



# DANE COUNTY PLANNING & DEVELOPMENT

Room 116, City-County Building, Madison, Wisconsin 53703  
Fax (608) 267-1540

**TO:** Town Supervisors & Planning Commissioners

**FROM:** Majid Allan, Senior Planner

**DATE:** December 20, 2010

**RE:** Request for feedback on draft changes to accessory structure regulations

**CC:** Chapter 10 Task Force Members  
Jerry Derr, President, Dane County Towns Association

*Housing &  
Economic Development*  
(608)266-4270, Rm. 362

*Planning*  
(608)266-4251, Rm. 116

*Records & Support*  
(608)266-4251, Rm. 116

*Zoning*  
(608)266-4266, Rm. 116

*This memo describes draft changes to the accessory structure regulations in the county zoning code currently under consideration by the Chapter 10 Task Force. The Task Force is requesting feedback and suggestions for improving the draft changes from towns and other interested parties. Please refer to the attached draft ordinance amendment and submit your ideas to me in writing by email at [allan@countyofdane.com](mailto:allan@countyofdane.com). You can also use the feedback form on the Task Force's website: <http://www.countyofdane.com/plandev/Chapter10.aspx>. If possible, I would appreciate your feedback by Monday, January 24<sup>th</sup>. If you have questions please contact me at 267-2536.*

## **I. BACKGROUND – Issues with existing accessory structure regulations**

The current accessory structure regulations are poorly designed and confusing. Administration and enforcement of the provisions relating to residential, agricultural, and farm accessory structures hinge on being able to adequately determine the use of both existing and proposed structures. Experience demonstrates that the use of accessory structures over time is inherently varied and transitory. This is especially true of accessory structures on larger, rural lots (e.g., over 2 acres) which may be used for hobby shops, storage of recreational vehicles or farm / garden equipment. Under the current ordinance, such structures can go from being conforming to nonconforming based on ownership and use many times over the life of the structure – with numerous unintended, often negative, consequences. A well-defined, uniform approach to regulating accessory structures would provide more predictability for property owners and promote more equity and consistency in the administration and enforcement of the ordinance.

### **Summary of current regulations**

The ordinance includes references to 3 types of accessory structures – residential, agricultural, and farm – but only *farm accessory building* is defined in the ordinance [s.10.01(23g)].

Section 10.04, *Restrictions Upon Lands, Buildings and Structures*, limits the size of residential accessory structures relative to the size of the associated principal residence. In the absence of clear definitions, and given the multi-use nature of accessory buildings in a rural setting, administering the provisions in 10.04 consistently has proven problematic. The regulations are listed in the box, at right, for reference.

Zoning permits are required for most accessory structures, but not “accessory farm buildings...used in the operation of a farm”, provided that the building, “will not be located within a

### **Accessory building regs in s. 10.04**

#### **Residential accessory buildings:**

Except in the A-1, A-1EX, A-2, or A-3 Agriculture Districts, the total floor area of all residential accessory buildings shall not exceed 50% of the floor area of the principal residence... in A-1, A-1EX, A-2 or A-3, the total floor area of all residential accessory buildings shall not exceed 100% of the floor area of the associated residence.

#### **Agricultural accessory buildings:**

On land in the A-1, A-1EX, A-2, or A-3 Agriculture districts used for agricultural purposes, agricultural accessory buildings are permitted but are limited to barns, sheds, silos and other structures that are clearly related to a permitted agricultural use.

mapped floodplain or shoreland area...” The permit exemption for farm buildings has also resulted in problems over the years, including buildings being built in mapped floodplains, or too close to lot lines. Perhaps most troubling is the fact that an indeterminate number of accessory buildings have been built without a permit in violation of the ordinance by those seeking to take advantage of a provision designed to benefit farmers.

