

## CHAPTER 28

### AIRPORT HEIGHT LIMITATION ZONING

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## 28.01 DEFINITIONS.

- (1) “Airport” means the Boscobel Municipal Airport, a General Utility II class airport located in Section 24, Town 8 North, Range 3 West of the 4th Principal Meridian; Section 25, Town 8 North, Range 3 West of the 4th Principal Meridian; Section 13, Town 8 North, Range 3 West of the 4th Principal Meridian; Section 19, Town 8 North, Range 2 West of the 4th Principal Meridian; and Section 18, Town 8 North, Range 2 West of the 4th Principal Meridian, all in Grant County, State of Wisconsin.
- (2) “Airport Hazard” means any structure or object of natural growth which obstructs the air space required for the flight of air craft in taking off or landing at the airport or which is otherwise hazardous to such taking off or landing.
- (3) “Height” means the elevation above mean sea level of the top of the structure, including any appurtenance installed on it, or the top of any object of natural growth.
- (4) “Nonconforming Use” means the lawful use of land, buildings and structures existing at the time of the adoption of this chapter, although such structure or use does not conform with the provisions of this chapter.
- (5) “Permit” means written permission from the City of Boscobel on a form provided by it stating that the proposed structure site either conforms to the provisions of this chapter or has been granted a variance hereunder.
- (6) “Person” includes without limitation all natural persons, partnerships, corporations, limited liability companies, cooperatives, associations, municipalities, bodies politic and corporate, estates and trusts, and any representative, agent, assign or employee thereof.
- (7) “Runway” means a paved level portion of the airport specifically developed and maintained for the takeoff and landing of aircraft.
- (8) “Structure” means any mode of building, construction, or organization; arrangements of parts, elements, or constituents; or anything built or constructed, installed or located by any person, including any object or mobile object.
- (9) “Tree” means a plant having a permanently woody main stem or trunk, ordinarily growing to a considerable height, and usually developing branches at some distance from the ground, but excludes shrubs, bushes and plants which do not grow to a height of more than 20 feet.

## **28.02 ZONING.**

Zones are all zones established by the official “Height Limitation Zoning Map” of the Boscobel Municipal Airport dated April 19, 2007, (hereafter the “Airport Zoning Map”), a copy of which is on file with the City Clerk. This Map is adopted by this Section and incorporated into this Chapter by reference.

## **28.03 HEIGHT LIMITS AND EXCEPTIONS.**

- (1) Height Limitation Zones. Except as otherwise permitted by this chapter, no structure shall be constructed, altered, located or permitted to remain after such construction, alteration or relocation, that exceeds the height limit indicated on the Airport Zoning Map, nor shall any tree be allowed to grow to a height that exceeds the height limit indicated on the Airport Zoning Map.
- (2) Exceptions. The restrictions contained in (1) shall not apply to objects that are less than 35 feet in height above ground level at the object site within one-half mile of the airport boundary, or to structures less than 50 feet in height above ground at the object site within the area beginning one-half mile from the airport boundary and extending to three miles from the airport boundary.

## **28.04 NONCONFORMING USES AND STRUCTURES UNDER CONSTRUCTION.**

- (1) Nonconforming Uses. Nonconforming uses existing at the time of the adoption of this chapter, or any amendment of it, may be continued. The Common Council may remove such nonconforming use, or acquire the necessary air right over it, by purchase or exercise of the right of eminent domain in the manner provided by Chapter 32 of the Wisconsin Statutes.
- (2) Structures Under Construction. This chapter shall not be construed to require any change in the construction or alteration of any structure, if the construction or alteration was visibly commenced by work in place prior to the effective date of this chapter.

## **28.05 ADMINISTRATION.**

- (1) Zoning Administrator.
  - (a) The zoning administrator designated by Section 17.12 of this Code is charged with the administration and enforcement of this chapter.

28.05(1) Zoning Administrator (cont.)

- (b) Applications for permits and variances shall be made to the zoning administrator upon such forms as he or she shall prescribe, shall be completed fully, and shall provide in sufficient detail all information requested. Applications for permits and variances shall be granted or denied within 30 days of their submission to the zoning administrator for approval, provided the application is in proper form and content. This time limit shall not apply if approval of the Federal Aviation Administration or the Bureau of Aeronautics is requested or required, in which case the application shall be acted upon seasonably.
  - (c) If an application requires review or approval by the Board of Zoning Appeals, the zoning administrator shall inform the applicant of that fact and shall provide the applicant with any forms necessary to commence an appeal.
  - (d) A permit shall expire within six months of its issue date unless substantial work has been commenced. Any permit issued in conflict with this chapter shall be null and void.
  - (e) Fees. There shall be no charge for applications or permits
- (2) Permits.
- (a) Contents. At minimum, an application for a permit shall state the use for which the permit is sought. It shall describe the use and its location with sufficient detail to permit the zoning administrator to determine whether the use would be in conformity with this chapter. Grants or denials of permits shall be processed pursuant to Section 28.05(1)(a) - (c).
  - (b) Existing Uses. A permit is required before any nonconforming structure may be replaced, altered or rebuilt. Any expansion or enlargement of an existing structure, including a nonconforming use, shall be in conformity with this chapter. A permit for an existing use which does not constitute an expansion or enlargement of it shall be issued if the structure will not become a greater hazard to air navigation than it was on the effective date of this chapter.
  - (c) New Uses and Structures. No structure shall be constructed, erected or installed after the effective date of this chapter in any zone created by Section 28.02 of this chapter unless the owner has obtained the necessary permit from the zoning administrator. However, permits shall be issued for all structures less than 35 feet in height above the ground and within

28.05(2)(c) Zoning Permits (cont.)

one-half mile of the airport boundary, and for all structures less than 50 feet in height above the ground that are in an area beginning one-half mile from the airport boundary and extending to three miles from the airport boundary.

