

R E S O L U T I O N

DATE: 3/19/19

To The Board of Supervisors of Winnebago County, Wisconsin:

AMENDATORY ORDINANCE 5

WHEREAS, it is desirable to amend the Zoning Ordinance of the TOWN OF CLAYTON in accordance with the petition of the Town Board.

WHEREAS, the Winnebago County Planning and Zoning Committee has reviewed said amendments, has found no conflicts with county zoning jurisdiction or regulatory authority with them, and is hereby submitting those amendments of the TOWN OF CLAYTON Zoning Ordinance, Chapter 9, Article 7, Division 4 – Conditional Use Code to the Winnebago County Board of Supervisors for final approval.

WHEREAS, said amendments to the TOWN OF CLAYTON Zoning Ordinance, Chapter 9, Article 7, Division 4 – Conditional Use Code are hereby attached and available on the County Clerks website.

AND BE IT FURTHER RESOLVED, by the Winnebago County Board of Supervisors that the enclosed Ordinance is hereby **ADOPTED** OR **DENIED**.

County Board Supervisor
(Town of CLAYTON)

COUNTY DISCLAIMER:

County Board approval does not include any responsibility for County liability for the legality or effectiveness of the Town Zoning Amendment or the Town Zoning Ordinance.

APPROVED BY WINNEBAGO COUNTY EXECUTIVE THIS _____ DAY OF _____,
2019.

Mark Harris



Winnebago County

Zoning Department

The Wave of the Future

MEMO FOR P & Z PLANNING MEETING AGENDA OF MARCH 8, 2019

TO: Planning & Zoning Committee

FM: Zoning Administrator 

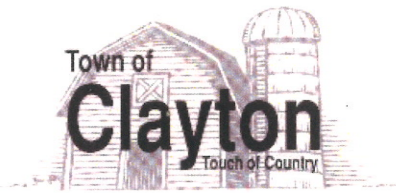
RE: Review of Town of Clayton Zoning Ordinance Amendments

1. Review of Zoning Ordinance Amendments – Town of Clayton

The zoning office received a copy of the Town of Clayton's adopted zoning ordinance amendments. The amendments were in response to the 2017 Wisconsin Act 67 regarding conditional uses. The adopted zoning ordinance amendments for the Town of Clayton must be approved by the County Board. There does not appear to be any conflicts with county zoning jurisdiction or regulatory authority.

RECOMMENDATION: Forward adopted zoning ordinance amendments to County Board for action.

BJ, BD₂ 4-0



Thursday, October 18th, 2018

County Zoning Office
Attn: Cary A. Rowe
112 Otter Avenue
Oshkosh, WI 54901



Re: Town Board approved amendment to the Town's Zoning Code of Ordinances Map.

Mr. Cary A. Rowe:

Enclosed please find the material relative to the following amendment(s) to the Zoning Code of Ordinances, Zoning Map in the Town of Clayton:

Town Board changes to the Town's Zoning Code of Ordinances, Chapter 9 – Town of Clayton Zoning Ordinances, Article 7 – Specific Review Procedures, **Division 4 – Conditional Use** to bring the Code's Conditional Use function of the Zoning Code into compliance with **2017 Wisconsin Act 67**.

Should you have any questions relative to this request please feel free to call or E-mail me.

Sincerely,

Richard Johnston
Town Administrator/Clerk

CC County Clerk, Sue Ertmer

ATTACHEMENT A TO ORDINANCE 2018-006

ARTICLE 7 SPECIFIC REVIEW PROCEDURES AND REQUIREMENTS

Divisions

1. Code amendment (text and zoning map)	8. Reserved
2. Planned development overlay district	9. Variance
3. Reserved	10. Administrative appeal
4. Conditional use	11. Zoning permit
5. Special use permit for specified livestock operations	12. Reserved
6. Determination of unsafe conditions	13. Site plan
7. Termination of approval	14. Rural accessory building determination
	15. Code interpretation

DIVISION 4 CONDITIONAL USE

Sections

9.07-51 Generally	9.07-58 Staff report content
9.07-52 Initiation	9.07-59 Content of decision notice
9.07-53 Application and review procedure	9.07-60 Effect of approval
9.07-54 Basis of decision	9.07-61 Amendment of an approved conditional use
9.07-55 Special requirements for certain land uses in a A-1 district	9.07-62 Violation of a condition of approval
9.07-56 Imposition of conditions	9.07-63 Appeal
9.07-57 Application form and content	

9.07-51 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” and are listed in division 3 of article 8. This division describes the requirements and procedures for reviewing a conditional use, including an amendment of an approved conditional use. *In this sub-section, the following terms apply:*

“Conditional Use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by the town but does not include a variance.

