

## ARTICLE XIV. CHANGES AND AMENDMENTS

### Sec. 95.214. Intent.

(a) It is the intent of this chapter to provide stability and regularity in the zoning of the property in the ETZ Area; nevertheless, to best achieve the full purposes of this chapter it is likely that from time to time amendments will be necessary in the text or in the district map portions of this chapter to recognize that changing conditions or expectations call for changed plans, and changed plans call for changed regulations. As a result, owners of property subject to particular regulations under this chapter cannot enjoy an eternally vested right to those regulations if the public interest demands otherwise.

(b) Among the conditions which may be expected to require zoning changes include:

- (1) Holding districts, which constitute a form of temporary zoning, may require rezoning to other basic or overlay districts as full development becomes imminent (see section 95.170(1)).
- (2) Additional state imposed regulations, which may require amendments to this chapter to conform to such state mandates.
- (3) ETZ Area plan amendments or refinements, which may require adjustments in the boundaries of districts or in the form of text regulation in order to reflect the new knowledge added to the plan.
- (4) Property owners' petitions, in which owners may propose modifications to the zoning in which they are located in order to better do their part in carrying out the town plan and in serving the public interest.

### Sec. 95.215. Authority.

Whenever the public necessity, convenience and general welfare require, the board may, by ordinance as provided for in Wis. Stats. §§ 60.62 and in 62.23(7)(d)2., amend any part of this chapter, including amending the textual regulations, the district regulations, or the reclassifying of property into other districts. Such amendments shall be by petition and be considered as provided for in this article.

### Sec. 95.216. Initiation.

A petition for change or amendment may be made by any property owner or agent of the owner in the area to be affected by the change or amendment, by the board, or by the ETZ Committee.

### Sec. 95.217. Filing of petitions.

(a) Petitions for any change to the district boundaries or amendments to the regulations shall be filed with the zoning administrator, together with the fee required in section 95.119 and the following information where appropriate on forms supplied by the zoning administrator.

(b) The following information is required for district map changes:

- (1) Plot plan or map drawn to scale, or map of legal descriptions, showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of adjacent properties.
- (2) Owners' names and addresses as listed on such records as the assessor's maps or tax roll, of all properties lying within 100 feet of a proposed district change.
- (3) Additional information as required by the board or ETZ Committee on forms available from the zoning administrator.

(c) The following information is required for text amendments:

- (1) Proposed text amendment language, and if possible, a defense of the necessity for such a change.
- (2) Owners' names and addresses as described in subsection (b)(2) of this section if it is determined by the zoning administrator or by the administrator in consultation with the village attorney that the amendment is sufficiently site specific to consider protest petitions as provided for in Wis. Stats. § 62.23(7)(d)2m.a., and section 95.221.
- (3) Additional information as required on forms available from the zoning administrator.

#### **Sec. 95.218. Referral and recommendations.**

(a) *Referral to ETZ Committee.* The zoning administrator shall check the petition for change or amendment for completeness, conferring with the petitioner as necessary. When the petition appears complete, the administrator shall place it upon the ETZ Committee agenda, with copies to other village staff that the ETZ Committee is likely to consult on the petition.

(b) *ETZ Committee review and recommendations.* Upon receipt of the petition, the ETZ Committee shall conduct the necessary study and investigation in order to provide, as promptly as possible, a recommendation to the board as set forth in Wis. Stats. § 66.23(7)(d)1.b., and section 95.115(d)(2).

- (1) *ETZ Committee public interest criteria.* In making its recommendations, the ETZ Committee shall always be guided by a finding that the change or amendment would be in the public interest, and not solely for the benefit of the applicant. The public interest shall be found by weighing the following:
  - a. Compliance with the town plan adopted by the town plan commission and town board. The town comprehensive plan shall be used as a guide for future land use within the ETZ Area.
  - b. Compliance with the intent and purposes in view of this chapter as set forth in sections 95.104 and 95.105.
- (2) *Informational hearings.* In developing its recommendations, the ETZ Committee may hold an informational hearing, noticed as it determines in each case.

### **Sec. 95.219. Official hearing.**

The ETZ Committee shall hold a public hearing upon each proposed change or amendment, the village clerk giving notice of the time and place of such hearing by:

- (1) Publication of a class 2 notice under Wis. Stats. ch. 985.
- (2) Mailed notice to the owners of record on town tax rolls or assessor maps of all lands lying within 100 feet of any part of the land involved and any affected municipality under Wis. Stats. § 62.23(7)(d) in either a zoning district change or text amendment to this chapter found to have specific impact upon only a few properties.
  - a. *Mailed notice postmark.* Such mailed notice shall be postmarked at least ten days prior to the date of hearing. The failure of such notice to reach any property owner provided such failure be unintentional, shall not invalidate any amending ordinance, or other action taken upon the matter noticed.
  - b. *Waiver or reduction of mailed notice.* Where the ETZ Committee finds that the number of mailed notices will exceed ten under this provision, the ETZ Committee may waive the mailed notice entirely, or reduce the number to ten by providing notice to those owners directly opposite and directly adjacent on the fronting street.

