

**AN ORDINANCE AMENDING CHAPTER 17 (ZONING CODE)  
OF THE VILLAGE OF GERMANTOWN MUNICIPAL CODE**

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THE VILLAGE BOARD OF THE VILLAGE OF GERMANTOWN, WASHINGTON COUNTY,  
WISCONSIN, ORDAINS AS FOLLOWS:

**SECTION 1.** That Section 17.41 (Residential Accessory Use, Building and Structure Restrictions) is revised as follows where words that are ~~stricken~~ are deleted and words that are underlined are to be added:

- 17.41(6) **RETAINING WALLS.** Retaining walls shall meet the following minimum setback from all front, side and rear property lines (measured along a perpendicular line from the base of the wall to the property line):
- (a) ~~Side Yard. A~~ The minimum distance equal to or greater than the height of the retaining wall above the lowest finished yard grade measured from the finished yard grade to the highest point of the wall.
  - (b) If a tiered retaining wall system is installed, the minimum setback shall apply to the highest point of the wall in each tier.
  - (b) ~~Rear Yard. The minimum distance equal to or greater than the height of the retaining wall above the lowest finished yard grade.~~

**SECTION 2.** That Section 17.50(2) (YARDS) is revised as follows where words that are ~~stricken~~ are deleted and words that are underlined are to be added:

- 17.50(2) **YARDS.**
- (f) Fences, Retaining Walls and Berms in Residential Zoning Districts (and properties used for residential purposes in business districts).
    - 1. All fences except "Temporary Fences", "Agricultural Fences" and "Exempt Fences" defined herein shall be subject to review and approval by of the Building Inspector prior to the issuance of a building permit.
    - 2. Fences in rear or side yards may be up to 6 feet in height.
    - 3. Fences in front yards may not exceed 4 feet in height, except a maximum height of 6 feet may be approved with a Zoning Permit by an approval of the Plan Commission after consideration of visibility, privacy and access concerns.
    - 4. No fence shall be closer than 2 feet to a public right-of-way, interfere with traffic visibility, or block or impede stormwater drainage that would affect adjacent or downstream property.

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5. Fences shall be constructed using the following methods and materials:
  - i. Naturally resistant or treated wood
  - ii. Brick, masonry or natural stone
  - iii. Wrought iron, aluminum or galvanized metal (coated and noncoated)
  - iv. Vinyl (rigid PVC)
  - v. Other material of comparable quality must be approved by the Zoning Administrator.
  - vi. Fences that contain a finished side and an unfinished side, shall be installed in a manner in which the finished side faces the adjacent property. In case of a discrepancy, the Village Zoning Administrator Building Inspector shall determine which side of the fence is the finished side.
  - vii. The use of agricultural fences defined herein is prohibited in all Residential Zoning Districts except the Rs-1 and Rs-2 Districts when necessary for the containment of horses or other large animals permitted in the district and provided that the type of agricultural fence to be installed is agreed to by all abutting property owners.
6. Fences and Easements.
  - i. Fences shall not be located within any type of easement, provided however, the Planning Commission may authorize the encroachment by a fence into a drainage easement where the owner of the land encumbered by the easement shows to the satisfaction of the Planning Commission that, considering the proposed location, design and materials of the proposed fence, the encroachment of the fence into the easement will not materially interfere with drainage flow within the easement, and, in the case of a subdivision, the homeowners association consents in writing to the encroachment, or if not in a subdivision, the adjacent landowners consent in writing.
  - ii. If the Planning Commission deems it necessary in order to make its decision to authorize an encroachment into a drainage easement by a fence, it may require that the applicant provide a report by a professional engineer providing an opinion that the encroachment will not impair drainage flow within the easement.
  - iii. If the applicant whose property abuts the drainage way shall be aggrieved by the decision of the Planning Commission, such aggrieved person may appeal the decision to the Village's Board of Zoning Appeals by filing a request for appeal review of the record below within 14 days of the date of the Planning Commission's decision.
7. It is the property owner's responsibility for any lawn maintenance of lands that lie between a fence and the property line.
8. Should it be necessary and in the public interest for ~~that~~ the Village or its agent, to remove a ~~the~~ fence, all the material costs (materials and labor) shall ~~would~~ be borne by the owner of the fence.

