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## 28M. Procedures

## 28M.1101 In General

### (1) Purpose

This Section describes how land development decisions and projects are approved and permitted in Madison. It describes how an application is submitted, who processes the application, the types of procedures that are followed, and what the permit allows the applicant to do. Refer to Appendix C for detailed application submittal requirements.

### (2) Common Elements

Many of the application requirements outlined in this Section have the following common elements:

**Table 28M-1. Common Elements of Zoning Applications**

Element	Description
<b>Applicability and Initiation</b>	<p>This describes the situations, building types, development types, uses, or contexts where the procedure applies, and who may file an application.</p> <p>Eligible Applicant: Unless otherwise specified, any person, firm, corporation or organization that has any of the following interests that are specifically enforceable in the land that is subject to the application may file an application:</p> <ul style="list-style-type: none"> <li>• a freehold interest</li> <li>• a possessory interest entitled to exclusive possession</li> <li>• a contractual interest which may become a freehold possessory interest</li> <li>• any exclusive possessory interest</li> <li>• any unit of government which issues a relocation order or adopts a resolution of necessity of taking describing the land for which the application is sought</li> </ul>
<b>Initiation</b>	This describes how the application is filed, and who receives the application.
<b>Completeness Review</b>	Application materials must be submitted as specified in each Section and in Appendix C. Incomplete applications will not be accepted.
<b>Notice</b>	This describes how notice, where required, is provided. This includes the type of notice and when it must be provided. See subsection (5), below, for general notice requirements.
<b>Decision</b>	This describes the procedures for review by appropriate staff, agencies and boards and for reaching a decision as to whether the permit is approved, denied, or approved with conditions.
<b>Standards</b>	This lists standards or criteria for approval. These standards or criteria supplement any other standards or criteria required by this Chapter for approval of the application.
<b>Subsequent Applications</b>	This provides a waiting period for some applications in order to avoid consuming staff resources to process of repetitive applications.
<b>Alterations</b>	This describes how the applicant can make changes to the approval. Some applications have separate procedures for major and minor changes.
<b>Scope of Approval</b>	<p>This establishes and limits the rights that an Applicant obtains from approval or conditional approval of an application, what actions the permit authorizes, and the time period for exercising rights under the order or permit.</p> <p>Before granting any application, the approving official or agency may attach conditions and restrictions to secure compliance with the standards in this Chapter. The official or agency may require such evidence and guarantees as proof that the applicant will comply with the conditions.</p>
<b>Finalization of Approval</b>	This section describes how the decision on the application is finalized or recorded in the public records.

### **(3) Pre-Application Conference**

Before an application is filed, the applicant is strongly encouraged to attend a pre-application meeting with Zoning and Planning staff. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for an Application.

### **(4) Completeness Review**

These procedures apply to any Application unless a different procedure is established for the Application elsewhere in this Chapter.

- A. No Application is complete unless all of the information required by Appendix C is included, and all application fees required by Appendix B have been paid. The Zoning Administrator may refuse to accept an incomplete application.
- B. The Zoning Administrator will make current application materials available in the offices of the Department of Planning and Community and Economic Development.
- C. The Zoning Administrator may establish a schedule for filing any Application that requires action by the Plan Commission, Zoning Board of Appeals, Urban Design Commission, or the Common Council. Completed applications shall be filed according to any posted schedule of the Zoning Administrator.

### **(5) Notice**

The type of notice required for certain applications is established in Table 28M-2 below.

Table 28M-2. Notice Requirements

Type of Notice (Responsible Party)	Requirements	Map Amendment	Text Amendment	Conditional Use	Variance	Demolition
Pre-application (Applicant)	Applicant must notify the following at least 30 days before filing an application by mail or electronic mail with a copy to the Department Director and the Zoning Administrator –					
	• neighborhood association registered with City that serves the area where the property is located	X	X	X		X
	• business association listed with City that serves the area where the property is located	X	X	X		X
	• any person registered with the Department of Department of Planning and Community and Economic Development to receive such notice					X
	• the alderperson of the district in which the property is located.	X	X	X		X
	<i>Failure to provide the mailed pre-application notice does not invalidate any action taken on the application by the Plan Commission or Common Council. The neighborhood notice requirement may be waived, if approved by the Alderperson, President of the Neighborhood Association, and Director of Planning and Community and Economic Development.</i>					
Publication (City)	Class 1 notice (see ch. 985 WSA) in the official city paper.				X	
	Class 2 notice (see ch. 985 WSA) in the official city paper.	X	X	X		X
First class mail (City)	Recipients:					
	• the applicant			X	X	X
	• the zoning file	X		X	X	X
	• the alderperson of the district in which the property affected is located.	X		X	X	X
	• the owners of record, as listed in the office of the City Assessor, and occupants of multi-tenant buildings, of property in whole or in part situated within two hundred (200) feet of the boundaries of the properties affected.	X		X		X
	• the owners of record, as listed in the office of the City Assessor, and occupants, of adjoining property.				X	
Signage (Applicant)	Obtain the sign from the Department of Planning and Community and Economic Development, on the property that is the subject of the application. The sign must list the times and locations of all public hearing(s) to consider the application. The sign shall be posted at least fourteen (14) days prior to the public hearing and shall be located in a position on the property so that it can be read from the sidewalk or other public right-of-way. If a property abuts more than one (1) public right-of-way, a sign shall be placed facing each public right-of-way. The sign shall be removed within seven (7) days of the last hearing listed on the sign.	X		X		X

