

**ORDINANCE NO. 2022-2**

**AN ORDINANCE TO REPEAL AND RE-CREATE SECTIONS 8.01, 8.06, 8.07, 8.10(7) AND 8.10(8) CONCERNING CONDITIONAL USES IN THE VILLAGE OF NORTH BAY ZONING CODE**

**WHEREAS**, the Village Board has determined that the current language within the Village Code does not provide adequate explanation to the context and history behind the Purpose of the Village Zoning Code; and

**WHEREAS**, the Village Board has determined it necessary and in the interest of the Village to maintain the Village’s unique residential community, nature and architecture by enacting certain Village Zoning Code provisions to maintain those qualities and features redevelopment within the Village occurs; and

**WHEREAS**, on November 27, 2017, the State of Wisconsin enacted 2017 Wisconsin Act 67 related to requiring a political subdivision to issue a conditional use permit under certain circumstances which resulted in requiring substantial evidence, rather than personal preferences or speculation directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit; and

**WHEREAS**, the Village Board has determined that the current standards within the Village Code do not provide the Village with adequate information to evaluate the Conditional Use request under the "substantial evidence" standard and under this new standard many uses previously considered as conditional uses are no longer appropriately categorized as such and should be repealed; and

**WHEREAS**, the Village Board duly referred the matter to the Village Plan Commission for report and recommendation; and

**WHEREAS**, upon publication of a Class 2 Notice per Chapter 985 Wisconsin Statutes once each week for two consecutive weeks prior to the hearing, and upon at least 10 days prior written notice to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed Zoning Code territory as required by Wisconsin Statutes Section 62.23(7)(d), the Village Board held a public hearing regarding the tentative recommendation, on May 2nd, 2022; and

**WHEREAS**, the Plan Commission has recommended the ordinance be adopted; and

**WHEREAS**, the Village Board finds that this change to the Village 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**, 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 amendments on the health, safety and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the surrounding properties as to noise, dust, smoke and odor, and others, hereby determine that the zoning amendments will not violate the spirit or intent of the Zoning Code for the Village of North Bay, will not be contrary to the public health, safety or general welfare of the Village of North Bay. will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhoods within the Village and will be consistent with the Village of North Bay Comprehensive Plan.

**NOW THEREFORE**, the Village Board for the Village of North Bay, Racine County, Wisconsin does hereby ordain as follows:

**SECTION 1:** Chapter 8 of the Village of North Bay Village Code, entitled, “Planning and Zoning,” Section 8.01 entitled “Purpose,” is hereby repealed and re-created as follows:

The purpose of this Ordinance is to promote the public health, safety and general welfare of the community and these regulations are designed to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to prevent overcrowding of lands; to avoid undue concentration of population; to facilitate adequate provisions for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to insure proper legal description and proper monumenting of land subdivided. The historic Village of North Bay is an eclectic confluence of architectural styles deployed over several decades. Houses were designed to complement the rolling landscape, lake views, original trees, and existing homes creating the “North Bay aesthetic”. This unique mosaic of contemporary, traditional and revival architecture that characterizes North Bay has attracted home buyers from across the country. It is a source of pride to residents and is a key component of maintaining our unique completely exclusive residential community which is the only complete residential community in Racine County. These regulations are made with reasonable consideration, among other things, of the character of the Village with a view of conserving if not increasing the value of the buildings placed upon land, providing the best possible environment for human habitation and for encouraging the most appropriate use of land throughout the Village.

**SECTION 2:** Chapter 8 of the Village of North Bay Village Code, entitled, “Planning and Zoning,” Section 8.06 entitled “Definitions,” Subsection (11.5) is hereby created as follows:

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

**SECTION 3:** Chapter 8 of the Village of North Bay Code, entitled “Planning and Zoning,” Section 8.06 entitled “Definitions,” Subsection (71) is hereby repealed.

**SECTION 4:** Chapter 8 of the Village of North Bay Code, entitled “Planning and Zoning,” Section 8.07 entitled “District Establishment, Use and Regulation,” Subsection (4) is hereby created as follows.

(4) To maintain the North Bay aesthetic, construction following the teardown of an existing house must emulate the previous structure. Specifically, the replacement house must replicate the exterior dimensions, i.e. height, length and width, location and orientation on the lot, setbacks, and square footage of the previous house. Building materials, insulation, windows, doors, plumbing, heating, air conditioning, and electrical systems of the new structure may be updated with approval of the planning commission.

