

ORDINANCE 2015-

AN ORDINANCE TO ASSIGN ZONING DISTRICTS TO AN EXPANDED EXTRATERRITORIAL ZONING AREA IN VIENNA AND AMEND AGRICULTURAL ZONING DISTRICTS AND STANDARDS IN THE VILLAGE ZONING CODE (CHAPTER 15)

WHEREAS, the Village has previously enacted an extraterritorial zoning ordinance governing a portion of its extraterritorial jurisdiction within the Towns of Vienna and Burke, with such zoning ordinance containing agricultural zoning districts; and

WHEREAS, the Village of DeForest has entered into an agreement with the Town of Vienna pursuant to §66.0301(6), Wis. Stats. entitled “Boundary And Utility Service Agreement,” approved by the Village Board on January 7, 2014 and by the Town Board on January 20, 2014; and

WHEREAS, §7.02 of the boundary agreement provides for adjustment of the Village’s extraterritorial zoning boundary to include additional areas of the Town of Vienna which currently lie within the Village’s extraterritorial jurisdiction, but have not been previously subject to Village zoning; and

WHEREAS, via Resolution 2014-005, adopted on March 4, 2014, the Village Board declared its intention to prepare a comprehensive zoning ordinance governing the use and development of lands within such additional areas; and

WHEREAS, the Town of Vienna has separately requested that the Village amend its zoning ordinance to include one or more agricultural zoning districts that would be certified by the State Department of Agriculture, Trade and Consumer Protection to enable eligible land owners to obtain farmland preservation income tax credits, and the Village Board has agreed to that request; and

WHEREAS, following a public hearing, the Village Planning and Zoning Commission, DeForest-Vienna Extraterritorial Zoning Committee, and DeForest-Burke Extraterritorial Zoning Committee have recommended enactment of the zoning ordinance amendments set forth below; and

WHEREAS, the Village Board finds that the amendments to the zoning ordinance set forth in this ordinance are consistent with the Village Comprehensive Plan, and are in the public interest.

NOW, THEREFORE, THE VILLAGE BOARD OF DEFOREST, WISCONSIN DOES ORDAIN AS FOLLOWS:

SECTION 1. The following definitions are hereby created within Section 15.02 to read as follows:

(2s) **AGRICULTURAL USE.** Any of the following activities conducted for the purpose of producing an income or livelihood:

- (a) Crop or forage production.
- (b) Keeping livestock.
- (c) Beekeeping.
- (d) Nursery, sod, or Christmas tree production.
- (e) Floriculture.
- (f) Aquaculture.

(g) Fur farming.

(h) Forest management.

(i) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

(2u) AGRICULTURAL ACCESSORY USE. Any of the following land uses on a farm:

(a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.

(b) An activity or business operation that is an integral part of, or incidental to, an agricultural use.

(c) A farm residence.

(d) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in par. (a) or (c), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland. Such activities may include, but are not limited to:

1. Sale of agricultural and dairy products not produced on the premises and incidental sale of non-alcoholic beverages and snacks.
2. The seasonal storage of recreational equipment and motor vehicles owned by private individuals other than those residing on the premises, but not including the storage of a dealer's inventory.
3. Agricultural entertainment activities exceeding 45 days per year, in aggregate, or events planned or anticipated to attract 200 or more persons per day.
4. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities, occurring on more than five days in a calendar year.
5. Horse boarding stables, riding stables, hay and sleigh rides, and horse training facilities, including the sale of bridles, saddles, grooming supplies and related items at a horse boarding or riding stable facility.

(2w) AGRICULTURE-RELATED USE. A facility, whether or not located on a farm, that has at least one of the following as a primary and not merely incidental purpose:

(a) Providing agricultural supplies, agricultural equipment, agricultural inputs or agricultural services directly to farms.

(b) Storing, processing or handling raw agricultural commodities obtained directly from farms.

(c) Processing agricultural by-products or wastes received directly from farms.

