

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

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Neil H. Palmer, Village President

Mary S. Stredni, Village Clerk

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OMNIBUS CONDITIONAL USE PROVISIONS
PROPOSED AMENDMENTS

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§ 335-86 Conditional use permit.
A.
Conditional use permits. The Village Board may authorize the Zoning Administrator to issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this chapter and are found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or community.
B.
Application. Applications for conditional use permits shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following information:
(1)
Names and addresses of the applicant, owner of the site, architect, professional engineer and/or contractor, and all opposite and abutting property owners of record.
(2)
Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure; proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site is located.
(3)
Survey prepared by a registered land surveyor showing the location, property boundaries, dimensions, uses and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side and rear yards; and areas subject to inundation by floodwaters. The survey shall also show the location, elevation and uses of any abutting lands and their structures that are located with 40 feet of the subject site; soil mapping unit lines, types and slopes; ground surface elevations; mean and historic high-water lines on or within 40 feet of the subject premises; and existing and proposed landscaping when so required by the Plan Commission.
(4)
In areas subject to inundation by floodwaters, the survey provided by the applicant shall also include first floor elevations, utility elevations, historic and probable future floodwater elevations, depth of inundation, floodproofing measures and plans for proposed structures with dimensions and elevations pertinent to the determination of the hydraulic capacity of the structures or their effect on flood flows. Where floodproofing is required, the applicant shall submit a plan or document certified by a licensed professional engineer or architect attesting to the adequacy of the floodproofing measures to withstand flood forces and velocities associated with a one-hundred-year recurrence interval flood. Prior to the issuance of a certificate of compliance, the applicant shall also submit a certification by the licensed professional engineer that the finished floodproofing measures were accomplished in compliance with the provisions of this chapter.
(5)
Additional information as may be required by the Village Board, Village Plan Commission, Village Engineer or the Zoning Administrator.
C.
Plan Commission review.
(1)
The Village Plan Commission shall review all applications for conditional use permits. The Plan Commission shall review and consider the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and

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301 circulation, drainage, sound and vibration generation, sewerage and water systems, aesthetic and
302 conditional use compatibility with the then character of the neighborhood and the proposed plan of
303 operation for compliance with the Code of Ordinances and the purpose and intent of this chapter.

304 (2)
305 Conditions such as landscaping, architectural design, type of construction, construction
306 commencement and completion dates, sureties, lighting, fencing, planting screens, operational
307 control, hours of operation, traffic, deed restrictions, increased yards or parking requirements, and
308 potential negative impact on neighboring properties may be considered by the Plan commission
309 upon its finding that these are necessary to fulfill the propose and intent of this Chapter.

310
311 (3)
312 The Plan Commission shall report its findings to the Village Board within 60 days and may
313 recommend conditions, such as landscaping, architectural design, type of construction,
314 construction commencement and completion dates, sureties, lighting, fencing, drainage, sound and
315 vibration generation reduction or elimination, planting screens, operational control, hours of
316 operation, improved traffic circulation, deed restrictions, highway access restrictions, increased
317 yards and parking requirements, or any other condition the Plan Commission deems necessary in
318 order to ensure that the proposed use complies with the intent and character of the surrounding
319 properties and where such conditions are deemed necessary to fulfill the purpose and intent of this
320 chapter.

321 D.
322 Public hearing. The Village Board shall hold a public hearing upon each application after receiving
323 the recommendation from the Plan Commission. A notice shall be via class 2 notice prior to the
324 public hearing giving the time and place for the hearing, and due notice shall be given to the parties
325 in interest. At the hearing, the applicant may appear in person or by his or her agent or attorney.
326 [Amended 4-22-2008]

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

338 (1)
339 Compliance with all other provisions of this chapter, such as lot width and area, yards, height,
340 parking, loading, traffic and highway access shall be required of all conditional uses unless a
341 variance has been granted under Article **IX** of this chapter; provided, however, that the Village
342 Board may, with the recommendation of the Plan Commission, authorize the reconstruction of a
343 lawful pre-existing detached garage at its current location and in its current dimensions,
344 notwithstanding noncompliance with the setback and minimum square footage requirements of this
345 chapter.

346 (2)
347 Amendments. Changes subsequent to the initial issuance of a conditional use permit that result in
348 a need to change the initial conditions shall require an amendment to the conditional use permit.
349 Enlargement of a conditional use shall be considered an amendment. The process for amending a
350 permit shall generally follow the procedures for the initial granting of a conditional use permit.

351 (3)

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

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

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

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

376 **(1)**
377 Application and review. The Village Manager shall determine an application to be complete and
378 eligible for formal presentation to the Plan Commission and establishment of public hearing date
379 only after the applicant has submitted information as required under this chapter.

380 **(2)**
381 Fees and deposits. The Village Manager shall identify and estimate the need of the Village to
382 engage expertise to assist the Village staff, the Plan Commission and the Board of Trustees in
383 reviewing the application. Per the requirements set forth in § 30-3, the Village Manager shall inform
384 the applicant of these requirements, and the amounts that the applicant will be required to pay shall
385 be confirmed by the Plan Commission at its initial formal review and may be modified by the Plan
386 Commission if additional expertise needs to be engaged. These amounts shall be due and payable
387 by the applicant to the Village within the timetable established by the Village per § 30-3.

388 **(3)**
389 Application documentation. The applicant shall submit in writing as part of its application the
390 following documentation:

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

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

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

403 **(d)**

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

408 **(4)**

409 Co-location preference; public site preference.

410 **(a)**

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

421 **(b)**

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

428 **(c)**

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

435 **[1]**

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

438 **[2]**

439 Co-location is technologically infeasible; and

440 **[3]**

441 Co-location creates an unreasonable economic burden to the wireless communication service
442 provider.

443 **(5)**

444 Additional criteria and requirements for conditional use permit.

445 **(a)**

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

450 **(b)**

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

455 **(c)**

456 Landscaping requirements.

457 **[1]**
458 For all commercial towers over 50 feet in height, the tower base, accessory building, anchor points,
459 and parking area shall be screened with a four-foot-tall (at time of planting) evergreen hedge
460 consistent with the landscaping requirements for nonresidential properties.

461 **[2]**
462 For towers of 180 feet or greater, at least one row of deciduous trees not less than a caliper of
463 2 1/2 inches' diameter at breast height (dbh) shall be planted between the tower and public rights-
464 of-way and residential properties. The type and amount of required landscaping shall be
465 determined by the Plan Commission on a case-by-case basis.

466 **[3]**
467 The Plan Commission may allow an alternative landscaping or screening plan or waive the
468 landscape requirements if it is determined that the landscaping will not serve a functional value
469 based on existing topography or surrounding land uses.

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

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

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

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

495 **(h)**
496 This subsection applies to both towers existing at the time of adoption of this subsection and those
497 constructed thereafter.

498 **(6)**
499 Conditions. Conditional use approvals shall contain conditions addressing issues such as
500 maintenance, including allocation of responsibilities and costs for maintenance in co-location
501 situations, mandatory removal of towers upon termination of their use, security features and
502 provisions allowing municipal access for inspection purposes, and related issues

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