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9. Exempt Fences:
  - i. A short section of decorative fence or component installed within the applicable building setbacks for the zoning district within which the property is located and exclusively for aesthetic or landscaping purposes.
  - ii. Arbors, trellises, pergolas, etc. when not incorporated into or used for boundary or privacy purposes.
  - iii. Underground or other electronic boundary fence used for pet training/containment purposes
10. Temporary Fences.
  - i. A fence installed for a limited period of time and for purposes of providing protection for residents, property and property owners, and the general public from the area or condition for which the fence is designed and intended to provide such protection, including but not limited to the following:
    1. The use of wood or plastic snow fence for the purpose of limiting snow drifting during the winter season from November 1 through April 1.
    2. The protection of an active excavation and/or construction site and the protection of plants, septic fields, etc. during grading and construction provided there is a valid building permit for the site and construction is imminent or ongoing.
  - ii. A temporary fence does not require a building permit.
  - iii. The owner and/or installer is responsible for ensuring said temporary fence is installed and maintain properly for the purpose it is intended so that it does not create a safety hazard or nuisance for the property owner, adjacent property owners or the general public.
11. Retaining Walls. See Section 17.41(6).
12. Berms. See Section 17.57.

**(g) Fences, Retaining Walls and Berms in Commercial, and Industrial, Institutional and Agricultural Districts.**

1. All fences shall be subject to review and approval by of the Building Inspector prior to the issuance of a building permit.
2. Fences in rear and/or side yards may be up to 10 feet in height.
3. Fences in front of the building or within the front yard setback are only permitted after approval by the Plan Commission.
4. Fences shall be constructed using the following methods and materials:
  - i. Naturally resistant or treated wood
  - ii. Brick, masonry or natural stone
  - iii. Wrought iron, aluminum or galvanized metal (coated and noncoated)
  - iv. Vinyl (rigid PVC)
  - v. Other material of comparable quality must be approved by the Zoning Administrator.
  - vi. Fences that contain a finished side and an unfinished side, shall be

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installed in a manner in which the finished side faces the adjacent property. In case of a discrepancy, the Village Zoning Administrator ~~Building Inspector~~ shall determine which side of the fence is the finished side.

- 5. Fences and Easements. See Section 17.50(2)(f)6. above.
- 6. It is the property owner's responsibility for any lawn maintenance of lands that lie between a fence and the property line.
- 7. Agricultural Fences.
  - i. Agricultural fences are permitted in all Agricultural Zoning Districts pursuant to Chapter 90, Wis. Stats.
- 8. Retaining Walls. See Section 17.41(6).
- 9. Berms. See Section 17.57.

**SECTION 3.** That Section 17.46(7)(h)5. (ELECTRONIC MESSAGE BOARDS) is revised as follows where words that are ~~stricken~~ are deleted and words that are underlined are to be added:

17.46(7)(h) ELECTRONIC MESSAGE BOARDS.

- 5. The ~~sign area or active display area~~ face of the message board shall be included in the calculation of sign area for the monument or ground sign to which it is attached and shall not exceed 40 percent of the total sign area ~~allowed for the monument or ground sign to which it is attached;~~

**SECTION 4.** That Section 17.59 (ANIMAL WASTE STORAGE FACILITIES) is created as set forth in Exhibit 1 attached hereto.

**SECTION 5.** This ordinance shall take effect and be in full force the day after its passage and publication, as provided by law.

Introduced by Trustee:

Adopted:

Vote:            Ayes:            Nays:

\_\_\_\_\_  
Dean Wolter, Village President

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Brian C. Sajdak, Village Attorney

