

1 STATE OF WISCONSIN WAUKESHA COUNTY VILLAGE OF ELM GROVE

2 ORDINANCE NO. _____

3 AN ORDINANCE AMENDING SECTION 335-22
4 OF THE VILLAGE OF ELM GROVE CODE OF ORDINANCES

5
6 THE BOARD OF TRUSTEES OF THE VILLAGE OF ELM GROVE DO ORDAIN AS
7 FOLLOWS:

8
9 **SECTION 1:** Section 335-22 of the CODE OF ORDINANCES OF THE VILLAGE OF ELM
10 GROVE is hereby amended by the addition of underlined text and the deletion of text as follows:

11 § 335-22 B-1 Local Business District.

12 The B-1 Business District is intended to provide for individual or small groups of retail and
13 customer service establishments serving primarily the convenience of the village residents. The
14 character, appearance and operation of local centers shall be compatible with the character of
15 the surrounding area.

16 A.

17 Permitted uses.

18 (1)

19 Antique, collectors and furniture consignment stores.

20 (2)

21 Appliance stores.

22 (3)

23 Art shops.

24 (4)

25 Bakeries.

26 (5)

27 Banks, credit unions, savings and loan associations and other financial services or institutions.

28 (6)

29 Barbershops and beauty parlors.

30 (7)

31 Books, newspapers and magazines or stationery stores.

32 (8)

- 33 **(9)**
- 34 Brokerages (stock, mortgage), accounting and similar financial services.
- 35 **(10)**
- 36 Business offices.
- 37 **(11)**
- 38 Camera and photographic or imaging supply stores.
- 39 **(12)**
- 40 Tailor or dressmaker or apparel stores.
- 41 **(14)**
- 42 Standalone convenience or full scale grocery or food store.
- 43 **(15)**
- 44 Confectioneries.
- 45 **(16)**
- 46 Delicatessens.
- 47 **(19)**
- 48 Drugstores.
- 49 **(20)**
- 50 Electronic devices stores.
- 51 **(22)**
- 52 Florist shops.
- 53 **(24)**
- 54 Furriers and fur apparel.
- 55 **(25)**
- 56 Furniture or household goods or home décor stores.
- 57 **(26)**
- 58 Gift stores.
- 59 **(28)**

- 60 Hardware stores.
- 61 **(29)**
- 62 Hobby and craft shops.
- 63 **(30)**
- 64 Insurance sales offices and real estate offices.
- 65 **(31)**
- 66 Interior decorator.
- 67 **(33)**
- 68 Jewelry stores.
- 69 **(34)**
- 70 Laundries and dry-cleaning establishments.
- 71 (35)
- 72 Household goods repair stores.
- 73 **(36)**
- 74 Meat or fish markets.
- 75 **(38)**
- 76 Music stores.
- 77 **(39)**
- 78 **(40)**
- 79 Office supplies and equipment and computer stores.
- 80 .
- 81 **(42)**
- 82 Packaged beverage stores.
- 83 **(43)**
- 84 Paint, glass and wallpaper stores.
- 85 **(44)**
- 86 Parking lots and parking structures serving businesses in the district.

- 87 **(45)**
- 88 Photographer.
- 89 **(46)**
- 90 Pet or pet supplies store.
- 91 **(47)**
- 92 Professional offices.
- 93 **(48)**
- 94 Equipment rental stores.
- 95 **(49)**
- 96 Real estate offices.
- 97 **(50)**
- 98 **(51)**
- 99 Self-service laundry and dry-cleaning establishments.
- 100 **(52)**
- 101 Shoe stores and leather goods stores, sales and repairs.
- 102 **(53)**
- 103 .
- 104 **(54)**
- 105 **(55)**
- 106 **(56)**
- 107 **(57)**
- 108 Tobacco shops.
- 109 **(58)**
- 110 **(59)**
- 111 **B.**
- 112 Permitted accessory uses.
- 113 **(1)**

114 Garages for storage of vehicles used in conjunction with the operation of business or owned or
115 used by tenants residing within quarters located in the same structure as the business.

