

CHAPTER 17

ZONING

17.01 Jefferson County Zoning Ordinance Adopted

17.01 JEFFERSON COUNTY ZONING ORDINANCE ADOPTED. The provisions of the Jefferson County Zoning Ordinance, passed December 10, 1974, are adopted by reference and made a part of this chapter as if set forth in full.

17.02 NONMETALLIC MINERAL EXTRACTION REGULATION AND CONTROL.

(1) LEGISLATIVE PURPOSE:

- (a) Purpose. The purpose of this ordinance is to regulate and control the operation of non metallic mineral extraction operations in the Town of Concord and to assure such operations are conducted in a manner that promotes successful operation consistent with the standards established in this chapter, as well as to address the health, safety, and welfare concerns of the Concord community
- (b) Definition; "Nonmetallic Mineral Extraction and Processing." Nonmetallic mineral extraction processing operations are conditional uses in Jefferson County, and include mining, quarrying, burrow pits, crushing, washing and other removal or processing of nonmetallic resources, the erection of buildings and the installation of necessary machinery used in said extraction or processing, and the preparation of hot-mix asphalt and ready mixed concrete.

(2) PROCEDURE FOR APPLICATION:

- (a) Permit: No nonmetallic mineral extraction operation shall take place within the Town of Concord until a conditional use permit application has been received, reviewed by the Town Plan Commission (Park and Planning), and approved by both the town board and appropriate Jefferson County zoning authority. Such permit shall be for an initial period as is deemed appropriate to the specific situation but not to exceed three (3) years. To renew an existing permit the applicant shall mail the application at least sixty (60) and no more than one hundred twenty (120) days before the expiration of the original permit. Application after such date shall be treated as an original application. Permit renewal shall not be unreasonably withheld so long as (1) there is no uncured default existing at the time the permit renewal is either applied for or is granted by the Town and (2) the operator has not engaged in a pattern of flagrant and repeated violations of the terms of the permit during the prior term. Repeated violation shall mean three (3) or more separate violations of a similar nature which are identified by written notice from the Town Board. The permit may be rescinded after a public hearing before the Town Board and Plan Commission (Park and Planning) and a new conditional use permit will be required to resume operations. Any alleged violation of the permit shall be identified to the applicant and the property owner in writing, with particularity, and the applicant shall have thirty (30) days to cure such violation unless the violation will result in imminent harm to the health and safety of the Town of Concord neighbors immediately adjacent to the quarry in which case the operator shall take prompt actions to cure such violation. A cease work order may be issued by the Town Board for a violation of the permit and its applicable regulations which may result in imminent harm to the health and safety of those Town of Concord neighbors immediately adjacent to the mineral extraction operation. Such order shall be

promptly complied with and appropriate measures taken to correct the violation. Extraction operations may resume once the violation has been corrected.

- (b) APPLICATION: Application for conditional use permit shall be made on forms supplied by the Jefferson County Zoning Department and shall be accompanied by the current prevailing fee. Such fee shall be paid by cash, check or money order to Jefferson County. Applicant shall also pay costs associated with the application process including, but not limited to, engineering, surveying, attorney's fees, etc.
 - 1. A full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation. Where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description.
 - 2. A legal description of the proposed site with a map showing its location with indications of private access roads, existing or proposed, public highways adjacent to the site which will be affected by the operation, all buildings and all Concord property owners' names and addresses within one thousand (1,000) feet of the site boundaries.
 - 3. A topographic map of the area at a minimum contour interval of two (2) feet extending beyond the site of the nearest public street or highway or to a minimum distance of three hundred (300) feet on all sides.
 - 4. An operations plan for the site outlining how the site is going to be developed. The operations plan shall include such details as property boundaries, extraction setbacks, phasing and duration of extraction, depth of all existing and proposed excavations, location of proposed extraction area, staging area and equipment storage, location of proposed temporary and permanent structures including scales and offices, proposed fencing and gates, proposed location and type of screening including berms and landscaping.
 - 5. A reclamation plan that meets the requirements of the Jefferson County Nonmetallic Mining Ordinance No. 2001-3 and Chapter NR-135 Wisconsin Administrative Code. The reclamation plan shall include such items outlined in the reclamation ordinance such as the future land use for the site or compliance with the underlying zoning in place at time of reclamation. The final slopes within a sand and gravel pit shall not exceed 3 to 1, final slopes shall be covered with topsoil and seeded, and provisions for adequate erosion control practices are to be used during revegetation. After completion of the extraction operations, the site shall be clear of all the debris, unnecessary outbuildings, machinery, and left in a sanitary condition.

