



## **Audit of Chapter 17: Zoning Summary of Recommended Changes**

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### **A. Introduction**

The purpose of the zoning audit is to review Chapter 17: Zoning Code (hereafter, the ordinance), its application forms, and its application review & decision process, in order to provide a list of recommended amendments intended to:

- Make the ordinance more attuned to the needs of the community by simplifying and streamlining the application, review, and approval process
- Enhance its legal defensibility
- Excise obsolete, inconsistent, and redundant language
- Rectify internal conflicts and inconsistencies
- Address areas of noncompliance with relevant state and federal laws
- Modernize the document to reflect the desires of the Waupaca community and accommodate 21st century land use standards

### **B. Consistency and Compliance with State & Federal Statutes**

- (1) Chapter 62.23(7)(de), Wis. Stats. – 2017 Wisconsin Act 67
  - (a) Review all conditional uses, special exceptions, and other special zoning permissions to determine compliance with Act 67 (see ‘Section E – Act 67 Review’ beginning on page 6 of this report).
- (2) Chapter 66.0401, Wis. Stats. – Solar and Wind Energy Systems Regulations.
  - (a) Incorporate language regulating the placement, construction, operation, and maintenance of solar and wind energy systems consistent with Chapter 66.0401.
  - (b) Consider also language regulating geothermal systems and electric vehicle infrastructure.
- (3) Chapter 66.0404, Wis. Stats., Mobile Tower Siting Regulations
  - (a) Amend Section 17.303 to comply with Chapter 66.0404. This will likely require separating the section in two: one regulating mobile service facilities (cell towers); the other telecommunications facilities.
  - (b) Amend district regulations to allow for mobile towers as conditional (or special) use in all districts.
- (4) Chapter 66.1001, Wis. Stats. – Comprehensive Planning
  - (a) Upon adoption of the updated comprehensive plan, amend the zoning ordinance to be consistent with the plan.



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- (5) Chapter 66.1014, Wis. Stats. – Limits on Residential Dwelling Rentals (2017 Wisconsin Act 59)
  - (a) Amend ordinance to include Short-Term Rentals as Permitted Use in districts that allow residential uses.
  - (b) Section 17.210(1)(c)(20) is noncompliant with Act 59.
- (6) 42 U.S.C. §§ 2000cc – Religious Land Use and Institutionalized Persons Act (RLUIPA)
  - (a) Convert ‘Churches’ from Special Use to Permitted Use in the B-1 District.
  - (b) Add ‘Churches’ as Permitted Use in the B-2, B-3, B-4, B-5, and PUL Districts.
  - (c) Add ‘Churches’ as a Special Use in the Interchange Zone, B7, I-1, and I-2 Districts.
  - (d) Throughout zoning ordinance, replace ‘Churches’ with ‘Places of Worship’, ‘Religious Institutions,’ or similar First Amendment-compliant term.

### **C. Specific Updates**

- (1) Ensure consecutive numbering throughout all sections (i.e., 17.001, 17.002, 17.003, etc.). Where gaps exist, insert ‘Reserved for Future Use.’
- (2) Section 17.021 – Definitions
  - (a) Move all definitions from body of ordinance into Section 17.021.
  - (b) Remove words from Section 17.021 that do not appear in ordinance and move entire section to end of ordinance.
  - (c) Add definitions for the following:
    - 1. Bed and breakfast establishments
    - 2. Established front yard
    - 3. Short-term rental
    - 4. Temporary structures
    - 5. Sexually oriented land use
    - 6. Outdoor display
    - 7. Live-Work Unit (clearly differentiate from mixed-use)
- (3) Section 17.101 – Location on Lot Required
  - (a) This section may limit opportunities for certain types of mixed-use and multi-family development that are otherwise permissible within ordinance.