116 **(2)**

117 Off-street parking and loading areas.

118 **(3)**

119 Residential quarters for the owner or proprietor or any rental tenant located in the same
120 structure as the business, provided such living accommodations satisfy all applicable health,
121 safety and current building code provisions and such use is accurately reflected in a current
122 plan of operation which identifies the number and location of all residential occupants in such
123 structure in accordance with § **335-22** of the Code of the Village of Elm Grove.

124 **C.**

125 Conditional uses. All conditional uses shall require the issuance of a condition use permit in
126 accordance with §335-86 of the Code of the Village of Elm Grove.

127 **(1)**

128 Cocktail, or wine or beer bars or taverns.

129 **(2)**

130 Building maintenance and supply stores.

131 **(3)**

132 Drive-in banks.

133 **(4)**

134

135 **(5)**

136 Online retailers' delivery drop-off or item return sites

137 **(6)**

138 Funeral homes.

139 **(7)**

140 Garden supply stores.

141 **(8)**

142 Gasoline service stations and car wash establishments, provided that all pumps and service
143 islands meet the setback and yard requirements.

144 Medical, dental clinics or optical stores.

- 145 **(10)**
- 146 Physical culture facilities, such as fitness centers, massage parlors, tanning parlors and body-
147 piercing establishments as defined by Wis. Admin. Code § HFS 173.03(8) and tattoo parlors.
- 148 **(11)**
- 149 Power equipment centers, sales, service and storage.
- 150 **(12)**
- 151 (a) Restaurants with drive-through windows with take-away service. Only property which
152 has frontage along, and vehicular ingress and egress access to, Bluemound Road may be
153 considered for such a use.
- 154 (b) Restaurants, without drive-through windows with take-away service.
- 155 **(13)**
- 156 Utilities.
- 157 **(14)**
- 158 Lodges and clubs.
- 159 **(15)**
- 160 **(16)**
- 161 Wireless communication antennas.
- 162 **(17)**
- 163 Multifamily residential units as part of a Mixed Compatible Residential Planned Development
164 Overlay District project under § **335-30**. Densities of up to 12 dwelling units per net acre may
165 potentially be granted subject to the adjustments provided for in § **335-30F(3)** and **(4)**.
- 166 **(18)**
- 167 Parking lots, driveways, walkways or other hardscape constructed using a permeable surface to
168 exceed the allowable percentage of maximum impervious surface area as defined within this
169 chapter.
- 170 **(19)**
- 171 Other unspecified uses which are found to be similar in character to those principal uses
172 conditionally permitted by the Plan Commission.
- 173 **D.**
- 174 Lot area and width. Lots shall be a minimum of 7,200 square feet in area and shall be not less
175 than 60 feet in width at the front building line.
- 176 **E.**

177 Building height. No structure or parts thereof shall exceed ??? feet in building height, or ???
178 stories, whichever is less. No accessory structure shall exceed ??? feet in building height.

179 **F.**

180 Yards (principal and/or accessory structures).

181 **(1)**

182 There shall be a minimum building setback of ??? feet from each abutting street right-of-way.

183 **(2)**

184 There shall be no required side yard.

185 **(3)**

186 There shall be a rear yard setback of not less than ??? feet.

187 **G.**

188 Yards within the Downtown Design Overlay District (principal and/or accessory structures).

189 **(1)**

190 Subject to the provisions of § **335-22G(2)**, the Plan Commission may approve deviations from
191 any of the yard requirements specified in § **335-22F**.

192 **(2)**

193 Notwithstanding the provisions of § **335-22F(1), (2) and (3)**, an applicant shall propose, and the
194 Plan Commission shall review and approve, the proposed side, front and rear yard setbacks for
195 structures to be developed or redeveloped within the boundaries of the Downtown Design
196 Overlay District as established by § **335-12G(3)**. Before determining appropriate setbacks, the
197 Plan Commission shall first make a final determination that due consideration has been given to
198 the existing conditions of adjacent properties when establishing side, front and rear yard
199 setbacks, so as to provide a suitable, streamlined and compatible transition between structures.
200 The following criteria shall be considered by the Plan Commission in determining front, side and
201 rear yard setbacks:

202 **(a)**

203 Whether the building setbacks of new or modified structures are compatible with those of
204 existing, adjacent structures and are scaled at an appropriate distance based on massing and
205 height characteristics to adjacent structures;