## 28M.1102 Text and Map Amendments

### (1) Purpose

This section allows the Common Council to amend the text of this Chapter or the zoning districts in order to promote public health, safety, and welfare throughout the City, giving due consideration to existing conditions, conservation of property values, building development providing best advantage to the City, the current use of property, and in the case of map amendments, the cost of providing municipal services to the property and uses accommodated by the map amendment.

### (2) Applicability

- A. The Common Council may amend this Chapter at any time as provided in this section.
- B. There are two classes of amendments: text amendments and map amendments. These are defined below:

Text amendments	Amendments to the <b>text</b> of this chapter.
Map amendment	A change to the <b>zoning map</b> . The change may either expand or contract the boundaries of a zoning district, or change the district classification of an area or property.

### (3) Initiation

- A. **Text amendments** may be initiated by the Common Council and any alderperson.
- B. **Map amendments** may be initiated the Common Council or a person with an interest specified in Section (5) [notice table].
- C. **Filing.** The applicant shall file the application with the Zoning Administrator.

### (4) Completeness Review

- A. The application must include the information prescribed in Appendix C.
- B. For a **map amendment**, the Zoning Administrator will review the application for completeness as provided in § 1101(4).E.
- C. If the application is incomplete, the Zoning Administrator may return the application with a summary of the deficiencies.

### (5) Notice

- A. **Generally.** The following notice is required for any map amendment (refer to § 1101(5), above):
  - Pre-application
  - Publication

*Some jurisdictions distinguish a comprehensive and site specific map amendment – eg,*

- *A comprehensive map amendment generally covers a large area, and implements a change in the City's land use policy. Examples include area-wide map amendments that coordinate zoning districts with the Comprehensive Plan, a Neighborhood Plan, a Neighborhood Development Plan or a Special Area Plan. A comprehensive map amendment is initiated by the planning department, Plan Commission or Common Council.*

- *A site specific map amendment generally includes a small area or the first step in the development process for a property. It is initiated by the property owner or agent.*

*This could be useful to carve out different procedures for large area, city initiated map amendment that implements a plan, as opposed to a landowner initiated map amendment. For example, mailed notice to all property owners makes sense for a site specific map amendment, but is burdensome for a large area.*

- Mail (see subsection B, below)
- Signage

**B. Mailed Notice.**

1. Mailed notice must be sent at least ten (10) days before the date of each public hearing.
2. The applicant may choose to make the required mailing and may use labels purchased from the City, or the applicant may pay the City to do the mailing.

**(6) Decision**

**A. Recommendation by the City Plan Commission.**

1. The Plan Commission shall hold a public hearing on each application for an amendment at a time and place as shall be established by the commission. The procedures for conducting the hearing and recording the proceedings are prescribed in the “Basic Policy and Procedures Manual” adopted by the Plan Commission.
2. After the public hearing on an amendment, the City Plan Commission shall submit its recommendation to the Common Council prior to the Council’s public hearing.
3. The Plan Commission may recommend conditions that are consistent with the intent of this ordinance and will protect the public interest.
4. The Plan Commission may recommend the following modifications:
  - a. The adoption of a map amendment changing the zoning classification of the property in question to any classification that is more restricted than that proposed by the applicant. For this purpose, the Conservancy district is the most restrictive classification and the Industrial - General (IG) district is the least restricted classification.
  - b. That a proposed map amendment take effect within an area smaller than the area as originally proposed and which is entirely included within the originally proposed area.

**B. Action by Common Council.**

The Common Council shall not act upon a text amendment or map amendment until it has received a recommendation from the City Plan Commission as provided above.

**C. Protest Petition.**

1. A written protest against a map amendment may be filed after the application is filed or modified. If a valid protest petition is filed, the map amendment shall not become effective except by the favorable vote of three-fourths (3/4) of the members of the Common Council voting on the proposed change.