“Substantial evidence” means facts and information, other than merely personal preferences 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.

9.07-52 Initiation

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

9.07-53 Application and review procedure

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

- (1) **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent shall meet with the zoning administrator to review (1) applicable regulations and procedures, (2) applicable sections of the Town’s comprehensive plan, and (3) the proposal. The zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary.

- (2) **Submittal of application materials.** The applicant shall submit a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Town Board of Supervisors.
- (3) **Staff review.** Within 10 days of submittal, the zoning administrator shall either schedule a date for the public hearing with the Plan Commission allowing for proper public notice or make a determination that the application is incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has 3 months after the date of such determination to resubmit the application or forfeit the application fee. The zoning administrator shall take no further steps to process the application until the deficiencies are remedied. The incomplete application shall be retained as a public record.
- (4) **General notice.** Consistent with division 2 of article 6, the zoning administrator shall provide for a class 2 public notice, an on-site sign, property owner notice, agency notice, and meeting agenda notice.
- (5) **Staff report preparation and distribution.** The zoning administrator shall prepare a written staff report as described in this division and provide a copy of it to each member of the Plan Commission, the Town Board of Supervisors, and the applicant. The zoning administrator shall also provide a copy to interested people upon request.
- (6) **Public hearing.** Allowing for proper notice, the Plan Commission shall conduct a public hearing consistent with division 3 of article 6. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with division 3 of article 6.
- (7) **Plan Commission recommendation.** The Plan Commission shall make a written recommendation to the Town Board of Supervisors to approve or deny the proposed conditional use.
- (8) **Town Board of Supervisors action.** After reviewing the Plan Commission's recommendation, the Town Board of Supervisors shall make a decision based on the decision criteria contained in this division to (1) approve the conditional use, (2) approve the conditional use with conditions, or (3) deny the conditional use.

If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the ordinance or those imposed by the Town Board, the Town shall grant the conditional use permit. Any condition imposed must be related to the purpose of this ordinance and be based on substantial evidence.
- (9) **Notification of decision.** Within a reasonable time following the Town Board of Supervisor's decision, the zoning administrator shall mail the decision notice to the applicant by regular mail.
- (10) **Acceptance by property owner required.** If an approval includes one or more condition of approval, the property owner shall sign the decision notice to acknowledge the imposition of such condition or conditions and return the same to the zoning administrator. Failure to sign and return the decision notice within 45 days of the Town Board of Supervisor's decision shall void the approval. The decision notice shall become effective upon the property owner's signature.
- (11) **Public record copy.** A duplicate copy of the decision notice shall be retained as a public record.

9.07-54 Basis of decision

The Plan Commission and the Town Board of Supervisors, in making its decision, shall consider the following factors:

- (1) the size of the parcel on which the proposed use will occur;
- (2) the presence of and compatibility with other uses on the subject property;
- (3) the location of the proposed use on the subject property (e.g., proximity of the proposed use to other existing or potential land uses);
- (4) effects of the proposed use on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
- (5) the suitability of the subject property for the proposed use;

- (6) effects of the proposed use on the natural environment;
- (7) effects of the proposed use on surrounding properties, including operational considerations relating to hours of operation and creation of potential nuisances;
- (8) 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; and
- (9) any other factor that relates to the purposes of this chapter as set forth in s. 9.01-5 and other sections as may apply that can be supported by substantial evidence.

The requirements and conditions described must be reasonable and, to the extent practical, measurable and may include conditions such as the permit's duration, transfer or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the Town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The Town's decision to approve or deny the permit must be supported by substantial evidence.