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- (4) Section 17.101 – Building Permit Required
- (a) This section seems unnecessarily stringent. Should small garden sheds, backyard chicken enclosures, dog houses, raised bed gardens, ‘rainbow’-style swing sets, and the like require a building permit?
  - (b) Consider creating ‘transitory accessory structure’ classification not requiring permit (not to be confused with temporary structures); include definition of such structures in Section 17.021.
- (5) Section 17.105 – Satellite Dishes or Antennae
- (a) Should Section 17.105 (1) read, ‘Satellite dishes or antennae shall not exceed a diameter of 18 inches *without the approval of the Plan Commission*’?
  - (b) Section 17.105(2) and Section 17.105(3) potentially prevents some landowners from utilizing satellite TV/cable services.
- (6) Section 17.110(7)(b)1 – Height and Area Exceptions
- (a) Are the buildings referred to in Section 17.101 considered accessory buildings or structures under Section 17.110(7)?
  - (b) Should Section 17.110(7)(b)1 be amended to clarify what is meant by square footage of the principal structure? As written, a lot with a 3,500 sq. ft. single-family structure could have a detached accessory structure with a similarly size footprint. Should the footprint of the accessory structure be ‘not to exceed’ the footprint of the principal structure?
  - (c) Correct numbering in ‘Bulk Requirements Tables’ (see 1, 2, 2, 3, etc.).
  - (d) The term “established front yard” appearing in Bulk Requirements Tables is not defined in ordinance.
  - (e) In first Bulk Requirements Table, why 1,008 sq. ft. as opposed to 1,000 sq. ft. for detached garage?
  - (f) Section 17.110(7)(c) ‘Permitted Uses by Special Use Permit in one-family or two-family zoning districts’ violates 2017 Wisconsin Act 67. A special use permit cannot be required for a permitted use.
  - (g) Under Section 17.110(10)(a), a fence is defined as ‘an enclosing barrier consisting of vegetation...’ while Section 17.110(10)(b) sets maximum height of six feet in side or rear yard. Does this mean trees and shrubs planted for screening may not exceed six feet in height?
  - (h) For corner lots, consider establishing Primary Front Yard and Secondary Front Yard classifications, with more lenient restrictions for the latter.



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- (7) Section 17.111(8 and 9) – Board of Appeals, Appeals and Review
  - (a) Move to Section 17.430
- (8) Section 17.111(10) – Penalty
  - (a) Move to Section 17.463
- (9) Section 17.120 – Nonconformity Regulations
  - (a) Revise compliant with 2011 Wisconsin Act 170 and 2017 Wisconsin Act 67.
- (10) Section 17.201 – Map of Standard Zoning Districts
  - (a) Amend Section 17.201(1) as such “...which is made a part of this chapter, *as adopted and amended by the Council from time to time.*”
  - (b) Remove Section 17.201(2).
- (11) Section 17.210 – Agricultural District Requirements
  - (a) Section 17.210(1)(b)2.a seems to be contradicted by Section 17.210(1)(c)3.
- (12) Section 17.220 – Residential District Requirements
  - (a) Section 17.220(1)(b)3 is noncompliant with Chapter 66.1014, Wis. Stats. (2017 Wisconsin Act 59)
- (13) Section 17.280 – Design and Historic Zoning District
  - (a) Consider converting to overlay district.
- (14) Section 17.301 – Mobile Home Parks
  - (a) Recommend Corp Council review section to determine whether any aspect conflicts with Fair Housing Act, the Americans with Disabilities Act, or the Equal Protection and Due Process Clauses of the Constitution.
- (15) Section 17.310 – Signs
  - (a) Consider comprehensive update of section.
- (16) Section 17.330 – Site Plan Requirements.
  - (a) Consider comprehensive update of section.



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### (17) Section 17.430 – Board of Appeals

- (a) Amend Section 17.430(4)(a) to clarify that Board of Appeals may not hear appeals of decisions regarding conditional uses/special uses, as per Act 67.
- (b) Amend Section 17.430(4)(c) to clarify conditions under which a variance made be granted under state law.
- (c) Remove Section 17.430(5)(a) and Section 17.430(5)(b) from ordinance.

### (18) Section 17.440 – Special Uses

- (a) Amend section consistent with requirements of Act 67

### (19) Section 17.462 – Fees

- (a) In Section 17.462(2), change, ‘The City may apply the charges for these services to the petitioner’ to ‘The City *shall* apply the charges for these services to the petitioner.’

## **D. General Updates**

- (1) Consider recommended amendments presented in ‘Zoning Code Rewrite’ memo dated May 23, 2019.
- (2) Undertake a comprehensive review of the permitted and special uses currently listed in the ordinance. Remove those that are undesirable and not present on the landscape.
- (3) Consider creating ‘Central Business District Mixed-Use’ overlay zone.
- (4) Consider adding ‘Bed & breakfast establishments’ as Special Use in residential districts.
- (5) Consider adding ‘Keeping of bees’ as Special Use in residential districts.
- (6) Consider placing all landscaping requirements into a separate landscape section, with subsections specific to each zoning district as relevant.
  - (a) Incorporate a list of species prohibited for use in landscaping plans.
- (7) Consider moving all building architecture and style regulations into a separate section, with subsections specific to each relevant zoning district.
- (8) Move all parking standards into a separate section, with subsections specific to each relevant zoning district.
- (9) Special Use and Conditional Use appear to be used as synonyms at various location within the ordinance; consider converting all to conditional uses.



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(10) Consider adding the phrase, “ And other uses deemed by the Plan Commission to be substantially the same as a listed use” to Permitted Uses for all relevant zoning districts.

(11) Formatting, punctuation, and grammar corrections are required throughout the ordinance.

