcement provisions of this conditional use order, and all applicable ordinances.
8. Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises, structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
9. Unless this conditional use order expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Plan Commission if the Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the plan commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
10. As a condition precedent to the issuance of the conditional use permit, the owner of the subject property shall approve the issuance of this conditional use order upon the terms and conditions described herein in writing, and the petitioner is required to accept the terms and conditions of the same in its entirety in writing.
11. Petitioner shall, on demand, reimburse the Village for all costs and expenses of any type that the Village incurs in connection with this application, including the cost of professional services incurred by the Village (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the Village is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.
12. Any unpaid bills owed to the Village by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Village; shall be placed upon the tax roll for the subject property if not paid within 30 days of billing by the Village, pursuant to s. 66.0627, Wis. Stats. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Village, including possible cause for termination of this approval.

13. The petitioner is obligated to file with the village clerk a current mailing address and current phone number at which the petitioner can be reached, which must be continually updated by the petitioner if such contact information should change, for the duration of the conditional use. If the petitioner fails to maintain such current contact information, the petitioner thereby automatically waives notice of any proceedings that may be commenced under this conditional approval, including proceedings to terminate this conditional use.
14. All conditions of approval imposed by duly adopted motion of the Village Board in its consideration of the petitioner's application, as noted in the minutes of the Village Board meeting at which approval was granted, are specifically incorporated herein by reference.
15. Should any paragraph or phrase of this conditional use order be determined by a court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use order and the remainder shall continue in full force and effect.
16. If any aspect of this conditional use order or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Plan Commission.
17. If the property owner/operator is a business entity, such as a limited liability company or a corporation, such entity shall for the life of the conditional use continuously maintain a registered office in the state of Wisconsin as evidenced by registration with the Wisconsin Department of Financial Institutions.
18. The property owner shall not change the size and/or shape of the subject property by any means without the approval of the Village Board. If the Village Board determines that a proposed change is substantial with regard to the overall size of the parcel and/or configuration, such change shall require issuance of a new conditional use approval pursuant to the requirements in effect at the time of application.
19. This approval is given under the Village's zoning code and is not to be, in any way, interpreted to abrogate any private rights other property owners may have pursuant to deed restrictions or restrictive covenants.
20. If this conditional use terminates for any reason, the property owner is obligated to remove any improvements specifically related to the conditional use and which cannot be utilized for an approved use (i.e., a use permitted by right or a different conditional use as approved).
21. In the event the subject property is found to be in violation and then brought into compliance, the Village Board reserves the right to impose periodic reviews to ensure continued compliance.

#### **70.539 Application form and content**

The application submittal shall include an application form as may be used by the Village and a project map prepared at an appropriate scale depicting the information listed in Appendix ii.

#### **70.540 Staff report content**

The staff report should contain preliminary findings for the decision criteria listed in this division and other information deemed appropriate.

#### **70.541 Content of decision document**

- A. **Approval.** If the application for a conditional use is approved, the decision document should include the following:
  1. a statement that the conditional use is approved;
  2. a description of the conditional use;
  3. a description of where the conditional use will occur on the property;
  4. reasons for the decision based on the criteria listed in this division;
  5. conditions of approval that must be satisfied prior to the establishment of the conditional use, if any;
  6. conditions of approval that must be complied with during the life of the conditional use, if any;

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

#### 70.542 Term for an approval

A conditional use order authorizing a conditional use shall generally have 5-year terms unless otherwise specified in the conditional use order. The order shall describe an administrative renewal process to allow for streamlined renewal of the conditional use order with a provision that allows the Plan Commission and/or the Village Board to remove the conditional use order from automatic renewal if there are concerns with compliance with the conditional use order or concerns raised by the public about the applicant's operations. If the Plan Commission or the Village Board pulls the conditional use order from automatic approval the conditional use order shall remain in effect while the Plan Commission provides due process to the applicant in reviewing the conditional use order and its potential renewal.

#### 70.543 Effect of approval

- A. **Generally.** Unless otherwise specified in the conditional use order, approvals run with the land.
- B. **Temporary uses.** If a use is listed as a temporary use in **Appendix A** and is approved by the Village Board as a conditional use, the use may be re-established with the written approval of the zoning administrator if he or she determines that the use to be re-established is substantially the same as what was originally approved and that the approved use did not create any potentially adverse impacts on the public health, safety, or welfare.

#### 70.544 Expiration of an approval

- A. **Non-establishment of use.** If the zoning administrator determines that substantial work as authorized by a conditional use approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division **13** of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond his or her control

prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

- B. **Cessation of use.** If the zoning administrator determines that a conditional use has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article.

#### **70.545 Amendment of an approved conditional use**

Following approval of a conditional use, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

#### **70.546 Appeal**

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

#### **70.547 Effect of comprehensive plan**

Pursuant to Wis. Stats. 66.1001(2m)(b), a conditional use approval that may be issued by the Village Board does not need to be consistent with the Village's adopted comprehensive plan.

#### **70.548 to 70.550 Reserved**

### **DIVISION 4 WIRELESS TELECOMMUNICATION FACILITY**

#### **70.551 Review procedure**

- A. **New telecommunication tower and Class 1 collocation.** The general steps outlined below shall be used to review an application for a new telecommunication tower and a Class 1 collocation as designated in the land-use matrix (Appendix A).
1. **Submittal of application materials.** The applicant submits a completed application to the zoning administrator along with the application fee as may be established by the Village Board.
  2. **Determination of completeness.** The zoning administrator reviews the application and determines whether the application is complete. If the application includes all of the required information, the application shall be found to be complete. The zoning administrator notifies the applicant in writing within 10 days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their application as often as necessary until it is complete.
  3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
  4. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
  5. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report and provides a copy of it to each member of the Plan Commission, the applicant, and any other interested person upon request.
  6. **Public hearing.** Allowing for proper notice, the Plan Commission conducts a public hearing to review the application consistent with Division 2 of Article 4. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with Division 3 of Article 4.
  7. **Staff follow-up.** If the Plan Commission does not render a decision immediately following the public hearing, the Plan Commission may direct the zoning administrator to prepare a preliminary decision document.

- Draft December 26, 2019 -

8. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the staff report, the Plan Commission, no more than 40 calendar days after the public hearing, makes a decision to (i) approve the application, (ii) approve the application with conditions, or (iii) deny the application.
9. **Preparation of final decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a final decision document.
10. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
11. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the Plan Commission may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision is null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
12. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
13. **Recording of decision document.** If the property owner returns the decision document within the required time period with the required signatures, the zoning administrator records the decision document against the subject property in the Washington County register of deeds office.

In the event an applicant believes the Village has exceeded its authority as set forth in s. 66.0404, Wis. Stats., and other such laws as may apply which may include 47 USCA s. 1455, the applicant shall notify the zoning administrator in writing and the reviewing authority reserves the right to reconsider the matter, to ensure that applicable laws are followed.

