

STATE OF WISCONSIN

TOWN OF DELAFIELD

WAUKESHA COUNTY

ORDINANCE NO. 2011-002

**AN ORDINANCE TO CREATE AND TO
REPEAL AND RECREATE CERTAIN PORTIONS OF
SECTION 17.03 1. OF THE TOWN OF DELAFIELD
CODE OF ORDINANCES REGARDING
APPLICATION INFORMATION REQUIREMENTS
AND REVIEW PROCEDURES FOR BUILDING PERMITS
AND ZONING PERMITS IN THE TOWN OF DELAFIELD**

WHEREAS, from time to time, the Town Plan Commission reviews the Zoning Code (Chapter 17) of the Town of Delafield Municipal Code; and

WHEREAS, this amendment to the zoning regulations of the Town of Delafield was initiated by the Plan Commission pursuant to Section 17.10(5) of the Town of Delafield Zoning Code; and

WHEREAS, the Town of Delafield Plan Commission has determined that certain sections should be modified to clarify, add or delete language to better meet the purpose of the Chapter; and

WHEREAS, the Plan Commission has conducted the necessary investigation and has reported its recommendation to the Town Board pursuant to Section 17.10(5)(D) of the Town of Delafield Zoning Code; and

WHEREAS, upon due notice as required by Section 17.10(5)(F) and Section 17.10(6) of the Town of Delafield Zoning Code, the Town Board conducted a public hearing regarding the proposed amendments on March 1, 2011; and

WHEREAS, the Town Board of the Town of Delafield, having carefully reviewed the recommendation of the Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, and having given the matter due consideration, and having based its determination on the effect of the zoning amendment on the health, safety and welfare of the community, and having given due consideration to the municipal problems involved as well as the impact on surrounding properties as to noise, dust, smoke and odor, hereby determines that the zoning amendment will not violate the spirit or intent of the Zoning Code for the Town of Delafield, will not be contrary to the public health, safety or general welfare of the Town of Delafield, will not be hazardous, harmful, noxious, offense, or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of properties affected by these zoning amendments, and further finds that these amendments will be consistent with the Town of Delafield Comprehensive Plan,

NOW, THEREFORE, the Town of Delafield Board of Supervisors DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning Ordinance,” Section 17.03 entitled “General Regulations,” subsection 1. entitled “General Permit Regulations,” subsection A. entitled “Building and Zoning Permit,” subsection 1. entitled “Required,” is hereby repealed and recreated as follows:

17.03 1. A.

1. **Required.** No building or structure shall be erected, converted, relocated, enlarged, structurally altered or moved from one location to another, unless and until a building permit is secured from the Code Enforcement Officer and a zoning permit is secured from the Zoning Administrator, certifying that such building or structure complies with the provisions of this chapter and with the building code and other applicable codes of the Town.

SECTION 2: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning Ordinance,” Section 17.03 entitled “General Regulations,” subsection 1. entitled “General Permit Regulations,” subsection A. entitled “Building and Zoning Permit,” subsection 2. entitled “Application,” subsection b. the introductory paragraph only, preceding subsection (1), is hereby repealed and recreated with the title “Plat of Survey,” as follows:

17.03 1. A. 2.b.

Plat of Survey. Except as described in subsection (e.), below, a plat of survey of the proposal involved, drawn to a reasonable scale and properly dimensioned, shall be prepared and certified by a surveyor registered by the State. Such survey shall bear the date of the survey, which shall be within one year of the application for the building permit. The survey shall also show the following:

SECTION 3: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning Ordinance,” Section 17.03 entitled “General Regulations,” subsection 1. entitled “General Permit Regulations,” subsection A. entitled “Building and Zoning Permits,” subsection 2. entitled “Application,” subsection b., subsection (4) is hereby repealed and recreated as follows:

17.03 1. A. 2.b. (4)

The location on the property of any existing buildings, structures, hard surfaces, proposed additions or proposed new buildings and structures, including the measured distances between such buildings and structures and the lot lines, and a chart indicating the area, measured in square feet, of each structure or hard surface.

SECTION 4: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning Ordinance,” Section 17.03 entitled “General Regulations,” subsection 1. entitled “General Permit Regulations,” subsection A. entitled “Building and Zoning Permit,” subsection 2. entitled “Application,” subsection e. entitled “Plat of Survey Exceptions,” is hereby created as follows:

e. “Plat of Survey Exceptions.” The following exceptions apply to the survey otherwise required by subsection b., above.

(1) For zoning permits that do not involve construction of a building (e.g. landscape, hardscape, driveway modifications) and do not need a building permit, a site plan containing all required information above, prepared and stamped by a registered engineer, registered landscape architect or registered architect may be substituted for the plat of survey.

(2) For proposals for interior modifications only, that do not change the open space on the property, no plat of survey is required.