### **E. Act 67 Review**

#### (1) Background

Adopted in November 2017, Chapter 62.23(7)(de), Wis. Stats. (2017 Wisconsin Act 67) changed the way in which conditional uses (special uses) are administered within zoning ordinances. Prior to the Act, local government could consider a variety of factors in determining: (a) whether to grant a Conditional Use permit (CUP); and, (b) establishing the conditions under which the given use must operate. These included the goals of the comprehensive plan, testimony provided during the public hearing, the reasoned opinion of the Plan Commission and City Council, and past precedent, among others. Under Act 67, conditions must now be:

- Related to the purpose of the ordinance.
- Reasonable and, to the extent practicable, measurable.
- Based on substantial evidence, defined as: *“Facts and information, other than merely personal preference or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”*

The Act also grants certiorari review to anyone denied a CUP the right to, bypassing the Board of Appeals. A permit must be granted if the Applicant agrees to meet all conditions.

#### (2) Existing CUPs

Chapter 62.23(7)(de), Wis. Stats., applies to every CUP issued after the effective date of the statute. However, questions remain as to whether the law applies to existing CUPs. The most likely answer...*it probably does.*

Section 17.3034.03(11) and Section 17.400(3)(b) describe the process of revoking conditional/special use permits in the City of Waupaca. Once a CUP/SUP is revoked, the use(s) in question becomes nonconforming (not to be confused with ‘legal, nonconforming’) and, as such, falls under the provisions of Section 17.463 Penalty and Section 17.464 Enforcement of the zoning ordinance.

When a CUP is revoked, the landowner has the right to apply for reinstatement or reapply for new CUP. Should a permit holder of a revoked CUP choose to reapply for a new CUP, the re-application process must comply with Chapter 60.62(4e)(a) as described in Item II above. As for reinstatement, experts disagree as to whether local government may reinstate a CUP without giving consideration to Act 67. It would seem unlikely that the courts would condone the complete disregard of Act 67 during the reinstatement process.



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### (3) Compliance

Act 67 likely rendered a number of special/conditional uses in the zoning ordinance legally indefensible. The review presented in Section E.4 below and on the following pages classifies, by color code, all such uses in the zoning ordinance by zoning district as one of the following:

- (a) **Compliant Uses**. Uses that are likely consistent with Act 67.
- (b) **Potentially Compliant Uses**. Uses that may be compliant, but conditions related to substantial evidence, purpose of the ordinance, and practicable measureables are not readily apparent.
- (c) **Noncompliant Uses**. Uses no longer legally defensible. These should be converted to conventional permitted uses, converted to permitted uses under an overlay district, or removed from the ordinance altogether.

### (4) Review of Conditional/Special Uses

#### (a) Section 17.110 – Height and Area Exceptions

- 1. Section 17.110(c) – **Permitted Uses by Special Use Permit in one-family or two-family zoning districts**.

#### (b) Section 17.210(1)(c) – Agriculture District Special Uses

- 1. **Animal hospital, provided the lot area is not less than 3 acres, and all principal structures and uses are not less than 100 feet from any residential district.**
- 2. **Dumps, disposal areas, incinerators and sewage disposal plants, including farms for disposal of garbage, sewage, rubbish or offal.**
- 3. **Commercial raising, propagation, boarding or butchering of animals such as dogs, mink, rabbits, foxes, goats and pigs; the commercial production of eggs; and the hatching, raising, fattening or butchering of fowl.**
- 4. **Pea vineries, creameries and condenseries.**
- 5. **Recreational uses such as archery ranges, bathhouses, beaches, boating, camps, conservatories, driving ranges, firearm ranges, golf courses, hunting, pools, riding academies, skating rinks, sport fields, zoological and botanical gardens.**
- 6. **Airports.**
- 7. **Outdoor institutional.**
- 8. **Outdoor commercial entertainment.**
- 9. **Commercial animal boarding.**
- 10. **Bed and breakfast establishments.**
- 11. **Campground.**
- 12. **Junkyard or salvage yard.**
- 13. **Waste disposal facility.**
- 14. **Composting operation.**
- 15. **Airport/heliport.**
- 16. **Communication tower.**



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17. Extraction use.
18. The keeping or raising of domestic livestock for show, breeding, or other use incidental to the principal use of the premises subject to the following:
  - a. The keeping or raising of hogs, or fur bearing animals other than rabbits shall not be permitted.
  - b. Not more than one head of domestic livestock or 10 fowl shall be permitted per 80,000 square feet of lot area. Nor shall any such livestock or fowl be permitted on a lot less than 5 acres in area.
19. Nurseries and greenhouses for the propagation and cultivation of plants.
20. Guest houses provided such structure shall not be rented or leased. Such structure shall be a minimum of 1,200 square feet.

