

ORDINANCE NO. 248

**AN ORDINANCE TO REPEAL AND RE-CREATE THE
DEFINITION OF "STRUCTURE" AND THE REGULATION OF RETAINING WALLS
WITHIN THE VILLAGE OF OCONOMOWOC LAKE ZONING CODE**

WHEREAS, the Village Administrator has recommended that the Village Zoning Code be amended, to prevent construction of what appears to be an accessory structure in locations where accessory structures are prohibited, due to underground or insubstantial connections between such structures and the principal structures; and

WHEREAS, the Village Administrator has also recommended that the Village Zoning Code be amended to allow and require a review process for retaining walls that help to support buildings; and

WHEREAS, upon receipt of the Village Administrator's recommendation, the Village Board initiated this amendment to the Village of Oconomowoc Lake Village Code and referred the matter to the Village Plan Commission for report and recommendation; and

WHEREAS, upon receipt of the Village Plan Commission's recommendation, the Village Board of Trustees held a public hearing on November 16, 2009, after providing all required notice, as required by §17.62(5)(a) of the Village of Oconomowoc Lake Village Code; and

WHEREAS, the Village Board for the Village of Oconomowoc Lake finds that the public necessity, convenience, general welfare and good zoning practice requires the Village Board to amend, change or supplement the regulations established by the Village of Oconomowoc Lake Zoning Code as described herein.

NOW, THEREFORE, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 17 of the Village of Oconomowoc Lake Village Code entitled "Zoning Code," Section 17.10 entitled "Definitions," the definitions of "Structure" is hereby repealed and re-created as follows:

STRUCTURE

Anything, other than natural terrain or plant growth, whether or not moveable,

1. Constructed or erected above grade,
2. Constructed or erected at grade, or
3. Attached to something constructed or erected on the ground.

Unless specifically excluded hereinafter, examples of structures shall include but are not limited to:

1. Principal structures
2. Accessory structures
3. Nonconforming structures
4. Legal Nonconforming structures

Also included in the definition of structures are buildings of all types including prefabricated or pre-built buildings.

Specific examples of structures shall include but are not limited to:

1. Gazebos
2. Screen enclosures
3. Statuary in excess of 6 feet in height or 4 feet in width
4. Fences
5. Decks
6. Handrails
7. Lean-tos
8. Silos
9. Carports
10. Towers
11. Masts
12. Booms
13. Machinery
14. Equipment
15. Walls
16. Retaining walls two (2) feet or greater above grade. (For this purpose, the vertical rise of walls with less than two (2) horizontal feet of planting area between them shall be cumulated.) Notwithstanding the foregoing, a retaining wall is not a structure if it is approved pursuant to Section 17.31(4) of this Code.

Structures shall not include:

1. Decks and patios more than 75 feet from the water at grade or less than 8 inches above the original grade.
2. Not more that 1 deck or patio 75 feet or less from the water at grade or less than 12 inches above the original grade and less than 300 square feet in size as long as said deck or patio does not have any railings and is screened with natural materials when viewed from the lake.
3. Statuary 6 feet or less in height or 4 feet or less in width,
4. Retaining walls less than two (2) feet above grade, for this purpose, the vertical rise of walls with less than two (2) horizontal feet of planting area between them shall be cumulated.
5. Seawalls or rip rap at the shoreline which have been approved by the Wisconsin Department of Natural Resources, and
6. Stairways not in excess of four (4) feet in width together with associated handrails and landings not in excess of thirty-six (36) sq. feet where such stairways are necessary to provide convenient access to the shoreline.

Whether a construction constitutes one or more than one structure shall be determined by the Zoning Inspector based upon the above-ground elements. If there is a separation between the above-ground elements so that they appear to be separate structures, the above ground elements shall be regulated as separate structures, and such separate structures may be restricted or prohibited as regulated herein. This shall be true even if the above ground elements are connected below ground, or by insubstantial means that do not dispel the above ground appearance of separate structures. Insubstantial means include, without limitation: unenclosed connections; connections that lack a roof or floor; connections that are not heated, ventilated or air conditioned in the manner of the main structure; connections that lack substantial structural elements that are present in the main structure; and connections that lack a foundation or footing.

SECTION 2: Chapter 17 of the Village of Oconomowoc Lake Village Code entitled

“Zoning Code,” Section 17.31 entitled “Modifications,” subsection (4) entitled “RETAINING

WALL NEEDED FOR A MAIN STRUCTURE is hereby created as follows:

(4) RETAINING WALL NEEDED FOR A MAIN STRUCTURE.

A retaining wall that is two (2) feet or greater above grade, or more than one retaining wall with less than two (2) horizontal feet of planting area between each one that has total vertical rise of two (2) feet or greater above the grade of the lowest one, may be excluded from the definition of “structure” and regulated only as ordinary landscaping, upon receiving all of the following approvals: (a) the Architectural Control Board upon consideration of the issues noted in Section 17.60(3); and (b) the Plan Commission upon consideration of the issues noted in Section 17.02 and 17.03; and (c) the Board of Zoning Appeals, as a special exception as to the limited issues described in this Section 17.31(4). The foregoing bodies shall only approve this exception upon finding that the retaining wall is necessary to stabilize the soil with appropriately designed support for

the foundation of a main structure on the property. No public hearings shall be required for the Board of Zoning Appeals to consider the special exception, or for the Architectural Control Board to consider the matter, and compliance with Sections 17.61(6), 17.60(7), and other provisions of this Ordinance which otherwise might require a public hearing by such bodies shall not apply with regard to special exceptions considered under this subsection. A public hearing shall, however, be required for the Plan Commission to consider the matter. Said public hearing notice and procedural requirements shall be as set forth in Section 17.61(6), except that it shall be held by the Plan Commission. The Architectural Control Board, Plan Commission and/or Board of Zoning Appeals may each place conditions or restrictions on their approvals, including but not limited to conditions related to shoreland protection.

SECTION 3: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 16th day of November, 2009.

VILLAGE OF OCONOMOWOC LAKE



Richard J. Kneiser, Village President

ATTEST:



Cindy J. Schlieve, Village Clerk

Published and/or posted this 20th day of November, 2009.

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA)

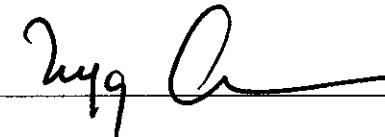
AFFIDAVIT OF POSTING

Ordinance No. 248 re: To Repeal and Re-Create the Definition of "Structure" and the regulation of retaining walls within the Village of Oconomowoc Lake Zoning Code

The undersigned, being first duly sworn, on oath deposes and states that on Nov. 20, 2009, at the direction of the Clerk of the Village of Oconomowoc Lake, he posted copies of the foregoing proceedings of the Village Board in the following public places in said Village:

to-wit:

- (1) Opposite the entrance to the Oconomowoc Lake Club on the northern side of the road in front of the Club;
- (2) At the entrance to the Village Hall on West Pabst Road;
- (3) At the Village Boat Launch located at 35622 E. Wisconsin Avenue.

T. Aisen 
Posting Officer

Subscribed and sworn to before me

This 20th day of November, 2009

Cindy J. Schlieve
Notary Public, Waukesha County, Wisconsin
My Commission expires: 07/03/2011

