

## **Town of Hamburg, Vernon County, Wisconsin Farmland Preservation Zoning Ordinance**

**First Change** – page 5 of current Zoning Ordinance to be changed as below –

**Established Districts:** Five zoning districts are provided as follows:

- 1 – Farmland Preservation (Agricultural) (A)
- 2 – Rural Residential (RR)
- 3 – Residential (R)
- 4 – Rural Commercial (RC)
- 5 – Industrial (I)

Boundaries of these districts are hereby established as shown on the map titled “Town of Hamburg, Vernon County, Wisconsin Zoning District Map”, dated January 17, 2023, which is hereby incorporated and made a part of this Ordinance.

**Second Change** – the below text to be inserted directly prior to the “Agricultural” zoning district, currently located on page 6.

### **FARMLAND PRESERVATION (AGRICULTURAL) (A) Zoning Standards**

1. **AUTHORITY.** The Town of Hamburg adopts this farmland preservation ordinance in accordance with its authority pursuant to Wisconsin Statute Section 91.30.
2. **PURPOSE.** The purpose of this district is to (1) maintain highly productive agricultural lands in food and fiber production by limiting non-agricultural development and minimizing any land use which is incompatible with agricultural purposes, (2) to maintain the rural nature and character of the Town of Hamburg, and (3) to meet the minimum requirements of Chapter 91, Wis. Stats., in order that the town’s farmers may qualify for tax credits.
3. **FARMLAND PRESERVATION DEFINITIONS.** The following definitions apply in the Farmland Preservation district only. If any of these definitions contradict the definitions in the general “Definitions” Section of this Ordinance, the definitions in Farmland Preservation apply. The definitions in the general “Definitions” Section of this Ordinance still apply to the Farmland Preservation (Agricultural) district, to the extent that they are not contradicted by the Farmland Preservation (Agricultural) definitions.

- 1) **“Accessory use”** means any of the following land uses on a farm:

- (a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.<sup>1</sup>
  - (b) An activity or business operation that is an integral part of, or incidental to, an agricultural use.
  - (c) A farm residence.
  - (d) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in par. (a) or (c), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.
  - (e) Any other use that the department [WI Department of Ag, Trade and Consumer Protection], by rule [As of March 2023, the "rules" are currently at Chapter ATPC 49], identifies as an accessory use.
- 2) **"Agricultural use"** means any of the following:
- (a) Any of the following activities conducted for the purpose of producing an income or livelihood:
    1. Crop or forage production.
    2. Keeping livestock.
    3. Beekeeping.
    4. Nursery, sod, or Christmas tree production.
    5. Floriculture.
    6. Aquaculture.
    7. Fur farming.
    8. Forest management.
    9. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

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<sup>1</sup> Per ATPC 49.01, the Department of Ag, Trade and Consumer Protection provides the following notes: **Note:** A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use under s. 91.01 (1) (a) includes facilities *on the farm* used to: store or process raw agricultural commodities primarily produced on the farm, keep livestock, keep or service vehicles or equipment primarily used on the farm, provide veterinary services to livestock on the farm, or store or process inputs for agricultural uses primarily on the farm. Such buildings and structures may also include greenhouses, roadside stands, and agricultural research facilities selling or utilizing agricultural products produced primarily on the farm, as well as facilities to produce energy primarily from the farm's products, or primarily for use on the farm, such as wind turbines, solar energy structures, manure digesters, or bio-fuel facilities. A waste storage or processing facility to store or process animal waste produced on the farm may also be considered an accessory use.

**Note:** An activity or business operation that is an integral part of, or incidental to, an agricultural use under s. 91.01 (1) (b), Stats., could include activities such as: direct sales from farm to customer, "you-pick" operations, crop mazes, and agricultural tourism operations.