### (c) Section 17.220(1)(c) – R-1 Single-Family Residence District Special Uses

1. Churches, public schools, parochial schools, colleges including dormitories, public libraries, public museums and art galleries. Municipal buildings, except sewage disposal plants, garbage incinerators, public warehouses, public garages, public shops and storage yards, and penal or correctional institutions and asylums. Public recreational and community buildings and grounds. All existing uses detailed above and their existing accessory uses as of the date of adoption of the amendment of this paragraph are hereby defined as an existing special use and shall be issued a special use permit by the Zoning Administrator. Any expansion, change, addition or alterations to the existing special use of the property or structures thereon, including existing accessory uses, shall be approved by the Plan Commission in accordance with sec. 17.440. (Am. Ord. #9-00)
2. Telephone buildings, exchanges and lines and static transformer stations, provided there is no service garage or storage yard. This regulation, however, shall not include microwave radio relay structures unless and until the location thereof shall first have been approved by the Plan Commission.
3. Railroad right-of-way and passenger depots, not including switching, storage, freight yards or siding.
4. Professional offices.
5. Community living arrangement (9—16 residents).
6. Bed and breakfast establishments.
7. Cemeteries.

### (d) Section 17.220(2)(c) – R-2 Two-Family Residence District Special Uses

1. Churches, public schools, parochial schools, colleges including dormitories, public libraries, public museums and art galleries. Municipal buildings, except sewage disposal plants, garbage incinerators, public warehouses, public garages, public shops and storage yards, and penal or correctional institutions and asylums. Public recreational and community buildings and grounds. All existing uses detailed above and their existing accessory uses as of the date of adoption of the amendment of this paragraph are hereby defined as an existing special use and shall be issued a special use permit by the Zoning Administrator. Any expansion, change, addition or alterations to the existing special use of the property or structures thereon,



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including existing accessory uses, shall be approved by the Plan Commission in accordance with sec. 17.440. (Am. Ord. #9-00)

2. Telephone buildings, exchanges and lines and static transformer stations, provided there is no service garage or storage yard. This regulation, however, shall not include microwave radio relay structures unless and until the location thereof shall first have been approved by the Plan Commission.
3. Railroad right-of-way and passenger depots, not including switching, storage, freight yards or siding.
4. Professional offices.
5. Community living arrangement (9—16 residents).
6. Sewage disposal plants.
7. Bed and breakfast establishments.
8. Buildings or premises for such public utility purposes as are reasonably necessary for public convenience and welfare.

### (e) Section 17.220(3)(c) – R-3 Multiple-Family Residence District Special Uses

1. Boardinghouses and lodging houses.
2. Philanthropic and eleemosynary institutions.
3. Private clubs, fraternities and lodges, except those whose chief activity is customarily carried on as a business.
4. Churches, public schools, parochial schools, colleges including dormitories, public libraries, public museums and art galleries. Municipal buildings, except sewage disposal plants, garbage incinerators, public warehouses, public garages, public shops and storage yards, and penal or correctional institutions and asylums. Public recreational and community buildings and grounds. All existing uses detailed above and their existing accessory uses as of the date of adoption of the amendment of this paragraph are hereby defined as an existing special use and shall be issued a special use permit by the Zoning Administrator. Any expansion, change, addition or alterations to the existing special use of the property or structures thereon, including existing accessory uses, shall be approved by the Plan Commission in accordance with sec. 17.440. (Am. Ord. #9-00)
5. Telephone buildings, exchanges and lines and static transformer stations, provided there is no service garage or storage yard. This regulation, however, shall not include microwave radio relay structures unless and until the location thereof shall first have been approved by the Plan Commission.
6. Railroad right-of-way and passenger depots, not including switching, storage, freight yards or siding.
7. Professional offices.
8. Storage garage or parking area in connection with a housing development project.
9. Sewage disposal plants.
10. Buildings or premises for such public utility purposes as are reasonably necessary for public convenience and welfare.
11. Nursing, rest, or convalescent homes. (Cr. Ord. #10-00)
12. Bed and breakfast establishments.
13. Group day care center (9+ children).