### **Sec. 95.219. 1 Findings of Fact and Recommendation of the ETZ Committee.**

Within 30 days after the close of the hearing on a proposed amendment, the ETZ Committee shall make written findings of fact and shall submit same together with its recommendations to the village board. Where the purpose and effect of the proposed amendment is to change the zoning classification of a particular property, the ETZ Committee shall make findings based upon the evidence presented to it in each specific case with respect to the following matters:

- (1) Existing use of property within the general area of the property in question.
- (2) The zoning classification of property within the general area of the property in question.
- (3) The suitability of the property in question to the uses permitted under the existing zoning classification.
- (4) The trend of development, if any, in the general area of the property in question, including changes if any which have taken place since the day the property in question was placed in its present zoning classification.
- (5) Minimum size of parcel: A lot, lots, or parcel of land shall not qualify for a zoning amendment unless it adjoins a lot, lots, or parcel of land which bears the same zoning district classifications as the proposed zoning amendment.

The ETZ Committee shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such amendment is in the public interest of the applicant and not solely for the benefit of the applicant. The ETZ Committee may recommend the adoption of an amendment changing the zoning classification of the property in question to any higher classification than that requested by the applicant.

For the purpose of this paragraph, the R1 District shall be considered the highest classification and the M1 District shall be considered the lowest classification.

**Sec. 95.220. Action.**

(a) *Board.* The village board shall not act upon a proposed amendment to this ordinance until it shall have received written findings and recommendation from the ETZ Committee on the proposed amendment. After such public hearing and no later than the second board meeting following receipt of the ETZ Committee's recommendations, the board shall act to approve, modify and approve, or disapprove the proposed change or amendment. If an application for a proposed amendment is not acted upon by the village board within 90 days of the date upon which such application is received by the village board, it shall be deemed to have been denied.

(b) *Re-referral to ETZ Committee.*

- a. The board shall not take action without having first heard the recommendations of the ETZ Committee. Should the board not concur in the recommendation of the ETZ Committee, including an intent to approve with substantial modifications not contained in the ETZ Committee recommendation, the board shall re-refer the matter to the ETZ Committee for reconsideration before taking final action, specifying the amount of time available to the ETZ Committee for its reconsideration. When the matter so re-referred to the ETZ Committee returns to the board, the board shall assume the sole responsibility for disposition of the proposed change or amendment. In the case of a re-referral to the ETZ Committee, the 90 day requirement by the board to act under Sec. 95.220 (a) shall be waived and the board shall set a new time limit upon which such decision on the proposed application will be made.
- b. Once the board has so assumed the sole responsibility for the disposition of the proposed change or amendment, the following action may take place: If the board acts to disapprove, the amendment is defeated; if the board acts to approve, or modify and approve, so approved.

(c) *Provisional zoning.* In connection with its action to modify and approve, or to approve if already so recommended by the ETZ Committee, the board may provisionally rezone the property that is the subject of the petition. Any such provisional rezoning shall become permanent provided that the conditions imposed by the board have been complied with in such period of time as may be designated by the ETZ Committee or board, but not to exceed three years.

- (1) *Zoning map notation.* For such period of time until the provisions have been met and so certified by the zoning administrator, the official zoning map of the ETZ Area shall show the property to be zoned "P\* \_\_\_\_\_" (\*for provisional).
- (2) *Waiver of vested interest.* By accepting the provisional rezoning, the petitioner is deemed to waive any claim of vested rights in the property during the period of provisional rezoning.
- (3) *Title recording.* The board, in its discretion, may cause notice of the provisional rezoning, together with the provisions imposed, to be recorded in the office of the register of deeds.

**Sec. 95.221. Protest.**

(a) *Filing of protest petition and verification.* If a protest against a proposed change or amendment is filed under Wis. Stats. § 62.23(7)(d) with the village clerk at least 24 hours prior to the time of the meeting of the board at which the recommendation of the ETZ Committee is to be considered, appearing to be duly signed and acknowledged by the owners of 20 percent or more of the area proposed to be altered, or by abutting owners of over 20 percent of the total perimeter of the area proposed to be altered included within 100 feet of the parcel or parcels proposed to be rezoned, or by the owners of 20 percent or more of the land directly opposite the parcel extending 100 feet from the street frontage of such opposite land, action on such ordinance may be deferred until the town clerk/treasurer has had a reasonable opportunity to ascertain and report to the board as to the authenticity of such ownership statements.

(b) *Extra majority required.* If such statements are found to be true, such ordinance shall not be adopted except by the affirmative vote of three-fourths of the members of the board present and voting. If such statements are found to be untrue to the extent that the required frontage or area ownership is not present, such protest may be disregarded.

**Sec. 95.222. Effective date.**

An amending ordinance transmitted to the board shall become effective upon passage and publication by the board.