206 **(b)**

207 Whether the proposed new or modified structure fosters a harmonious relationship to adjacent
208 structures;

209 **(c)**

210 Whether the proposed location of the new or modified structure is reasonably accessible to
211 streets and public walkways, as contemplated in the Downtown District Site Design Guidelines;

212 **(d)**

213 Whether the major facade and/or major entrance of the proposed new or modified structure is
214 functionally linked to the primary pedestrian access as determined by the Plan Commission on a
215 case-by-case basis; and

216 **(e)**

217 Whether the proposed new or modified structure maintains an appropriate distance from any
218 adjacent single- and/or multiple-family residentially zoned properties as determined by the Plan
219 Commission on a case-by-case basis.

220 [2]

221 **H.**

222 Maximum impervious surface: 80% of lot area.

223 **I.**

224 Maximum building footprint area ??? % of lot area.

225 **J.**

226 Plan of operation required. (Refer to § **335-85**.)

227 **SECTION 2:** If any section, sentence, clause, phrase or portion of this ordinance is for any
228 reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall
229 be deemed a separate, distinct and independent provision, and such holding shall not affect the
230 validity of the remainder of such ordinance.

231 **SECTION 3:** This ordinance shall take effect and be in full force from and after its passage and
232 publication by posting commencing on _____, 2019.

233 Passed and approved this _____ day of _____, 2019.

VILLAGE OF ELM GROVE

By: _____
Neil Palmer, Village President

ATTEST:

Mary S. Stredni, Village Clerk

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250
~~251~~
252
253

OMNIBUS CONDITIONAL USE PROVISIONS
PROPOSED AMENDMENTS

254 § 335-86 Conditional use permit.

255 A.
256 Conditional use permits. The Village Board may authorize the Zoning Administrator to issue a
257 conditional use permit for conditional uses after review and a public hearing, provided that such
258 conditional uses and structures are in accordance with the purpose and intent of this chapter and
259 are found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the
260 value of the neighborhood or community.

261 B.
262 Application. Applications for conditional use permits shall be made in duplicate to the Zoning
263 Administrator on forms furnished by the Zoning Administrator and shall include the following
264 information:

265 (1)
266 Names and addresses of the applicant, owner of the site, architect, professional engineer and/or
267 contractor, and all opposite and abutting property owners of record.

268 (2)
269 Description of the subject site by lot, block and recorded subdivision or by metes and bounds;
270 address of the subject site; type of structure; proposed operation or use of the structure or site;
271 number of employees; and the zoning district within which the subject site is located.

272 (3)
273 Survey prepared by a registered land surveyor showing the location, property boundaries,
274 dimensions, uses and size of the following: subject site; existing and proposed structures; existing
275 and proposed easements, streets and other public ways; off-street parking, loading areas and
276 driveways; existing highway access restrictions; existing and proposed street, side and rear yards;
277 and areas subject to inundation by floodwaters. The survey shall also show the location, elevation
278 and uses of any abutting lands and their structures that are located with 40 feet of the subject site;
279 soil mapping unit lines, types and slopes; ground surface elevations; mean and historic high-water
280 lines on or within 40 feet of the subject premises; and existing and proposed landscaping when so
281 required by the Plan Commission.

282 (4)
283 In areas subject to inundation by floodwaters, the survey provided by the applicant shall also
284 include first floor elevations, utility elevations, historic and probable future floodwater elevations,
285 depth of inundation, floodproofing measures and plans for proposed structures with dimensions
286 and elevations pertinent to the determination of the hydraulic capacity of the structures or their
287 effect on flood flows. Where floodproofing is required, the applicant shall submit a plan or
288 document certified by a licensed professional engineer or architect attesting to the adequacy of the
289 floodproofing measures to withstand flood forces and velocities associated with a one-hundred-
290 year recurrence interval flood. Prior to the issuance of a certificate of compliance, the applicant
291 shall also submit a certification by the licensed professional engineer that the finished floodproofing
292 measures were accomplished in compliance with the provisions of this chapter.

293 (5)
294 Additional information as may be required by the Village Board, Village Plan Commission, Village
295 Engineer or the Zoning Administrator.

