

ORDINANCE NO. 2022-7

AN ORDINANCE TO REPEAL AND RECREATE SECTIONS 36-53 AND 36-56 OF THE MUNICIPAL CODE OF THE VILLAGE OF ROCHESTER TO ALLOW THE VILLAGE PLAN COMMISSION TO GRANT OR DENY CONDITIONAL USE PERMITS IN THE SHORELAND-WETLAND AND SHORELAND ZONING DISTRICTS

WHEREAS, Wisconsin Statutes Section 62.23(7)(de) allows a municipality to grant conditional use permits upon publishing a Class 2 notice and holding a public hearing on the application; and

WHEREAS, the Village Board of the Village of Rochester has delegated the authority of granting conditional use permits to the Village Plan Commission; and

WHEREAS, upon review of the Village Code by Village staff, Section 36-53 of the Village of Rochester Village Code still requires the Village Board to hold the public hearing and grant or deny conditional use permits in the Shoreland-Wetland and Shoreland Zoning Districts; and

WHEREAS, Village staff recommended updating the Village Code to create uniformity throughout the Code for the hearing and decision on conditional use permit applications; and

WHEREAS, this zoning amendment was initiated pursuant to Section 36-58 of the Village of Rochester Shoreland-Wetland Zoning Code; and

WHEREAS, a copy of the proposed text amendment was submitted to the Wisconsin Department of Natural Resources within five (5) days of the proposed amendment being submitted to the Village Plan Commission, as required by Section 36-58(A) of the Village of Rochester Shoreland-Wetland Zoning Code; and

WHEREAS, the matter was duly referred to the Village of Rochester Plan Commission for report and recommendation pursuant to Section 36-58(B) of the Village of Rochester Shoreland-Wetland Zoning Code, and the Village Plan Commission has reviewed the matter and offered its recommendation to the Village Board; and

WHEREAS, a duly noticed public hearing was conducted by the Village Board of the Village of Rochester on _____, 2022 as required by Section 36-58(B) of the Village of Rochester Shoreland-Wetland Zoning Code; and

WHEREAS, the Village Board of the Village of Rochester, upon recommendation from Village staff and Village Plan Commission, finds that updating Section 36-53 of the Village Code to allow the Village Plan Commission to hear and decide upon conditional use permit applications will be a benefit to the Village residents by creating a uniform process for all conditional use permit applications; and

WHEREAS, the Village Board finds that this change to the Village of Rochester Shoreland-Wetland Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and

therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, the Village Board for the Village of Rochester, Racine County, Wisconsin finds that the public necessity, convenience, general welfare and good zoning practice require the amendments to the Village Code described herein; and

WHEREAS, the Village Board of the Village of Rochester having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such zoning change on the health, safety and welfare of the community, hereby determine that the procedural zoning change will not violate the spirit or intent of the Shoreland-Wetland Zoning Code for the Village of Rochester, will not be contrary to the public health, safety or general welfare of the Village of Rochester, and will not be hazardous, harmful, noxious, offensive and the change to the Shoreland-Wetland Zoning Code is consistent with the Village of Rochester Comprehensive Plan.

NOW, THEREFORE, the Village Board of the Village of Rochester, Racine County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 36 of the Village of Rochester Municipal Code entitled "Shoreland-Wetland and Shoreland Zoning Districts," Article 5 entitled "Administration," Section 36-53 entitled, "Conditional Use Permits," is hereby repealed and re-created as follows:

36-53. CONDITIONAL USE PERMITS

A. Application. Any use listed as a conditional use in this Chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a Conditional Use Permit has been granted by the [Plan Commission Village Board](#) after [recommendation received by the Plan Commission](#) following the procedures in this Chapter and in Chapter 35 of this Municipal Code.

B. Conditions. Upon consideration of the permit application and the standards applicable to the conditional uses designated in this Chapter, the [Plan Commission Village Board](#) shall attach such conditions to a Conditional Use Permit, in addition to those required elsewhere in this Chapter, as are necessary to further the purposes of this Chapter as listed in s. 36-2. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Plan Commission [and Village Board](#) may require the applicant to furnish, in addition to the information required for a Zoning Permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Chapter.

SECTION 2: Chapter 36 of the Village of Rochester Municipal Code entitled "Shoreland-Wetland and Shoreland Zoning Districts," Article 5 entitled "Administration," Section 36-56 entitled "Plan Commission and Village Board" is here repealed, re-created, and re-titled as follows:

36-56. PLAN COMMISSION ~~AND VILLAGE BOARD~~

A. The Plan Commission appointed by the Village pursuant to Wis. Stat. s. 62.23(1) shall consider, hold hearings, and make decisions on applications for Conditional Use Permits, ~~and forward its recommendations to the Village Board for hearing and decision.~~

B. Notice and Public Hearings.

1. Before making a decision on an application for a Conditional Use Permit, the ~~Plan Commission Village Board~~ shall, within a reasonable period of time, hold a public hearing. The ~~Plan Commission Board~~ shall give public notice of the hearing by publishing a class 1 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Plan Commission Board. At the public hearing, any party may present testimony in person, by agent or by attorney.
2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving Shoreland-Wetland Zoning or Shoreland Zoning.
3. The additional provisions for notice to neighbors set forth in Chapter 35 shall apply.

C. Decisions.

1. The final disposition of an application for a Conditional Use Permit before the ~~Village Board~~Plan Commission shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the ~~Village President~~Chairman of the Plan Commission.
2. Such decision shall state the specific facts which are the basis of the ~~Board~~Plan Commission's determination and shall either grant or deny the Conditional Use Permit.
3. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.
4. If the ~~Plan Commission Board~~ grants the Conditional Use Permit, it shall direct the Zoning Administrator to issue the Permit, inclusive of the conditions thereto.

SECTION 3: SEVERABILITY

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

SECTION 4: CONTINUATION OF EXISTING PROVISIONS

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are

intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

SECTION 5: EFFECTIVE DATE

This ordinance shall take effect on _____, 2022 after passage and posting and/or publication as provided by law.

PASSED AND ADOPTED by the Village Board of the Village of Rochester on this _____ day of _____, 20__.

VILLAGE OF ROCHESTER

Edward Chart, Village President

Attest:

Sandra Swan, Village Clerk