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**§ 335-30 Planned Development Overlay District.
[Amended 5-25-2004]**

- A. Intent. The Planned Development Overlay District ("PDO District") is intended to permit development, redevelopment and rehabilitation of property through use of coordinated site planning, diversification of location of structure location and/or types and/or through mixing of compatible allowed uses. The PDO District is intended to achieve high standards of planning and construction and allow for design flexibility while, at the same time, maintaining use requirements set forth in the underlying zoning district.
- B. General provisions.
- (1) A petition for unified and planned development, redevelopment and/or rehabilitation of a site using a PDO District may encompass one or more individual lots or structures, together with allowed compatible uses and related accessory uses or structures (collectively, the "project") may be approved in accordance with this section.
 - (2) The Village may approve a specific petition for rezoning under this section after a public hearing when all regulations and standards, including but not limited to the approval, execution and recording of a development agreement as required in § **335-30J**, have been met.
 - (3) All petitions for a zoning amendment establishing a PDO District shall be considered on a case-by-case basis by the Plan Commission, in making its recommendation, and by the Village Board.
 - (4) The granting of a zoning amendment establishing a PDO District shall be discretionary.
- C. Allowed uses.
- (1) Uses allowed in a PDO District are those uses expressly provided for as permitted, conditional and/or accessory uses in the underlying zoning district.
 - (2) More than one type of use may be allowed in a PDO District if the underlying zoning district allows such uses as permitted and/or conditional uses.
- D. Dimensional and stormwater management requirements.
- (1) PDO Districts shall comply at all times with MMSD District Rules and Regulations Chapter 13 relating to stormwater management requirements within the underlying zoning district.
 - (2) PDO Districts may, however, deviate from the requirements of the underlying zoning district with respect to maximum building height, yard areas, lot dimensions, setbacks and parking requirements.
 - (3) The density of residential units allowed in the PDO District is subject to the provisions of § **335-30F(1)**.
 - (4) PDO Districts authorized under this section shall not contain less than the following applicable minimum acreage for a single or combination of parcels:

Uses

Minimum Acreage

Residential PDO District

5

Uses	Minimum Acreage
Commercial PDO District	5
Industrial PDO District	20
Mixed Compatible Use PDO District	20
Mixed Compatible Use within the boundaries identified in § 335-12G(3)	1.5
Residential PDO District adjacent on at least one complete side to a business, office and/or manufacturing zoning district in any municipality	1.5

E. Ownership and transfer requirements.

- (1) Areas zoned as PDO Districts may be under any form of ownership arrangement (including but not limited to the Wisconsin Condominium Ownership Act [Wis. Stat. Ch. 703, as amended from time to time]) provided the total completion of the project as reflected in the development agreement approved by the Village Board of Trustees can be guaranteed.
- (2) No project or portion thereof, except a residential condominium unit therein, shall be transferred before full completion of the obligations within the development agreement without the prior written consent of the Village Board of Trustees.
- (3) All requests for consent to transfer that are approved by the Village Board shall be conditioned upon the deposit of financial security in whatever form or amount deemed reasonably necessary by the Village Board of Trustees.
- (4) Individually developed lots or improvements thereon may be transferred at any time after execution and recording of the development agreement if allowed by the terms of the development agreement.

F. Residential density calculations.

- (1) Determination of residential density. Only one of three possible levels of residential density shall be allowed in a specific PDO District:
 - (a) The number of residential units allowed as a permitted use in the underlying zoning district; or
 - (b) The number of residential units allowed as a conditional use in the underlying zoning district, which can be less, but not more than, a maximum total density of 12 dwelling units per net acre; or
 - (c) The number of residential units allowed where an enhanced density is allowed in recognition of a project of exceptionally high overall quality as provided by § 335-30F(3).
- (2) Density calculations involving residential use. Except as otherwise allowed by this subsection, residential unit density in all PDO Districts shall be calculated by considering all land encompassed within the proposed project area.
- (3) Enhanced density.
 - (a) If, notwithstanding dimensional differentials, a proposed project uniformly contains exterior and interior materials, design details, workmanship and features of an exceptionally high quality, comparable to the highest quality tier of the Village's then current housing stock or its best

commercial office structure, an "enhanced density" for residential units may be recommended by the Plan Commission and may be granted as part of the original PDO District approval process.