- (b) Any other use that the department, by rule, identifies as an agricultural use.
- 3) **"Agriculture-related use"** means any of the following:
- (a) An agricultural equipment dealership, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes.
  - (b) Any other use that the department, by rule, identifies as an agriculture-related use.
- 4) **"Base farm tract"** means one of the following:
- (a) All land, whether one parcel or 2 or more contiguous parcels, that is in a farmland preservation zoning district and that is part of a single farm on the date that the department under s. 91.36 (1) first certifies the farmland preservation zoning ordinance covering the land or on an earlier date specified in the farmland preservation zoning ordinance, regardless of any subsequent changes in the size of the farm.
  - (b) Any other tract that the department by rule defines as a base farm tract.
- 5) **"Certified farmland preservation plan"** means a farmland preservation plan that is certified as determined under s. 91.12.
- 6) **"Certified farmland preservation zoning ordinance"** means a zoning ordinance that is certified as determined under s. 91.32.
- 7) **"Comprehensive plan"** has the meaning given in s. 66.1001 (1) (a).
- 8) **"Conditional use"** means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by the Town of Hamburg.
- 9) **"Department"** means the department of agriculture, trade and consumer protection.
- 10) **"Farm"** means all land under common ownership that is primarily devoted to agricultural use.
- 11) **"Farm acreage"** means size of a farm in acres.
- 12) **"Farm family business"** means a business operated by the owner or operator, or resident family member of the owner or operator, of a farm, that is not associated with an agricultural use, that requires no buildings, structures, or improvements other than those described in Wis. Stat. §. 91.01 (1) (a) ["a building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use"] or (c) ["a farm residence"], that employs no more than 4 full-time non-family employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.
- 13) **"Farmland preservation agreement"** means any of the following agreements between an owner of land and the department under which the owner agrees to restrict the use of land in return for tax credits:
- (a) A farmland preservation agreement or transition area agreement entered into under s. 91.13, 2007 stats., or s. 91.14, 2007 stats.
  - (b) An agreement entered into under s. 91.60 (1).

- 14) **"Farmland preservation area"** means an area that is planned primarily for an agricultural use or agriculture-related use, or both, and that is one of the following:
- (a) Identified as an agricultural preservation area or transition area in a farmland preservation plan described in s. 91.12 (1).
  - (b) Identified under s. 91.10 (1) (d) in a farmland preservation plan described in s. 91.12 (2).
- 15) **"Farmland preservation plan"** means a plan for the preservation of farmland in a county, including an agricultural preservation plan under subch. IV of ch. 91, 2007 stats.
- 16) **"Farmland preservation zoning district"** means any of the following:
- (a) An area zoned for exclusive agricultural use under an ordinance described in s. 91.32 (1).
  - (b) A farmland preservation zoning district designated under s. 91.38 (1)
  - (c) in an ordinance described in s. 91.32 (2).
- 17) **"Farm residence"** means any of the following structures that is located on a farm:
- (a) A single-family or duplex residence that is the only residential structure on the farm *or* is occupied by any of the following:
    - 1. An owner or operator of the farm.
    - 2. A parent or child of an owner or operator of the farm.
    - 3. An individual who earns more than 50 percent of his or her gross income from the farm.
  - (b) A migrant labor camp that is certified under s. 103.92.
- 18) **"Gross farm revenues"** has the meaning given in s. 71.613 (1) (g) [gross receipts from agricultural use of a farm, excluding rent receipts, less the cost or other basis of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year.].
- 19) **"Livestock"** means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.
- 20) **"Nonfarm residence"** means a single-family or multi-family residence other than a farm residence.
- 21) **"Nonfarm residential acreage"** means the total number of acres of all parcels on which nonfarm residences are located.
- 22) **"Owner"** means a person who has an ownership interest in land.
- 23) **"Permitted use"** means a use that is allowed without a conditional use permit, special exception, or other special zoning permission.
- 24) **"Political subdivision"** means a city, village, town, or county.
- 25) **"Prime farmland"** means any of the following:
- (a) An area with a class I or class II land capability classification as identified by the natural resources conservation service [NRCS] of the federal department of agriculture.

(b) Land, other than land described in par. (a), that is identified as prime farmland in a certified farmland preservation plan.