\_\_\_\_\_  
, Village Clerk

# EXHIBIT 1

## ANIMAL WASTE STORAGE FACILITIES ORDINANCE

### Part I. INTRODUCTION.

- (1) **Authority.** This ordinance is adopted under authority granted by §92.16, Wis. Stats.
- (2) **Title.** This ordinance shall be known as, referred to, and may be cited as the Village of Germantown Animal Waste Storage Facility Ordinance and is hereinafter referred to as the “ordinance”.
- (3) **Findings and Declaration of Policy.**
  - (a) The Village of Germantown Board finds that storage of animal waste in storage facilities not meeting technical design and construction standards may cause pollution of the ground and surface waters and may result in actual or potential harm to the health of Village residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of the Village.
  - (b) The Village Board also finds that improper management of animal waste storage facilities, including improper land application of stored animal waste, may cause pollution of the ground and surface waters.
  - (c) The Village Board also finds that abandoned animal waste storage facilities may cause pollution of ground and surface waters and may be considered a human health hazard.
  - (d) The Village Board further finds that the technical standards developed by the U.S.D.A. Natural Resources Conservation Service (NRCS) provide effective, practical, and environmentally safe methods of storing and utilizing animal waste and proper methods for closure/reclamation of abandoned facilities.
- (4) **Purpose.** The purpose of this ordinance is to regulate the location, design, construction, installation, alteration, use and closure of animal waste storage facilities; and the management of wastes from these facilities; to prevent water pollution and thereby protect the health of Village residents and transients; prevent the spread of disease; and promote the prosperity and general welfare of the citizens of the Village. It is also intended to provide for the administration and enforcement of this ordinance and to provide penalties for violations of this ordinance.
- (5) **Interpretation.** The provisions of this ordinance shall be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.
- (6) **Severability Clause.** If any section, provision, or portion of this ordinance is ruled invalid by a court, the remainder of the ordinance shall not for that reason be rendered ineffective.

**Part II. GENERAL PROVISIONS.**

- (1) **Definitions.** For the purposes of this ordinance, the following terms are defined:
- (a) **Abandoned Animal Waste Storage Facility.** An animal waste storage facility that is idle or no longer used for its intended purpose.
  - (b) **Administering Authority.** The Washington County Conservationist and/or the Village Zoning Administrator, or their designee, who is responsible for the administration and enforcement of this ordinance.
  - (c) **Animal Waste.** Livestock excreta and other materials such as bedding, rain or other water, soil, hair, feathers, and debris normally included in animal waste handling operations.
  - (d) **Animal Waste Storage Facility.** A concrete, wooden, steel, or otherwise fabricated structure, or an excavated or earthen impoundment specifically designed and made for the purposes of temporarily storing and holding of animal waste. Installation of a manure transfer system will be considered a waste storage facility for purposes of this ordinance.
  - (e) **Applicant.** Any person who applies for a permit under this ordinance.
  - (f) **Manure Transfer System.** A manure conveyance system using structures, conduits, or equipment. It includes transfer through a hopper, reception structure or tank, a pump, channel, or conduit. Additional definitions and criteria are listed within the standard as identified in Part II. Section (4) of this ordinance.
  - (g) **Permit.** The signed, written statement issued by the Administering Authority under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter an animal waste storage facility.
  - (h) **Permittee.** Any person to whom a permit is issued under this ordinance.
  - (i) **Person.** Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, County, or State agency within Wisconsin, the Federal Government, or any combination thereof.
  - (j) **Substantially Altered.** A change to a structure or facility that results in its relocation or a significant change to the size, depth or configuration including; replacement of a liner, an increase in the volumetric capacity or area by greater than 20%, or a change in livestock management from one species of livestock to another such as cattle to horses.
  - (k) **Technical Guide.** The Wisconsin version of the Natural Resources Conservation Service field office TECHNICAL GUIDE published by the Natural Resources Conservation Service of the U.S. Department of Agriculture.
  - (l) **Water Pollution.** Contaminating or rendering unclean or impure the ground or surface waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
- (2) **Applicability.** The requirements of this ordinance shall apply to all lands in jurisdiction of the Village of Germantown. Activities subject to regulation include the construction, installation, reconstruction, enlargement, substantial alteration or closure of an animal waste storage facility by any person; whether such activities are engaged by the landowner or someone employed by the landowner, occurring after October 1, 2021.