- B. **Class 2 collocation.** The general steps outlined below shall be used to review an application for a Class 2 collocation which is allowed in all zoning districts.
  1. **Submittal of application materials.** The applicant submits a completed application to the zoning administrator along with the application fee as may be established by the Village Board.
  2. **Determination of completeness.** The zoning administrator reviews the application and determines whether the application is complete. If the application includes all of the required information, the application shall be found to be complete. The zoning administrator must notify the applicant in writing within 5 days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their application as often as necessary until it is complete.
  3. **Decision.** The zoning administrator makes a decision on the application within 45 days of the date the application is deemed complete, unless the time is extended by the applicant. The decision shall be stated in writing. If approval is not granted, the reasons therefor must be stated.
  4. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

In the event an applicant believes the Village has exceeded its authority as set forth in s. 66.0404, Wis. Stats., and other such laws as may apply which may include 47 USCA s. 1455, the applicant shall notify the zoning administrator in writing and the reviewing authority reserves the right to reconsider the matter, to ensure that applicable laws are followed.

#### 70.552 Application form

- A. **New telecommunication tower and Class 1 collocation.** An application form for a new telecommunication tower or a Class 1 collocation must include all of the following information as appropriate:
  1. The name and business address of, and the contact individual for, the applicant.
  2. The location of the proposed tower or affected tower.
  3. The location of the proposed mobile service facility.

4. If an application is to substantially modify an existing telecommunication tower, a construction plan which describes the proposed modifications to the tower, and equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  5. If an application is to construct a new telecommunication tower, a construction plan which describes the proposed tower and equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
  6. If an application is to construct a new telecommunication tower, an explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
- B. **Class 2 collocation.** An application form for a Class 2 collocation must include the following information:
1. The name and business address of, and the contact individual for, the applicant.
  2. The location of the proposed tower or affected tower.
  3. The location of the proposed mobile service facility.

#### 70.553 Imposition of conditions

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

#### 70.554 Expiration of an approval

- A. **Non-establishment of use.** If the zoning administrator determines that substantial work as authorized by the approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months, provided (1) the permit holder requests the extension prior to the expiration of the approval, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.
- B. **Cessation of use.** If the zoning administrator determines that a conditional use has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article.

**70.555 Amendment of an approval**

Following approval, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

**70.556 Fees**

- A. **Professional service reimbursement.** Costs incurred by the Village in obtaining legal, planning, engineering, and other technical and professional advice in connection with an application shall be charged to the applicant as set forth in s. 70.409.
- B. **Limitation on fees.** The total of all fees, excluding professional service reimbursement, associated with the review of an application shall not exceed the limits established by s. 66.0404(4)(d), Wis. Stats.

**70.557 to 70.560** Reserved

**DIVISION 5  
SITE PLAN AND PLAN OF OPERATION**

**70.561 Generally**

- A. **Site plans.** The way in which a land use occupies a lot has a direct effect on the overall functionality of the site, the extent to which the land use can be expanded on the site in the future, effects of the land use on nearby properties, and impacts on existing and anticipated public and private infrastructure. This division describes the requirements and procedures for reviewing a site plan.
- B. **Plan of operations.** The way in which many land uses operate has a direct effect on the nature of the use and potential effects on nearby properties, including existing and anticipated land uses. This division describes the requirements and procedures for reviewing a plan of operation.

**70.562 Applicability**

Those land uses designated as requiring site plan review (SP) or plan of operation review (PO) in the land-use matrix (Appendix A) must comply with the requirements in this division.

**70.563 Initiation**

The owner of the subject property may submit an application for a site plan and plan of operation.

**70.564 Review procedure**

The general steps outlined below shall be used in the review of a site plan and plan of operation application.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and the

applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.

5. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
6. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
7. **Decision.** The Plan Commission makes a decision to (i) approve the site plan/plan of operation, (ii) approve the site plan/plan of operation with conditions, or (iii) deny the site plan/plan of operation. The Plan Commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the initial meeting unless the applicant agrees to an extension of a specified duration.
8. **Preparation of decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a decision document consistent with this division.
9. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
10. **Acceptance by property owner.** If the application is approved, the property owner and the operator, if different, must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner or operator, if different, may submit a petition to the village clerk requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
11. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

#### 70.565 Basis of decision

- A. **Site plan.** The review authority shall consider the following factors in making their decision:
  1. effects of the project on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
  2. effects of the project on the natural environment;
  3. effects of the project on surrounding properties;
  4. compliance with the general site design principles enumerated in s. 70.05;
  5. compliance with the design principles for parking lots enumerated in Article 13;
  6. compliance with other applicable requirements contained in this chapter; and
  7. any other factor that relates to the purposes of this chapter set forth in s. 70.05 or as allowed by state law.
- B. **Plan of operation.** The review authority shall consider the following factors in making their decision:
  1. the nature of the land use with regard to the number of employees, nature and extent of truck shipments to and from the site, hours of operation, use of hazardous substances, and other operational characteristics;
  2. the nature and extent of anticipated positive and negative effects on properties in the area;
  3. actions the applicant will undertake to mitigate the negative effects, if any, of the proposed land use; and
  4. any other factor that relates to the purposes of this chapter set forth in s. 70.05 or as allowed by state law.

**70.566 Imposition of conditions**

- A. **Site plan.** In approving a site plan, the Plan Commission may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, revisions to the site design, and outdoor lighting.
- B. **Plan of operation.** In approving a plan of operation, the Plan Commission may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to operational characteristic of the land use, including hours of operation and processes or activities related to the land use.
- C. **Effect on contracts with another party.** The Plan Commission shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>8</sup>

**70.567 Application form and content**

The application submittal shall include an application form as may be used by the Village.

**70.568 Staff report content**

The staff report should contain the following:

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

**70.569 Content of decision document**

- A. **Approval.** If the application for a site plan or plan of operation is approved, the decision document should include the following:
  1. a statement that the site plan/plan of operation is approved;
  2. a description of the land use along with operational characteristics;
  3. reasons for the decision based on the criteria listed in this division;
  4. conditions of approval, if any;
  5. a statement indicating that the property owner and operator, if different, must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same;
  6. a statement that the applicant may appeal the decision to a court of competent jurisdiction;
  7. a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  8. other information the reviewing authority or zoning administrator deems appropriate;
  9. the signature of the zoning administrator on behalf of the reviewing authority; and
  10. the date of the decision.
- B. **Denial.** If the application for a site plan or plan of operation is denied, the decision document should include the following:
  1. a statement that the site plan/plan of operation is denied,
  2. a description of the land use,

<sup>8</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

3. reasons for the decision based on the criteria listed in this division,
4. a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
5. a statement that the decision may be appealed as provided for in this division,
6. other information the reviewing authority or zoning administrator deems appropriate,
7. the signature of the zoning administrator on behalf of the reviewing authority, and
8. the date of the decision.

**70.570 Effect of approval**

The approval of a site plan and a plan of operation plan shall run with the land and is binding on all subsequent property owners.

**70.571 Expiration of an approval**

An approval of a site plan/plan of operation shall automatically expire 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

**70.572 Amendment of an approval**

Following approval of a site plan or plan of operation, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

**70.573 Appeal**

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

**70.574 to 70.575** Reserved

**DIVISION 6  
ARCHITECTURAL REVIEW**

**70.576 Generally**

Architectural review is intended to ensure that buildings fit in to the context in which they occur.

**70.577 Applicability**

Those land uses designated as requiring architectural review in the land-use matrix (Appendix A) must comply with the requirements in this division. The exterior of an existing building designated as requiring architectural review may be resided or re-roofed with the same or similar type of materials.