- (b) If granted, the enhanced density level of residential use shall be in lieu of any other possible residential density.
- (c) An enhanced density shall constitute a discretionary number of residential units that can be less than but not more than a maximum total of 22 residential units per net acre. PDO Districts located within the Rm-2 Multi-Family Residential District can be less than but not more than 33 units per net acre.
- (d) The following criteria shall be considered by the Village Board of Trustees in determining whether to approve an enhanced density:
 - [1] Whether the project will provide better utilization of the land and better preservation of natural resources than would otherwise be realized if the site were developed either in conformity with the density requirements of the underlying district or as a PDO District without an enhanced density;
 - [2] Whether the project makes adequate provision such that an increase in residential density will not have an unreasonable adverse effect on neighboring properties, existing and/or proposed public rights-of-way and/or municipal and other public services as a result of the type, intensity and frequency of the use(s) associated with the proposed project;
 - [3] Whether the structures proposed for the project are harmonious with existing surrounding structures and land uses.
 - [4] Whether building materials have been selected and are proposed to be utilized in a manner that is harmonious with the natural environment and the general character of other buildings and structures in the vicinity of the proposed development.
 - [5] Whether the proposed project will result in the construction or upgrading of specific public infrastructure improvements that will benefit the public without cost to the Village.
 - [6] Whether the proposed project will enhance an existing structure that is deemed beneficial to the character of the neighborhood where it is situated.
- (4) Mixed Compatible Use PDO District. The residential density of a Mixed Compatible Use PDO District project shall take into account the amount of nonresidential use in the project as follows:
 - (a) The average net interior square footage of all residential units ("ARU") upon completion of the project shall be calculated. This calculation shall not, however, include utility space, garage and areas, such as halls or other common areas, shared by all occupants.
 - (b) The total interior square footage of all space devoted to nonresidential ("TNR") uses shall be calculated. This calculation shall not, however, include utility space, garage areas for customer and employee parking and, where different portions of a building are owned or rented by different entities, areas, such as halls and other common areas, that are shared by more than one such entity.
 - (c) TRU is the total number of residential units anticipated upon completion of the project.
 - (d) Land size is the total size of the project in net acres.
 - (e) The effective residential density ("ERD") shall be calculated according to the expression:

$$ERD = [TRU + (TNR/ARU)] \div \text{land size.}$$
 The effective residential density shall not be greater than the level of residential density allowed for a project in § 335-30F(1).

G. Procedural requirements.

(1) Conceptual review.

- (a) All parties contemplating a request for the establishment of a PDO District shall first confer with the Zoning and Planning Administrator prior to appearing before the Plan Commission or filing a rezoning petition and provide sufficient written details and drawings concerning the proposed project as necessary to permit an adequate staff review.
 - (b) A staff review may involve other Village departments and professional consultants in the assessment of the feasibility and potential impact of the project on Village infrastructure and resources as well as its conformity with the provisions of the Village's Zoning Code.
 - (c) Any party desiring to submit a petition for the establishment of a PDO District shall, following completion of the staff review process, meet with the Village Plan Commission for a conceptual review prior to the submission of the petition.
 - (d) The purpose of the conceptual review is solely for the purpose of allowing the exchange of informal observations about a possible project while facilitating the orientation of the members of the Plan Commission and the petitioner(s) of a potential project regarding issues that may have to be addressed in the event that a petition is filed.
 - (e) All discussion about the proposed nature and scope of the contemplated project at the conceptual review by Village staff and Plan Commission members shall be nonbinding commentary and shall not, under any circumstance, vest any party with any right with respect to any development or project contemplated or discussed.
 - (f) A request for a conceptual review shall be accompanied by the payment of the fee established by Village Board resolution from time to time.
- (2) Petition. Following completion of the conceptual review, all affected real estate owners within the proposed PDO District or their agents shall file a petition with the Village Clerk for rezoning of the property as a PDO District. Such petition shall be accompanied by the review fee established by Village Board resolution from time to time and by all of the following information:
- (a) A statement that describes the relationship of the proposed PDO District to the Village's Zoning Code, adopted Master Plan (or any adopted component thereof), and describes in detail the uses requested to be included in the proposed PDO District, including the following information:
 - [1] Total area to be included in the PDO District, area of open space, the proposed number of dwelling units, together with the proposed residential unit density and details of supporting calculations in accordance with this § **335-30**, projected population analysis with details that support the assumptions used to calculate same, requirements for and availability of municipal or school district services and any other similar data pertinent to a comprehensive evaluation of the proposed development.
 - [2] A general summary of the estimated cost of constructing public and private structures and site-related improvements, landscaping and special features.
 - [3] Details about the manner in which the owners will participate in the formulation and execution of the development agreement.
 - [4] Details concerning the organizational structure of the property owners' or management association proposed to be established for the purpose of providing any necessary continuing private services, implementation of the development agreement or administration of the project.