- (3) **Compliance with Permit Requirements.** A person is in compliance with this ordinance if he or she follows the procedures of this ordinance, receives a permit from the Administering Authority before beginning activities subject to regulation under this section, and complies with the requirements of the permit.
- (4) **Technical Standards.**
- (a) Applicable Technical Standards. The technical standards listed below shall be adhered to during any activities permitted under the authority of this ordinance. A copy of these standards can be obtained from the Administering Authority.
1. **Waste Storage Facilities.** The standards for design and construction of animal waste storage facilities are those in standards 313 (Waste Storage Facility), 634 (Manure Transfer) of the Technical Guide. Construction specifications referenced within the above listed standards shall also be adhered to. Compliance with standards other than those previously listed above, including those referenced within the above listed applicable standards, shall not be required for the purpose of complying with the provisions of this ordinance.
  2. **Land Application of Animal Waste.** The standard for management and utilization of animal waste through land application about preventing water pollution is found in standard 590 (Nutrient Management) of the Technical Guide.
  3. **Abandoned Animal Waste Storage Facility.** The standard for closure of animal waste storage facilities is found in standard 360 (Closure of Waste Impoundments) of the Technical Guide. Construction specifications referenced within the above listed standards shall also be adhered to.
  4. **Construction Site Erosion Control.** The standards for controlling soil erosion from construction sites are those technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources, as outlined in Chapter NR 151, Wis. Adm. Code.
- (b) Subsequent Modification of Standards. The standards of the Technical Guide and the Wisconsin Department of Natural Resources as outlined in Chapter NR 151, Wis. Adm. Code are adopted and by reference made a part of this ordinance as if fully set forth herein. Any future amendment, revision or modification of the standards incorporated herein are made part of this ordinance unless otherwise acted upon by the Village Board.
- (c) Variances. Variances from these standards can only be granted by the custodian of the technical standards or through an appeal by the applicant in accordance with Part V. Section (4) of this ordinance unless otherwise acted upon by the Village Board.

**Part III. ANIMAL WASTE STORAGE FACILITY PERMIT.**

- (1) **General.** No animal waste storage facility or parts thereof may be located, installed, moved, reconstructed, extended, enlarged, converted, substantially altered or its use changed without an animal waste storage facility permit as provided in this ordinance, and without compliance with the provisions of this ordinance. The requirements of this ordinance shall be in addition to any other ordinance or administrative rule regulating animal waste storage or applicable technical standards. In the case of conflict, the most stringent provisions shall apply.
- (2) **Exceptions to Permit Requirement.** Emergency repairs such as repairing a broken pipe, or equipment, leaking dikes or the removal of stoppages may be performed without an animal waste storage facility permit. Such work shall be reported to the Administering Authority as soon as possible with a maximum of 2 working days for a determination as to whether an animal waste storage facility permit will be required for an additional alteration or repair to the facility. The Administering Authority may consult with the Village Board prior to making this determination. This ordinance shall not require a permit for routine maintenance or repair of an existing animal waste storage facility or transfer equipment. In addition, no permit is required for barnyard construction or alteration which does not meet the definition of animal waste storage facility in Part II. Section (1)(d) of this ordinance.
- (3) **Fees and Bonds.** The fee for a permit under this ordinance shall be established by the Administering Authority and adopted by the Village Board. The fee shall reflect reasonable expenses associated with administration of this ordinance. The fee for permit shall be non-refundable and payable at the time of application. The Administering Authority may require a cash bond or escrow until final certification of construction is received in accordance with Part III. Section (6)(e) of this ordinance.
- (4) **Permit Application.**
- (a) An application for an Animal Waste Storage Facility Permit shall be filed with the Administering Authority on forms supplied by the Administering Authority and shall include a plan specifying the following:
1. The number and kinds of animals for which storage is provided and design duration.
  2. A sketch of the facility and its location in relation to buildings, roads, lot lines and other features within 250 feet, and homes within 500 feet of the proposed facility. The sketch shall be drawn to scale, with a scale no smaller than one inch equals 100 feet.
  3. The structural details, including dimensions, cross sections, and concrete thickness and reinforcement.
  4. The location of any wells within 300 feet of the facility.
  5. The soil test pit and/or soil depth boring locations and soil descriptions to a depth of at least 5 feet below the planned bottom of the facility, or to bedrock if at a lesser depth.

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6. The elevation of groundwater or bedrock if encountered in the soil profile and the date of any such determinations.
  7. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater. If a navigable body of water lies within 500 feet of the facility, the location and distance to the body of water shall be shown.
  8. The scale of the drawing and the north arrow.
  9. A time schedule for construction of the facility.
  10. A description of the method in transferring animal waste into and from the facility.
  11. A nutrient management plan which meets the standards specified in Part II. Section (4) of this ordinance.
  12. A construction site erosion control plan which meets the standards specified in Part II. Section (4) of this ordinance.
  13. Any other additional information required by the Administering Authority to determine compliance with this ordinance.
- (b) An application for closure of an abandoned animal waste storage facility shall include the information specified in Part III. Section (4)(a)2-4, 7, 9, 12 and 13. The application process shall also include a description of the construction methods to be used, a description of compliance with the technical standards and the intended future use of the site.