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14. Educational or instructional facilities where the primary use is educational or instructional activities and accessory uses are in support of the primary use. The primary use shall be at least 75% and the accessory use shall not be greater than 25%. In this use, accessory uses are defined as sales of products or other uses that directly support the educational or instructional activity. (Cr. Ord. #01-11)
- (f) Section 17.220(4)(c) – MH Mobile Home District Special Uses
1. Mobile home parks per sec. 17.301.
  2. Institutional and public utility installations.
  3. Community living arrangement (9—16 residents).
  4. Group day care center (9+ children).
  5. Private clubs, fraternities and lodges, except those whose chief activity is customarily carried on as a business.
  6. Cemeteries.
- (g) Section 17.230(1)(c) – B-1 Neighborhood Business District Special Uses
1. Truck garage, repair and service of motor propelled vehicles including the storage and sale of automotive accessories, underground fuel storage and pumps, light manufacturing operations when such operations do not exceed 7,500 square feet of working area and not more than 15 employees. Storage parking of trailers outside buildings is prohibited, but employees' personal vehicles may be parked on the premises.
  2. Drive-in restaurants or fast food restaurants.
  3. Undertaking establishments.
  4. Restaurants, lunch rooms, refreshment stands, cocktail lounges and taverns.
  5. Public or private parking lots or structures (not including parking lots as accessory to a principal use).
  6. Motels.
  7. Food products, retail.
  8. Community living arrangement (9—15 residents).
  9. Community living arrangement (16+ residents).
  10. In-vehicle sales or service.
  11. Bed and breakfast establishments.
  12. Group day care center (9+ children).
  13. Boarding house.
  14. Private clubs and lodges, except those the chief activity of which is a service customarily carried on as a business.
  15. Hospitals and clinics.
  16. Institutions of an educational, philanthropic or eleemosynary nature.
  17. Cemeteries, unless religious.
  18. Uses with a floor area in excess of 10,000 square feet.
  19. Churches, public schools, parochial schools, colleges including dormitories, public libraries, public museums and art galleries, Municipal buildings, except sewage disposal plants, garbage incinerators, public warehouses, and penal or correctional institutions and asylums. Public recreational and community buildings and grounds.



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All existing uses detailed above and their existing accessory uses as of the date of adoption of the amendment of this paragraph are hereby defined as an existing special use and shall be issued a special use permit by the Zoning Administrator. Any expansion, change, addition or alterations to the existing special use of the property or structures thereon, including existing accessory uses, shall be approved by the Plan Commission in accordance with sec. 17.440. (Cr. Ord. #02-09; Am. Ord. #03-13)

20. Processing, packing and manufacture of food, with a retail component. (Cr. Ord. #02-10)

### (h) Section 17.230(2)(c) – B-2 Central Business District Special Uses

1. Any special use permitted by sec. 17.230(1)(c) in the B-1 Neighborhood Commercial District.
2. Automobile sales and service and mobile home sales establishments.
3. Convention and exhibition halls.
4. Railroad and bus passenger depots.
5. Community living arrangement (9—15 residents).
6. Community living arrangement (16+ residents).
7. In-vehicle sales or service.
8. Indoor commercial entertainment.
9. Brewing and distilling of alcohol.
10. Bed and breakfast establishments.
11. Group day care center (9+ persons).
12. Boarding house.
13. Drive-in, drive-thru, and other restaurants.
14. Retail and wholesale uses that exceed 10,000 square feet in floor area.
15. Processing, packing and manufacture of food, with a retail component, excluding bakeries employing not more than 12 persons on the premises, which are permitted by right in sec. 17.230(2)(b)9. (Cr. Ord. #02-10)

### (i) Section 17.230(3)(c) – B-3 General Commercial District Special Uses

1. Any special use permitted in sec. 17.230(1)(c) and (2)(c).
2. Truck garage; repair and service of motor propelled vehicles; including the sale and storage of automobile accessories.
3. Underground fuel storage and pumps.
4. Pre-manufactured home sales facilities.
5. Golf ball driving range.
6. Miniature golf establishment.
7. Amusement rides including related equipment; go-kart track including vehicles and other necessary equipment.
8. Water slides including related accessory structures.
9. Baseball/softball batting cage including related equipment and helipad including accessory buildings.
10. Community living arrangement (9—15 residents).
11. Community living arrangement (16+ residents).



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12. In-vehicle sales or service.
13. Bed and breakfast establishments.
14. Group day care center (9+ children).
15. Retail and wholesale uses that exceed 10,000 square feet in floor area.
16. Sewage disposal plants.
17. Buildings or premises for such public utility purposes as are reasonably necessary for public convenience and welfare.
18. Day care centers.
19. Ambulance service. (Cr. Ord. #1-84)
20. Nursing, rest, or convalescent homes. (Cr. Ord. #10-00)
21. County penal institutions. (Cr. Ord. #10-00)
22. Antennas, satellite dishes and amateur radio towers and ancillary structures provided the structure/tower is between 25 feet and 55 feet in height measured from the ground directly at the base of the tower. (Cr. Ord. #6-02)
23. Commercial animal boarding. (Cr. Ord. #05-08)
24. Processing, packing and manufacture of food, with a retail component. (Cr. Ord. #02-10)