- [5] Any proposed departures from the standards of development as set forth in the Village zoning ordinances other Village ordinances or applicable state or federal statutes or regulations.
 - [6] A realistic development timetable, including all benchmark dates from commencement to completion of physical development of the proposed project.
- (b) A general development plan including:
- [1] A legal description of the boundaries of all property included in the proposed PDO District and its relationship to surrounding properties, including existing topography on the site with contours at no greater than two-foot intervals as part of an ALTA survey.
 - [2] A detailed site plan for the entire PDO District showing:
 - [a] The type, size, arrangement, including respective use(s) and location of any individual lots, building sites and proposed structures on each individual lot.
 - [b] The location of open space areas and areas reserved or dedicated for private or public uses, including, but not limited to, easements and drainageways.
 - [c] Landscaping, exterior lighting and signage.
 - [d] The location of public and private roads, driveways and parking facilities and the calculations used to justify the number of spaces proposed.
 - [e] The existing and proposed location of public and private sanitary sewer and water supply facilities.
 - [f] The existing and proposed location of all other public and private utilities or other easements.
 - [g] Characteristics of soils related to contemplated specific uses.
 - [3] Anticipated uses of adjoining lands in regard to roads, surface water drainage and compatibility with existing adjacent land uses.
 - [4] Architectural plans, elevation and perspective drawings and sketches illustrating the character and design of all proposed structures.
- (3) Referral to Plan Commission.
- (a) The petition for a Planned Development Overlay District shall be referred to the Village Plan Commission for its review and preliminary recommendation, including any additional conditions or restrictions that it may deem reasonably necessary or appropriate.
 - (b) No final recommendation shall be rendered by the Plan Commission until after the holding of the public hearing provided in § **335-30G(4)**, which shall be attended by as many of the members of the Plan Commission as feasible without necessity that a quorum be achieved.
- (4) Public hearing.
- (a) The Village Board shall hold a public hearing pursuant to § **335-79** of this chapter.
 - (b) Notice for such hearing shall include reference to the development plans filed in conjunction with the requested PDO District.
- H. Review criteria for petition.

- (1) The Village Plan Commission, in making its preliminary and final recommendation on the petition, and the Village Board, in making its determination, shall consider whether each of the following criteria are satisfied: **[Amended 12-21-2004]**
 - (a) Whether the petitioner(s) for the proposed Planned Development Overlay District has demonstrated:
 - [1] An intent and ability to begin the physical development of the PDO District within 18 months following the approval of the petition; and
 - [2] That the necessary financial resources to carry out the project in strict conformity with the development agreement have been obtained and committed.
 - (b) Whether the proposed Planned Development Overlay District is consistent in all respects with:
 - [1] The purpose of this section and the spirit and intent of this chapter; and
 - [2] The adopted Master Plan or any adopted component thereof.
- (2) The Village Plan Commission, in making its preliminary and final recommendations, and the Village Board, in making its decision on any proposed PDO District, shall consider the following criteria:
 - (a) The development will not be contrary to the general welfare and economic prosperity of the community.
 - (b) The proposed site is being provided with adequate drainage facilities for surface and storm waters.
 - (c) The proposed site is accessible from public roads that are adequate to carry the traffic that can be expected to be generated by the proposed development.
 - (d) No undue constraint or burden will be imposed on public services and facilities (such as fire, EMT and police protection), street maintenance, maintenance of public areas near the proposed development and/or educational facilities.
 - (e) The private roads and driveways on the site of the proposed development are adequate to serve the users of the proposed development.
 - (f) Public sanitary sewerage facilities are adequately provided.
 - (g) The entire tract or lots to be included in a Planned Development Overlay District is subject to the terms and conditions of the development agreement, and the legal description encompasses said PDO District as a single area, shows all of its component lots and has been prepared to be recorded with the Register of Deeds for Waukesha County.
 - (h) The proposed project will be adequately served by appropriate off-street parking.
 - (i) The architectural design, landscaping, control of lighting and general site development will result in an attractive and harmonious project compatible without unreasonably affecting the property values of the surrounding neighborhood.
 - (j) The locations for entrances and exits have been designated to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets and that the development will not create an unreasonable adverse effect upon the general traffic pattern of the surrounding neighborhood.
 - (k) Provision has been made for the adequate and continuing operation and maintenance of all aspects of the project.