(3) PROCEDURE FOR ACTION ON APPLICATION:

- (a) Plan Commission (Park and Planning): The application and all data and information pertaining thereto shall be referred to the Plan Commission for public hearing, report, and recommendation back to the Town Board within thirty (30) days after the public hearing. Applicant must also comply with all Jefferson County ordinances and procedures. This Ordinance is an exercise of the zoning power by the Town of Concord, which is more restrictive than the Overlay Jefferson County Zoning Ordinances.
- (b) Public Hearing: Within thirty (30) days after filing and receipt of application, the Plan Commission (Park and Planning) shall schedule a public hearing at which all interested parties may be heard. In addition to the normal posting and publishing, notices also shall be sent through the mail or otherwise placed in the hands of all Town of Concord land owners within one thousand three hundred twenty (1320) feet of the site boundaries of the proposed mineral

extraction operation. These notices shall be mailed or delivered at least 10 days prior to the date of the hearings as well as posted on the Town Web Site. Publication of a class 2 notice, under Chapter 985 of the Wisconsin Statutes of the date of the public hearing must be made once during each of the two weeks prior to such hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient. Following the public hearing, the Plan Commission (Park and Planning) shall forward a recommendation to the Town Board for its consideration and review.

(c) Action by Town Board: The Town Board shall within ten (10) days after receipt of the Plan Commission (Park and Planning) recommendation take action by a simple majority vote, unless the decision is subject to the provisions of Section (2)(d.) of this Ordinance, to approve or disapprove the application for the proposed mineral extraction operation. The Town Board shall be guided by consideration of the public health, safety, and welfare and shall give particular consideration to the following factors in making their decision:

1. The recommendations and report of the Plan Commission.
2. The effect of the proposed mineral extraction operation on existing roads and traffic movement in terms of adequacy, safety, and efficiency.
3. The effect of the proposed mineral extraction operation on drainage, water supply/wells and sanitary septic systems on the adjacent lands and on the land contained in the proposed mineral extraction operation.
4. The possibility of soil erosion as a result of the proposed mineral extraction operation on the adjacent lands and on the land contained in the proposed mineral extraction operation.
5. The degree and effect of dust and noise as a result of the proposed mineral extraction operation.
6. The practical possibility of restoration and reclamation of the site.
7. The effect of the proposed mineral extraction operation on the natural beauty, community character, tax base, property resale values and land uses in the area.
8. The most suitable future land use for the area after cessation of the mineral extraction operation with particular consideration for future residential value except in an A-1 Agricultural district where consideration should be given to the ability to reclaim the land to an agricultural use.
9. The concerns of adjacent property owners within a radius of 1320 feet to the extent that they are demonstrable and to the extent they negatively impact said adjacent property owners.
10. The assurances, contractual agreements or written warranties undertaken by the Applicant to adequately address the concerns of the impacted, adjacent property owners within a radius of 1320 feet.
11. No mineral extraction operation shall be permitted if thirty (30) or more residences lie within a band one-half (1/2) mile wide around the perimeter of the proposed mineral extraction operation.

(d) Action by Town Board After Protest:

1. In case of a protest against the proposed application duly signed and acknowledged by either of the following:
 - a. The number of qualified electors residing in the area within a radius of one

thousand three hundred twenty (1320) feet of the proposed mineral extraction operation equal to at least the majority of votes cast for Governor in said territory at the last gubernatorial election, and

- b. Either the owners of one-half ($1/2$) of the land in area within said territory,
 - c. Or the owners of one-half ($1/2$) of the real property in assessed value within said territory.
2. If no qualified electors reside in the territory within a radius of one thousand three hundred twenty (1320) feet adjacent to the site boundaries of the proposed mineral extraction operation, then the protest, to be considered valid may be duly signed and acknowledged by the owners of one-half ($1/2$) of the land in area within said territory and the owners of one-half ($1/2$) of the real property in assessed value within said territory.
 3. The term "owner" as used in this section shall mean the holder of record of an estate in possession in fee simple or in a life estate in land or real property or a purchaser under a land contract for the sale of an estate in possession in fee simple or for a life estate, but does not include the vendor (seller) under said land contract. A tenant in common or joint tenant is an "owner" to the extent of his or her interest.
 4. The term "assessed value" means the value for general tax purposes as shown on the tax roll for the year next preceding the filing of any application under this ordinance.
 5. In the event of a duly signed and acknowledged protest filed by the requisite number of adjacent land owners, the determination to approve the Application must be unanimous.
 - (e) Approval by Zoning Agency: The determination of the Town Board shall be immediately transmitted to the Jefferson County Zoning Agency which shall within a reasonable time either approve or disapprove the application after consideration of the Town Board's determination. The Applicant is solely responsible for obtaining County approval and is reminded that countywide zoning is applicable in Jefferson County.
 - (f) Additional Conditions: Any additional conditions to the granting of a permit shall be in writing and copies made a part of the record of the determination by the Town Board and of the County Zoning Agency.
 - (g) Renewals: The procedure as designated in Paragraphs (3) (a) through (g) above, shall apply to applications for renewal of a permit under this ordinance.