## II. RECOMMENDED CHANGES

To address the numerous issues with accessory structures, staff have recommended a number of changes to the regulations. Below is a summary of the recommendations currently under consideration by the Chapter 10 Task Force:

### General provisions:

- a. Require permits for all structures over 100 square feet in size, including farm buildings and permanent hunting blinds with walls and a roof. Farm buildings would be eligible for a reduced permit fee, or possibly a fee exemption.
- b. Treat farm buildings on parcels > 35 acres in the A-1, A-1EX, A-3 (and A-4) districts as principal uses. This change reflects the fact that on larger farm parcels, agriculture is the principal land use.
- c. Provide permit exemption for non-permanent structures under 100 square feet (e.g., pre-fabricated storage sheds, portable livestock shelters, etc.). All buildings on a permanent foundation, slab, pilings or footings would require a permit.
- d. Include a provision to maintain the permitted use status of existing agricultural accessory buildings.

### Use restrictions:

- a. Remove most distinctions between residential, agricultural, and farm accessory buildings. Removing the distinctions will ensure that accessory buildings do not become “non-conforming” based on their use at any given point in time. Also removes the current incentive for buildings to be characterized as “agricultural” to avoid various limitations and permit requirements.
- b. Prohibit “sanitary fixtures” in accessory structures unless required by law. Sanitary fixtures defined as: *“Any plumbing fixture that requires discharge to a private onsite wastewater treatment system or public sanitary sewer system pursuant to state or county plumbing code.”* (Note: prohibition would not apply to farm buildings on parcels > 35 acres since they would be considered principal uses. Accessory structures on parcels < 35 acres could have sanitary fixtures if required pursuant to local, state, or federal law – e.g., OSHA, etc. A CUP to allow sanitary fixtures will be offered for A-2 zoned properties.)

### Setbacks:

- a. Provide minimum side & rear yard setbacks for all buildings (10’ side & rear yard minimum). Reduced setbacks available for accessory structures under 100 square feet in size.
- b. Authorize zoning administrator to waive location survey requirement for non-permanent structures under 100 square feet in size located within 10’ of side or rear lot lines. A property owner would need to demonstrate compliance with the setback requirements upon request.
- c. Establish a minimum 50’ setback for livestock buildings from side & rear lot lines. (Note: existing 100’ setback requirement from R-Residence district lots for livestock buildings remains in place.)

### Size limitations:

- a. Revise the current accessory structure size limitations relative to the primary residence in the R-Residence, RH-Rural Homes, A-1, A-1EX, A-2, and A-3 Agriculture districts (refer to current

regulations in box on page 1). R-Residence district (R-1, R-2, R-3, R-3A, R-4) zoned properties would be limited to no more than 100% of the square footage of *floor area* of the residence.

- b. Residential buildings and accessory structures on parcels between 2 and 35 acres in the RH and A-1, A-1EX, A-2, A-3, and A-4 districts would be subject to a maximum 10% lot coverage limitation.

### III. DESCRIPTION

This section provides an article-by-article description of the draft ordinance amendment. These provisions are subject to change based on feedback from towns, and further review / consideration by the Chapter 10 Task Force.

- A) **Articles 2 through 7** would revise section 10.01 (definitions) to add definitions for *agricultural accessory building*, *sanitary fixtures*, *floor area*, and *building footprint*. Article 7 would revise the definition of building to include hunting blinds that have walls and a roof, and also communication towers. These structures would require zoning permits prior to construction.
- B) **Article 8** would amend section 10.04 (“Restrictions upon lands, buildings, and structures”) to establish farm buildings as principal uses on parcels over 35 acres in the agricultural zoning district (and on A-4 parcels). This article would also establish a 10 foot minimum side and rear yard setback for farm buildings.
- C) **Article 9** includes the substantive changes to the accessory structure regulations by making numerous revisions to section 10.04. The changes to section 10.04 include the following:
  - 1. Clarify that a principal residential use is required prior to the construction / placement of an accessory structure, except in the A-1, and A-2 districts (note that farm buildings on parcels over 35 acres would be considered principal structures).
  - 2. Prohibit sanitary fixtures, unless required by law or allowed as a conditional use (Article 9 would establish a CUP for sanitary fixtures on A-2 zoned property over 5 acres in size).
  - 3. Modify the size limitation for accessory structures in the R-Residence districts to no more than 100% of the building footprint of the associated residence.
  - 4. Establish a maximum 10% lot coverage limitation for all buildings on parcels between 2 and 35 acres in size in the RH, A-1, A-2, A-3, and A-4 zoning districts. This provision would replace the existing limit for “residential” accessory structures to no more than 50% or 100% of the square footage of the principal residence in the RH and A-1, A-1EX, A-2, and A-3 districts, respectively.
  - 5. Specifies that no building may be placed within the front yard setback (road centerline / right of way) established in section 10.17, except as authorized in section 10.16(4).
  - 6. Covers side-yard setbacks. Except on parcels over 35 acres in the A-1, A-1EX, and A-3 district, establishes minimum 50’ side yard setback for structures housing livestock or insects. Establishes 10’ minimum side yard setback for other accessory structures. Clarifies that accessory structures located between the front and rear building lines of a principal residence must meet side yard requirement specified in the applicable district regulations for principal buildings.
  - 7. Covers rear-yard setbacks. Mirrors side-yard requirements (50’ rear yard for livestock buildings on parcels <35 acres, 10’ minimum for other accessory structures).