(26t) FARM. All land under common ownership that is primarily devoted to agricultural use.

(28v) FARM OPERATOR. A person who, or a family at least one member of which, earns substantial farm income, as defined in section 15.02(89j), from farm operations on the farm.

(28x) FARM RESIDENCE. Any of the following structures that is located on a farm:

(a) A single-family residence that is occupied by any of the following:

1. A person who is both the owner and operator of the farm.
2. A parent or child of an owner-operator of the farm.
3. An individual who earns more than 50 percent of his or her gross income from the farm.

(b) A migrant labor camp that is certified under Section 103.92, Wisconsin Statutes.

(42g) LIVESTOCK. Domestic animals traditionally used in Wisconsin in the production of food, fiber, or other animal products. Livestock includes bovine animals, equine animals, goats (except pigmy), poultry, sheep, swine (except pot bellied pigs), farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

(89j) SUBSTANTIAL FARM INCOME. A minimum of \$10,400 gross farm income per year for the past three years derived from the farming operation on the farm. Rental income is not considered farm income for this definition.

SECTION 2. Sections 15.03(7)(h) and 15.035(3)(g) [zoning map amendments] are hereby created as follows:

Rezoning of Land from the A-1 Ex or A-4 Districts. No land in the A-1 Ex or A-4 districts shall be rezoned to any district aside from the A-1 Ex or A-4 district, except in accordance with the following criteria:

1. The land is better suited for a use not allowed in the A-1 Ex or A-4 district.
2. The rezoning is consistent with the Dane County farmland preservation plan, Village comprehensive plan, and town comprehensive plan as applicable.
3. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

SECTION 3. Sections 15.03(7)(g) and 15.035(3)(h) [zoning map amendments] are hereby created as follows:

Reporting on Rezonings out of the A-1 Ex and A-4 districts. Per Section 91.48(2), Wisconsin Statutes, the Zoning Administrator shall, by March 1 of each year, provide to the Department of Agriculture, Trade and Consumer Protection a report of the number of acres that the Village has rezoned out of the A-1 Ex and A-4 districts the previous year and a map that clearly shows the location of those areas.

SECTION 4. Section 15.09(1)(d) [Zoning Districts] is hereby amended to read as follows:

(d) Agricultural Districts

1. A-1 Agricultural District
2. A-1 Ex Exclusive Agricultural District
3. A-2 General Agricultural District
4. A-3 Agricultural Transition District
5. A-4 Small Lot Exclusive Agricultural District

SECTION 5. Section 15.131 is hereby repealed and recreated to read as follows:

15.131 A-1 EXCLUSIVE (A-1 EX) AGRICULTURAL DISTRICT.

(1) **PURPOSE.** The A-1 Ex district is designed to provide for a wide range of agriculture uses and agricultural accessory uses. The district favors uses which are associated with the primary production and harvesting of crops, livestock, animal products or plant materials. Activities typically associated with working farms should be expected in the A-1 Ex district, including noise, dust, odors, heavy equipment, use of chemicals, and long hours of operation. The A-1 Ex district also includes undeveloped natural resource and open space areas, and other uses permitted hereunder. The A-1 Ex district meets the criteria for certification as a farmland preservation zoning district under s. 91.38, Wis. Stats.

(2) **PERMITTED USES.**

(a) Agricultural uses. Keeping of livestock is prohibited on parcels smaller than 5 acres.

(b) Agricultural accessory uses, except for those types of agricultural accessory uses listed as conditional uses below.

(c) Any residence lawfully existing as of February 20, 2010. Notwithstanding the provisions of Section 15.17 regarding nonconforming uses and structures, such residence may be added to, altered, restored, repaired, replaced, or reconstructed, provided all of the following criteria are met:

1. The use remains residential,
2. The structure complies with all residential building height, setback, side yard, and rear yard standards of this section; and
3. For replacement residences, the structure must be located within 100 feet of the original residence, except where a site plan for an alternative location is approved by the associated Joint Committee.
4. Rental of existing or secondary residences located on a farm, but no longer utilized in the operation of the farm.