**Note: the Zoning Ordinance currently allows a number of parties to “propose” a zoning amendment (MGO § Sec. 28.12(10)(b)) –**

- map amendments by Common Council, the City Plan Commission, the Zoning Board of Appeals, any unit of government which issues a relocation order or adopts a resolution of necessity of taking describing the land for which an amendment is sought, or any person, firm, corporation or organization, provided any person, firm, corporation or organization shall have a freehold interest, a possessory interest entitled to exclusive possession, a contractual interest which may become a freehold interest, or any exclusive possessory interest, and which is specifically enforceable in the land which is described in the application for an amendment” and
- Text amendments by “Common Council, the City Plan Commission, the Zoning Board of Appeals, and any alderperson.”

MGO § 2.05(6) provides that ordinances are normally initiated when they are sponsored by a member of the common council and/or the mayor. This section also goes on to provide that this does not apply to “Zoning map or text amendments allowed under Sec. 28.12(10)(b), MGO, to be sponsored by the Plan Commission or Planning Division.” Any member of the general public (including any member of the Common Council, the Mayor, or a City board, commission or agency) could ask the Plan Commission or Planning Division to sponsor a zoning amendment.

The City Attorney is reviewing this section for consistency with the City’s current practice and regulations.

*Impact analysis reference is moved to the Appendix that includes submittal requirements*

*Deleted requirement that the Zoning Administrator transmit the application to the City Clerk and that the City Clerk file all such applications*

2. The protest must be filed with the City Clerk.
3. The protest must be duly signed and acknowledged by:
  - a. the owners of twenty percent (20%) or more of the area of land included in the proposed map amendment or modification, or
  - b. twenty percent (20%) of the registered electors residing in the areas of the land included in the proposed map amendment or modification, or
  - c. the owners of twenty percent (20%) or more of the area of the land immediately adjacent extending one hundred (100) feet from the subject property, or
  - d. the owners of twenty percent (20%) or more of the land directly opposite from the subject property and extending one hundred (100) feet from the street frontage of the opposite land, or
  - e. twenty percent (20%) of the registered electors residing within all buildings any part of which is on land immediately adjacent extending one hundred (100) feet from the subject property, or
  - f. twenty percent (20%) of the registered electors residing within all buildings any part of which is on land directly opposite the subject property and extending one hundred (100) feet from the street frontage of the opposite land.
4. Protest Petition Procedure.
  - a. If a protest is commenced under this Subdivision, the following procedure must be used in order for the protest petition to be accepted as valid by the City.
  - b. Each protest petitioner must date and acknowledge his signature in compliance with Sec. 706.07, Wis. Stats., Uniform Acknowledgment Act. The protest petitioner shall either sign in the presence of a notary public or other officer as specified in WSA § 706.07(2) or shall personally appear before the notary public or other officer and acknowledge his or her prior signing.
  - c. Protest petitions shall be delivered to the City Clerk by noon on the Thursday before final Common Council consideration.
  - d. If action on the proposed map amendment is not taken at the initial meeting of the Common Council, additional protest petitions may be again filed with the City Clerk until noon on the Thursday before the meeting at which the Common Council again proposes to act upon the map amendment.
  - e. The same day the petitions are received, the City Clerk shall make copies of the petitions and forward these copies to the Department of Planning and Community and Economic Development.

*with the Common Council. The Plan Commission hears the application initially, not the Council. While the city may still require referral to the clerk and the council, this is an internal procedure and need not be codified.*

*Suggest deleting the referral option if the application is incomplete. The submittal requirements at this stage are not very demanding. If someone cannot submit the bare information required, why should the City hear the application?*

*Note: this notice is specifically required by W.S. § 66.23(7)(d)2. Refer to the statute for additional notice for military bases / installations or municipalities whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations.*



- f. The Department of Planning and Community and Economic Development shall compute the protest petitions and inform the Common Council concerning the percentage of protesters prior to a vote by the Common Council.
- g. Although protesters may exercise their rights to subsequently withdraw their names from a protest petition, the withdrawal must be signed, dated and acknowledged and the form of the acknowledgement must also comply with Sec. 706.07, Wis. Stats. Withdrawals must be submitted to the City Clerk by noon on the Friday before final Common Council consideration. If action on the proposed map amendment is not taken at the initial meeting of the Common Council, additional withdrawals may be again filed with the City Clerk until noon on the Friday before the Common Council again proposes to act upon the map amendment.