8. Maintains permitted use status of existing agricultural accessory buildings.
  9. Requires a permit for all accessory buildings, but provides an exemption for non-permanent structures under 100 square feet in size.
- D) **Article 10** revises the existing provision regarding agricultural accessory buildings to be internally consistent by applying it to parcels under 35 acres and adding references to agricultural and agricultural accessory use (revised per OA 16, 2010-11).
- E) **Article 11** provides a conditional use permit for sanitary plumbing fixtures on A-2 zoned parcels over 5 acres in size.
- F) **Article 10** rescinds section 10.25(2)(b) which provides a zoning permit exemption for farm buildings.
- G) **Articles 13 & 14** authorize the zoning administrator to waive the requirement for a location survey for non-permanent structures under 100 square feet in size.

Please see the attached table for an illustration of the proposed changes.

#### IV. ANALYSIS

This section provides a brief staff analysis of the proposed ordinance changes.

- ***Provides clearer and more uniform accessory structure regulations***  
The proposed changes would remove many of the existing distinctions between types of accessory buildings, and instead provide a more uniform set of standards. The changes will facilitate consistent and equitable administration and enforcement of the ordinance.
- ***Provides additional flexibility***  
The changes would allow property owners to erect a non-permanent accessory building under 100 square feet in size (e.g., pre-fab shed) without a permit. Similarly, the zoning administrator can waive the requirement of a location survey for such non-permanent structures.
- ***Clarifies setback requirements***  
The revisions would establish setback requirements for agricultural use buildings based on zoning category and parcel size. In addition, small structures under 100 square feet in size qualify for a reduced side and rear yard setback of 4'.

#### V. FEEDBACK REQUESTED

As noted at the beginning of this memo, the Chapter 10 Task Force is requesting feedback from town officials and other interested parties on the draft changes to the accessory structure regulations. Please review this memo and the attached draft ordinance amendment and submit your ideas and suggestions for modifying / improving the draft changes. The Chapter 10 Task Force next meets on Thursday, January 27<sup>th</sup> at noon in room 357 of the city-county building. If possible, I'd appreciate your comments, ideas, and suggestions by Monday, January 24<sup>th</sup>. Of course, we always welcome your feedback, and will try to incorporate any recommendations received after that date. If you have questions, please contact me (phone: 267-2536; email: [allan@countyofdane.com](mailto:allan@countyofdane.com)).