296 C.
297 Plan Commission review.

298 (1)
299 The Village Plan Commission shall review all applications for conditional use permits. The Plan
300 Commission shall review and consider the site, existing and proposed structures, architectural
301

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302 plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and
303 circulation, drainage, sound and vibration generation, sewerage and water systems, aesthetic and
304 conditional use compatibility with the then character of the neighborhood and the proposed plan of
305 operation for compliance with the Code of Ordinances and the purpose and intent of this chapter.

306 **(2)**
307 Conditions such as landscaping, architectural design, type of construction, construction
308 commencement and completion dates, sureties, lighting, fencing, planting screens, operational
309 control, hours of operation, traffic, deed restrictions, increased yards or parking requirements, and
310 potential negative impact on neighboring properties may be considered by the Plan commission
311 upon its finding that these are necessary to fulfill the propose and intent of this Chapter.

312
313 **(3)**
314 The Plan Commission shall report its findings to the Village Board within 60 days and may
315 recommend conditions, such as landscaping, architectural design, type of construction,
316 construction commencement and completion dates, sureties, lighting, fencing, drainage, sound and
317 vibration generation reduction or elimination, planting screens, operational control, hours of
318 operation, improved traffic circulation, deed restrictions, highway access restrictions, increased
319 yards and parking requirements, or any other condition the Plan Commission deems necessary in
320 order to ensure that the proposed use complies with the intent and character of the surrounding
321 properties and where such conditions are deemed necessary to fulfill the purpose and intent of this
322 chapter.

323 **D.**
324 Public hearing. The Village Board shall hold a public hearing upon each application after receiving
325 the recommendation from the Plan Commission. A notice shall be via class 2 notice prior to the
326 public hearing giving the time and place for the hearing, and due notice shall be given to the parties
327 in interest. At the hearing, the applicant may appear in person or by his or her agent or attorney.

328 [Amended 4-22-2008]
329 **E.**
330 Village Board action. Following the public hearing, and after consideration of the Plan
331 Commission's recommendations, the Village Board shall exercise its own independent judgment in
332 evaluating all data and information received or absent from the record of the application, including
333 testimony or public comments which it deems to constitute substantial evidence under Wis. Stat. §
334 62.23 (7)(de)b. and the recommendation of the Plan Commission in determining whether to grant
335 the conditional use permit as applied for, grant the conditional use permit with conditions deemed
336 appropriate by the Board, impose conditions such as the permit's duration, transfer, or renewal, in
337 addition to any other conditions specified in the village's zoning ordinances or as recommended by
338 the Plan Commission, or deny the permit In which case, such decision may be appealed to the
339 circuit court under the procedures contained in Wis. Stat. § 62.23(7)(e.)10. In addition:

340 **(1)**
341 Compliance with all other provisions of this chapter, such as lot width and area, yards, height,
342 parking, loading, traffic and highway access shall be required of all conditional uses unless a
343 variance has been granted under Article **IX** of this chapter; provided, however, that the Village
344 Board may, with the recommendation of the Plan Commission, authorize the reconstruction of a
345 lawful pre-existing detached garage at its current location and in its current dimensions,
346 notwithstanding noncompliance with the setback and minimum square footage requirements of this
347 chapter.

348 **(2)**
349 Amendments. Changes subsequent to the initial issuance of a conditional use permit that result in
350 a need to change the initial conditions shall require an amendment to the conditional use permit.
351 Enlargement of a conditional use shall be considered an amendment. The process for amending a
352 permit shall generally follow the procedures for the initial granting of a conditional use permit.

353 **(3)**

354 Revocation of conditional use permit. In the event an applicant or its successors or assigns, where
355 such transfer is allowed, fail to comply with the conditions of the conditional use permit, or if the
356 use, or characteristics of the use, is changed without prior approval by the Plan Commission, the
357 conditional use permit may be revoked by the Village Board of Trustees. The process for revoking
358 a permit shall generally follow the procedures for granting a permit.

359 **F.**
360 Existing conditional uses. Lawful uses existing at the effective date of this chapter that would be
361 classified as a conditional use in the particular district concerned if they were established after the
362 effective date of this chapter shall be considered legal conditional uses without further action of the
363 Village. Changes to or substitution of such conditional uses shall be subject to review and approval
364 by the Village Board of Trustees in accordance with this section.