(4) REQUIREMENTS:

- (a) Setback Requirements: No part of the mineral extraction operation other than access roads or screening measures shall be located closer than two hundred (200) feet, nor shall any accessory parking area, stock pile or office building be permitted closer than one hundred (100) feet to the building setback line along any street or highway. Excavating and other processing operations and activities shall not take place within three hundred (300) feet of a residence, or within five hundred (500) feet of a school or institution.
- (b) Offset (Side Yard) Requirements: No part of the mineral extraction operation shall be permitted closer than two hundred (200) feet, nor shall any accessory access road parking area or office building be closer than fifty (50) feet to any property line except with the written consent of the owner of the adjoining property, or abutting an existing quarrying operation, but in no case shall such operation be closer than twenty (20) feet to any property line except by agreement between abutting quarrying operations, or be in conflict with County ordinances

relating to preservation topography. The setback and offset requirements do not apply to accessory uses to the mineral extraction operations such as fencing, berms, landscaping, or other non-extraction activities.

(c) Operational Requirements:

1. Fencing or other suitable barrier shall be erected and maintained around portions of the site where, in the determination of the Town Board, such fencing or barrier is necessary for the protection of the public, and shall be a type approved by the Town Board.
 2. All machinery and equipment used in the extraction operation shall be constructed, maintained and operated in such a manner as to minimize dust, noise and vibration. Access and haulage on the site shall be maintained in a dust-free condition by surfacing or treatment as directed by a Town representative.
 3. The crushing, washing, refining, or other processing other than the initial removal of material may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.
 4. In Stone quarries, the production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stock-piling of such products on the side shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be otherwise specifically authorized under the terms of the grant of the permit.
 5. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready mixed concrete or hot-mixed concrete or hot-mix asphalt and any similar production or manufacturing processes which might be related to the extraction operation shall not be permitted except as permitted by a separate conditional use permit.
 6. The washing of sand and gravel shall be prohibited in any operation where the source of water is doubtful capacity or where the quantity of water required will seriously affect the water supply for other users in the area.
 7. The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the plan committee and approved by the Town Board, to screen the operation so far as practical from normal view, to minimize the damaging effect of the operation on the beauty and the character of the surrounding countryside. Such planting shall be started as soon as practical, but no later than one (1) year after quarrying operations commence, and shall be done according to the Town recommendations.
 8. Allowable extraction hours shall be set by the Town Board at the time of permit issuance. Hours of operation will reflect the location of the site in relationship to the surrounding properties and the impact they may have on "quiet enjoyment". Typically hours would be from 7:00 a.m. and shall not continue past 6:00 p.m.; and no operation shall take place past 12:00 p.m. on Saturdays or anytime on Sundays or legal holidays. During periods of national or unusual emergency, time and hours may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at thirty day intervals.
- (d) Haul Road Maintenance: If material removed from the site is hauled over town roads to a state of county highway, the operator shall make the necessary improvements to the town roads prior to the start of the mineral extraction operation. Any improvements to the site entrance and town road from the entrance to the nearest county or state highway shall be improved at the operators expense in accordance with the submitted operations plan and standards set by the Town Board to allow for safe truck movements in and out of the site.