(5) **Review of Application.**

- (a) The Administering Authority shall receive and review all permit applications.
- (b) The Administering Authority shall determine if the proposed facility meets the required standards set forth in Part II. Section (4) of this ordinance. In making this determination, the Administering Authority may require a site inspection and/or may consult with an outside agency.
- (c) Within 30 days after receiving the completed application and fee, the Administering Authority shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required from the applicant, the Administering Authority has 30 days from the receipt of the additional information in which to approve or disapprove the application. If, in addition to the applicant's information, the Administering Authority requires comment from an outside agency, the Administering Authority has 30 days from receipt of the comments from the outside agency in which to approve or disapprove the application.
- (d) If the Administering Authority fails to approve or disapprove the permit application in writing within sixty (60) days of the receipt of the permit application, receipt of additional applicant information, or receipt of outside agency comments, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.
- (e) The Administering Authority shall mail a copy of action taken by the Administering Authority and the permit to the Village of Germantown. The Administering Authority may mail a copy of the action taken and permit to other

agencies or units of government that may have jurisdiction over the proposed facility.

- (6) **Permit Conditions.** All permits issued under this ordinance shall be subject to the following conditions and requirements in addition to any other conditions or requirements imposed by the Administering Authority, Village Board, other state agencies or local units of government:
- (a) Design and construction shall be carried out in accordance with the animal waste storage facility plan and applicable standards specified in sub. (4) above.
  - (b) The permittee shall give 2 working days notice to the Administering Authority before starting any construction activity authorized by the permit.
  - (c) The permittee certifies in writing that all other State, County, Village, Sanitary District, Army Corp of Engineers or other State or Federally required permits will be obtained from the appropriate authorities. The Administering Authority may require proof of any permit known to be needed prior to issuing an animal waste storage facility permit.
  - (d) Approval in writing must be obtained from the Administering Authority prior to any modifications to the approved animal waste storage facility plan.
  - (e) The permittee and, if applicable, the contractor or professional engineer, licensed in the State of Wisconsin, shall certify in writing that the facility was installed as planned and designed. A copy of the signed certification sheet shall be given to the Administering Authority within 30 days of completion of installation. Administering Authority personnel may conduct site inspection during and following construction to determine that the facility was installed as planned and designed. Any approved changes made to the animal waste storage facility plans shall be specified in the certification sheet and approved by the Administering Authority.
  - (f) Unless an extension is granted by the Administering Authority, all activities authorized by permit must be completed within 2 years from the date of issuance after which such permit shall be void.
- (7) **Permit Revocation.** The Administering Authority may revoke any permit issued under this ordinance if the holder of the permit has misrepresented any material fact in the permit application or animal waste storage facility plan, or if the holder of the permit violates any of the conditions of the permit. The permittee shall be immediately notified of the revocation in writing giving the reason(s) for revocation.

**Part IV. ADMINISTRATION.**

- (1) **Delegation of Authority.** As designated by the Village Board, the Administering Authority is authorized to administer and enforce this ordinance.
- (2) **Administrative Duties.** In the administration and enforcement of this ordinance, the Administering Authority, or designated representative, shall:
  - (a) Keep an accurate record of all permit applications, animal waste storage facility plans, permits issued, inspections made, and other official actions.
  - (b) Review permit applications and issue permits in accordance with Part. III. Section (5) of this ordinance.
  - (c) Inspect animal waste storage facility construction/closure to ensure the facility is being constructed/closed according to plan specifications.
  - (d) Investigate complaints relating to compliance with this ordinance.
  - (e) Perform other duties as specified in this ordinance.
  - (f) Provide technical services to the applicant to the extent resources are available.
- (3) **Inspection Authority.** The Administering Authority, or designated representative, is authorized to enter upon any lands affected by this ordinance to inspect the land prior to or after permit issuance to determine compliance with this ordinance pursuant to the authority granted by §92.07(14), Wis. Stats. Entry by the Administering Authority or designated representative may also be according to §66.0119, Wis. Stats. Refusal to grant permission to enter lands affected by this ordinance for purposes of inspection may be grounds for denial of the permit or revocation thereof.
- (4) **Enforcement Authority.**
  - (a) All enforcement actions will be referred to and issued by the designated enforcement officer of the Village except when the violation is an immediate and significant threat to the public or the environment, as determined by the Administering Authority. The enforcement officer, or designated representative, is authorized to post an order stopping work upon land which has had a permit revoked or on land currently undergoing activity in violation of this ordinance. Notice is given by both posting upon the land where the violation occurs one or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order shall specify that the activity must cease.
  - (b) Any permit revocation or order stopping work shall remain in effect unless retracted by the Village Board, Administering Authority, or designated representative, or by a court of general jurisdiction; or until the activity is brought into compliance with this ordinance.