365 **G.**
366 Notice to Department of Natural Resources. The Zoning Administrator shall transmit a copy of each
367 application for a conditional floodland use or shoreland W-1 District conditional use to the
368 Wisconsin Department of Natural Resources (DNR) for its review and comment. Action on such
369 applications shall not be taken for 30 days or until the DNR has made its recommendation,
370 whichever occurs first. A copy of floodland conditional use permits and shoreland W-1 District
371 conditional use permits shall be transmitted to the DNR within 10 days of the effective date of such
372 permit.

373 **H.**
374 Conditional use review of communication structures. The following procedures and standards are
375 applicable to proposed communication structures identified as conditional uses within this chapter.
376 Terms within this section shall have the meanings found in § 335-50.1 and § 335-94.
377 [Added 10-13-1997; amended 8-25-2014]

378 **(1)**
379 Application and review. The Village Manager shall determine an application to be complete and
380 eligible for formal presentation to the Plan Commission and establishment of public hearing date
381 only after the applicant has submitted information as required under this chapter.

382 **(2)**
383 Fees and deposits. The Village Manager shall identify and estimate the need of the Village to
384 engage expertise to assist the Village staff, the Plan Commission and the Board of Trustees in
385 reviewing the application. Per the requirements set forth in § 30-3, the Village Manager shall inform
386 the applicant of these requirements, and the amounts that the applicant will be required to pay shall
387 be confirmed by the Plan Commission at its initial formal review and may be modified by the Plan
388 Commission if additional expertise needs to be engaged. These amounts shall be due and payable
389 by the applicant to the Village within the timetable established by the Village per § 30-3.

390 **(3)**
391 Application documentation. The applicant shall submit in writing as part of its application the
392 following documentation:

393 **(a)**
394 The name and business address of, and the contact individual for, the applicant.

395 **(b)**
396 Construction plan showing the location of the proposed or affected wireless Tower; and renderings
397 showing site and structural features, including network components, Wireless Communication
398 Antennas, transmitters, receivers, base stations, power supplies, cabling and any other associated
399 equipment that is necessary to provide wireless communication service.

400 **(c)**
401 If the application is a substantial modification of an existing Tower or Mobile Service Facility, the
402 applicant shall submit a construction plan which describes the proposed modifications, including
403 equipment and network components, antennas, transmitters, receivers, base stations, power
404 supplies, cabling and related equipment associated with the proposed modifications.

405 **(d)**

406 If the application is to construct a new Tower and/or a New Mobile Service Facility, a construction
407 plan which describes the proposed structure and the equipment and network components,
408 including antennas, transmitters, receiver's base stations, power supplies, cabling and related
409 equipment to be placed on or around the new wireless tower.

410 **(4)**

411 Co-location preference; public site preference.

412 **(a)**

413 As a matter of municipal policy, the Village of Elm Grove strongly supports co-location (single
414 locations accommodating multiple Wireless Communication Antennas and related facilities on a
415 single Mobile Service Support Structure or groupings of Mobile Service Support Structures) and
416 location of facilities on public property. Applicants proposing locations not conforming with these
417 policy preferences shall have the burden of demonstrating the necessity of location on private
418 property and/or as single-use or single-system Mobile Service Facilities. Sites and Mobile Service
419 Facilities proposed for approval shall generally be sized and designed to allow flexibility for addition
420 of more facilities by the same applicant entity or other entities, and the Village may negotiate terms
421 and conditions facilitating co-location. Once approved, additional antennas and accessory facilities
422 may be added to a site in accordance with the sharing conditions of the conditional use approval.

423 **(b)**

424 Permittees shall exercise good faith in co-locating and/or clustering with other communication
425 companies and sharing the permitted site, provided such shared use does not give rise to a
426 substantial technical level or quality-of-service impairment of the permitted use (as opposed to a
427 competitive conflict or financial burden). In the event a dispute arises as to whether the permittee
428 has exercised good faith in accommodating other users, the Village may require a third-party
429 technical study at the expense of either or both the applicant and complaining user.