**70.578 Initiation**

The owner of the subject property may submit an application for architectural review.

**70.579 Review procedure**

The general steps outlined below shall be used in the review of an architectural plan application.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Architectural Review Committee consistent with its adopted calendar.
4. **Recommendation.** The Architectural Review Committee makes a recommendation to the Plan Commission to (i) approve the architectural plan, (ii) approve the architectural plan with conditions, or (iii) deny the architectural plan.
5. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
6. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
7. **Decision.** The Plan Commission makes a decision to (i) approve the architectural plan, (ii) approve the architectural plan with conditions, or (iii) deny the architectural plan. The Plan Commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the public meeting unless the applicant agrees to an extension of a specified duration.
8. **Preparation of decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a decision document consistent with this division.
9. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
10. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

#### **70.580 Basis of decision**

The review authority shall determine whether the building complies with all applicable provisions of this chapter.

#### **70.581 Imposition of conditions**

- A. **Generally.** In approving an architectural plan, the review authority may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>9</sup>

#### **70.582 Application form and content**

The application submittal shall include an application form as may be used by the Village and a set of architectural plans prepared at an appropriate scale.

#### **70.583 Content of decision document**

- A. **Approval.** If the architectural plan is approved, the decision document should include the following:
  1. a statement that the architectural plan is approved;
  2. a description of the project;

<sup>9</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

3. reasons for the decision based on the criteria listed in this division;
4. conditions of approval, if any;
5. if one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same;
6. a statement that the applicant may appeal the decision to a court of competent jurisdiction;
7. a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
8. other information the Plan Commission or administrator deems appropriate;
9. the signature of the zoning administrator on behalf of the Plan Commission; and
10. the date of the decision.

B. **Denial.** If the architectural plan is denied, the decision document should include the following:

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

#### **70.584 Effect of approval**

An approval of an architectural plan shall run with the land and is binding on all subsequent property owners.

#### **70.585 Expiration of an approval**

An approval of an architectural plan shall automatically expire 12 months after the date of issuance unless substantial work has commenced and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

#### **70.586 Amendment of an approval**

Following approval of an architectural plan, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

#### **70.587 Appeal**

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

**70.588 to 70.590**

**Reserved**

**DIVISION 7  
SPECIAL EXCEPTION****70.591 Generally**

Upon written petition, the Plan Commission may, on a case-by-case basis, grant a special exception for those development standards specifically noted as special exceptions in this chapter.

**70.592 Initiation**

The owner of the subject property may submit an application for a special exception.

**70.593 Review procedure**

The general steps outlined below shall be used in the review of a special exception application.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
4. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.
5. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
6. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
7. **Decision.** After considering all of the information submitted by the applicant and the staff report, the Plan Commission makes a decision based on the decision criteria contained in this division to (i) approve the special exception, (ii) approve the special exception with conditions, or (iii) deny the special exception.
8. **Preparation of final decision document.** Based on the action of the Plan Commission, the zoning administrator prepares a final decision document consistent with this division.
9. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
10. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
11. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

**70.594 Basis of decision**

The review authority shall consider the following factors:

1. the size of the property in comparison to other properties in the area;
2. the extent to which the issuance of the special exception would be in keeping with the overall intent of this chapter;
3. whether there are any unique circumstances and the nature of those circumstances that warrant the issuance of the special exception;
4. the nature and extent of anticipated impacts to the natural environment that could potentially occur if the special exception was granted;
5. the nature and extent of anticipated positive and negative effects on properties in the area;
6. actions the applicant will undertake to mitigate the negative effects, if any, of the proposed special exception;
7. a factor specifically listed under a section of this chapter authorizing the issuance of a special exception; and
8. any other factor that relates to the purposes of this chapter set forth in s. 70.05 or as allowed by state law.

#### **70.595 Imposition of conditions**

- A. **Generally.** In approving a special exception, the review authority may impose one or more conditions deemed necessary to further the intent and purposes of this chapter.
- B. **Effect on contracts with another party.** The review authority shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>10</sup>

#### **70.596 Limitations on issuing a special exception**

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

#### **70.597 Application form and content**

The application submittal shall include an application form as may be used by the Village and a site plan prepared at a scale of 1" = 20' or other appropriate scale depicting the information listed in Appendix F.

#### **70.598 Staff report content**

The staff report should contain the following:

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

#### **70.599 Content of decision document**

- A. **Approval.** If the application for a special exception is approved, the decision document should include the following:
  1. a statement that the special exception is approved;
  2. a description of the special exception;
  3. reasons for the decision based on the criteria listed in this division;

<sup>10</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

4. conditions of approval, if any;
  5. a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same;
  6. a statement that the applicant may appeal the decision to a court of competent jurisdiction;
  7. a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  8. other information the review authority or zoning administrator deems appropriate;
  9. the signature of the zoning administrator on behalf of the reviewing authority; and
  10. the date of the decision.
- B. **Denial.** If the application for a special exception is denied, the decision document should include the following:
1. a statement that the special exception is denied,
  2. a description of the special exception,
  3. reasons for the decision based on the criteria listed in this division,
  4. a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
  5. a statement that the decision may be appealed as provided for in this division,
  6. other information the review authority or zoning administrator deems appropriate,
  7. the signature of the zoning administrator on behalf of the reviewing authority, and
  8. the date of the decision.

#### **70.600 Effect of approval**

If a special exception is approved, such approval shall run with the land and is binding on all subsequent property owners.

#### **70.601 Expiration of an approval**

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

#### **70.602 Appeal**

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

**70.603 to 70.605** Reserved

### **DIVISION 8 ZONING PERMIT**

#### **70.606 Generally**

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

**70.607 Applicability**

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

**70.608 Initiation**

The owner of the subject property may submit an application for a zoning permit.

**70.609 Review procedure**

The general steps outlined below shall be used in the review of an application for a zoning permit.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Decision.** When the zoning administrator determines the application is complete, he or she makes a decision to (i) approve the zoning permit, (ii) approve the zoning permit with conditions, or (iii) deny the zoning permit
4. **Applicant notification.** Within a reasonable time following his or her decision to approve or deny the application, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
5. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

**70.610 Basis of decision**

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

**70.611 Expiration of an approval**

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

**70.612 Appeal**

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

**70.613 to 70.615****Reserved**

**DIVISION 9  
FLOODPLAIN PERMIT****70.616 Generally**

A floodplain permit is administrative in nature and is intended to ensure that land uses located in the floodplain overlay district comply with the requirements in Article 8.

**70.617 Applicability**

A floodplain permit must be obtained before any of the following is initiated in the floodplain overlay district:

1. new development, broadly construed;
2. repair, modification, or addition to an existing structure; or
3. change in the use of a building or structure.

**70.618 Initiation**

The owner of the subject property may submit an application for a floodplain permit.

**70.619 Review procedure**

The general steps outlined below shall be used in the review of an application for a floodplain permit.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. If the application is deemed incomplete or if additional information is requested, the zoning administrator will take no further steps to process the application until the deficiencies are remedied or the information is provided. The incomplete application is retained as a public record.
3. **Decision.** When the zoning administrator determines the application is complete, he or she makes a decision based on the decision criteria contained in this division to (i) approve the floodplain permit, (ii) approve the floodplain permit with conditions, or (iii) deny the floodplain permit.
4. **Applicant notification.** Within a reasonable time following his or her decision to approve or deny the application, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
5. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

**70.620 Basis of decision**

In determining whether to issue a floodplain permit or deny the permit, the zoning administrator shall determine whether the proposed use is consistent with the standards in Article 8.