**Part V. VIOLATIONS.**

- (1) **Penalties.** Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$10 or more than \$250 plus costs of prosecution for each violation. An unlawful violation includes failure to comply with any standard of this ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate violation.
- (2) **Enforcement of Injunction.** As a substitute for, or an addition to forfeiture actions, the Administering Authority may seek enforcement of any part of this ordinance by court actions seeking injunctions or restraining orders.

**VI. APPEALS.**

- (1) **Authority.** The Village Board of Zoning Appeals shall act as an appeal authority under §68.09(2), Wis. Stats., and is therefore authorized to hear and decide appeals of any order, requirement, decision, or determination by the Administering Authority for this ordinance.
- (2) **Procedure.** The rules, procedures, duties and powers of the Village Board of Zoning Appeals and the provisions of Ch. 68, Wis. Stats., shall apply to appeals under this ordinance.
  - (a) A request for an appeal shall be filed with the Village Clerk within 30 days of action or decision to be appealed. The appeal request shall specify whether an interpretation of ordinance requirements or a variance is sought and the grounds thereof.
  - (b) The appeal shall be heard by the Village Board of Zoning Appeals at a regularly scheduled meeting with public notice as required by §19.81, Wis. Stats. The appeal shall be heard within 45 days of the date the appeal is filed with the Village Clerk. A copy of the meeting notice shall be sent to the applicant. The Village Clerk shall transmit to the Village Board of Zoning Appeals all documents constituting the record from which the appeal was taken.
  - (c) A written decision regarding the appeal shall be made within a reasonable time.
  - (d) The final decision on an appeal shall be in the form of a written determination signed by the Chairperson of the Village Board of Zoning Appeals. The determination shall state the specific facts, which are the basis for the Board's decision and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, deny the appeal for lack of justification or grant or deny the application for a variance. The reasons or justifications for granting an appeal including a description of the hardship or practical difficulty which was demonstrated by the applicant in the case of a variance, shall be clearly stated in the recorded minutes of the Board's meeting.

- (3) **Who May Appeal.** Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision, or determination made by the Administering Authority.
- (4) **Variances.**
- (a) The Village Board of Zoning Appeals may upon appeal authorize a variance from the requirements of this ordinance when, upon showing by the applicant, unnecessary hardship would result from a literal enforcement of this ordinance. The granting of a variance for unnecessary hardship shall:
1. Be consistent with the spirit and purpose of this ordinance as stated in sub. Part I. of this ordinance.
  2. Not permit an activity or practice that may fail structurally or otherwise and cause significant water pollution or other offsite impacts.
  3. Be due to unique circumstances and not to the general conditions of the area.
  4. Not be granted for a self-created hardship.
  5. Not be granted unless it is shown that the variance will not be contrary to the public interest and will not be damaging to the right of other persons.
  6. Not be granted solely based on economic gain or loss.
  7. Not be granted solely on the fact that certain conditions existed prior to the effective date of the ordinance.
- (b) The Village Board of Zoning Appeals may authorize a variance from the requirements of this ordinance contingent on the applicant receiving a variance from the technical standards through the Natural Resources Conservation Service or other qualified engineering authority if applicable. If public funds are involved, this may be a program requirement.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE VILLAGE OF GERMANTOWN AND WASHINGTON COUNTY**

**Whereas**, the Village of Germantown (herein referred to as the "Village") and the Washington County Planning and Parks Department, Land & Water Conservation Division (hereinafter referred to as the "County") both recognize that storage of animal waste in storage facilities that do not meet technical design and construction standards may cause pollution of the ground and surface waters; and