Any variance of this standard must be approved by the planning commission.

**SECTION 5:** Chapter 8 of the Village of North Bay Village Code, entitled, “Planning and Zoning,” Section 8.10 entitled “Residential Conservation Overlay District Establishment, Uses and Standards of Review,” Subsection (7) entitled “Review and Approval” is hereby repealed and re-created as follows.

(7) Review and Approval. The Village Planning Commission shall review the application for a Conditional Use Permit and hold a public hearing upon class 2 notice as required by Wisconsin Statutes Section 62.23(7)(de)3 jointly with the Village Board. The Village Planning Commission shall then consider and vote to recommend the grant or denial of the Conditional Use Permit application. The recommendation shall be made based upon the applicable standards of the ordinance by substantial evidence presented at the hearing, as required by Wisconsin Statutes Section 62.23(7)(de)3. The Planning Commission shall then forward that recommendation to the Village Board. The Village Board shall make the final determination in the manner required by Wisconsin Statutes Section 62.23(7)(de)3.

(a) Conditions such as, but not limited to, landscaping, architectural design, type of construction, construction commencement and completion dates, location, water supply and waste disposal system, street dedication, flood proofing, ground cover, diversions, silting basins, terraces, stream bank protection, planting screens, operational controls, roadway access restrictions, increased yards, stream crossings or culverts may be considered by the Village Planning Commission, along with any and all other relevant matters, when reviewing, considering, and voting upon the application for a Conditional Use Permit.

The standard conditions listed below are automatically incorporated into the terms of a Conditional Use Permit issued under this section, unless otherwise stated in the Conditional Use Permit.

- 1 Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Village Plan Commission for determination.
- 2 No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the County of Racine, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the

extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by Village ordinance or other law.

- 3 This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Village Plan Commission as being in compliance with all pertinent ordinances.
- 4 All buildings and grounds shall be maintained in a neat, attractive and orderly way.
- 5 The property shall comply with all rules and regulations of the Village and the local Fire Department, including submission to routine inspections by Village and Fire Department staff.
- 6 Should the permitted conditional use be abandoned in any manner, or discontinued in use for twelve (12) months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to the Village, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Village Plan Commission, pursuant to the enforcement provisions of this Conditional Use Order, and all applicable ordinances.
- 7 Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises (including but not limited to any change to the boundary limits of the subject property), structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
- 8 Unless this conditional use permit expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Village Plan Commission if the Village Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the Village Plan Commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
- 9 Petitioner and Owner Agreement. As a condition precedent to the issuance of the conditional use permit, the owner of the Subject Property shall approve the issuance of this conditional use permit upon the terms and

conditions described herein in writing, and the Petitioner is required to accept the terms and conditions of the same in its entirety in writing.

- 10 Professional fees. Petitioner shall, on demand, reimburse the Village for all costs and expenses of any type that the Village incurs in connection with this application, including the cost of professional services incurred by the Village (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the Village is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.
- 11 Payment of charges. Any unpaid bills owed to the Village by the Subject Property Owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Village; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of billing by the Village, pursuant to section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Village, including possible cause for termination of this approval.
- 12 Current Address. The Petitioner is obligated to file with the Village Clerk a current mailing address and current phone number at which the Petitioner can be reached, which must be continually updated by the Petitioner if such contact information should change, for the duration of this conditional use. If the Petitioner fails to maintain such current contact information, the Petitioner thereby automatically waives notice of any proceedings that may be commenced under this conditional approval, including proceedings to terminate this conditional use.
- 13 Conditions Shown in Minutes Incorporated. All conditions of approval imposed by duly adopted motion of the Village Board in its consideration of the Petitioner's application, as noted in the Minutes of the Village Board meeting at which approval was granted, are specifically incorporated herein by reference.
- 14 Should any paragraph or phrase of this conditional use permit be determined by a Court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use and the remainder shall continue in full force and effect.
- 15 If any aspect of this conditional use permit or any aspect of any plan contemplated and approved under this conditional use is in conflict with

any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Village Plan Commission.