- (e) Hydrologic Review: A hydrologic review shall be submitted by the applicant to the Town as part of the permit application. The Town may have the study reviewed by an independent consultant at the applicant's expense for the verification that the mineral extraction operation will not affect the quantity or quality of water in nearby wells, lakes, streams or wetlands.
- (f) Well Protection: Before work on the extraction site is initiated, the operator must offer property owners within 1,320 feet of the extraction boundaries an opportunity to have an operator perform a baseline well test to establish water quality and quantity in said wells. The offer must be made in the form of written notices (certified mail, return receipt requested) to each property owner with a state registered well. Operator must submit to the Town a list of to whom the notices were sent and a second list which enumerates those property owners who have requested the baseline well test. The purpose of such inspections shall be to provide baseline comparative data in the event of any future claims of well problems allegedly resulting from extraction operations. Operator shall be responsible for the costs of conducting such inspections. Selection of the consultant shall be by the operator, subject to Town approval.
- (g) Well Guarantee: Operator shall be responsible for any damage associated with area wells resulting from its extraction operations. Any property owner in the designated area experiencing well problems, which may be caused by extraction operations, shall immediately notify the operator and the Town representative verbally and in writing. If there is a problem with any such tested well after extraction operations have begun, a disinterested third party will be brought in at operators expense to investigate the situation. If it is determined that the well problem resulted from the extraction operations and requires increased depth, casing or lowering of pumps, to the extent that this is caused by the extraction operations, this work shall be done at operator's expense, to include if necessary, total replacement to bring such wells up to code. If the situation is urgent, (i.e. loss of use of effected well) the operator shall immediately provide the property owner with adequate potable water to sustain previously existing conditions on the effective site.
- (h) Claims Procedures: Any well problems caused by extraction operations shall be compensated by operator in accordance with the following procedures:
 - 1. Any claim for damage shall by presented to operator in written form, with a sworn certification, estimate of damage, and request for payment.
 - 2. Operator shall have the right to inspect property or well to determine in its own good faith judgment, the damage was caused by extraction operations.
 - 3. In the event of a good faith dispute, operator shall post 125% of the amount of claimed damage in the Town of Concord bank of record and the matter shall be referred to a qualified neutral, consultant for determination of the cause of the damage claimed by the property owner. Such determination shall by promptly rendered by the decision-maker. I the operator is found at fault, the claim shall be paid within 5 business days.
- (i) Dust Control: Operator shall meet Jefferson County's performance standard for dust. No solid or liquid particles shall be emitted in concentrations greater than 0.3 grams per cubic foot of the conveying gas or air. Dust shall be controlled so that there are not visible emissions (0% opacity) at the boundaries of the permitted extraction area. A fugitive dust control plan for the extraction site shall be submitted to the Town prior to commencing extraction operations.
- (j) Noise: Operator shall meet Jefferson County's performance standards for noise. Processing and stockpiling operations shall be located in an area to minimize noise. Operator shall require all trucks entering and leaving the site to have proper muffler

systems and controls which meet or exceed the most current industry standard for noise abatement. The use of Jake brakes on trucks entering or leaving the site shall not be allowed except in an emergency.

- (k) Safety: Operator shall abide by all safety rules and regulations as enforced by the Mine Safety and Health administration. In addition there shall be a safety fence around the entire active extraction area at all times. The safety fence shall be a WDOT standard ROW fence a minimum height of 5 ft. with a single strand barbed wire on the top. A locking gate shall be installed at all entrances to the mineral extraction site. Signs warning of the mineral extraction operation shall be installed every 300 feet around the perimeter of the active mineral extraction area.
- (l) Liability: The operator shall submit to the Town Board proof of sufficient liability coverage and maintain said policy in full force and effect during the term of permit and renewals. Public liability insurance in the amount of \$1,000,000 for sites of less than ten acres and \$5,000,000 for all other sites in excess of 5 acres shall be the minimum required.
- (m) Extraction Permit Fee: Operator shall be required to pay an annual fee to the Town. The annual fee shall be \$500 for sites of less than ten acres, and \$2,500 for sites of ten acres or more. In addition, operator shall be required to pay to the Town a yearly mineral extraction fee of \$0.10 per ton for all nonmetallic minerals removed from the permitted site each year. This fee shall be designated for Town road improvements or for any other major equipment expenditures.
- (n) Storm water and Erosion Control: Operator shall secure and maintain in full force and effect an NR-216 storm water permit for the extraction site from the Wisconsin Department of Natural Resources.
- (o) Permits and Environmental Compliance: Operator shall secure and maintain in full force and effect during the term of the permit all permits required from local, state, and federal authorities to open and operate a mineral extraction operation on the site.
- (p) Screening Regulations: Operator shall meet Jefferson County's Performance standard for screening. Extraction operations shall be contained within an opaque fence or wall eight (8) feet high, or a visual screen consisting of evergreen or evergreen type hedges or shrubs with spacing not more than six (6) feet on center, located and maintained in good condition within fifteen (15) feet of the property line, or in any way out of view of the public.
- (q) Reclamation Requirements: In order to insure that the area of the extraction operation shall be reclaimed to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall obtain, prior to beginning extraction activities, a reclamation permit from the Jefferson County Land Conservation Department and post the appropriate financial assurance for Reclamation with Jefferson County. (Reclamation permit application for new or Reopened nonmetallic mining sites pursuant to Chapter NR 135, Wis. Admin Code).
- (r) Financial Assurances:
 - 1) Operational Standards: Following approval of a permit for nonmetallic mining the operator shall file a financial guarantee with the Town. The financial assurance shall provide that the operator will faithfully comply with all applicable operational standards, such as road maintenance and well guarantees, contained in this ordinance and associated permit. The financial assurance shall be sufficient to cover the costs of implementing the standards in their entirety. In no case, shall the financial assurance be less than \$100.00 per

site acre.