**70.621 Application form and content**

The application submittal shall include an application form as may be used by the Village and a site plan prepared at a scale of 1" = 20' or other appropriate scale depicting the information listed in Appendix F. The application at a minimum shall include the following:

1. name and address of the property owner;
2. legal description of the subject property;
3. a description of the proposed project;

4. the elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
5. 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 Division 4 or 6 [3.0 or 4.0] of Article 8 are met; and
6. data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 70. [11.12.142 [2.1]]. This may include any of the information noted in s. 70. [11.12.63. [3.3(1)]].

In addition to the information listed in Appendix F, the following shall be depicted on the site map:

1. elevation of existing and proposed roads located in the floodplain,
2. elevation of existing and proposed wellheads located in the floodplain, and
3. elevation of existing and proposed buildings located in the floodplain.

#### **70.622 Expiration of an approval**

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

#### **70.623 Appeal**

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

**70.624 to 70.625 Reserved**

### **DIVISION 10 BERM PERMIT**

#### **70.626 Generally**

A berm permit is administrative in nature and is intended to ensure the proposed project complies with all applicable sections of this code.

#### **70.627 Applicability**

A berm permit must be obtained before any work is done to construct or modify an existing berm.

#### **70.628 Initiation**

The owner of the subject property may submit an application for a berm permit.

#### **70.629 Review procedure**

The general steps outlined below shall be used in the review of an application for a berm permit.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.

2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. If the application is deemed incomplete or if additional information is requested, the zoning administrator will take no further steps to process the application until the deficiencies are remedied or the information is provided. The incomplete application is retained as a public record.
3. **Decision.** When the zoning administrator determines the application is complete, he or she makes a decision based on the decision criteria contained in this division to (i) approve the berm permit, (ii) approve the berm permit with conditions, or (iii) deny the berm permit.
4. **Applicant notification.** Within a reasonable time following his or her decision to approve or deny the application, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
5. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

**70.630 Basis of decision**

In determining whether to issue a berm permit or deny the permit, the zoning administrator shall determine whether the proposed berm complies with all applicable sections of this code.

**70.631 Application form and content**

The application submittal shall include an application form as may be used by the Village and a site plan prepared at a scale of 1" = 20' or other appropriate scale depicting the information listed in Appendix F.

**70.632 Expiration of an approval**

A berm permit shall automatically expire 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

**70.633 Appeal**

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

**70.634 to 70.635 Reserved**

**DIVISION 11  
TEMPORARY USE – 30 DAYS OR LESS**

**70. to 70. Reserved**

**DIVISION 12  
TEMPORARY USE – MORE THAN 30 DAYS BUT LESS THAN 90 DAYS**

70. to 70. Reserved

### DIVISION 13 TERMINATION OF APPROVAL

#### 70.675 Generally

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

#### 70.676 Initiation

- A. **Voluntary termination of a conditional use.** The property owner is authorized to submit an application to terminate a conditional use approval for his or her property.
- B. **Involuntary termination of conditional use approval due to cessation.** The zoning administrator is authorized to submit an application to terminate a conditional use approval when he or she determines the land use authorized by such approval has ceased to operate for more than 12 months.
- C. **Involuntary termination of a conditional use approval due to violation.** The zoning administrator is authorized to submit an application to terminate a conditional use approval when he or she determines that the property owner has violated one or more conditions of approval and satisfactory action has not been taken to correct the violation.
- D. **Involuntary termination of a specified land use due to cessation.** The zoning administrator is authorized to submit an application to terminate an approved land use when he or she determines that such use is no longer in use for the time period specified for such use.
- E. **Involuntary termination of a nonconforming use.** The zoning administrator is authorized to submit an application to terminate a nonconforming use when he or she determines that such use is having a significant harmful effect on the public health, safety, and welfare or the nonconforming use has ceased to operate for the period of time required by this chapter to retain designation as a nonconforming use.

#### 70.677 Review procedure for voluntary termination

The general steps outlined below shall be used in the review of an application to voluntarily terminate an approval of a land use authorized under this chapter.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
4. **Meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
5. **Decision.** The Village Board makes a decision to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination. The Village Board may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the date of the initial meeting unless the applicant agrees to an extension of a specified duration.
6. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.

7. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
8. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
9. **Administrative steps.** If the application is approved, the zoning administrator updates any village records to indicate that the use as specified in the application has been terminated.

#### **70.678 Review procedure for involuntary termination**

The general steps outlined below shall be used in the review of an application to involuntarily terminate an approval of a land use authorized under this chapter.

1. **Submittal of application materials.** The zoning administrator shall complete an application and other required materials.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Village Board and the Plan Commission consistent with its adopted calendar.
4. **Special notice to property owner.** The zoning administrator sends a written notice to the property owner by regular and certified mail at least 30 calendar days prior to the date of the public hearing. Such notice should state (i) the reasons why the zoning administrator has submitted an application to terminate the specified use; (ii) the date and time of the public hearing; (iii) contact information for the zoning administrator, including telephone number; and (iv) other information deemed appropriate by the zoning administrator. If the action is intended to terminate a conditional use for a violation, the notice shall state the alleged violation along with supporting evidence. If the action is intended to terminate an inactive land use, the notice shall state the time period when the land use was not in use along with any supporting evidence.
5. **General public notice.** Consistent with Division 2 of Article 4, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
6. **Public hearing.** Allowing for proper notice, the Village Board and the Plan Commission conduct a joint public hearing consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant, the Village Board, or the Plan Commission may request a continuance consistent with Division 3 of Article 4. If the public hearing is adjourned, the Village Board or the Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research. In addition, the Plan Commission may direct the zoning administrator to prepare such documents it deems necessary, including a preliminary decision document.
7. **Recommendation.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the Plan Commission, no more than 40 calendar days after the public hearing, makes a recommendation to the Village Board based on the decision criteria contained in this division to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
8. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
9. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
10. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the Plan Commission's recommendation, the Village Board makes a decision based on the decision criteria contained in this division to (i) approve the termination, (ii) approve the termination with conditions, or (iii) deny the termination.
11. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division.

12. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the property owner by regular mail and/or email.
13. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
14. **Administrative steps.** If the application is approved, the zoning administrator updates any village records to indicate that the use as specified in the application has been terminated.

#### **70.679 Basis of decision**

The Plan Commission in making its recommendation and the Village Board in making its decision shall consider the following factors:

1. the nature of those buildings or other structures, if any, on the subject property that relate to the use and the extent to which they are or are not otherwise permitted in the district in which the subject property is located;
2. effects of the existing use on surrounding properties, including detriment to the full and complete use of such properties and potential for concerns related to possible nuisances;
3. effects of the existing use on the normal and orderly development and improvement of the surrounding property for those uses permitted in the zoning district in which they are located; and
4. any other factor that relates to the purposes of this chapter as set forth in s. 70.05 or as allowed by state law.