### (j) Section 17.230(4)(c) – B-4 Strip Commercial District Special Uses

1. Truck garage; repair and service of motor propelled vehicles, including the sale and storage of automobile accessories; underground fuel storage and pumps; and mobile home sales facilities.
2. Any special use permitted in sec. 17.230(2)(c) and (3)(c).
3. Pre-manufactured home sales facilities.
4. Retail and wholesale uses that exceed 10,000 square feet in floor area.
5. Commercial animal boarding. (Cr. Ord. #05-08)
6. Processing, packing and manufacture of food, with a retail component. (Cr. Ord. #02-10)

### (k) Section 17.230(5)(c) – B-5 Planned Commercial District Special Uses

1. Outdoor display.
2. In-vehicle sales or service.
3. Indoor commercial entertainment.
4. Commercial animal boarding.
5. Commercial indoor lodging.
6. Bed and breakfast establishments.
7. Group day care center (9+ children).
8. Vehicle repair and maintenance.
9. In-vehicle sales and service
10. Light industrial incidental to indoor sales.
11. Processing, packing and manufacture of food, with a retail component. (Cr. Ord. #02-10)
12. Public schools, parochial schools, colleges including dormitories, public libraries, public museums and art galleries, Municipal buildings, except sewage disposal plants, garbage incinerators, public warehouses, and penal or correctional



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institutions and asylums. Public recreational and community buildings and grounds. All existing uses detailed above and their existing accessory uses as of the date of adoption of the amendment of this paragraph are hereby defined as an existing special use and shall be issued a special use permit by the Zoning Administrator. Any expansion, change, addition or alterations to the existing special use of the property or structures thereon, including existing accessory uses, shall be approved by the Plan Commission in accordance with sec. 17.440. (Cr. Ord. #03-13)

### (l) Section 17.230(6)(c) – Interchange Zone District Special Uses

1. Retail uses less than 10,000 square feet in floor area.
2. Entertainment uses including movie theaters, taverns, and similar uses.
3. Offices.
4. Professional and personal services.
5. Intermodal and transportation stations.
6. Public schools, parochial schools, colleges including dormitories, public libraries, public museums and art galleries, Municipal buildings, except sewage disposal plants, garbage incinerators, public warehouses, and penal or correctional institutions and asylums. Public recreational and community buildings and grounds. All existing uses detailed above and their existing accessory uses as of the date of adoption of the amendment of this paragraph are hereby defined as an existing special use and shall be issued a special use permit by the Zoning Administrator. Any expansion, change, addition or alterations to the existing special use of the property or structures thereon, including existing accessory uses, shall be approved by the Plan Commission in accordance with sec. 17.440. (Cr. Ord. #03-13)

### (m) Section 17.230(7)(c) – B-7 Riverfront District Special Uses

1. Artisanal. (Cr. Ord. #04-17(2017))
2. Light Industrial/Manufacturing. (Cr. Ord. #04-17(2017))
3. Main Level Live-Work Unit: (Cr. Ord. #04-17(2017))
4. Multi-Family Residential Development: (Cr. Ord. #04-17(2017))
5. Multi-Family Residential Mixed Use: (Cr. Ord. #04-17(2017))
6. Row House/Town House: (Cr. Ord. #04-17(2017))

### (n) Section 17.240(1)(c) – I-1 Light Industrial District Special Uses

1. Any use permitted in sec. 17.230(4)(c).
2. Public services and utilities.
3. Printing and publishing shop when the usable working area exceeds 2,500 square feet and/or such printing or publishing shop employs more than 4 employees.
4. Manufacture and bottling of nonalcoholic beverages.
5. Processing, packing and manufacture of food, except meat and meat products, fish and fish products, sauerkraut and cabbage byproducts, or the vining of peas.
6. Sewage disposal plants.
7. Buildings or premises for such public utility purposes as are reasonably necessary for public convenience and welfare.



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8. Day care centers.
9. Ambulance service. (Cr. Ord. #1-84)
10. Self-service storage units and mini-warehouses. (Cr. Ord. #17-98)
11. County penal institutions. (Cr. Ord. #10-00)
12. Antennas, satellite dishes and amateur radio towers and ancillary structures provided the structure/tower is between 25 feet and 55 feet in height measured from the ground directly at the base of the tower. (Cr. Ord. #6-02)
13. Institutional and educational uses.
14. Commercial animal boarding. (Cr. Ord. #05-08)

### (o) Section 17.240(2)(c) – I-2 Heavy Industrial District Special Uses

1. Public services and utilities.
2. Outdoor storage or wholesaling.
3. Outdoor maintenance service.
4. Sexually oriented land use.
5. Junkyard or salvage yard.
6. Waste disposal facility.
7. Composting operation.
8. Airport/heliport.
9. Freight terminal.
10. Communication tower.
11. Retail and wholesale buildings shall be limited to a maximum of 10,000 square feet unless special authority for a larger building is granted in conjunction with the requirements of sec. 17.440 of the Municipal Code.
12. Institutional and educational uses.
13. Day care centers.
14. Commercial animal boarding. (Cr. Ord. #05-08)

### (p) Section 17.295(2)(b) – PUL Public Facility and Utility Lands District Special Uses

1. Waste facilities.
2. Indoor/outdoor recreational facilities.
3. Wireless communication facilities.
4. Recycling facilities.
5. Road maintenance facilities.