26) **"Prior nonconforming use"** means a land use that does not conform with this farmland preservation zoning ordinance, but that existed lawfully before this farmland preservation zoning ordinance was enacted.

27) **"Protected farmland"** means land that is located in a farmland preservation zoning district, is covered by a farmland preservation agreement, or is otherwise legally protected from nonagricultural development.

**4. LAND USE IN THE FARMLAND PRESERVATION DISTRICT, GENERALLY.** Only the following land uses are allowed in this Farmland Preservation Zoning District:

- a. Uses allowed under Section 5, below, as principal permitted uses.
- b. Uses allowed under Section 6, below, with a conditional use permit.
- c. Prior nonconforming uses, subject to Wis. Stat. § 60.61(5).

**5. PRINCIPAL PERMITTED USES.**

- a. Agricultural uses, except proposed livestock facilities of more than 500 animal units shall seek a conditional use permit.
- b. Accessory uses.
- c. Agriculture-related uses.
- d. Undeveloped natural resource and open space areas.
- e. A transportation, utility, communication, or other use that is required under state or federal law to be located in a specific place or that is authorized to be located in a specific place under a state or federal law that preempts the requirement of a conditional use permit for that use.
- f. Residences, regardless of occupancy, existing as of January 1, 2014.
- g. Livestock facilities of more than 500 animal units existing with the Town of Hamburg's permission as of March 1, 2023. Expansions of such livestock facilities of greater than 20% of the livestock units on the date of approval shall seek a conditional use permit in accordance with ATCP 51 and the Town of Hamburg's Zoning Ordinances.
- h. Farm family businesses.

**6. CONDITIONAL USES.** The following uses are permitted in the farmland preservation district provided that the Town of Hamburg issues a conditional use permit. The Town of Hamburg is not required to issue a permit. See "Conditional Uses" in the Town of Hamburg's Zoning Ordinances for the procedure to apply for a conditional use permit.

- a. **Slopes.** Residences, buildings, driveways, or private or public road construction which will be built on slopes greater than 20% may only be constructed with a conditional use permit.

- b. **Large Livestock Facilities.** For proposed agricultural operations in excess of 500 animal units, a conditional use permit may be issued following State of Wisconsin standards and procedures found in Wisconsin Statute 93.90, the administrative code at ATCP 51 (the Livestock Facility Siting Rule). Expansions of such livestock facilities of greater than 20% of the livestock units on the date of approval shall seek a conditional use permit in accordance with ATCP 51 and the Town of Hamburg's Zoning Ordinances.
- c. **Nonfarm Residences.** A conditional use permit may be issued for the creation of a nonfarm residence or conversion of a farm residence to a nonfarm residence through a change of occupancy, subject to the following requirements:
  - i. The ratio of nonfarm residential acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1 to 20 after the residence is constructed or converted to a nonfarm residence.
  - ii. There will not be more than four dwelling units in nonfarm residences, nor, for a new nonfarm residence, more than 5 dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.
  - iii. The location and size of the proposed nonfarm residential parcel, and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel, will not do any of the following:
    - A. Convert prime farmland from agricultural use or convert land previously used as cropland, other than a woodlot, from agricultural use if on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or a nonfarm residence.
    - B. Significantly impair or limit the current or future agricultural use of other protected farmland.
- d. **Transportation, communication, pipeline, electric transmission, utility, or drainage uses.** A conditional use permit may be issued for a transportation, communications, pipeline, electric transmission, utility, or drainage use if *all* of the following apply:
  - i. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
  - ii. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
  - iii. The use is reasonably designed to minimize conversion of land at and around the site of the use, from agricultural use or open space use.