#### **70.680 Application form and content**

The application submittal shall include an application form as may be used by the Village. The application form shall request the following information:

1. the subject property location;
2. a description of the original approval, including conditions of approval, if any;
3. verification that the property owner is voluntarily seeking termination of a conditional use approval or evidence supporting the assertion that the use may be involuntarily terminated consistent with this division;
4. a description of those buildings or other structures, if any, on the subject property that relate to the use and the extent to which they are or are not otherwise permitted in the district in which the subject property is located; and
5. other information deemed necessary.

#### **70.681 Content of decision document**

- A. **Approval.** If the application to terminate an approval is approved, the decision document should include the following:
  1. a statement that the specified use is terminated;
  2. a description of the land use being terminated;
  3. reasons for the decision based on the criteria listed in this division;
  4. requirements for the removal of any building or other structure, if any, on the subject property that are related to the terminated use and that are not otherwise permitted in the zoning district in which the subject property is located;
  5. a statement that the decision may be appealed as provided for in this division;
  6. other information the Village Board or zoning administrator deems appropriate;
  7. the signature of the zoning administrator on behalf of the Village Board; and
  8. the date of the decision.
- B. **Denial.** If the application to terminate an approval is denied, the decision document should include the following:

1. a statement that the specified use continues to be an approved use,
2. a description of the land use,
3. reasons for the decision based on the criteria listed in this division,
4. a statement that the decision may be appealed as provided for in this division,
5. other information the Village Board or zoning administrator deems appropriate,
6. the signature of the zoning administrator on behalf of the Village Board, and
7. the date of the decision.

**70.682 Compliance with requirements of zoning district**

If the Village Board terminates an approval under this division, the property owner shall bring the subject property into conformity with the permitted use regulations of the zoning district in which the property is located. The Village Board shall establish a timeframe it determines appropriate to bring the property into compliance. In making such determination, the Village Board should consider the type of actions the property owner will need to take to bring the property into compliance and weather conditions. In no event, shall the compliance period be less than 30 calendar days or more than 9 months.

**70.683 Appeal**

The property owner or other person having a development interest in the terminated use may appeal a final decision made pursuant to this division by filing an appeal with a court of competent jurisdiction within 30 calendar days of the final decision.

**70.684 to 70.686 Reserved**

**DIVISION 14  
REGISTRATION OF A NONCONFORMING USE**

**70.687 Generally**

There may be now or in the future certain uses of land that are not in compliance with this chapter, but which were legally established. These uses are referred to as "nonconforming uses," and consistent with the provisions of Article 14 are allowed to continue to operate within certain parameters. For this reason, it is necessary to document those uses that are considered nonconforming. Registration of a use as a nonconforming use provides documentary evidence establishing (1) when the use was first established; (2) that the use was established consistent with the rules and regulations in effect at the time, if any; (3) that the use has operated continuously, without cessation of more than 12 continuous months; and (4) the nature of the use. Failure to register a nonconforming use does not result in prohibition of the use, but in any future situation where the owner asserts the use is a nonconforming use, the property owner shall have the burden of so proving.

**70.688 Initiation**

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

1. a person having a financial interest in the property or in the use occurring on the property;
2. the zoning administrator;
3. the Plan Commission, or any member thereof; and
4. the Village Board, or any member thereof.

**70.689 Review procedure**

The general steps outlined below shall be used to determine if an existing use should be registered as a nonconforming use.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
3. **Special notice to property owner.** If the application process is not initiated by the property owner, the zoning administrator sends a written notice to the property owner by regular and certified mail at least 60 calendar days prior to the date of the Plan Commission meeting. Such notice shall invite the property owner to submit evidence relating to the pending determination. In addition, the notice should state (i) the reasons why the application has been submitted; (ii) the date and time of the meeting; (iii) contact information for the zoning administrator; and (iv) other information deemed appropriate by the zoning administrator.
4. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
5. **Recommendation.** The Plan Commission determines whether it has sufficient evidence to make a recommendation, and if so whether the use should or should not be classified as a nonconforming use. The Plan Commission may render its recommendation at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the date of the initial meeting unless the applicant agrees to an extension of a specified duration.
6. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
7. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
8. **Decision.** After considering the Plan Commission's recommendation, the Village Board determines whether it has sufficient evidence to make a final decision, and if so whether the use should or should not be classified as a nonconforming use.
9. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator within 15 calendar days of such decision prepares a decision document consistent with this division.
10. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the property owner by regular mail and/or email.
11. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
12. **Inclusion in registry.** If the use is determined to be a nonconforming use, the zoning administrator shall include the nonconforming use in the registry authorized in Article 6.

#### **70.690 Basis of decision**

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

#### **70.691 Application form and content**

The application submittal shall include an application form as may be used by the Village and scaled drawing of the property and the location of the land use on the property. At a minimum, the application shall request the following information:

1. the date, or approximate date, the use was first established or believed to be first established;
2. evidence showing that the use at the time of establishment was legally established;
3. the date, or approximate date, when the use became nonconforming;
4. the section of the zoning regulation causing the use to be nonconforming;
5. evidence showing that the use has continued from the date, or approximate date, of establishment to the current date without an interruption of more than 12 continuous months; and

6. the nature of the use and location on the property.

Sources of such information may be derived from any of the following:

1. written document (e.g., business license, meeting minutes, reports, planning documents, or a permit or other authorization) maintained by a local, state, or federal governmental body;
2. a newspaper article;
3. a dated photograph;
4. an aerial photograph;
5. a sworn affidavit supplied by the applicant or any other person; and
6. any other authoritative source as approved by the zoning administrator.

#### **70.692 Content of decision document**

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

#### **70.693 Effect of decision**

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

#### **70.694 Appeal**

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

**70.695 to 70.697**

**Reserved**

## DIVISION 15 CONVERSION OF A NONCONFORMING USE

### 70.698 Generally

An existing nonconforming use (e.g., a tavern in a residential district) may be converted to another nonconforming use provided the new use is less nonconforming (e.g., from a tavern to a restaurant).

### 70.699 Initiation

The owner of the subject property may submit an application for a conversion of a nonconforming use, but only when the nonconforming use has been registered as a nonconforming use pursuant to Division 14 of this article.

### 70.700 Review procedure

The general steps outlined below shall be used in the review of an application for a conversion of a nonconforming use.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent shall meet with the zoning administrator to review (i) applicable regulations and procedures, (ii) applicable sections of the Village's comprehensive plan, and (iii) the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the Village's zoning requirements.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
3. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and Village Board, the applicant, and any other interested person upon request.
6. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator provides for a class 2 public notice, property owner notice, and meeting agenda notice.
7. **Public hearing.** Allowing for proper notice, the Village Board and Plan Commission conduct a joint public hearing consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant, Village Board, or Plan Commission may request a continuance consistent with Division 3 of Article 4. If the public hearing is adjourned, the Village Board or Plan Commission may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research and to prepare such documents if deemed necessary, including a preliminary decision document.
8. **Recommendation.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the Plan Commission, no more than 40 calendar days after the public hearing, makes a recommendation to the Village Board based on the decision criteria contained in this division to (i) approve the conversion, (ii) approve the conversion with conditions, or (iii) deny the conversion.
9. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
10. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.