## **(7) Standards for Map Amendments or Text Amendments**

In Wisconsin, text amendments or map amendments are legislative decisions of the Common Council that shall be based on public health, safety and welfare, shall be consistent with the Comprehensive Plan, and shall comply with Wisconsin and federal law.

## **(8) Subsequent Applications**

An application for a map amendment that is denied by the Common Council cannot be resubmitted within one (1) year from the date of the denial, unless:

- A. the Council specifically determines that the denial is without prejudice, or
- B. the application is substantially different from the application that was denied.

## **(9) Recording**

A text amendment is codified by the City Attorney as provided in § 3.07 MGO. A map amendment becomes part of the “Zoning District Maps” on file in the office of the Zoning Administrator.

*Move the following to the floodplain regulations: “Approval of Amendments to Flood Plain Regulations and Flood Plain Maps by the Wisconsin Department of Natural Resources. No amendment to floodplain regulations, either text or map, shall become effective until approved by the Wisconsin Department of Natural Resources.”*



## 28M.1103 Conditional Uses

### (1) Purpose

This Chapter divides the City into districts where the design, use, bulk and location of buildings and structures are compatible and substantially uniform. However, some uses have unique characteristics, and therefore cannot be properly allowed as unrestricted permitted uses. The City require consideration, in each case, of their impact on neighboring land or public facilities, and of the public need for the particular use at a particular location. These uses may be necessary or desirable in a particular district if sufficient consideration is given to their location, development and operation.

### (2) Applicability and Initiation

This section applies to those uses that are enumerated as conditional uses in the zoning district regulations (Subchapters 28C through 28I).

Any Eligible Applicant (see § 1100(2) may file an application for a conditional use permit with the Zoning Administrator.

### (3) Completeness Review

See § 1101(4).

### (4) Notice

A conditional use permit application requires the following type of notice (see § 1101.(5):

- Preapplication
- Mail – by City or applicant, sent at least ten (10) days before the public hearing
- Publication - by City, at least 7 days before the public hearing

### (5) Decision

#### A. City Plan Commission.

1. On receipt of a complete application for a conditional use permit, the Plan Commission shall hold a public hearing. The hearing shall be conducted and recorded in accordance with the Plan Commission's Policies and Procedures Manual.
2. The Plan Commission shall approve, approve with conditions, or deny any application for a conditional use permit.
3. The Plan Commission shall render its decision within a reasonable time.
4. The concurring vote of a majority of quorum of the Plan Commission is required to grant a conditional use permit.
5. The decision of the Plan Commission shall include findings of fact. When a conditional use application is denied, the findings of fact must list the standards that are not met and the reasons the Commission used to determine that each standard was not met.

6. When reviewing a conditional use application that involves any new construction of a building or an addition to an existing building, the Plan Commission may require the applicant to submit plans to the Urban Design Commission for comments and recommendations.
7. Final action may be either initial action on a conditional use or action following reconsideration of the said initial action under the Plan Commission's Policies and Procedures Manual. However, reconsideration requires written notification of intent to reconsider by a Commission member to the Commission Secretary no later than ten (10) days after said initial action. The notice requirements of subsection D, above, apply to reconsideration, except that the notice by publication shall be a Class 1 Notice. The taking of an appeal before the third day after the initial action does not preclude or invalidate reconsideration by the Commission.

**B. Appeal From Action by Plan Commission.**

1. The Plan Commission's decision is appealable to the Common Council.
2. The appeal may be filed by:
  - the applicant, or
  - the Alderperson of the district in which the use is located, or
  - twenty percent (20%) or more of the property owners notified who object to the establishment of the conditional use.
3. The appeal shall specify the grounds with specific reference to the findings of the Plan Commission.
4. The appeal shall be filed with the Secretary of the Plan Commission within ten (10) days of the final action of the Plan Commission.
5. The Secretary of the Plan Commission or his/her designee shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council.
6. The Common Council shall fix a reasonable time for hearing the appeal, and decide the appeal within a reasonable time.
7. The Common Council shall give public notice and due notice to the parties in interest.
8. The action of the Plan Commission shall be upheld unless it is reversed or modified by a favorable vote of two-thirds (2/3) of the members of the Common Council.
9. Any person aggrieved by the decision of the Common Council or any alderperson, officer, department, board or bureau of the City, may, within thirty (30) days after the decision is filed in the office of the City Clerk, commence an action seeking the remedy available by certiorari.