(3) For zoning permits or building permits on lots that have at least 1,500 square feet more open space than the minimum required by this Code, no plat of survey is required, subject to the following. This option is only available if the Applicant or the Zoning Administrator produce, for the Zoning Administrator’s use current, clear, readable aerial photography to determine the existing amount of open space and dimensional elements of a site. If the Zoning Administrator determines under this subsection that a plat of survey is not required, then in lieu of the plat of survey the Applicant shall designate and show an area equal to the open space on an aerial photo acceptable to the Zoning Administrator which encompasses all the existing and proposed hard surface improvements, and the Zoning Administrator shall review this alternative document when conducting the open space review procedure of Section 17.03 1.A.3. of this Code.

SECTION 5: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning Ordinance,” Section 17.03 entitled “General Regulations,” subsection 1. entitled “General Permit

Regulations,” subsection A. entitled “Building and Zoning Permit,” subsection 6. entitled “Open Space Review Procedure by Zoning Administrator,” is hereby created as follows:

17.03 1. A.6.

6. Open Space Review Procedure by Zoning Administrator

- a. Documents are received by the Zoning Administrator and checked for completeness.
- b. Zoning Administrator shall walk the site to determine if the plat of survey or site plan captured all the existing hard surfaces and structures. If there are items missing, the applicant will be contacted and shall be required to provide this information.
- c. Zoning Administrator completes the zoning permit using the information on the plat of survey/site plan, unless the Zoning Administrator finds it to be inaccurate. If the Zoning Administrator finds it to be inaccurate, the applicant will be contacted and shall be required to provide this information.
- d. The Zoning Administrator reviews, as applicable the subdivision plat, conditional use and any other conditions put on the zoning of the property by the Town that dictates restrictions related to open space, land disturbance, tree removal or anything else that may affect the development of the property.
- e. Zoning Administrator informs the Applicant and the Owner of the property in writing of the current and required open space on the property via information on the zoning permit.
- f. For (i) any improvements to homes on lots directly adjacent to Pewaukee Lake, and (ii) new homes, additions, or lots with substantial hardscape improvements that reduces the open space to within 500 square feet or less of what is required; an as-constructed survey shall be prepared and submitted to the Zoning Administrator showing the final location of all improvements and a chart indicating the areas of all improvements on the site and the open space calculation. No occupancy permit shall be issued unless and until this document is submitted to and has received the approval of, the Zoning Administrator. The Zoning Administrator shall review the calculations and update the zoning permit as needed to reflect the final calculation of open space on the property. The Zoning Administrator shall place the as-constructed drawing and the final zoning permit in the Town property file. No temporary occupancy permit can be issued for such a property, unless the Property Owner first provides a cash deposit of \$1.00 per square foot of floor space as defined on the building permit, with a minimum deposit of \$1,500 for completion of the as-constructed survey. Such cash deposit shall be retained by the Town Treasurer until such time as the Town Treasurer receives written notice from the Zoning Administrator that the as-constructed survey requirement has been met and the cash deposit should be refunded. It is the Applicant’s responsibility to request the return of the deposit when the Applicant believes that the work is completed. The deposit is returnable

only to the party who made the deposit unless satisfactory proof is shown that this right to claim the deposit has been assigned to a different claimant. In the event application for return of the deposit is not made within two (2) years of issuance of the temporary occupancy permit, the deposit shall be forfeited, and upon forfeiture the amount forfeited shall be owned by the Town without claim from the person making the deposit or from any other person. In the event a deposit is forfeited, this does not relieve the Applicant of the obligation to comply with the as-constructed survey requirements of this subsection, and forfeiture of the deposit by the Town is in addition to such other penalties and remedies as may apply.

SECTION 6: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning Ordinance,” Section 17.03 entitled “General Regulations,” subsection 1. entitled “General Permit Regulations,” subsection B. entitled “Occupancy Permit,” subsection 3. entitled “Temporary Occupancy Permit,” is hereby repealed and recreated as follows:

3. **Temporary Occupancy Permit.** Pending the issuance of a regular permit, a temporary permit may be issued for a period not exceeding six months during the completion of alterations or during partial occupancy of land, premises, building or structure pending its permanent occupation. Such temporary permit shall not be issued except under such restrictions and provisions as will adequately ensure the safety of the occupants, and in any event will not be issued until the complete plumbing and electrical wiring and outlets are installed and approved and until the plastering, if any, and the outside wall insulation are completed. There shall be a charge for the temporary permit as set from time-to-time by resolution of the Town Board. Upon expiration of the temporary permit, the temporary permit shall be void and the occupancy must cease until such time as all provisions of this chapter are met. No temporary occupancy permit can be issued on properties subject to an as-constructed survey requirement per Section 17.03 1.A.6.f., except upon payment of a cash deposit as described therein.

SECTION 7: 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 8: EFFECTIVE DATE

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

This ordinance passed this 8th day of March, 2011.

BY THE TOWN BOARD OF THE
TOWN OF DELAFIELD:



Paul L. Kanter, Town Chairman

ATTEST:



Mary T. Eskner, CMC, WCMC
Town Clerk

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