- iv. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
  - v. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.
- e. **Governmental, institutional, religious, or nonprofit community uses.** A conditional use permit may be issued for a governmental, institutional, religious, or nonprofit community use if *all* of the following apply:
- i. The use and its location in the farmland preservation district are consistent with the purposes of the farmland preservation zoning district.
  - ii. The use and its location in the farmland preservation district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
  - iii. The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
  - iv. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
  - v. Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.
- f. **Nonmetallic mineral extraction.** A conditional use permit may be issued for a nonmetallic mineral extraction use if *all* of the following apply:
- i. The operation complies with Subchapter I of Chapter 295, Wisconsin Statutes, and rules promulgated under that subchapter, and any applicable provisions of local ordinances under Wis. Stat. §295.13 or Wis. Stat. §295.14 (including all applicable provisions of this ordinance), and with any applicable requirements of the department of transportation concerning the restoration of nonmetallic mining sites.
  - ii. The operation and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
  - iii. The operation and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations outside the farmland preservation zoning district, or are specifically approved under state or federal law.
  - iv. The operation is reasonably designed to minimize the conversion of land around the extraction site from agricultural use or open space use.
  - v. The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

- vi. The owner agrees to restore the land to agricultural use, consistent with any required reclamation plan, when extraction is completed.

## **7. PROHIBITED USES.**

- a. All uses not specifically permitted.

## **8. MINIMUM LOT SIZE AND WIDTH.**

The minimum lot size is 5 acres, except:

- a. The minimum lot size for an additional residence for a person earning 50 percent of his or her gross income from the farm, or a parent or child of an owner or operator of the farm, or an owner or operator of the farm, or a migrant labor camp is 2 acres.
- b. Additional residences, which are not lotted off and continue to be owned by the owner of the original parcel, are permitted for persons earning 50 percent of his or her gross income from the farm, or a parent or child of an owner or operator of the farm, or an owner or operator of the farm, are permitted with no minimum lot size as long as all applicable setbacks are met.

In all situations other than the ones described above, a person seeking to build a residence on less than 5 acres must request permission to re-zone out of the Farmland Preservation district.

## **9. SETBACKS.** For all buildings, the following minimum setbacks apply:

- a. **Front.** For buildings located on state highways, 110 feet from the centerline or 50 feet from the right-of-way line, whichever is greater. For buildings located on county roads, 68 feet from the centerline of the road or 35 feet from the right-of-way, whichever is greater. For buildings located on town and all other roads, 68 feet from the centerline of the road or 35 feet from the right-of-way, whichever is greater.
- b. **Rear.** For all principal or accessory buildings, 20 feet from the rear property line.
- c. **Side.** For all principal or accessory buildings, 20 feet from the side property line.
- d. **Neighboring buildings.** For all principal or accessory buildings, at least 25 feet from any other building.

## **10. FOUNDATIONS AND SANITARY CODES.**

- a. **Foundations.** All dwelling units except those that are 16 feet or less in width shall be erected on and securely anchored to a permanent foundation with footings below the frost line or on a floating reinforced slab. The foundation shall be

composed of poured concrete, cemented concrete block, or a like material that is accepted in the building trade as being permanent in nature.

- b. **Safe Uniform Dwelling Code and Sanitary Codes.** All dwelling units and septic and water systems shall conform to the applicable State Administrative Codes and to any applicable Vernon County codes.

**11. REZONING LAND OUT OF FARMLAND PRESERVATION DISTRICT.** The Town of Hamburg will charge applicable zoning fees for rezoning land out of the Farmland Preservation district into any other type of district.

- a. Except as provided in Section 11(b), below, the Town of Hamburg may not rezone land out of the farmland preservation zoning district unless the Town of Hamburg Zoning Committee finds all of the following, in writing, after a public hearing, as part of the official record of the rezoning:
  - i. The land is better suited for a use not allowed in the farmland preservation zoning district.
  - ii. The rezoning is consistent with any applicable comprehensive plan.
  - iii. The rezoning is substantially consistent with the Vernon County certified farmland preservation plan in effect at the time of the proposed rezoning.
  - iv. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
- b. **Town Reporting Requirements.** By March 1<sup>st</sup> of each year, The Town of Hamburg shall provide to the department a report of the number of acres that the Town of Hamburg has rezoned out of the farmland preservation zoning district during the previous year and shall provide a map that clearly shows the location of those acres and shall submit a copy of the same report to Vernon County.