### (q) Section 17.303(5)(b) – Telecommunication Towers, Antennas and Related Facilities

1. B-1 Neighborhood Business District
2. B-2 Central Business District
3. B-3 General Commercial District
4. B-4 Strip Commercial District
5. B-5 Planned Commercial District
6. I-1 Light Industrial District
7. I-2 Heavy Industrial District
8. AG-1 Agricultural District



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9. RC Resource Conservation District
10. Q Quarrying District
11. PUD Planned Unit Development District

### F. Zoning Methodologies

A number of methodologies are available to administer and enforce general zoning regulations. Each has benefits and limitations applicable to the City's process of deciding whether (or how, if the decision has already been made) to transition from a conventional zoning code to an alternative model.

#### (1) Traditional Zoning

Chapter 17 represents a traditional, or *Euclidian*, method of zoning. The most common form of land use regulation in the US, it is based on a 1926 Supreme Court ruling (*Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365). This model of land regulation focuses on the segregation of incompatible uses. Euclidean codes sort land uses into designated zoning districts (agricultural, commercial, residential, etc.). Each has its own set of site and building restrictions that vary with the desired development intensity. Uses are classified either as *permitted*, meaning they require no special review, or *conditional* (titled 'special uses' in Chapter 17), demanding a higher level of scrutiny.

##### (a) Pros:

1. Prevents the worst aspects of incompatible development.
2. Nearly 100 years of case law in Wisconsin.
3. Generally well-understood elected & appointed officials and the general public.

##### (b) Cons:

1. Can lead to sprawl and dead space (i.e., vacant parcels that may never develop without a zoning change).
2. Results in automobile-dependent development.
3. Generally incompatible with mixed-use development.

#### (2) Form-based Zoning

Form-based codes regulate development by focusing on the scale, design, and placement of buildings. Particular attention is paid to the relationship between proposed structures and the street (or other public spaces). Municipalities that implement form-based zoning codes tend to view the design and arrangement of buildings as more strongly defining community character than the uses that take place within those buildings. Tends to be employed to promote walkability, transit-friendly development, and more compact settlement patterns.

##### (a) Pros:

1. Readily accommodates the mixing of different land uses.



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2. Results in diversity of building designs.
3. Forces local government to reexamine traditional zoning codes.

(b) Cons:

1. Highly prescriptive nature tends to limit effectiveness, particularly in auto-dependent communities.
2. Introduces terms and concepts unfamiliar to developers and officials.
3. Often a mismatch between ideals of form-based code and realities of existing infrastructure and built environment.
4. Risk of 'Disneyfication'

### (3) Performance Zoning

Often accommodated within a traditional zoning ordinance, performance zoning techniques enable atypical land uses to move into existing districts as long as they conform to a fixed set of standards established for that district. Under traditional zoning, differing land uses produce varying external impacts, ranging from traffic and noise to glare and waste generation. With performance zoning, standards are established to manage those impacts and promote compatible development.

(a) Pros:

1. Ideally suited to in-fill and mixed-use development.
2. Tends to work best when selectively applied to specific districts.

(b) Cons:

1. More complicated and expensive than traditional codes to develop and administer.
2. Standards may require sophisticated measurement techniques that staff must be trained to use.
3. Like form-based model, unfamiliar to many of those who will administer and enforce the code.

### (4) Incentive Zoning

Incentive zoning uses a traditional code as a baseline. It enables projects to exceed standard requirements as long as they provide some other form of benefit to the local community. In exchange for providing desired amenities (parks, plazas, public art, affordable housing, etc.), developed may be allowed to build at higher densities or to greater heights than would otherwise be permissible. This is similar to the way in which density bonuses are used to achieve housing and open space goals within a subdivision ordinance.

(a) Pros:

1. Allows traditional zoning model to be used in a way that achieves broader community goals.



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### (c) Cons:

1. More expensive to administer.
2. Can be politically divisive.
3. Non-market basis may be considered an “over reach” by local government.

### (5) Hybrid Zoning

Most modern zoning codes contain elements of the approaches described above (the overlays and Planned Development District in Chapter 17, for example). They often employ traditional Euclidean districts (especially in single-family residential areas, for instance) while applying performance standards to more intensely developed neighborhoods and commercial centers. The hybrid model allows for greater land use flexibility in some districts while retaining the traditional model in others. Basically, the hybrid code accommodates the best aspects of the other models.