In the event the conditional use being proposed is an adult-oriented establishment, the above-named decision-making bodies shall not consider the nature of expressive conduct protected by the U.S. Constitution with regard to any of the above-mentioned criteria.

9.07-55 Special requirements for certain land uses in a A-1 district

(a) **Agriculture-related uses.** Subject to the general requirements under this division, the Town Board of Supervisors may approve agriculture-related uses in a A-1 district as a conditional use only if all of the following apply:

- (1) The use supports agricultural uses in the A-1 zoning district in direct and significant ways, and is more suited to the A-1 zoning district than to an industrial or commercial zoning district.
- (2) The use and its location in the A-1 zoning district are consistent with the purposes of the A-1 zoning district.
- (3) The use and its location in the A-1 zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- (4) The use is reasonably designed to minimize conversion of land, at and around the use site, from agricultural use or open space use.
- (5) The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
- (6) Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

(b) **Nonmetallic mine.** Subject to the general requirements under this division, the Town Board of Supervisors may approve a nonmetallic mine in the A-1 district as a conditional use only if all of the following apply:

- (1) The operation complies with (1) subchapter I of ch. 295, Wis. Stats., and administrative rules promulgated under that subchapter; (2) applicable provisions of chapter 20 of the general code; and (3) any applicable requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mineral extraction sites.
- (2) The use and the location of such use in the A-1 zoning district are consistent with the purposes of the A-1 zoning district.
- (3) The use and the location of such use in the A-1 zoning district are reasonable and appropriate, considering alternative locations outside the A-1 zoning district, or are specifically approved under state or federal law.
- (4) The use is reasonably designed to minimize the conversion of land around the extraction site from agricultural use or open space use.

- (5) The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
- (6) Following cessation of this use, all disturbed areas will be restored to a condition suitable for agricultural use consistent with a written restoration plan as approved under chapter 20 of the Winnebago County General Code.

(c) **Government and nonprofit community uses.** Subject to the general requirements under this division, the Town Board of Supervisors may approve government and nonprofit community uses in the A-1 district as a conditional use only if all of the following apply:

- (1) The use and the location of such use in the A-1 zoning district are consistent with the purposes of the A-1 zoning district.
- (2) The use and the location of such use in the A-1 zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- (3) The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
- (4) The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
- (5) Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

(d) **Specified infrastructure.** Subject to the general requirements under this division, the Town Board of Supervisors may approve certain types of compatible infrastructure in the A-1 district as a conditional use only if all of the following apply:

- (1) The use and the location of such use in the A-1 zoning district are consistent with the purposes of the A-1 zoning district.
- (2) The use and the location of such use in the A-1 zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- (3) The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
- (4) The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
- (5) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

A wind energy system that complies with the siting requirements in s. 9.08-375 is presumed to comply with this subsection.

9.07-56 Imposition of conditions

(a) **Generally.** The Town Board of Supervisors 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. ~~Conditions which are imposed shall be achievable.~~ The requirements and conditions described, must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer or renewal. The applicant and all requirements and conditions established by the Town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The Town's decision to approve or deny the permit must be supported by substantial evidence. Furthermore, if an applicant for a conditional use permit agrees to meet all of the requirements and conditions specified by the Town Board, the Town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and based on substantial evidence.

(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 Town Board of Supervisors 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.

(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.

9.07-57 Application form and content

The application submittal shall include an application form as may be used by the county and a project map prepared at an appropriate scale depicting the information listed in appendix A. In addition, the applicant shall also provide a building, site plan, and plan of operation along with the application materials.

9.07-58 Staff report content

The staff report shall contain the following:

- (1) a summary of the comments received from the interdepartmental/agency review;
- (2) preliminary findings based upon 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 regardless of whether the staff recommendation is for approval or denial; and
- (5) other information deemed necessary by the staff.