11. **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the Plan Commission's recommendation, the Village Board makes a decision based on the decision criteria contained in this division to (i) approve the conversion, (ii) approve the conversion with conditions, or (iii) deny the conversion.
12. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a final decision document consistent with this division, and a conversion order if approved.
13. **Applicant notification.** If the application is denied, the zoning administrator, within a reasonable time following the Village Board's decision, sends the decision document to the applicant by regular mail and/or email.
14. **Acceptance by property owner.** If the application is approved, the property owner must sign the conversion order to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The conversion order shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
15. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
16. **Recordation.** If the property owner signs the approved conversion order, the zoning administrator records the conversion order in the office of the Washington County register of deeds.

#### 70.701 Basis of decision

The Plan Commission and Village Board shall compare the known and anticipated impacts of the existing nonconforming use on properties in the area and those of the proposed nonconforming use. The Plan Commission shall not recommend and the Village Board shall not approve a conversion when the new nonconforming use would be more of a nonconformity than the existing nonconforming use.

#### 70.702 Imposition of conditions

- A. **Generally.** In approving a conversion, the Village Board may impose one or more conditions deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping and screening, outdoor lighting, and hours of operation.
- B. **Effect on contracts with another party.** The Village Board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>11</sup>

#### 70.703 Application form and content

The application submittal shall include an application form as may be used by the Village and a site plan prepared at a scale of 1" = 20' or other appropriate scale depicting the information listed in Appendix F.

#### 70.704 Staff report content

The staff report should contain the following:

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

<sup>11</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

**70.705 Content of decision document**

- A. **Approval.** If the application for a conversion is approved, the decision document should include the following:
1. a statement that the conversion is approved;
  2. a description of the new nonconforming use;
  3. a statement indicating that the property owner must sign the conversion order and return it to the zoning administrator;
  4. a statement that the applicant may appeal the decision to a court of competent jurisdiction;
  5. a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
  6. other information the review authority or zoning administrator deems appropriate;
  7. the signature of the zoning administrator on behalf of the review authority;
  8. the date of the decision; and
  9. the copy of the conversion order described in s. 70.706.
- B. **Denial.** If the application for a conversion is denied, the decision document should include the following:
1. a statement that the application is denied,
  2. a description of the proposed conversion,
  3. reasons for the decision based on the criteria listed in this division,
  4. a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
  5. a statement that the decision may be appealed as provided for in this division,
  6. other information the Village Board or zoning administrator deems appropriate,
  7. the signature of the zoning administrator on behalf of the Village Board, and
  8. the date of the decision.

**70.706 Content of conversion order**

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

**70.707 Effect of approval**

If the Village Board approves the conversion, such approval shall run with the land and is binding on all subsequent property owners.

**70.708 Expiration of an approval**

If the zoning administrator determines that substantial work as authorized by a conversion approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 13 of this article. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 6 months.

**70.709 Amendment of an approval**

Following approval of a conversion, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without

following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

#### **70.710 Appeal**

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

#### **70.711 to 70.712 Reserved**

### **DIVISION 16 EXPANSION OF A NONCONFORMING BUILDING**

#### **70.713 Generally**

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

#### **70.714 Initiation**

The owner of the subject property may submit an application to expand a nonconforming building with a conforming use.

#### **70.715 Review procedure**

The general steps outlined below shall be used in the review of an application to expand a nonconforming building.

1. **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.
2. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
3. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
4. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Plan Commission consistent with its adopted calendar.
5. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy of it to each member of the Plan Commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator will also provide a copy to interested people upon request.
6. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
7. **Meeting.** Allowing for proper notice, the Plan Commission considers the application at a regular or special meeting.
8. **Recommendation.** The Plan Commission makes a recommendation to (i) approve the expansion, (ii) approve the expansion with conditions, or (iii) deny the expansion. The Plan Commission may render its recommendation at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the public meeting unless the applicant agrees to an extension of a specified duration.

9. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Village Board.
10. **Village Board meeting.** Allowing for proper notice, the Village Board considers the application at a regular or special meeting.
11. **Decision.** The Village Board makes a decision to (i) approve the expansion, (ii) approve the expansion with conditions, or (iii) deny the expansion.
12. **Preparation of decision document.** Based on the action of the Village Board, the zoning administrator prepares a decision document consistent with this division.
13. **Applicant notification.** Within a reasonable time following the Village Board's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
14. **Acceptance by property owner.** If the application is approved, the property owner must sign the decision document to acknowledge the imposition of such condition or conditions and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
15. **Recording of decision document.** The decision document is recorded in the Washington County register of deeds office when approval is granted.
16. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

#### 70.716 Basis of decision

The review authority shall consider the following factors:

1. the degree of the existing nonconformity (i.e., 1 foot into the setback or 1 foot from the property boundary line),
2. the size and configuration of the lot,
3. whether the lot conforms to the dimensional standards of the zoning district in which it is located,
4. the size and location of the existing nonconforming building,
5. the size and location of other existing structures and those structures reasonably anticipated on the lot,
6. the impact, if any, that the expansion may have on adjoining properties,
7. whether the proposed expansion would violate the intent of this chapter, and
8. any other factor that relates to the purposes of this chapter set forth in s. 70.05 or as allowed by state law.

#### 70.717 Imposition of conditions

- A. **Generally.** In approving an expansion of a nonconforming building, the Village Board may impose one or more conditions of approval deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping, screening, and the maximum size of the building(s), or impose limitations on additional buildings otherwise allowed on the subject property under the applicable zoning district regulations.
- B. **Effect on contracts with another party.** The Village Board shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>12</sup>

<sup>12</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The Village, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

**70.718 Application form and content**

The application submittal shall include an application form as may be used by the Village and a site plan prepared at a scale of 1" = 20' or other appropriate scale depicting the information listed in **Appendix F**.

**70.719 Content of decision document**

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

**70.720 Effect of decision**

If the review authority approves the expansion of a nonconforming building, the approval runs with the land and is binding on all subsequent property owners.

**70.721 Expiration of an approval**

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

**70.722 Appeal**

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

**70.723 to 70.725** Reserved

## DIVISION 17 CODE INTERPRETATION

### **70.726** Generally

From time to time, there may be instances where a person may have a question concerning a provision of this chapter or the application of a provision of this chapter. To ensure this chapter is consistently interpreted over time, a mechanism is needed to issue written interpretations. This division describes the procedures and requirements to issue such interpretations.

### **70.727** Initiation

Any person, including the zoning administrator, may submit a question for interpretation.