# Table of proposed accessory structure changes

Drafted: December 16, 2010

	Residential	Rural Homes	A-2 Agriculture	A-1, A-1EX, A-3 < 35 ac	A-1, A-1EX, A-3 > 35 ac (& A-4)
Residence required?	Yes	Yes	No*	A-1: No (limit 1)* A-1EX: Yes* A-3: Yes*	No**
Maximum size	100% of the building footprint of principal residence	10% of lot area	10% of lot area	10% of lot area	None
Maximum height	12'	None not limited by ordinance	16' (Ag bldgs not limited)	16' (Ag bldgs not limited)	None not limited by ordinance
Side / rear yard setbacks, non-livestock building	Varies by district	>100sqft = 10' <100sqft = 4'	>100sqft = 10' <100sqft = 4'	>100sqft = 10' <100sqft = 4'	10'
Side / rear yard setback livestock building	Not allowed	50' (unless located next to R-zoned prop)	10' (unless located next to R-zoned prop)	10' (unless located next to R-zoned prop)	10' (unless located next to R-zoned prop)
Sanitary fixtures allowed?***	Not allowed	Not allowed	Allowed only on parcels > 5 acres with CUP	Not allowed	N/A
Permit required?	Yes	Yes	Yes	Yes	Yes

\* On lots under 35 acres in the A-1, A-1EX, A-2, or A-3 districts that are used for agricultural purposes, agricultural accessory buildings are permitted, but are limited to barns, sheds, silos or other structures that are clearly related to a permitted agricultural or agricultural accessory use.

\*\* On lots in the A-1, A-3, and A-1EX district over 35 acres in size, and on lots in the A-4 district, buildings that are an integral part of an agricultural use or agricultural accessory use shall be considered principal uses.

\*\*\* Sanitary Fixture: *Any plumbing fixture that requires discharge to a private onsite wastewater treatment system or public sanitary sewer system pursuant to state or county plumbing code.*

P E T I T I O N

The undersigned hereby petitions the County of Dane to amend its zoning ordinances in the manner indicated below.

Dated: \_\_\_\_\_ BY: \_\_\_\_\_

Dated: \_\_\_\_\_ BY: \_\_\_\_\_

Dated: \_\_\_\_\_ BY: \_\_\_\_\_

Dated: \_\_\_\_\_ BY: \_\_\_\_\_

ORD. AMEND. NO. \_\_\_\_\_, 2010-2011

AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES, REGARDING ACCESSORY STRUCTURES

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 10.01(2d) is created to read as follows:

(2d) Agricultural accessory building. Means a building that is an integral part of, or incidental to, an agricultural use.

ARTICLE 3. Section 10.01(7f) is created to read as follows:

(7f) Building footprint. The entire area of ground covered by a structure, expressed in square feet, including appurtenances such as, but not limited to, balconies, porches, decks, stoops, fireplaces, and chimneys.

ARTICLE 4. Section 10.01(23g) is amended to read as follows:

(23g) ~~Farm accessory building.~~ -Means an ~~accessory~~ building or buildings which are used in the operation of a farm.

ARTICLE 5. Section 10.01(23gf) is created to read as follows:

(23gf) Floor area. The aggregate area of all horizontal levels of a building, expressed in square feet, not including any horizontal level where the average floor to ceiling height is less than 6 feet.

47 ARTICLE 6. Section 10.01(55a) is created to read as follows:  
48 (55a) Sanitary fixture. Any plumbing fixture that requires discharge to a private  
49 onsite wastewater treatment system or public sanitary sewer system pursuant to  
50 state or county plumbing code.  
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52 ARTICLE 7. Section 10.01(7) is amended to read as follows:  
53 (7) *Building*. Any structure having a roof supported by posts, columns or walls  
54 and its appendages including, but not limited to balconies, porches, decks,  
55 stoops, fireplaces and chimneys. Also included for permit and locational  
56 purposes are swimming pools, both above and below ground, permanent hunting  
57 blinds, and towers, except including communication towers. Not included within  
58 the definition, for permit purposes or otherwise, are poles, towers and posts for  
59 lines carrying telephone messages or electricity and recreational structures of  
60 open construction and without walls, such as swing sets, slides, yard gyms,  
61 climbers, sand boxes and teeter totters.  
62