#### (a) Pros:

1. Does not require wholesale conversion of existing traditional code.
2. Can target needs and goals within specified districts, leaving remainder unchanged.

#### (b) Cons:

1. Requires that elected officials and appointed officials be familiar with multiple zoning models and their review & approval processes.
2. Requires administrators to be expert in the same.

### (6) Summary

Considering the City’s established land base it is unlikely that a wholesale transition from a traditional to alternative zoning model would prove justified. More likely than not, it would create complexities and costs exceeding anticipated benefits. However, the ‘hybridization’ of Chapter 17 has already occurred, albeit in a limited way. The further integration of form- and performance-based principals may prove beneficial, particularly within downtown Waupaca and its adjoining neighborhoods.

## **G. Zoning Amendments and Nonconforming Uses**

Nonconforming uses are uses of a property that were permissible under the zoning regulations at the time the use was established but which, because of subsequent amendments to those regulations, are no longer a permitted or conditional use. The potential for creating nonconforming uses arises whenever a zoning ordinance is amended. Nonconforming uses may create hardships for property owners. Among the potential risks are an inability to modify or expand existing structure, difficulties in securing adequate insurance, and the reluctance of some financial institutions to make loans for such uses/structures. As such, it is important that the City strive to minimize, whenever possible, the creation of legal nonconforming uses when updating Chapter 17.



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### **H. Application Forms**

The current application forms are satisfactory (is there an Application for Appeal? I did not receive a copy). Recommended modifications include:

(1) Rezone Petition

- (a) Add check box that reads something like, "The Applicant understands that the proposed zoning change may not be approved if it is determined to be inconsistent with the City of Waupaca Comprehensive Plan."

(2) Application for Site Plan Review

- (a) Amend filing fee to be more equitable and reflective of the actual costs associated with site plan review:

1. Application Fee. Establish a baseline fee, irrespective of size/complexity of proposal, the amount of which reflects the costs associated with processing and distributing the application as required by state law.
2. Review Fee. Actual cost associated with time spent by staff (or consultant, as per Section 17.462 – Fees) reviewing the application and preparing a report for the Plan Commission. Billed after completion of the review.

- (b) The site plan requirements of Section 17.260 Planned Development District differ from those of Section 17.330 Site Plan Requirements.

1. Create separate application form for PUD site plan review.
2. Include filing fee and review fee consistent with recommendation in Section H(2)(b) of this report.

(3) Application for Special Use Permit

- (a) Amend form to include checklist consistent with the submittal requirements of Section 17.440(3)(a). Current requirements:

1. An accurate map of the property including indication of general terrain and topographical characteristics, the location of all significant terrain features such as streams, ponds, tree growths, etc., and the location of all existing structures.
2. An accurate and complete written description of the use for which a special use grant is being requested including pertinent statistics and operational characteristics.
3. Plans and other drawings showing proposed development of the site and buildings including landscape plans, location of parking and service areas, driveways, exterior lighting, type of building material, etc.



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(b) Add the following to the checklist described above, consistent with Section 17.440(3)(a):

1. Building, site and operation plans of the proposed use shall be submitted for approval of the Plan Commission. Such plans shall be in sufficient detail to enable the Commission to evaluate the suitability of architectural and landscape treatment; the proper location of the building or buildings on the lot; the satisfactory provision for parking and circulation needs, for drainage and sewage disposal for adequate planting screen where necessary, and for operational control devices where necessary to eliminate noise, dust, odor, smoke, or other objectionable operating condition; and the general compatibility of the proposed use with the area in which it is located.

### (4) Variance Petition

The top of the second page of the application form includes the following statement:

*The Board of Appeals **shall have the power** to authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to public interest where, owing to special conditions peculiar to a specific lot or tract of land, a literal enforcement will result in practical difficulty or unnecessary hardship so that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. In every case where a variance from these regulations has been granted by the Board, the minutes of the Board shall affirmatively show that an "unnecessary hardship" or "practical difficulty" would be created. [emphasis added]*

The term "shall have the power" seems misleading. It implies discretion where discretion does not exist. The burden on the Applicant is not to convince the Board of Appeals to grant the variance but to convince the BOA that granting the variance is compliant with the law. In other words, it's not a decision by the Board but an interpretation. Re-writing the guide to make that clear would be beneficial for future Applicants.

### **I. Application Guides**

In terms of ease of use, the application guides are excellent. They should be updated when the zoning ordinance is updated, with particular attention to ensuring that they do not cross over into code. For instance, the 'Site Plan Checklist' includes a number of requirements that are zoning in nature but do not appear in Section 17.330 (i.e., for landscaping: minimum shrub size, minimum deciduous tree caliper, 5-foot concrete sidewalk, letter of credit, etc.). The ability of the City to compel compliance with these requirements when they are not specified within in the ordinance is questionable.