- (b) Subject to all other requirements of this Chapter, excavating and filling for the siting of a new single family residence or an addition to an existing single family residence shall be allowed provided that such activities are limited to that area actually needed to site the structure on the lot and further provided that such activities be conducted so as to prevent erosion and sedimentation and preserve the natural beauty of the Village.
- (c) With respect to conditional uses within shorelands, the standards set forth in Section 281.31(5)(a) of the Wisconsin Statutes, in particular as they relate to the avoidance or control of pollution, shall apply. Page 8-20 Printed 2.8.2020

(d) Performance Standards

1. It is the intent of this Section to describe performance standards for the regulation of uses and to establish an objective and equitable basis for control and to ensure that the community is adequately protected from potential hazardous and nuisance-like effects. These performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or zoning district. In addition, these performance standards are intended to comply with other applicable local, state and federal codes and standards. All structures, lands, air and water shall hereafter comply with the following performance standards.
2. Control of Odors. No operation or activity shall emit any substance or combination of substances in such quantities that create an objectionable odor. The Plan Commission reserves the right to request an odor control plan from the applicant to identify potential odors and implement recommendations from the plan.
3. Control of Fire and Explosive Hazards
  - a. All uses involving the manufacturing, utilization, processing, or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with adequate firefighting and fire suppression equipment and devices as may be required by the Fire Prevention Code.
  - b. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have noncombustible exterior walls and an automatic fire extinguishing system.

- c. The storage of fuels and other materials that produce flammable or explosive vapors shall be permitted only after review and approval by the Village Fire Department and in accord with their requirements to minimize fire and explosive hazards.
- 4. Glare, Heat and External Lighting
  - a. No operation or activity shall produce any intense lighting, glare or heat with the source directly visible beyond the boundary of the property line. Operations producing light, glare, or heat shall be conducted within an enclosed building.
  - b. External lighting shall be shielded so that light rays do not adversely affect adjacent uses.
- 5. Water Quality Standards
  - a. No activity shall locate, store, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might runoff, seep, percolate, or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant, or aquatic life.
  - b. No activity shall withdraw water or discharge any liquid or solid materials so as to exceed or contribute toward exceeding the minimum standards and those other standards and the application of those standards set forth in Wis. Adm. Code NR 102 or in other applicable Chapters which regulate water quality.
- 6. Noise. No operation or activity shall transmit any noise beyond the boundaries of the property so that it becomes a nuisance.
- 7. Vibration
  - a. No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to,

sensation by touch or visual observation of moving objects.

- b. Vibrations not directly under the control of the property user and vibrations from temporary construction or maintenance activities shall be exempt from the above standard.
8. Traffic Impact. The Plan Commission reserves the right to require a traffic impact study in order to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study. The traffic study shall be prepared by a registered professional engineer in accordance with the following standards:
- a. Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
  - b. Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
  - c. Manual on Uniform Traffic Control Devices (Federal Highway Administration)
  - d. Trip Generation Manual (Institute of Transportation Engineers)
  - e. Other local, county or state standards

**SECTION 6:** Chapter 8 of the Village of North Bay Village Code, entitled, “Planning and Zoning,” Section 8.10 entitled “Residential Conservation Overlay District Establishment, Uses and Standards of Review,” Subsection (8) entitled “Village Board Action” is hereby created as follows.

- (8) Village Board Action. Following a public hearing held jointly with the Village Planning Commission, and after careful consideration of the Village Planning Commission's recommendation, the Village Board may grant the Conditional Use Permit as applied for, grant the Conditional Use Permit with conditions deemed appropriate by the Board, or deny the permit, based upon whether the standards of the ordinance have been met as demonstrated by substantial evidence at the hearing. The requirements of Section 62.23(7)(de) Wisconsin Statutes shall apply. The provisions of any Conditional Use Permit granted by the Village Board shall comply with all of the provisions of this Chapter and the Village of North Bay Code of Ordinances.

**SECTION 7: 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 8: SEVERABILITY**

The several sections of this Ordinance are declared to be severable. If any section or provision thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such declaration shall apply only to the specific section(s) or portion(s) thereof directly specified in said declaration, and shall not affect the validity of any other provisions, sections, or portions of the Ordinance, which 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 9: EFFECTIVE DATE**

This Ordinance shall take effect immediately upon its passage and posting/publication as provided by law

**PASSED AND ADOPTED** by the Village Board of the Village of North Bay on this **23rd** day of **May**, 2022.

*Mark J. Schall*

Mark Schall, Village President

Attest:

*Dori A. Panthofer*

Dori Panthofer, Village Clerk