63 ARTICLE 8. Section 10.04(1)(a)3 is created to read as follows:  
64 Farm buildings as principal uses. On lots in the A-1, A-3, and A-1EX district over  
65 35 acres in size, and on lots in the A-4 district, buildings that are an integral part  
66 of an agricultural use or agricultural accessory use shall be considered principal  
67 uses. Such buildings include, but are not limited to, barns, silos, dairy parlors,  
68 and livestock shelters. Farm buildings shall be located not less than ten (10) feet  
69 from side or rear lot lines. Farm buildings for the housing of livestock or insects  
70 may be subject to more restrictive side and rear yard setbacks as specified in the  
71 applicable district regulations of this ordinance.  
72

73 ARTICLE 9. Section 10.04(1)(b) is amended to read as follows:  
74 (b). ~~Residential~~ *Accessory buildings*. Any number of detached accessory  
75 buildings associated with a permitted or conditional residential use are permitted  
76 on a-lots in the various zoning districts, subject to the regulations specified below  
77 and in the applicable district regulations of this ordinance, provided that the  
78 following conditions are met:  
79

- 80 1. Principal residential use required. Notwithstanding the provisions of s.  
81 10.04(1)(c), or as may be allowed under the applicable district regulations  
82 of this ordinance, A principal residential use must exist or is-be under  
83 construction prior to the erection or placement of an residential accessory  
84 building.  
85
- 86 2. Except in the A-1, A-1 Exclusive, A-2, or A-3 Agriculture Districts,  
87 residential accessory buildings shall not exceed fifty percent (100%) of  
88 the total floor area of the associated residence. Sanitary fixtures  
89 prohibited. Sanitary fixtures are prohibited in accessory buildings unless  
90 required by law, or allowed by a conditional use permit.  
91

- 92 3. On lots in the A-1, A-1 Exclusive, A-2 or A-3 Agriculture Districts, the total  
93 floor area of all residential accessory buildings shall not exceed one  
94 hundred percent (100%) of the total floor area of the associated  
95 residence. *Size limitations – residential accessory buildings.* In the R-  
96 Residence districts, the total floor area of all detached accessory  
97 buildings shall not exceed one hundred (100%) of the total building  
98 footprint area of the associated residence.  
99
- 100 4. *Lot coverage.* No residential building together with its accessory  
101 buildings on parcels between 2 and 35 acres in size in the RH Rural  
102 Homes, A-2 Agriculture, A-1 Agriculture, A-1 EX (Exclusive Agriculture),  
103 and A-4 (Small Lot Agriculture) districts shall cover in excess of 10% of  
104 the lot area.  
105
- 106 5. *Setback requirements, front yard.* Except as provided under section  
107 10.16(4) of this ordinance, no building, including barns and other farm  
108 buildings of any description whatsoever, shall be erected, moved or  
109 structurally altered so as to be nearer the highway than is prescribed by  
110 section 10.17.  
111
- 112 6. *Setback requirements, side yard.*
- 113 a. Except on parcels of land over 35 acres in size in the A-1, A-1EX,  
114 and A-3 zoning districts, and on parcels in the A-2 and A-4 districts,  
115 accessory buildings for the housing of livestock or insects shall be  
116 located not less than 50 feet from any side lot line.
- 117 b. Accessory buildings, cages, kennels, hives and runs for housing of  
118 animals or insects shall be located at least 100 feet from an R-1, R-  
119 1A, R-2, R-3, R-3A or R-4 Residence District, except with respect  
120 to existing buildings when the residence district has been created  
121 for an existing farm residence or by separating a farm residence  
122 from a farm property and the separated parcel has been rezoned to  
123 a residence district after or at the time of the division.
- 124 c. All other accessory buildings over 100 square feet in size shall be  
125 located not less than ten (10) feet from any side lot line, unless  
126 eligible for a reduced side yard setback under s. 10.16(6).
- 127 d. All other accessory buildings less than 100 square feet in size shall  
128 be located not less than four (4) feet from any side lot line, unless  
129 eligible for a reduced side yard setback under s. 10.16(6).
- 130 e. Accessory buildings located between the front and rear building  
131 lines of a principal residence shall conform to the minimum side  
132 yard requirements for principal buildings specified in the respective  
133 district regulations of this ordinance.
- 134 7. *Setback requirements, rear yard.*



