

To: Lodi Plan Commission
From: Stephen Tremlett, AICP, Zoning Administrator
Subject: Potential Amendment to Chapter 340-11 (Accessory Buildings and Uses)
Date: July 7th, 2022

Request

Consider an amendment to Chapter 340-11(B) that currently requires detached accessory buildings to be a minimum of 6 feet from the principal structure. Per discussions at our May meeting, Plan Commission requested further review on how small low-cost sheds are treated in other community zoning ordinances.

This an update to a memo (dated June 8th, 2022) shared at the June 14th Plan Commission meeting.

Background Information

The building inspector has had several building permit requests for installing sheds near their principal structure with many planned to be abutting their garage. City zoning ordinance requires all accessory structures, including (tool)sheds, to be a minimum of six feet from the principal structure (and three feet from any property line). While reviewing these proposals, the building inspector noted many sheds in the community are in fact closer than 6 feet from the principal structure.

Fire protection is the primary concern with detached accessory structure placement near the principal structure; however, building codes allow for structures to be closer than six feet with a minimum of ¾-hour fire rated construction (per WI Uniform Dwelling Code, Table 321.08 table – shown on the right). Fire-rated construction is not required if accessory structures are built/installed more than 10 feet from the principal structure.

In the past sheds were reviewed only by the building inspector, as it is generally a building code issue; however, it fair to question why six feet minimum separation in the zoning ordinance if it’s based on fire protection.

In review of other communities of similar size, I have found that most allow for accessory buildings closer than 10 feet with ¾-hour (or 1-hour) fire-rated construction. In some cases, they require 10 feet separation. In no cases did they require 6 feet, which appears arbitrary based on fire protection codes and codes in other communities.

SPS 321.08 Fire separation and dwelling unit separation. (1) FIRE SEPARATION. Dwelling units shall be separated from garage spaces, accessory buildings, property lines and other dwelling units in accordance with Table 321.08 and the following requirements:

Table 321.08

Between Dwelling And:	Distance Between Objects ¹	Fire Rated Construction ^{2,5}
Detached garage or accessory building on same property	Less than 5 feet	¾-hour wall ³ 1/3-hour door or window ³
Another dwelling on same property	Less than 5 feet	¾-hour wall ⁴ 1/3-hour door or window ⁴
Detached garage, accessory building, or other dwelling on same property	5 to 10 feet	¾-hour wall ³ 1/3-hour door or window ³
Detached garage, accessory building, or other dwelling on same property	More than 10 feet	No requirements
Property Lines	Less than 3 feet	¾-hour wall 1/3-hour door or window
Property Lines	3 feet or more	No Requirements
Zero Lot Line	None	Follow sub. (2) (d) requirements

¹Distance shall be measured perpendicular from wall to wall or property line, ignoring overhangs.
² Fire rated construction shall protect the dwelling from an exterior fire source.
³ Fire rated construction may be in either facing wall.
⁴ Fire rated construction shall be in both facing walls.
⁵ The methods for garage separation in par. (a) 1. are examples of ¾ hour wall construction.

I found no cases where the zoning ordinances allow for an exemption to building separation for specific accessory structure (this includes no exemption for low-cost sheds).

Building inspector is okay with accessory structures closer than 10 feet to a dwelling if the wall parallel has a 45-minute fire wall per the Uniform Dwelling Code. He also has no objections to exempting sheds (no permanent foundations) less than 100 square feet from building permit process.

Applicable Zoning & Development Code Regulations

- **Chapter 127-13 Building permit required.**
 - A. No building or structure or any part thereof shall hereafter be built, enlarged, altered, demolished or moved within the City or Lodi, nor permanent building equipment be installed, except as herein provided, unless a permit therefor shall first be obtained by the owner, or his agent, from the Building Inspector.

- **Chapter 340-11(B) Accessory buildings and uses.** (Full ordinance section provided as an attachment)
 - B. Separation from principal structures. Detached accessory buildings shall be distant at least **six feet** from the principal structure situated on the same lot.