9.07-59 Content of decision notice

(a) **Approval.** If an application for a conditional use is approved, the decision notice shall include the following:

- (1) a statement that the application is approved;
- (2) a description of the conditional use;
- (3) a description of where the conditional use will occur on the property;
- (4) findings based upon the decision criteria listed in this division;
- (5) a list of conditions of approval imposed by the Town (which may include a date by which time the conditional use must be established) that must be satisfied prior to the establishment of the conditional use or complied with during the life of the conditional use, or both;
- (6) if one or more conditions of approval are imposed, a statement indicating that the property owner must sign the decision notice and return it to the zoning administrator within 45 days of such decision to acknowledge acceptance of the same;
- (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 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;
- (9) other information the Town Board of Supervisors or zoning administrator deems appropriate;
- (10) the signature of the zoning administrator on behalf of the Town Board of Supervisors; and
- (11) the date of the decision.

- (b) **Denial.** If an application for a conditional use is denied, the decision notice shall include the following:
- (1) a statement that the application is denied,
 - (2) a description of the project, including acreage and proposed use characteristics,
 - (3) findings based upon the decision 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 Town Board of Supervisors or zoning administrator deems appropriate,
 - (7) the signature of the zoning administrator on behalf of the Town Board of Supervisors, and
 - (8) the date of the decision.

9.07-60 Effect of approval

The approval of a conditional use shall run with the land and be binding on all subsequent property owners.

9.07-61 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 application and review procedure in this division. If the proposed change constitutes a major alteration, the application and review procedure in effect at the time of submittal shall be followed.

9.07-62 Violation of a condition of approval

If a property owner does not comply with one or more condition of approval, such action shall be deemed a violation of this chapter and cause for termination of the approval consistent with division 7 of this article.

9.07-63 Appeal

(a) **Appeal relating to procedural requirements.** An aggrieved person who claims the required procedural requirements were not followed, in whole or in part, may file a written appeal with the Zoning Board of Appeals prior to issuance of a final decision or within 30 days of issuance of a final decision. If an appeal is filed with the Zoning Board of Appeals prior to issuance of a final decision, the zoning administrator at his or her discretion may suspend the review process until such time as the deficiency is remedied. The Zoning Board of Appeals shall only consider the procedural requirements and may not alter the decision of the Town Board of Supervisors. If the Zoning Board of Appeals determines that a procedure, in whole or in part, was not followed as required, the review process shall not progress until such time as the deficiency has been remedied or the decision shall be stayed until such time as the deficiency and subsequent steps have been completed. An aggrieved person may appeal the final decision of the Zoning Board of Appeals to a court of competent jurisdiction within 30 days of the Zoning Board of Appeal's decision.

(b) **Appeal relating to the Zoning Board of Appeal's decision or relating to the substantive decision.** An aggrieved person may appeal the final decision of the Zoning Board of Appeals to a court of competent jurisdiction within 30 days of the final decision.

9.07-64 to 9.07-70 Reserved

TOWN OF CLAYTON

ORDINANCE 2018-006

ORDINANCE TO AMEND THE OFFICIAL TEXT OF CLAYTON ZONING ORDINANCES

WHEREAS, one or more applications for amendments to the Text of the Town of Clayton Zoning Code of Ordinances have been filed with the Town Clerk as described herein; and

WHEREAS, following the requisite Notices and Public Hearings the proposed amendments have been reviewed and recommended to the Town Board by the Town's Plan Commission; and

WHEREAS, the applications for amendments to the Map of the Town of Clayton Zoning Code of Ordinances does comply with both the Town's existing land use and future land use elements of the CY 2015/16 update to the Town's Comprehensive Plan; and

WHEREAS, all other procedural requirements have been met for purposes of consideration of the amendment(s) as provided in Section 7 of the Town of Clayton Zoning Code of Ordinances; and

NOW, THEREFORE BE IT ORDAINED THAT, the Town Board of the Town of Clayton, County of Winnebago, State of Wisconsin, pursuant to Article 7 of the Town of Clayton Zoning Code of Ordinances, hereby adopts the following Amendment(s) to the Text of the Town's Zoning Code of Ordinances:

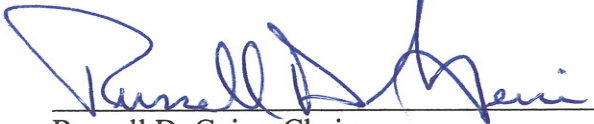
Section 1: The Official Text of Town of Clayton Zoning Code of Ordinances is amended as follows identified on ATTACHEMENT A of this Ordinance:

Section 2: This Ordinance shall be submitted to the Winnebago County Board for approval. This amendment to the Town of Clayton Zoning Code of Ordinances shall be effective upon approval by the Winnebago County Board.