**28.06 APPEALS AND REVIEWS.**

- (1) Board of Zoning Appeals. The Board of Zoning Appeals established by Section 17.75 of the Municipal Code shall have jurisdiction over all appeals of grants or denials of applications for permits and over all requests for any variance from the terms and conditions of this Chapter.
- (2) Powers. The Board of Zoning Appeals shall have the power to hear and decide appeals where it is claimed there is an error in any determination made by the Zoning Administrator and may grant variances as provided in Section 28.06(3).
- (3) Variances. Upon appeal in special cases, the Board may, after investigation and public hearing, grant variances from the terms of this Chapter, if such will not be contrary to the public interest, where due to special conditions a literal enforcement of the terms of this Chapter would result in unnecessary hardship, and where the grant of a variance would do substantial justice and be in accordance with the spirit and purposes of this Chapter, provided, the variance shall not create a hazard to the safe and normal operation of aircraft.
- (4) Appeals and Applications. Appeals may be made by any person aggrieved or by an officer, department, board or commission of the City. Such appeal shall be filed with the Secretary of the Board within 30 days after the date of written notice of the decision or order of the Zoning Administrator. Applications for variances may be made by the owner or lessee of a structure, land or water to be affected at any time and shall be filed with the Secretary. Such appeals and the applications shall include the following:
  - (a) The name and address of the appellant or applicant and all abutting and opposite property owners of record.

28.06 Appeals and Reviews (cont.)

- (b) A site plan showing all of the information required under Section 17.14 of the Municipal Code for a zoning permit.<sup>1</sup>
  - (c) Such additional information as may be required by the Board of Zoning Appeals.
- (5) Hearings. The Board of Zoning Appeals shall fix a reasonable time and place for the hearing, and give a Class 2 notice thereof. At the hearing the applicant or appellant may appear in person, by agent or by attorney.
- (6) Findings. No variance to the provisions of this Chapter shall be granted by the Board unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicate in the minutes of its proceedings:
- (a) Exceptional Circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions that apply to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and that the granting of the variance would not be of so general or recurrent a nature as to suggest that the airport zoning code should be changed.
  - (b) Preservation of Property Rights. The Board shall find that such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and the same vicinity.
  - (c) Absence of Detriment. The Board shall find that the variance will not create a substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Chapter or the public interest, nor such the variance create a hazard to the safe and normal operation of aircraft.

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<sup>1</sup>17.14(2) Description of the subject site by lot, block, and record subdivision or by metes and bounds; address of the subject site; type of structure, existing and proposed operation or use of the structure or site; number of employees; the zoning district within which the subject site lies.

17.14(3) Site plan showing the location, boundaries, dimensions, elevations, uses, and size of the following: subject site, 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. In addition, the site plan shall show the location, elevation and use of any abutting lands and their structures within 40 feet of the subject site.

17.14(4) Additional information as may be required by the plan commission or city zoning administrator.

28.06 *Appeals and Reviews (cont.)*

(7) Decision.

- (a) The Board shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and to the Zoning Administrator and Plan Commission.
- (b) The Board may place conditions upon any zoning permit ordered or authorized by this Chapter. Approvals granted by the Board shall expire within six months unless substantial work has commenced pursuant to such grant or variance.

**28.07 AMENDMENTS.**

The airport zoning map and provisions of this Chapter may be amended pursuant to the method of procedure prescribed by Section 62.23(7)(d)2., Stats.

**28.08 PENALTY.**

Any person who violates any of the provisions of this Ordinance, shall, upon conviction, forfeit not less than \$50.00 nor more than \$200.00 for each such offense, together with the costs of prosecution. In default of payment of such forfeiture and costs of prosecution, such person may be imprisoned in the County Jail as directed by the presiding Court until such forfeiture and costs are paid. Each day that a violation of any provision of this Chapter continues to exist shall constitute a separate and distinct offense.

**28.09 SEVERABILITY.**

If any of the provisions of this Chapter or the application of it to any person or circumstance is held invalid by any Court with jurisdiction to so rule, that invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end any provision of this Chapter declared to be invalid is declared to be severable.

**28.10 CONFLICTING REGULATIONS.**

If a conflict exists between any of the regulations or limitations prescribed in this Ordinance and any other regulations that apply to the same area, structure or use, whether the conflict is with respect to the height of a structure or any other matter, the more stringent limitations or requirements shall govern and prevail.