(d) Undeveloped natural resource and open space areas.

(e) A transportation, utility, communication, pipeline, electric transmission, or drainage use that is:

1. Required under state or federal law to be located in a specific place, or;
2. Authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit.

(3) **CONDITIONAL USES.**

(a) The following types agricultural accessory uses:

1. Farm residences, subject to the application requirements in Section 15.16(3)(a) and a “sunset” condition indicating that the conditional use permit shall expire upon sale of the

property to an unrelated third party (thereby requiring a new conditional use permit or rezoning application at such time) and requiring the recording of a notice document with the Register of Deeds notifying current and future owners of this provision.

2. Sale of agricultural and dairy products not produced on the premises and incidental sale of non-alcoholic beverages and snacks.
 3. The seasonal storage of recreational equipment and motor vehicles owned by private individuals other than those residing on the premises, but not including the storage of a dealer's inventory.
 4. Agricultural entertainment activities exceeding 45 days per year, in aggregate, or events planned or anticipated to attract 200 or more persons per day.
 5. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities, occurring on more than five days in a calendar year.
 6. Horse boarding stables, riding stables, hay and sleigh rides, and horse training facilities, including the sale of bridles, saddles, grooming supplies and related items at a horse boarding or riding stable facility.
- (b) Governmental, institutional, religious, or nonprofit community uses.
- (c) Any transportation, communications, pipeline, electric transmission, utility, or drainage use that is not classified as a permitted use.
- (d) Non-metallic mineral extraction operations, subject to s. 91.46(6), Wis. Stats. and Sections 15.04(12) and 15.16(4) of this chapter.
- (e) Asphalt plants or ready-mix concrete plants for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration.

(4) DIMENSIONAL REQUIREMENTS.

- (a) The minimum lot area is 35 acres. Replacement dwellings on lots less than 35 acres are permitted per subsection (2)(c) above.
- (b) The minimum lot width is 150 feet.
- (c) Residential dwellings (including replacement dwellings), detached residential accessory buildings, and other buildings that are not agricultural accessory buildings shall meet the maximum building height and minimum setback requirements applicable to such buildings in the RH-1 district per Table 15.10B. The maximum height of residential accessory buildings and any other accessory building that is not an agricultural accessory building is 15 feet.
- (d) Agricultural accessory buildings have no height limitation; agricultural accessory buildings constructed after January 1, 2015 shall meet the minimum setback requirements for accessory buildings in the RH-1 district. No agricultural accessory building shall be moved or structurally altered so as to be nearer than 25 feet from any street or highway right-of-way.

(e) Agricultural accessory buildings, cages, kennels, hives and runs for housing of animals or insects shall be located at least 100 feet from any residential district, except with respect to existing structures when the residence district has been created for an existing farm residence or by separating a farm residence from a farm property and the separated parcel has been rezoned to a residence district after or at the time of the division.

SECTION 6. Section 15.133 is hereby created as follows:

15.133 A-3 AGRICULTURAL TRANSITION DISTRICT.

(1) **PURPOSE.** The A-3 district is established to preserve, in agricultural and open space uses, lands suited to future urban development pending proper timing and the economical provision of public utilities and community facilities to ensure their orderly development. The A-3 district does meet the criteria for certification as a farmland preservation zoning district under Section 91.38, Wisconsin Statutes, because it is not mapped in areas planned for long-term farmland preservation in the Dane County farmland preservation plan.

(2) **PERMITTED USES.** Permitted uses shall be the same as those within the A-1 Exclusive Agricultural district.

(3) **CONDITIONAL USES.** Conditional uses shall be the same as those within the A-1 Exclusive Agricultural District.