### **70.728** Limitations on interpretations

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

### **70.729** Review procedure

- A. **Zoning administrator review.** The general steps outlined below shall be used to render an interpretation.
  1. **Submittal of question.** The individual requesting the interpretation shall submit the question in writing to the zoning administrator and the application fee as may be established by the Village Board.
  2. **Decision.** In consultation with the village attorney, the zoning administrator shall make a written decision within 60 calendar days of when the petition was submitted.
  3. **Notification of decision.** Within a reasonable time following completion of the interpretation, the zoning administrator sends a duplicate copy of the interpretation by regular mail and/or email to the individual requesting the interpretation and provides a copy of the same to the Plan Commission, the village attorney, and those village employees and agents involved in the administration of this chapter, as appropriate.
  4. **Public record copy.** A duplicate copy of the interpretation is retained as a public record.
- B. **Plan Commission review on appeal.** If a final decision of the zoning administrator is appealed as provided for in this division, the general steps outlined below shall be used to render an interpretation.
  1. **Submittal of application materials.** The zoning administrator forwards the application and other materials the applicant submitted to the Plan Commission along with the administrator's interpretation.
  2. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator places the matter on the meeting agenda of the Plan Commission.
  3. **Meeting.** Allowing for proper notice, the Plan Commission considers the appeal at a regular or special meeting.
  4. **Decision.** In consultation with the village attorney, the Plan Commission makes a written decision within 60 calendar days of when the zoning administrator's decision was appealed.
  5. **Preparation of decision document.** Based on the action of the Plan Commission, the zoning administrator within 15 calendar days of such decision prepares a decision document consistent with this division.
  6. **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
  7. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

**70.730 Basis of decision**

- A. **General.** In consultation with the village attorney and others as appropriate, the review authority shall (1) evaluate the section of this chapter in question and those that are related, (2) consider the purposes of this chapter set forth in s. 70.05 and other parts of the chapter along with applicable legislative findings contained in this chapter, and (3) consider other applicable interpretations that have previously been made and make a decision consistent with this division giving this chapter its most reasonable application. If the review authority cannot make a reasonable interpretation, a determination shall not be issued.
- B. **Floodplain zoning.** If an unclear provision relates to the floodplain regulations and is required by ch. NR 116, Wis. Admin. Code, the provision shall be interpreted in light of the standards in ch. NR 116 in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- C. **Shoreland-wetland zoning.** If an unclear provision relates to the shoreland-wetland regulations and is required by ch. NR 117, Wis. Admin. Code, the provision shall be interpreted in light of the standards in ch. NR 117 in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- D. **Similarity of land uses.** In making a determination as allowed under s. 70. [11.06.32] with respect to similarity of land uses, the zoning administrator should consider (1) the nature of the requested use; (2) whether the requested use is consistent with the Village's comprehensive plan; and (3) whether the requested use is consistent with the purposes of each of the zoning districts where the similar use is allowed either by right or as a conditional use.

**70.731 Repeal or revision of an interpretation**

The review authority may rescind or modify an interpretation the review authority issued if such interpretation is deemed to be incorrect in whole or in part.

**70.732 Interpretation content**

An interpretation shall be in writing and contain the following:

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

**70.733 Effect of interpretation**

An interpretation once rendered shall have full effect as if set forth in this chapter. Where appropriate, interpretations should be addressed through the amendment process. If the review authority determines that it is not possible to make a reasonable interpretation, such decision shall not affect the validity of any section of this chapter.

**70.734 Compilation of interpretations**

The zoning administrator shall keep a written record of all interpretations in effect and make them available for public inspection during normal office hours.

**70.735 Appeal**

An aggrieved person may, without time constraint, appeal an interpretation made pursuant to this division by filing an appeal with the Plan Commission. Following the final decision of the Plan Commission, an aggrieved person may appeal such decision to a court of competent jurisdiction without time constraint.

**70.736 to 70.739 Reserved****DIVISION 18  
ADMINISTRATIVE APPEAL****70.740 Generally**

Recognizing that there may be situations where a property owner or another party believes that the zoning administrator made an error in administering a zoning code, the state legislature established a mechanism to allow the Zoning Board of Appeals to review alleged administrative errors. This division describes the requirements and procedures for reviewing an alleged administrative error.

**70.741 Initiation**

Any person aggrieved by a final decision of the zoning administrator may file an appeal with the Zoning Board of Appeals consistent with this division.

**70.742 Review procedure**

The general steps outlined below shall be used in the review of an administrative appeal.

1. **Submittal of appeal.** The applicant submits a written appeal to the village clerk within 30 calendar days of the date of the administrative decision being appealed, unless a different timeframe is established.
2. **Notification of appeal.** The village clerk provides a duplicate copy of the appeal to the Zoning Board of Appeals and the zoning administrator.
3. **Compilation and submittal of record.** The zoning administrator compiles a complete and accurate record relating to the action being appealed and transmits it to the Zoning Board of Appeals in a timely manner.
4. **Special notice to Department of Natural Resources.** If the administrative appeal relates to a decision relating to the floodplain regulations or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources by regular mail and/or email at least 10 calendar days before the date of the public hearing.
5. **Special notice to parties in interest.** The chairperson of the Zoning Board of Appeals gives notice for the public hearing to the parties in interest, including the applicant and the zoning administrator.
6. **General notice.** The chairperson of the Zoning Board of Appeals provides a class 2 public notice and meeting agenda notice consistent with Division 2 of Article 4.
7. **Public hearing.** Allowing for proper notice, the Zoning Board of Appeals conducts a public hearing consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant or the Zoning Board of Appeals may request a continuance consistent with Division 3 of Article 4.
8. **Decision.** After the public hearing has been closed, the Zoning Board of Appeals makes a decision to affirm the zoning administrator's decision, set aside the decision, or modify the decision. The Zoning Board of Appeals may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the date of the initial meeting unless the applicant agrees to an extension of a specified duration.
9. **Notification of decision.** Within a reasonable time following the Zoning Board of Appeals' decision, the village clerk sends the decision document to the applicant by regular mail and/or email and provides a duplicate copy of the same to the zoning administrator and the Plan Commission.
10. **Notification to Department of Natural Resources.** If the administrative appeal relates to a decision relating to the floodplain regulations or shoreland-wetland regulations in this chapter, the village clerk sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources by regular mail and/or email.
11. **Public record copy.** A duplicate copy of the decision document is retained as a public record.

**70.743 Basis of decision**

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

**70.744 Effect of appeal**

An appeal shall stay all legal proceedings in furtherance of the action from which the appeal is made, unless the zoning administrator certifies in writing to the Zoning Board of Appeals that a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Board of Appeals or by a court of record on application, with notice to the zoning administrator from whom appeal is made.

**70.745 Appeal**

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

**70.746 to 70.749 Reserved**

**DIVISION 19  
VARIANCE**

**70.750 Generally**

Recognizing that there may be situations where a zoning regulation that if enforced would cause unnecessary hardship to individual landowners, the state legislature established a mechanism to allow a municipality to issue a variance in those instances where a minor deviation would be appropriate to alleviate such hardship without circumventing or undermining the intent of the municipality's zoning regulations. This division describes the requirements and procedures for reviewing variance applications for dimensional standards.

**70.751 Initiation**

The owner of the subject property may submit an application for a variance.

**70.752 Review procedure**

The general steps outlined below shall be used in the review of a variance application.

1. **Submittal of application materials.** The applicant submits a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Village Board.
2. **Determination of completeness.** The zoning administrator reviews the submittal within 10 days of receiving the application and other required materials to make sure it is complete and ready for further review. If it is not complete, the zoning administrator will notify the applicant in writing of such deficiencies and that the applicant has 3 months from the date of the notice to resubmit the application or forfeit the application fee. The zoning administrator will take no further steps to process the application until the deficiencies are remedied. The incomplete application is retained as a public record.
3. **Review date.** When the zoning administrator determines the application is complete, he or she schedules the review with the Zoning Board of Appeals consistent with its adopted calendar.
4. **Special notice to Department of Natural Resources.** If the application relates to the floodplain regulations or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email at least 10 calendar days before the date of the public hearing.