- **Chapter 340-110 Certificates of zoning compliance.**
Certificate of zoning compliance required. It shall be unlawful to use, occupy or permit the occupancy of any building or parcel, or both, or part thereof hereafter developed until a certificate of zoning compliance shall have been issued therefor by the Zoning Administrator stating the proposed use conforms to the requirements of this chapter. Any lawful conditions of occupancy shall be attached to or referred to on the certificate.

- **Chapter 340-117 Definitions, interpretation.**
Accessory Use or Structure. A use or structure subordinate to the principal use of a building or to the principal use of land and which is located on the same parcel and serving a purpose customarily incidental to the use of the principal building or land use. **Accessory uses or structures to residential principal uses may include garages, carports, other parking spaces, swimming pools, tennis courts, and toolsheds.** Accessory uses in residential districts shall not involve the conduct of any business, trade, or industry, except as defined as a home occupation, and shall not include the commercial boarding of animals or the keeping of fowl or farm animals.

Recommendation

There are two factors to consider when reviewing this standard: 1) What's the regulation? 2) How will it be administered?. In reverse order, please consider the following questions.

Question 1: Do ALL structures incidental to the principal structure (as listed in Chapter 340-117), inclusive of all sheds, need a zoning permit (requiring permit applications and fees)? As stated in Chapter 340-110 (shown above). Here is a brief review of ordinances describing an "accessory use" and any exemptions from zoning permit process.

- **Village of Poynette:**
 - *Definition:* Includes detached residential garages, carports, and hoop sheds designed primarily to shelter parked passenger vehicles; utility sheds used primarily to store residential maintenance equipment for the same property; private recreation structures such as gazebos, and detached elevated decks or walkways associated with residential uses
 - *Zoning Permit Exemption:* None

- **Village of Arlington:**
 - *Definition:* no specific types identified
 - *Zoning Permit Exemption:* None
- **City of Portage:**
 - *Definition:* Include detached private residential garages, carports primarily use to shelter parked passenger vehicles, and utility sheds used to store residential maintenance equipment of the subject property.
 - *Zoning Permit Exemption:* None
- **Columbia County:**
 - *Definition:* no specific types identified
 - *Zoning Permit exemption:*
 - Birdhouses, birdbaths, clothes lines and poles flag poles, lawn ornaments and fixtures, landscaping structures, residential fuel storage tanks and pumps and accessory heating units, mailboxes, satellite dishes, and garbage containers, and similar structures as approved by the Zoning Administrator.
 - **Accessory buildings that do not exceed 100 square feet and are used by the residents of the principal building, including but not limited to tree houses and play houses, shelters for dogs and domestic pets of the residents of the property, ice fishing shanties, sheds, and other storage buildings under this area threshold.**
 - Recreational equipment used by the residents of the principal building for on premises activities, games and sports, including but not limited to swings, slides, climbers, teeter-totters, basketball baskets and backboards, badminton nets, and similar equipment.
 - Fences and walls six feet in height or less, as measured from the established grade, and all agricultural fences which meet the requirements of Chapter 90, Wisconsin Statutes.
- **Portage County:**
 - *Definition:* Accessory structures may include, but not limited to, garage, shed, storage building, boathouse, porch, deck, gazebo, or patio
 - *Zoning Permit Exemption:* "accessory structures less than 100 square feet, provided such building conforms to all the setbacks, yard and open space requirements of this Ordinance."
- **Town of Middleton:**
 - *Zoning Permit Exemption:* "accessory buildings 120 square feet or less in size **on non-permanent foundations**, provided they meet setback, height and lot coverage requirements."

All accessory structures are required to be reviewed if strictly enforcing the zoning ordinance. **Plan Commission recommended language that exempts zoning permit review for structures less than 100 square foot with non-permanent foundation similar to the language in the Portage County (shown above).**

MEMO

7/07/2022

Recommendation: Amend Section 340-110: Certificate of zoning compliance (CZC), and the corresponding language in the CZC application.

Section 340-110: Certificate of zoning compliance required. It shall be unlawful to use, occupy or permit the occupancy of any building or parcel, or both, or part thereof hereafter developed until a certificate of zoning compliance shall have been issued therefor by the Zoning Administrator stating the proposed use conforms to the requirements of this chapter. Any lawful conditions of occupancy shall be attached to or referred to on the certificate.