- 2) Reclamation Standards: Operator shall post the appropriate financial assurance for reclamation with Jefferson County as outlined in the County's nonmetallic mining reclamation ordinance.
- 3) Form and Management: Financial assurance shall be provided by the operator and shall consist of a bond or an alternate financial assurance. Financial assurance shall be payable to the Town of Concord and released upon termination of operations. Alternate financial may include, but is not limited to cash, certificates of deposit, irrevocable letters of credit, irrevocable trusts, established escrow accounts, or government securities. Any interest from the financial assurance should be paid to the operator. Certificates of deposit shall be automatically renewed or other assurances shall be provided to the maturity date. Financial assurance arrangements may include, at the discretion of the Town of Concord board, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.

(5) APPLICATION TO EXISTING OPERATIONS:

- (a) Permit: Within sixty (60) days after the adoption of this ordinance all existing quarrying operations shall be required to register with the Town Clerk submitting pertinent data relative to the present operation, including the boundaries of the actual operation and of the ownership. A conditional use permit shall be granted and is "grand fathered" to such existing operation subject to compliance with the operational requirements of this quarrying ordinance where they can be reasonably applied under existing circumstances.
- (b) Renewal Permit:

Within three (3) years after the date of this ordinance any such existing operation shall be required to make application for a renewal permit, the same as for reapplication in the case of a new operation under this ordinance.

(6) PENALTIES AND ENFORCEMENT

- (a) Orders and Citations: Failure to comply with the regulations and standards stated in this ordinance may result in the issuance of a citation(s), orders, revocation of the permit, or any other applicable remedy required by law. In the event the operator fails to comply with the provisions of this ordinance, the Town may issue a compliance order, suspension order, or order directing the immediate cessation of any activity regulated under this ordinance until the activity complies with the provisions hereof.
- (b) Review of Orders and Citations: An operator holding a permit issued under this ordinance who is subject to an order issued under Sub. 5(a) shall have the right to review the order in a contested case hearing as allowed by state law under s.68.11 Stats., Holder of permit consents to jurisdiction in the Circuit Courts of Jefferson County.
- (c) Citations: The Town of Concord may issue a citation under s.66.0113 Stats., to collect forfeitures or take any other required action needed to enforce this ordinance. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection. The Town of Concord may submit any order issued under the district attorney, the corporation counsel, the municipal attorney or the attorney general for enforcement as allowed by state law.
- (d) Penalties: Any violation of this ordinance or a permit issued under this ordinance may result in forfeitures as allowed by state law, which penalties are adopted herein by reference.

- (e) Inspection: The Town Board members or any oversight group of citizens appointed by the Town Board may inspect the premises at any reasonable times in order to ascertain compliance with this ordinance. The applicant and its assigns shall grant permission to such duly identified Town staffer group, subject only to such limited delays as may be reasonably necessary for the protection of person and property, and subject to their compliance with applicable safety regulations at this site. A representative of the operator must be present during any such inspection. The Town shall furnish to the operator any report prepared by the Town or its representatives regarding the inspection.
- (f) Severability: All provisions of this ordinance found by a court of law to be objectionable shall be deleted from the remainder of this ordinance while letting the remainder of this ordinance remain in full force and effect.

**AN ORDINANCE TO REPEAL SECTION 17.02 NONMETALLIC
MINERAL EXTRACTION REGULATION AND CONTROL IN
CHAPTER 17, ZONING, OF THE TOWN OF CONCORD GENERAL
ORDINANCES**

Sponsor: Chairperson Donald Groose

THE TOWN BOARD OF THE TOWN OF CONCORD DOES ORDAIN AS FOLLOWS: SECTION 1: Section 17.02 of the Zoning Code of the Town of Concord, entitled, "NONMETALLIC MINERAL EXTRACTION REGULATION AND CONTROL" is hereby repealed. SECTION 2: All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed. SECTION 3: This ordinance shall take effect and be in force the day after its passage and publication.