5. **General notice.** Consistent with Division 2 of Article 4, the zoning administrator provides for class 2 public notice, property owner notification, and meeting agenda notice.
6. **Staff report preparation and distribution.** The zoning administrator prepares a written staff report as described in this division and provides a copy to each member of the Zoning Board of Appeals and the applicant. The zoning administrator provides a copy to interested people upon request.
7. **Public hearing.** Allowing for proper notice, the Zoning Board of Appeals holds a public hearing consistent with Division 3 of Article 4. Prior to the close of the public hearing, the applicant or the board may request a continuance consistent with Division 3 of Article 4. If the public hearing is adjourned, the Zoning Board of Appeals may direct the zoning administrator, the village engineer, and/or village attorney to conduct additional research and to prepare such documents it deems necessary, including a preliminary decision document.
8. **Decision.** After the public hearing has been closed, the Zoning Board of Appeals after considering the comments and the staff report makes a decision based on the decision criteria contained in this division to (i) approve the variance, (ii) approve the variance with conditions, or (iii) deny the variance. The Zoning Board of Appeals may render its decision at the same meeting the public hearing is conducted or at a subsequent meeting, but no later than 40 calendar days after the public hearing unless the applicant agrees to an extension of a specified duration.
9. **Preparation of decision document.** Based on the action of the Zoning Board of Appeals, the zoning administrator prepares a decision document consistent with this division.
10. **Applicant notification.** Within a reasonable time following the Zoning Board of Appeals' decision, the zoning administrator sends the decision document to the applicant by regular mail and/or email.
11. **Notification to Department of Natural Resources.** If the application relates to the floodplain regulations or shoreland-wetland regulations in this chapter, the zoning administrator sends a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources via regular mail and/or email.
12. **Acceptance by property owner.** If the Zoning Board of Appeals grants the variance with one or more condition of approval, the property owner must sign the decision document to acknowledge the imposition of such condition or conditions and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the zoning administrator requesting an extension and the zoning administrator may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the Village. The decision document shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.
13. **Public record copy.** A duplicate copy of the decision document is retained as a public record.
14. **Additional procedural steps.** If the Zoning Board of Appeals grants the variance, the applicant shall then follow other review procedures as may be required.

#### **70.753 Basis of decision**

The Zoning Board of Appeals shall base its decision upon the standard for a variance described in s. 62.23(7)(e)(7), Wis. Stats., and applicable judicial interpretations of such statute.

#### **70.754 Limitations on issuing a variance**

The following actions shall not be allowed by an area variance, and shall be deemed to be a use variance subject to the use variance standard in s. 62.23(7)(e)(7)(d), Wis. Stats.:

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

**70.755 Imposition of conditions**

In approving a variance, the Zoning Board of Appeals may impose such conditions and restriction as may be necessary to grant approval.

**70.756 Application form and content**

The application submittal shall include an application form as may be used by the Village and a project map prepared at an appropriate scale depicting the information listed in [Appendix F](#).

**70.757 Staff report content**

The staff report should contain the following:

1. preliminary findings for the decision criteria listed in this division;
2. a preliminary recommendation to approve the application, approve the application with conditions, or deny the application;
3. a preliminary list of conditions for approval whether the staff recommendation is for approval or denial; and
4. other information deemed necessary.

**70.758 Content of decision document**

A. **Approval.** If an application for a variance is approved, the decision document should include the following:

1. a statement that the variance is approved;
2. a description of the variance;
3. reasons for the decision based on the criteria listed in this division;
4. conditions of approval, if any;
5. if one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same;
6. a statement that the approval will automatically expire 12 months after the date of approval unless substantial work as authorized by the approval has commenced and continues in good faith to completion and that the Zoning Board of Appeals may, with cause, grant a one-time extension, not to exceed 6 months;
7. a statement that the applicant may appeal the decision to a court of competent jurisdiction;
8. a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk;
9. other information the Zoning Board of Appeals or zoning administrator deems appropriate;
10. the signature of the chairperson of the Zoning Board of Appeals; and
11. the date of the decision.

B. **Denial.** If the application for a variance is denied, the decision should include the following:

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

7. the signature of the chairperson of the Zoning Board of Appeals, and
8. the date of the decision.

**70.759 Effect of approval**

- A. **Generally.** An approved variance merely sets aside the rule or regulation from which relief is sought. All other rules and regulations not part of the variance decision must be followed. The variance runs with the land.
- B. **Creation of nonconformity.** If a variance is granted and creates a nonconforming situation, the premises is subject to all applicable provisions relating to nonconformities set forth in Article 14.

**70.760 Effect of denial**

If the Zoning Board of Appeals denies a variance application, the board may not rehear the same, or essentially the same, application unless there has been substantial change in the circumstances relating to the application.<sup>13</sup>

**70.761 Expiration of an approval**

A variance approval shall automatically expire 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension, not to exceed 12 months, provided (1) the permit holder requests the extension prior to the expiration of the permit, (2) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (3) the project complies with this chapter in effect at the time the extension is granted.

**70.762 Appeal**

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

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<sup>13</sup> Commentary; See *Tatecka v City of Waukesha Bd. of Zoning Appeals*, 220 Wis.2d 656, 583 N.W. 2d 871 (Ct. App. 1998).

**Village of Richfield – Zoning Code Rewrite Project**  
**Summary of Existing and Proposed Review Authority – December 26, 2019**

Type of Application		Zoning Administrator	Architectural Review Committee	Plan Commission	Village Board	Zoning Board of Appeals	Court of Competent Jurisdiction
1. Code amendment – text and map	Existing	SR	-	R	D	-	CA
2. Planned development district	Existing	SR	-	R	D	-	CA
3. Conditional use	Existing	SR	-	R	D	-	CA
4. Wireless telecommunication facility	<b>New procedure</b>						
• New tower & Class 1 collocation		SR	-	D	LA?	-	CA
• Class 2 collocation		D	-	-		LA	CA
5. Site plan/plan of operation	Existing	SR	-	D	-	-	CA
	<b>Proposed change</b>	SR	-	D	LA?	-	CA
6. Architectural review (building plans)	Existing	SR	R	D	LA?	-	CA
7. Special exception	<b>New procedure</b>	SR	-	D	LA?	-	CA
8. Zoning permit	Existing	D	-	-	-	LA	CA
9. Floodplain permit	Existing	D	-	-	-	LA	CA
10. Berm permit	Existing	D	-	-	-	LA	CA
11. Temporary use permit - 30 days or less	Existing	D	-	-	-	LA	CA
12. Temporary use permit - more than 30 days but less than 90	Existing	SR	-	D	-	-	CA
13. Termination of use - voluntary	<b>New procedure</b>	SR	-	-	D	-	CA
Termination of use - involuntary	Existing	SR	-	R	D	-	CA
14. Registration of a nonconforming use	<b>New procedure</b>	SR	-	R	D	-	CA
15. Conversion of a nonconforming use	Existing	SR	-	-	-	D	CA
	<b>Proposed</b>	SR	-	R	D	-	CA
16. Expansion of a nonconforming building	<b>New procedure</b>	SR	-	R	D	-	CA
17. Code interpretation	Existing	SR	-	-	-	D	CA
	<b>Proposed change</b>	D	-	LA	-	-	CA
18. Administrative appeal	Existing	SR	-	-	-	D	CA
19. Variance	Existing	SR	-	-	-	D	CA

Key:

SR – staff report; R – recommendation; D – final decision; LA – local appeal; CA – court appeal