- (1) Exemption. Structures less than 100 square feet with non-permanent foundation shall not require a certificate of zoning compliance provided they meet setback, height, lot coverage and other requirements of this Ordinance. A permanent foundation shall include any system of supports and securements, including piers, mortared masonry and concrete footings, capable of transferring loads from a structure to the earth at a depth below the established frost line.

Question 2: Should there be an amendment to the building separation standard in Chapter 340-11 (see above)?

Recommendation: Since fire protection is a building code concern, I would recommend the regulation match what is allowed per Wisconsin's SPS 321.08. While I could see removing this regulation entirely (leaving it to building code enforcement and permitting), it may prove beneficial to change the language to inform the Zoning Administrator and Plan Commission of the fire separation requirements for reviewing development proposals.

My recommended is noted in the attachment. If there is support for this change, there will be a public hearing scheduled at the next regularly scheduled Plan Commission meeting prior to an agenda item to consider recommending approval of the zoning amendment to City Council.

Sincerely,
MSA Professional Services, Inc.



Stephen Tremlett, AICP
Zoning Administrator

Enc: Chapter 340-11 (Accessory Buildings and Uses)

Changes indicated in *red*.

§ 340-11 **Accessory buildings and uses.**

Accessory uses may be allowed where they comply with the following conditions and requirements:

A. Size of accessory structures in residential districts. Accessory structures in residential districts may not occupy more than 25% of a required rear yard or 35% of any nonrequired rear yard. In no instance shall the accessory structure exceed the ground floor area of the main building used for residence. The measurement of accessory structure size shall include the total of all detached or attached accessory buildings on the lot. The total area of accessory structures on a single lot in residential districts shall not exceed 1,000 square feet in area, except when issued a conditional use permit under the terms and conditions of this chapter.

B. Separation from principal structures. Detached accessory buildings shall be distant at least ~~six~~ **ten** feet from the principal structure situated on the same lot, **unless applicable Wisconsin Construction Standards are met. See Wisconsin Construction Standards, Table 321.08.**

C. Accessory structures in front yards limited. No attached or detached accessory use or accessory structure shall be permitted nearer to the front lot line than the legal front yard setback in the zoning district for the principal structure or the average setback of the principal structures on lots immediately adjoining the lot on the same side of the street, whichever distance is less. In no case may an accessory structure be located closer to a front lot line than the principal structure.

D. Accessory structure side and rear setbacks. All accessory structures shall be set back at least three feet from all interior lot lines. In those instances where the rear lot line is coterminous with an alley right-of-way, the accessory building shall not be closer than 20 feet to such rear lot line.

E. Accessory structure setbacks on corner lots. The average setback of the four, or fewer, nearest buildings may be used to determine the side street setback of an accessory building on a corner lot, but in no case shall the reduced setback be less than 20 feet. In no case may an accessory structure be located within the vision triangle as defined in § **340-19** of this chapter.

F. Accessory structure height. No accessory structure shall exceed 20 feet in height. "Height" for this purpose shall mean the vertical distance between the lowest aboveground point of the front of the structure and the peak of the roof. A cupola, no side of which exceeds three feet in length, and which does not extend more than four feet above the peak of the roof, shall not be included in measuring height. Any other cupola shall be included in the height measurement. Chimneys shall not be included in measuring height.

G. Accessory structures attached to principal buildings. When an accessory building is structurally attached to a main building, it shall be subject to, and must conform to, all regulations of this chapter applicable to main buildings, including all yard setbacks. If after initial construction any detached accessory building is attached to the principal building, the newly attached accessory structure must meet all of the applicable yard setbacks for the principal structure.

H. Conversion of accessory structures to dwellings limited. The conversion of any accessory structure into a dwelling or the conversion of any dwelling so as to accommodate an increased number of dwelling units or families shall be permitted only within a district in which a new building for similar occupancy would be permitted under this chapter, and only when the resulting occupancy will comply with the requirements governing new construction in such district, with respect to minimum lot size, lot area per dwelling unit, percentage of lot coverage, dimensions of yards and other open spaces, and off-street parking.

I. Accessory structures without principal structure. No accessory structure shall be erected or constructed prior to the erection or construction of the principal structure.