430 **(c)**

431 If an application seeks to construct a new Tower and Mobile Service Facility the applicant shall
432 provide a written explanation, in addition to the other required submittal materials, as to the reason
433 for the proposed location instead of co-location with an existing Mobile Service Facility. This
434 explanation shall include a sworn statement by the individual who has the responsibility over the
435 placement of the wireless Tower attesting that co-location is not possible due to the following
436 factors;

437 **[1]**

438 Co-location would not result in the same communication service functionality, coverage and
439 capacity;

440 **[2]**

441 Co-location is technologically infeasible; and

442 **[3]**

443 Co-location creates an unreasonable economic burden to the wireless communication service
444 provider.

445 **(5)**

446 Additional criteria and requirements for conditional use permit.

447 **(a)**

448 All changes made to towers exceeding what was requested in the original application or otherwise
449 legally existing at the date of adoption of this subsection, including, but not limited to, adding
450 microwave dishes, or increasing the height, or profile, shall require review and approval by the Plan
451 Commission.

452 **(b)**

453 All towers and sites shall be properly maintained and shall be kept in a condition as not to become
454 a public nuisance or eyesore. Proper maintenance shall include, but not be limited to, regular lawn
455 and landscaping care, painting of an accessory building, fences, and tower. Additionally, the site
456 shall be kept clear of junk and trash.

457 **(c)**

458 Landscaping requirements.

459 **[1]**

460 For all commercial towers over 50 feet in height, the tower base, accessory building, anchor points,
461 and parking area shall be screened with a four-foot-tall (at time of planting) evergreen hedge
462 consistent with the landscaping requirements for nonresidential properties.

463 **[2]**

464 For towers of 180 feet or greater, at least one row of deciduous trees not less than a caliper of
465 2 1/2 inches' diameter at breast height (dbh) shall be planted between the tower and public rights-
466 of-way and residential properties. The type and amount of required landscaping shall be
467 determined by the Plan Commission on a case-by-case basis.

468 **[3]**

469 The Plan Commission may allow an alternative landscaping or screening plan or waive the
470 landscape requirements if it is determined that the landscaping will not serve a functional value
471 based on existing topography or surrounding land uses.

472 **(d)**

473 Every three years, beginning with the adoption of this subsection or following completion of
474 construction of a tower, whichever is later, the owner of the tower shall submit to the Village
475 Engineer a report from a structural engineer or other expert acceptable to the Village Engineer
476 reflecting the fact that such tower is structurally sound and does not pose any threat to life or
477 property.

478 **(e)**

479 No apparatus shall be attached to any tower except as approved by the Plan Commission.
480 Apparatus attached legally to existing towers prior to enactment of this subsection may remain but
481 not be increased in any way except with approval of the Plan Commission. Approval of the Plan
482 Commission for additional apparatus will be granted only after the applicant demonstrates a need
483 for additional apparatus.

484 **(f)**

485 Prior to final approval for new towers or within one year of the date of adoption of this subsection
486 for existing towers, the tower owner shall furnish a financial guarantee, in the form of a letter of
487 credit, to the Village in the amount of \$20,000. The amount of such financial guarantee may be
488 reviewed by the Plan Commission at any time to determine the sufficiency of such amount to
489 remove the tower and restore the site upon which it is located. Funds from the financial guarantee
490 letter of credit may be used by the Village to pay any professional fees associated with the removal
491 of the tower and/or restoration of the site upon which it is located.

492 **(g)**

493 Prior to final approval for new towers or within one year of the date of adoption of this subsection
494 for existing towers, the owners shall furnish proof of liability insurance which protects against
495 losses due to personal injury or property damage resulting from the construction, operation or
496 collapse of the tower, antennas or accessory building in a form satisfactory to the Village Attorney.

497 **(h)**

498 This subsection applies to both towers existing at the time of adoption of this subsection and those
499 constructed thereafter.

500 **(6)**

501 Conditions. Conditional use approvals shall contain conditions addressing issues such as
502 maintenance, including allocation of responsibilities and costs for maintenance in co-location
503 situations, mandatory removal of towers upon termination of their use, security features and
504 provisions allowing municipal access for inspection purposes, and related issues

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