## (6) Approval Standards

A. The City Plan Commission shall not approve a conditional use without due consideration of the City of Madison Comprehensive Plan. No application for a conditional use shall be granted by the Plan Commission unless it finds that all of the following conditions are present:

1. The proposed use and development is consistent with the Comprehensive Plan and the adopted neighborhood plan, if any.
2. The proposed conditional use is consistent with the purposes and objectives of the zoning district, and
3. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
4. The City is able to provide municipal services to the property where the conditional use is proposed, given due consideration of the cost of providing those services.
5. The uses, values and enjoyment of other property in the neighborhood for purposes already established will not be substantially impaired or diminished in any foreseeable manner.
6. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
7. Adequate utilities, access roads, drainage, parking supply, internal circulation improvements, including but not limited to vehicular, pedestrian, bicycle, public transit and other necessary site improvements have been or are being provided.
8. Measures, which may include transportation demand management (TDM) and participation in a transportation management association have been or will be taken to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets.
9. The conditional use conforms to all applicable regulations of the district in which it is located.

*This includes standards for all conditional uses. Specific standards are moved to the supplemental use regulations.*

### B. Conditions.

1. Before granting a conditional use, the Plan Commission may stipulate conditions and restrictions on the establishment, location, construction, maintenance and operation of the conditional use.
2. The commission shall require evidence and guarantees of compliance with the conditions.

## (7) Subsequent Applications

No application for a conditional use that is denied wholly or in part by the Plan Commission (or, on appeal, by the Common Council) shall be resubmitted for a period of one (1) year from the date of the final decision, unless:

- A. the decision expressly states that it is placed on file without prejudice, and
- B. the applicant provides substantial new evidence or proof of a change of conditions that would support approval or conditional approval of the application.

*Deleted plan consistency from this section, which is already listed above.*

*Consistency with zoning district purposes is moved to a general standard.*

## (8) Alterations

- A. Any alteration in a property with an approved conditional use is processed in the same manner as the original application, except for minor alterations as provided below.
- B. The Zoning Administrator may approve minor alterations or additions which are approved by the Director of Planning and Community and Economic Development and are compatible with the concept approved by the City Plan Commission and the standards in subsection (6), above.

## (9) Scope of Approval

- A. An order granting a conditional use is valid for one (1) year from the date of the approval. During this time, the applicant must either lawfully commence the use or obtain a building permit and begin erecting or altering the building. If the applicant obtains a valid building permit, construction must commence within six (6) months of the date of issuance. The building permit shall not be renewed unless construction has commenced and is being diligently prosecuted.
- B. Where the plans have not been altered from the Plan Commission's approval, and the conditional use has expired, the Director of Planning and Community and Economic Development may, after consultation with the Alderperson of the District, approve an extension for up to twenty-four (24) months from the expiration date.
- C. Continuing Jurisdiction.
  - 1. The Plan Commission retains continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. This is in addition to the Zoning Administrator's authority under § 1112.
  - 2. Any citizen, the Zoning Administrator, or other official may file a written complaint with the Plan Commission that one or more conditions of a conditional use permit have not been completed, or are being violated.
  - 3. The Plan Commission shall initially determine whether the complaint indicates a reasonable probability that the subject

conditional use is in violation of a condition of approval. If the Plan Commission determines there is a reasonable probability of a violation, it shall conduct a hearing after giving notice as provided in Subsection (4), above.

4. The Plan Commission may, in order to bring the subject conditional use into compliance with the conditions previously imposed by the Plan Commission, modify the existing conditions and impose additional reasonable conditions. If no reasonable modification of the conditional use can be made that are consistent with the standards in subsection F, above, the Plan Commission may revoke the conditional use permit and direct the Zoning Administrator and the City Attorney to seek elimination of the subject use.
5. An appeal from a decision of the Plan Commission under this paragraph may be taken to the Common Council as provided by subsection (5)B, above.

*This section has additional requirements for the wetland district, which should be moved to those regulations.*

*It also had park and recreation development requirements which should be moved to the supplemental regulations in Subchapter 28K.*

## (10) Changes in Use

- A. On any zoning lot where a conditional use is established, any alteration, expansion or establishment of any other use(s), including permitted uses, except structures and buildings serving as synagogues, mosques, temples, churches, parish houses, rectories, and other places of worship, shall be subject to conditional use approval.
- B. However, within existing buildings, a change in use from one permitted use to another permitted use without any addition in square footage shall be exempted from this provision; provided that any exterior alterations to existing structures or the lot shall require approval as a conditional use.

## 28M.1104 Appeals to the Decisions of the Zoning Administrator

**[This section is being reviewed by the City Attorney and will be revised for the Public Review Draft. Most requirements are statutory in nature and thus not subject to change.]**

## 28M.1105 Variances

### (1) Applicability and Initiation

This section applies to any application to the Zoning Board of Appeals for a variance from the terms of this Chapter.