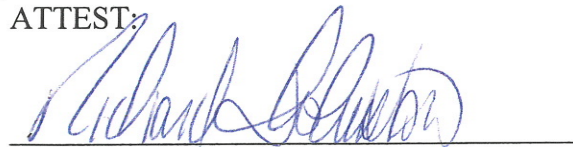
Adopted this 17th day of October, 2018

Vote: Yes: 5 No: 0 Absent: 0

ATTEST:



Russell D. Geise, Chair



Richard Johnston, Town Administrator

Date Mailed: _____

SUSAN T. ERTMER
Winnebago County Clerk
112 Otter Ave, PO Box 2806
Oshkosh, WI 54903-2806
(920) 232-3430

NOTICE OF COMMISSION, BOARD OR COMMITTEE MEETING

NAME OF COMMISSION

BOARD OR COMMITTEE: Planning and Zoning Committee

TIME OF MEETING: 7:45 A.M.

DATE OF MEETING: FRIDAY, MARCH 8, 2019

PLACE OF MEETING: 3rd FLOOR CONFERENCE ROOM
COUNTY ADMINISTRATION BUILDING
112 Otter Ave, Oshkosh, WI

SUBJECT MATTER OF MEETING

PLANNING MEETING

1. Approval of minutes from February 8, (Deliberative), February 8, (Planning Meeting), and February 26, 2019 (Public Hearing).
2. Committee review and action to forward Town Zoning Changes to County Board.
3. Report on staff changes in the GIS division.

The Committee reserves the right to take up any item on the agenda at any time after the meeting commences.

Upon request, provisions will be made for people with disabilities upon 24 hours prior notice to the Office of the County Clerk. Phone Number: (920) 232-3430.

WINNEBAGO COUNTY
PLANNING & ZONING COMMITTEE
DELIBERATIVE HEARING

February 8, 2019

7:30 A.M.

County Administration Building
3rd Floor Conference Room
Oshkosh, WI

PRESENT: Supervisors, Tom Egan, Rob Keller, Ben Joas and Brian Defferding. Karen Fredrick – court reporter, Brian O'Rourke and Cary Rowe – Zoning Administrator. Guest present.

EXCUSED: Supervisor Maribeth Gabert.

The meeting was called to order by Tom Egan at 7:30 A.M.

1. AF Group, LLC – East of 1762 Leonard Point Rd, South of Leonard Point Ln, Town of Algoma – Plat.

Committee reviewed Memo from Brian O'Rourke – Associate Planner, which was read into the record. Supervisor Keller asked if drainage was fully addressed. Staff assured committee drainage is reviewed for compliance with the county's stormwater ordinance.

MOTION by B. Joas, seconded by B. Defferding, to approve the preliminary plat with findings and conditions as submitted. Motion carried 4-0.

2. AF Group, LLC – East of 1762 Leonard Point Rd, South of Leonard Point Ln, Town of Algoma – Town of Algoma – Zoning Map Amendment.

Committee reviewed findings in order to take action on a zoning map amendment to R-2 (Suburban Residential District) and R-3 (Two-family Residential District) for a proposed residential subdivision. Supervisors Joas and Defferding stated that the lot sizes in the proposed residential subdivision meet and exceed county subdivision ordinance requirements for lot sizes.

MOTION by B. Defferding, seconded by B. Joas, to approve with findings as submitted. Motion carried 4-0.

ADJOURNMENT

MOTION made by B. Defferding to adjourn the meeting. Seconded by B. Joas.
Motion carried 4-0. Meeting adjourned at 7:45 A.M.

Respectfully submitted,

Cary A. Rowe
Recording Secretary

CAR