(4) **DIMENSIONAL REQUIREMENTS.** Lot area, width, setback, height, and other dimensional requirements shall be the same as those within the A-1 Exclusive Agricultural District.

SECTION 7. Section 15.134 is hereby created to read as follows:

15.134 A-4 SMALL LOT EXCLUSIVE AGRICULTURAL DISTRICT.

(1) **PURPOSE.** The A-4 district is established to provide for a modest range of agricultural and agricultural accessory uses, at scales consistent with the size of the parcel and compatible with neighboring land uses, and on lots between five and 35 acres in area. The district is also intended to preserve remnant parcels of productive agricultural land that are between five and 35 acres following development of adjoining property. Activities typically associated with working farms should be expected in the A-4 district, including noise, dust, odors, heavy equipment, use of chemicals, and long hours of operation. The A-4 district also includes undeveloped natural resource and open space areas, and other uses permitted hereunder. The A-4 district meets the criteria for certification as a farmland preservation zoning district under s. 91.38, Wis. Stats.

(2) **PERMITTED USES.** Permitted uses shall be the same as those within the A-1 Exclusive Agricultural district, except that the keeping of livestock shall be limited to a density of one animal unit per each full acre as a permitted use.

(3) **CONDITIONAL USES.** Conditional uses shall be the same as those within the A-1 Exclusive Agricultural district, except that the keeping of livestock at a density of greater than one animal unit per each full acre shall be a conditional use.

(4) **DIMENSIONAL REQUIREMENTS.** Dimensional requirements shall be the same as those within the A-1 Exclusive Agricultural District, except that the minimum lot area in the A-4 district shall be not less than five acres and the maximum lot area shall be not greater than 35 acres.

SECTION 7. Section 15.16(3)(a) [Conditional Use Permits] is hereby amended to read as follows:

(3) PROCEDURE FOR APPROVAL.

(a) Application. All applications for conditional use permits shall be submitted on a form provided by the Zoning Administrator. The application shall contain a description of the property, the name of the applicant, a description of the proposed use including applicable operational characteristics, a conceptual site and building plan if site and building improvements are anticipated or required to accommodate the conditional use, and such other information as the Zoning Administrator shall determine necessary for appropriate review. The application shall describe all conditions and restrictions proposed by the applicant to assure that the proposed use will continually meet the standards set forth in par. (f). The Zoning Administrator may reject any application which does not contain the required information or which proposes a use not authorized as a conditional use by the applicable district regulations. The following additional information shall be submitted with an application for a farm residence in the A-1 Ex or A-4 district:

1. Written description of the farm operation, including location, size, crops grown and/or livestock raised, number of employees beyond family members, and summary of farm income derived from the farm operation.
2. Completed IRS form “Schedule F – Profit or Loss from Farming” for the past three tax years.
3. Farm conservation plan obtained from the Land Conservation Division of the Dane County Land & Water Resources Department.
4. Site plan showing the farm ownership boundaries and the location of the proposed new homesite and driveway access.

SECTION 8. Section 15.16(3)(f) [Conditional Use Permits, Standards of Approval] is hereby created to read as follows:

9. If within the A-1 Ex or A-4 district:
 - i. The use and its location in the district are consistent with the purpose of the district.
 - ii. The use and its location in district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
 - iii. The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
 - iv. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
 - v. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

SECTION 9. Table 15.11A [Business District Use List] is hereby amended for applicability within the extraterritorial zoning area by adding the following land use as a conditional use in the B-1, B-2, and B-3 zoning districts, under the “Service Retail, Heavy” section of that table:

Mini-warehouses, for the indoor storage of household items and other non-hazardous, non-perishable durable goods entirely within partitioned buildings with individual access to each partitioned area.

Adopted at a regular Village Board meeting this ____ day of _____, 2015.

Judd Blau, Village President

Attest: _____
LuAnn Leggett, Village Clerk

Vote: _____

Date of Publication: _____, 2015

Effective Date: _____, 2015

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