

STATE OF WISCONSIN

WAUKESHA COUNTY

TOWN OF DELAFIELD

ORDINANCE NO. 2013-01

AN ORDINANCE TO CREATE SECTIONS 17.02(1)(G), 17.07(2)(C)(4) and 17.07(2)(I)  
OF THE TOWN OF DELAFIELD ZONING ORDINANCE REGARDING  
LEGAL NONCONFORMING STRUCTURES AND LOTS

WHEREAS, the State of Wisconsin has amended State laws that relate to legal nonconforming structures and lots in recent years, most recently by 2011 Wisconsin Act 170 which became effective on April 17, 2012; and

WHEREAS, the Town of Delafield Zoning Administrator and Town Attorney have recommended that the Town of Delafield Zoning Code be updated, to comply with amended State laws in this regard; 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 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 July 9, 2013; 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, offensive, 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 Board of the Town of Delafield, Waukesha County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code, entitled "Zoning Ordinance," Section 17.02 entitled "Rules and Definitions," subsection (1) entitled "Rules," subsection (G) is hereby created as follows:

- G. References in this Chapter to sections of the United States Code, or State of Wisconsin Statutes, or the Wisconsin Administrative Code shall be interpreted to include such amendments, repeal, renumbering and binding judicial interpretation of such State and federal laws as may be made from time to time, unless expressly stated otherwise. No such reference to State or federal law shall be interpreted to delegate interpretation authority to any person or entity outside of the Town of Delafield municipal government, however, and the Town of Delafield reserves to itself the right to interpret applicable laws and to appeal interpretations that it believes are incorrect, and to seek the repeal or amendment of laws that it believes are not in the best interests of the Town of Delafield.

SECTION 2: Chapter 17 of the Town of Delafield Municipal Code, entitled "Zoning Ordinance," Section 17.07 entitled "Nonconforming Uses, Structures, and Lots," subsection (2), entitled "Classification and Regulations," subsection (C), entitled "Legal Conforming Uses on a Conforming Lot or Nonconforming Lot Containing Legal Nonconforming Structures," subsection (4) is hereby created as follows:

- 4. Notwithstanding subsections 1, 2, and 3, above, repair, maintenance, renovation, remodeling and restoration of such legal nonconforming building or structure can be conducted under circumstances allowed by Wisconsin Statutes Section 62.23(7)(hb) or (hc), in full compliance with statutes. This subsection (4) is intended to comply with Wisconsin Statutes Section 62.23(7)(hb) and (hc).

SECTION 3: Chapter 17 of the Town of Delafield Municipal Code, entitled "Zoning Ordinance," Section 17.07 entitled "Nonconforming Uses, Structures, and Lots," subsection (I), entitled "Limited Shoreland Exception," is hereby created as follows:

I. **Limited Shoreland Exception.**

Notwithstanding limitations that may apply to structures and lots by this Section 17.07, in locations that are subject to the jurisdiction of the Waukesha County Shoreland and Floodland Protection Ordinance, and State DNR Shoreland Zoning Standards, legal nonconforming structures may be located, maintained, expanded, replaced, repaired or relocated as allowed by the State DNR Shoreland Zoning Standards; and construction of buildings or structures may be allowed on legal nonconforming lots as allowed by the State DNR Shoreland Zoning Standards; provided that this

exception applies only to the extent as is required by Wisconsin Statutes Section 59.692(2m).

**SECTION 4: 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 this ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances having terms in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

**SECTION 5: EFFECTIVE DATE.** This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Passed and approved this 11<sup>th</sup> day of June, 2013.

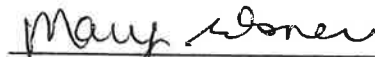
Town of Delafield

By:



Paul L. Kanter, Town Chairman

ATTEST:



Mary Elsher, Town Clerk