Any Eligible Applicant (see §1101(2)) may file an application for a variance with the Zoning Administrator.

### (3) Completeness Review

See § 1101(4).

### (4) Notice

A variance application requires the following type of notice (see § 1101(5)):

- Mail – sent at least 5 days before the first public hearing
- Publication – at least 7 days before the first public hearing

### (5) Decision

- A. The Zoning Board of Appeals may approve, conditionally approve, or deny a variance after a public hearing. The Zoning Board of Appeals shall conduct the public hearing after it receives a complete application.
- B. The concurring vote of four (4) members of the Zoning Board of Appeals is required to grant a variance.
- C. The decision of the Zoning Board of Appeals shall include findings of fact.
- D. The Zoning Board of Appeals may impose conditions on the use, development or activities subject to the variance. The Zoning Board of Appeals may require the conditions in order to comply with the standards in this section, to mitigate the effect of the variance on other property in the neighborhood, and to better carry out the general intent of this ordinance.

### (6) Approval Standards

- A. The Zoning Board of Appeals shall not grant a variance unless it finds that the following conditions are present:
  1. The variance is not contrary to the public interest.
  2. Compliance with the strict letter of this Chapter governing use will result in no reasonable use of the property.
  3. Compliance with the strict letter of this Chapter governing area, setback, height, bulk, density or other bulk requirement, would unreasonably prevent use of the property for a permitted purpose or would render conformity with this Chapter unnecessarily burdensome.

*Presently, the Zoning Board of Appeals is empowered to set the contents of a variance application. The Zoning Board of Appeals rules currently require only an application, 2 plot plans and an elevation drawing with 3 views. We propose moving these requirements to an Appendix to this Chapter.*

*This includes a floodplain and wetlands notification that should be moved to those regulations.*

*Move “When a floodplain variance is granted, the Zoning Board of Appeals shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property” to the floodplain regulations.*

4. The Zoning Board of Appeals shall not grant a variance if the alleged difficulty or hardship is created by a person who has a present interest in the property, rather than the terms of this Chapter.
5. The Zoning Board of Appeals shall not grant a variance if the hardship is based on conditions personal to the property owner rather than those unique to the property.
6. The proposed variance does not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values in the neighborhood.
7. The proposed variance will not impede the normal and orderly development of the surrounding property and neighborhood for uses permitted in the district.
8. The proposed variance is not contrary to the purpose of the zoning requirement.

**(7) Scope of Approval**

- A. An order granting a variance is valid for one (1) year from the date of the order. During this time, the applicant must either lawfully commence the use or obtain a building permit and begin erecting or altering the building.
- B. Where the plans have not been altered from those approved by the Zoning Board of Appeals, and the variance has expired, the Zoning Administrator may, after consulting with the Alderperson of the District, approve an extension up to twenty-four (24) months from the expiration date.



## 28M.1106 Approval of Demolition (Razing, Wrecking) and Removal

### (1) Statement of Purpose

It is hereby declared a matter of public policy that the good maintenance and rehabilitation of existing buildings, the preservation of safe and sanitary housing available at reasonable prices, and the careful consideration and planning of changes in the urban landscape are a public necessity and are required in the interest of the health, prosperity, safety, and welfare of the people. The purpose of this section is to aid in the implementation of adopted City plans, protect neighborhood character, preserve historic buildings, encourage the reuse and/or relocation of existing buildings, discourage buildings falling into a state of severe disrepair from lack of maintenance by the owner, encourage compliance with building and minimum housing codes, and allow the property owner to have a decision on approval or disapproval of the proposed use of the property before he or she takes the irrevocable step of demolishing or moving his or her existing building or buildings.

### (2) Applicability and Initiation

No building as defined in Section 29.03 of the Madison General Ordinances shall be demolished or removed without a permit from the Building Inspection Division of the Department of Planning and Community and Economic Development.

Any Eligible Applicant (see §1101(2)) may submit an application for a demolition or removal permits to the Director of the Building Inspection Division.

- A. An application for a demolition or removal permit shall contain a clear, detailed and complete statement of the present or most recent use and any use proposed to be made of the property if the demolition or removal permit is approved.
- B. An application for a permit also shall include a site plan for any proposed future use, the length of the current ownership, and photographs of the building(s).
- C. If the proposed demolition is to be accomplished by fire, the application shall designate the proposed method of demolition.

### (3) Completeness Review

See § 1101(4).