- (1) The proposed project has, where applicable, been examined with respect to its compatibility with the nonmandatory Downtown Overlay District Site Design Guidelines set forth in § **335-12G**.
- (3) In the case of a proposed PDO District with residential uses, the Village Plan Commission, in making its preliminary and final recommendations, and the Village Board, in making its decision on any proposed PDO District, shall also consider the following:
 - (a) Such development will provide an attractive residential environment of sustained desirability and economic stability.
 - (b) The impact of the population composition of the project upon the school district's capacity to provide needed educational services.
 - (c) Permanent preservation of open space areas as shown on the approved site plan is ensured by the creation of appropriate easements and recorded deed restrictions.
 - (d) The proposed mixture of uses produces a unified composite which is compatible within the underlying districts and which, as a total development entity, is compatible with the surrounding neighborhood.
- (4) In the case of a proposed Industrial PDO District, the Village Plan Commission, in making its preliminary and final recommendations, and the Village Board, in making its decision on any proposed PDO District, shall also consider the following:
 - (a) The operational character, physical plant arrangement and architectural design of structures will be compatible with the latest in industrial development design and performance standards and will not result in an adverse effect upon the property values of the surrounding neighborhood.
 - (b) The proposed project will include adequate provisions for off-street parking and truck service areas and will be adequately served by rail and/or arterial highway facilities.
 - (c) The proposed project is compatible with the available transportation system of the community and will not result in an adverse effect on the safety and efficiency of the public streets.

I. Determination.

- (1) The Village Board, after due consideration, may deny the petition, approve the petition as submitted or approve the petition subject to additional conditions and restrictions. The approval of a PDO District shall be based upon, and shall include as conditions thereto, approval of the plan of operation for the project and execution by all necessary parties to the development agreement as provided for in § **335-30J**.
- (2) Rezoning to the Planned Unit Development Overlay District shall not become effective until a development agreement has been approved by the Village Board, is fully executed by all parties and recorded with the Waukesha County Register of Deeds.

J. Development agreement contents and demonstration of consent.

- (1) The Village Board's review and approval process shall be conditioned upon the execution by the Village Board and the applicant of the development agreement approved by the Village Board in conjunction with its approval under § **335-30I** embodying all of the terms and conditions of the specific project plan and any additional terms of implementation.
- (2) The development agreement shall be submitted to the Plan Commission for its recommendation prior to approval by the Village Board and shall include, without limitation by reason of enumeration:

- (a) Timetables for performance/completion of improvements;
 - (b) Performance requirements and standards and assurances for all improvements and/or modifications pertaining to the PDO District;
 - (c) Inspection requirements;
 - (d) Prohibitions on any division/combination of the real estate lots included within the PDO District except as otherwise provided, including an exception for residential condominium units;
 - (e) Provision for lapsing of specific plan approval and automatic reversion of the zoning status of the property to non-PDO District status upon specified changes of circumstances or upon failure of the project to materialize as agreed to in the development agreement;
 - (f) Agreements, bylaws, provisions and/or covenants or additional deed restrictions to be recorded against the lot(s) within the PDO District that will perpetually govern the organizational structure, use, maintenance and continued preservation and protection of the project and any of its common services, common open areas and/or other facilities; and
 - (g) Exhibits, drawings or other attachments that depict improvements, including but not limited to structures, fixtures and landscaping and their relative locations in the development area as well as design and engineering details as may be necessary to document to a reasonable degree of specificity the type, character and nature of the improvements to be made within the development area.
- (3) Execution of the development agreement shall constitute evidence of consent and subordination of the entire project area to the terms of the development agreement. The development agreement and all agreements, bylaws, provisions covenants and/or additional deed restrictions required here under shall be recorded, shall run with all of the land included within the approved PDO District and shall fully bind all parties to such agreement and those subsequently taking interest in the property or properties.
- (4) No approval of a PDO District shall take effect and no rights shall vest in regard to any PDO District petition approved by the Elm Grove Village Board until the development agreement and all of its exhibits have been duly recorded with the Waukesha County Register of Deeds.
- K. Changes and additions. Any subsequent change or addition to the plans or uses of a PDO District or project located therein shall first be submitted for review to the Village of Elm Grove Plan Commission and then to the Village Board utilizing the procedural requirements, including the payment of fees, contained in § **335-30G**.
- L. Subsequent land division.
- (1) Except as otherwise provided in the development agreement, the division of any land or lands within a PDO District for the purpose of change or conveyance of ownership shall not be favored and shall not be permitted unless there is a demonstration of substantial and significant benefit to the public interest arising out of the specific land division.
 - (2) Any land division request shall be accompanied by a detailed proposed certified survey map of the lands to be divided.
 - (3) In addition to complying with any other applicable procedural requirements, any proposal for division of any land within a PDO District shall detail how the various dimensional, density, parking, green space, impervious surface, public infrastructure improvements approved pursuant to the development agreement and other requirements established by the initial granting of the PDO District will be affected or altered. Such proposal shall further demonstrate that all necessary components and obligations associated with the project, including, but not limited to, physical and

legal undertakings, will be otherwise be provided so that the proposed division will not negatively impact the organizational structure, use, maintenance and continued preservation and protection of the project and any of its common services, common open areas and/or other facilities.

- (4) The approval of any division of lands within a PDO District is discretionary.