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- a. Except on parcels of land over 35 acres in size in the A-1, A-1EX, and A-3 zoning districts, and on parcels in the A-2 and A-4 district, accessory buildings for the housing of livestock or insects shall be located not less than 50 feet from any rear lot line.
- b. Accessory buildings, cages, kennels, hives and runs for housing of animals or insects shall be located at least 100 feet from an R-1, R-1A, R-2, R-3, R-3A or R-4 Residence District, except with respect to existing buildings 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.
- c. All other accessory buildings over 100 square feet in size shall be located not less than ten (10) feet from any rear lot line, unless eligible for a reduced rear yard setback under s. 10.16(6).
- d. All other accessory buildings less than 100 square feet in size shall be located not less than four (4) feet from any rear lot line, unless eligible for a reduced rear yard setback under s. 10.16(6).

8. Existing accessory buildings. All accessory buildings involved in an agricultural use or agricultural accessory use, lawfully existing as of [clerk to insert date of adoption of this amendment] shall be considered a permitted use. Notwithstanding the provisions of secs. 10.21 and 10.23 regarding nonconforming uses, such buildings may be added to, altered, restored, repaired, replaced or reconstructed, provided the locational requirements of the district in which the building is located are complied with.

9. Permits required. No accessory building may be erected or placed without first obtaining a zoning permit as specified in section 10.25(2), except as provided below.

- a. Non-permanent accessory buildings less than 100 square feet in floor area which are not located on a foundation, concrete slab, pilings, or footings do not require a zoning permit, provided that the proposed building will not be located within a mapped floodplain or within a shoreland area and conforms to all of the locational requirements of this ordinance. It shall be the responsibility of the owner to demonstrate compliance with the setback requirements of this ordinance upon request.

ARTICLE 10. Section 10.04(1)(c) is amended to read as follows:

(c) Agricultural accessory buildings. On parcels of land less than 35 acres in size in the A-1, A-1 Exclusive, A-2 or A-3 Agriculture Districts used for agricultural purposes that are involved in an agricultural or agricultural accessory use, agricultural-accessory buildings are permitted but are limited

180 to barns, sheds, silos and other structures that are clearly related to a  
181 permitted agricultural or agricultural accessory use. The minimum side and  
182 rear yard setback for such structures is 10 feet, unless a greater distance is  
183 required by the applicable district regulations of this ordinance.  
184

185 ARTICLE 11. Section 10.126(3)(x) is created to read as follows:

186 *Conditional Uses permitted in the A-2 Agriculture District*

187 (x) Sanitary plumbing fixtures in accessory buildings on parcels over 5 acres in  
188 size.

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190 ARTICLE 12. Section 10.25(2)(b) is rescinded:

191 ~~(b) — Permits shall not be required for accessory farm buildings such as barns,~~  
192 ~~sheds, silos and the like when those buildings are used in the operation of a~~  
193 ~~farm, provided that the proposed building will not be located within a mapped~~  
194 ~~flood plain or within a shoreland area and conforms to all of the locational~~  
195 ~~requirements of this ordinance. If the proposed location of an accessory farm~~  
196 ~~building does not meet the locational requirements, a variance and a permit must~~  
197 ~~be requested from the board of adjustment.~~

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199 ARTICLE 13. Section 10.25(3)(a)1 is amended to read as follows:

200 **(3)** *Inspections of buildings to be made by the zoning administrator.* **(a) 1.** A  
201 location survey as defined herein shall be submitted to the zoning division for all  
202 construction which will be located less than ten (10) feet from required setback  
203 lines, except as exempted below. The survey shall be done at the time when  
204 foundations or basement walls are completed. Such survey shall be submitted to  
205 the zoning office prior to the continuation of work on the project.  
206

207 ARTICLE 14. Section 10.25(3)(a)3 is created to read as follows:

208 3. Upon approval by the zoning administrator, a location survey is not required  
209 for non-permanent accessory buildings under 100 square feet in floor area not  
210 located on a foundation, concrete slab, pilings, or footings. It shall be the  
211 responsibility of the owner to demonstrate compliance with the setback  
212 requirements of this ordinance upon request.