### (4) Notice

A demolition request, except for the applications submitted under (6) below, requires the following types of notice (see § 1101(5)):

- Preapplication – sent at least 30 days before the application is submitted; 60 days for buildings built before 1940
- Mail – sent at least 10 days before the first public hearing

- Publication – at least 7 days before the first public hearing
- A demolition or removal permit application considered with a zoning map amendment shall meet the public hearing requirements for zoning map amendments (see § 1101(5))
- A demolition or removal permit considered with a conditional use permit shall meet the public hearing requirements for conditional uses (see § 1101(5))

## (5) Decision

A. **City Plan Commission.** The Plan Commission shall approve, approve with conditions, or deny a demolition or removal permit.

B. **Appeal from Action by Plan Commission.**

1. The Plan Commission's decision may be appealed to the Common Council.
2. The appeal may be filed by:
  - a. the applicant, or
  - b. the Alderperson of the district in which the building proposed by be demolished or removed is located.
3. The appeal shall specify the grounds with specific reference to the findings of the Plan Commission.
4. The appeal shall be filed with the Zoning Administrator within ten (10) days of the final action of the Plan Commission.
5. The Zoning Administrator shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council.
6. The Common Council shall fix a reasonable time for hearing the appeal, and shall decide the appeal within a reasonable time.
7. The Common Council shall give public notice and due notice to the parties in interest.
8. The action of the Plan Commission shall be upheld unless it is reversed or modified by a favorable vote of two-thirds (2/3) of the members of the Common Council.
9. If the the applicant for a demolition or removal permit also requested a zoning map amendment pursuant to Section 28.1102 or a conditional use permit pursuant to Section 28.1103, the determination shall be appealed with the appeal of the conditional use or map amendment.

## (6) Exemptions

Demolition or removal permits may be issued without the approval required in Subdivision (5) above whenever any one (1) of the following conditions is present, provided that: the subject building has not been used at any time as a single-family or multiple-family dwelling in whole or in part, is not a landmark, and is not located in an Historic District or Neighborhood

## Conservation District:

- A. The Director of the Building Inspection Division finds that the building proposed to be demolished or removed is structurally unsound, subject to an appeal as provided in Section 29.18 of the Madison General Ordinances. The applicant may support the request with the report of a licensed architect or engineer certifying and providing reasons that the building is structurally unsound.
- B. The Director of the Building Inspection Division determines that the building proposed to be demolished or removed is an accessory building as defined in Section 28.1402.

Demolition or removal permits that are exempt from Plan Commission approval, as required in Subdivision (5) above shall be issued, denied or deemed denied by failure to issue within seven (7) business days of the date of application.

## **(7) Approval Standards**

Applications for demolition or removal permits shall not be approved, except as provided in (6) above, unless the following standards are met:

### **A. Applications With a Proposed Future Use.**

1. The Zoning Administrator issues a zoning certificate for the proposed use of the property. For the purpose of this subdivision, a zoning certificate shall mean a certification in writing that the proposed use of the property would be in compliance with the provisions of the Zoning Code, Chapter 28, Madison General Ordinances.
  - a. If the Zoning Administrator finds that the proposed use of the property is not in compliance with the provisions of the Zoning Code, the applicant for a demolition or removal permit may follow the procedures provided by the Zoning Code to apply for a map or text amendment pursuant to Section 28.1102 or for a conditional use permit pursuant to Section 28.1103 for the proposed use. All of the provisions of Sections 28.1102 and 28.1103 shall apply to said applications, except that the time limit for commencement of the conditional use, pursuant to Section 28.1103(9), shall be eighteen (18) months instead of twelve (12) months.
  - b. If after the procedures provided in Paragraph 1. are followed, the proposed use of the property would be in compliance with the provisions of the Zoning Code, the Zoning Administrator shall grant zoning approval for the proposed use, pursuant to Section 28.1108.
2. The Plan Commission finds that both the requested demolition or removal and the proposed use are compatible with the purpose of this section and the intent and purpose expressed in the Zoning Code for the zoning district in which the property is located. Furthermore, the proposed use should be consistent with adopted neighborhood plans, the Comprehensive Plan or with any applicable neighborhood conservation district requirements.

When making this finding the Commission shall consider and may give decisive weight to any relevant facts, including but not limited to:

- a. the effects the proposed demolition or removal and proposed use of the subject property would have on the normal and orderly development and improvement of surrounding properties;
  - b. the reasonableness of efforts to relocate the building, including but not limited to the costs of relocation, the structural soundness of the building; and
  - c. the limits that the location of the building would place on efforts to relocate it, and the availability of affordable housing.
3. In the case of landmarks or improvements located in a local Historic District, consideration and approval of demolition or removal permits by the Plan Commission shall be contingent upon the prior issuance of a certificate of appropriateness by the Landmarks Commission pursuant to Section 33.01(5)(c) of the Madison General Ordinances.
  4. The Plan Commission shall consider the report of the City's historic preservation planner regarding the historic value of the property as well as any report submitted by the Landmarks Commission.
  5. If a demolition or removal permit is approved, it shall not be issued until the reuse and recycling plan is approved by the Recycling Coordinator.
- B. Application With No Proposed Use.** In addition to the above standards in 28.1106(7)A. (3-5),
1. The Plan Commission finds that, based on evidence from the Madison Fire Department, Police Department, and/or Building Inspection Division, a potential fire hazard, potential unlawful use of the property, potential public nuisance, or other public health and safety concern supports demolition or removal before a future use is proposed, or
  2. For a non-residential building, the Plan Commission finds that the use, bulk, and design requirements of the existing zoning district designation are adequate to ensure that development will conform to existing adopted City plans.

## **(8) Reuse and Recycling Plan**

Every person who is required to submit a reuse and recycling plan pursuant to 28.1106(7)A.5. above shall submit documents showing compliance with the plan within sixty (60) days of completion of demolition.

## **(9) Demolition by Fire**

Demolition by Fire is prohibited unless the burn is conducted by the Madison Fire Department (MFD) in conjunction with an MFD training event and

limited to no more than three (3) demolitions by fire events per year. For any permit approved for demolition by fire, the applicant shall provide written notice of the date of the proposed demolition to the alderperson of the district where the demolition is proposed and to all owners and residents of properties within one thousand (1,000) feet of the boundaries of the property on which the demolition will occur. Such notice shall be provided at least five (5) days prior to the date of the proposed demolition.

## **28M.1107 Site and Building Plan Review**

### **(1) Purpose**

Site plan review is designed to:

- A. promote development that is compatible with this Chapter, and
- B. ensure that development is consistent with adopted neighborhood plans and the Comprehensive Plan, and
- C. establish procedures for the review of uses, building types, or development situations that require site plan review where designated by this Chapter.

Site plan may be reviewed on its own or as part of another application (for example, a map amendment).

### **(2) Applicability**

The following buildings and uses are subject to site plan review:

- A. Any new principal or accessory building.
- B. Site alterations, including but not limited to alterations of parking lots and landscaped areas.
- C. Exterior alterations to buildings.
- D. Changes in use.
- E. Alterations to approved site plans.

### **(3) Decision**

The site and building plans shall be reviewed by the Zoning Administrator for conformity with this chapter. The Zoning Administrator shall transmit a copy of submitted plans to appropriate City agencies for review and comment within their jurisdiction.

The Zoning Administrator shall approve, approve with conditions or deny a site plan. No public hearing is required. The applicant may appeal the Zoning Administrator's decision to the Zoning Board of Appeals. On appeal, the ZBA shall consider the administrative site plan at a public hearing.

## 28M.1108 Zoning Certificates

### (1) Applicability

- A. A zoning certificate is required before any permit relating to the use of land, buildings or structures is issued by any officer, department or employee of the City.
- B. Any permit or certificate of occupancy issued in conflict with this Section is null and void.
- C. This section does not apply to:
  - 1. Lots without buildings or structures.
  - 2. Lots used for public recreation purposes.

Note: The existing regulations (City Code § 28.12(5)(a)) have the following exception: "except as provided hereunder in Subsection (6) for a change in use." Subsection (6) is occupancy certificates. This subsection has no exception relating to zoning certificates.

### (2) Decision

The Zoning Administrator will approve or deny the zoning certificate application. The Zoning Administrator will affix a certificate of the office of the Zoning Administrator indicating that the proposed use of land, buildings or structures and any future proposed buildings or structures comply with all of the provisions of this Chapter.

## **28M.1109 Penalties**

### **(1) In General**

Penalties. Any person who violates any provisions of this chapter or fails to comply with any of its requirements shall upon conviction thereof be subject to a forfeiture of not less than one dollar (\$1.00) and not more than one thousand dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense.

### **(2) Penalty for Failure to Provide Notice**

Failure to comply with the notice requirements for posting of signs (see Section 28.1101(5)) shall subject the applicant to a forfeiture of at least fifty dollars (\$50) and no more than one hundred dollars (\$100). Failure to post or mail these notices does not affect the validity of the action taken.

### **(3) Penalty for Failure to Comply With Demolition Standards**

- A. Any person who fails to submit documentation of compliance with an approved reuse and recycling plan shall, upon conviction thereof, be subject to a forfeiture of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense.
- B. Any person who fails to obtain a demolition or removal permit prior to the demolition or removal shall, upon conviction thereof, be subject to a forfeiture of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000). Each day or portion thereof such violation continues shall be considered a separate offense.