**Whereas**, the County has adopted Chapter 16 of the County Code entitled "Animal Waste Storage Facility Ordinance" (herein referred to as the "Model Ordinance") which regulates the location, design, construction, installation, alteration, use and closure of animal waste storage facilities; and the management of wastes from these facilities; and

**Whereas**, the Village has adopted Section 17.59 of the Village Zoning Code entitled "Animal Waste Storage Facilities Ordinance" (herein referred to as the "Ordinance") based on a model of the County's ordinance; and

**Whereas**, §66.0301 Wis. Stats., entitled "Intergovernmental Cooperation," provides that any municipality may contract with another municipality for the furnishing of services and the joint exercise of power or duty required or authorized by law; and

**Whereas**, under the authority of §92.07(7), Wis. Stats., the County offers administrative and technical services to local municipalities to implement the model ordinance within Washington County.

**Now, Therefore**, in consideration of these premises, the Village and the County hereby agree to cooperate and exercise their municipal powers jointly to implement the model ordinance within the Village in accordance with the following:

**1 GENERAL PROVISIONS**

- 1.1 **Ordinance Administrator.** The County will, through execution of this agreement, serve as "Ordinance Administrator" or "Administering Authority" for the ordinance.
- 1.2 **General Duties.** The County will complete on-site evaluations, process permit applications, make all applicable technical determinations, approve waste storage facility plans, issue and enforce Animal Waste Storage Permits, and carry out all other duties of the Ordinance Administrator as described in the model ordinance.
- 1.3 **Costs.** The County will provide the services associated with the model ordinance and this agreement at no cost to the Village. The County will develop and periodically update a fee schedule for permits through the model ordinance. The County will retain all fees collected.
- 1.4 **Records.** The County will maintain all records associated with administering the model ordinance and this agreement and make those records available to the Village and for public records access according to law.

**2 VILLAGE/COUNTY ADMINISTRATIVE PROCEDURES**

To coordinate activities and provide for effective communication between the Village and the County, both parties agree to provide the other copies of all correspondence that occurs during the process of administering the model ordinance and other related activities. In addition, the following procedures will be adhered to:

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE VILLAGE OF GERMANTOWN AND WASHINGTON COUNTY**

- 2.1 **Plan Review/Approval Procedures.** The Village will invite the County to participate in all initial site visits for proposed developments that involve existing or proposed waste storage facilities or other applicable developments, notify the County of Village meetings scheduled to review projects and provide copies of plans and other materials to the County. If an Animal Waste Storage permit is desired or determined to be needed, the Village will not approve building or site development plans until an Animal Waste Storage Facility permit is issued by the County. The County may issue an Animal Waste Storage Facility permit contingent on receiving certain additional information, if necessary.
- 2.2 **Financial Guarantee.** The County will require a cash bond to ensure compliance with the provisions of the model ordinance. Due to the differing timelines that may be involved with completing various projects, the cash bond will be independent of any other financial guarantees that may be required by the Village. The County will establish the amount of the cash bond and the conditions for release in accordance with the model ordinance provisions.
- 2.3 **Permit Enforcement Procedures.**
- 2.3.1 Inspection/Enforcement. After a permit is issued, the permit holder will be required to provide the Village and County with an approved set of plans. Any complaints by local landowners or concerns by Village officials will be immediately conveyed to the County for inspection and enforcement purposes.
- 2.3.2 Warnings. It is understood that before a citation, stop work order or other enforcement measures are implemented, a written warning will be issued by the County. A copy of any warnings issued will be provided to the Village Administrator.
- 2.3.3 Citations, and other Enforcement Measures. All enforcement actions will be referred to and issued by the Village Zoning Administrator or duly appointed deputy except when the violation is an immediate and significant threat to the public or the environment, as determined by the County.
- 2.4 **Appeals.** The Village Board of Appeals will hear all appeals related to the implementation of the model ordinance. The County will provide all necessary background information and a staff report and will inform the Board on matters which involve County services under this agreement.
- 2.5 **Legal Services.** This agreement does not involve the provision of legal services to the Village. Legal advice and representation to the Village Board, the Village Board of Appeals and Village Officials shall be provided by the Village's legal counsel. All prosecution of violations, whether by citation or lawsuit, will be done at the direction of the Village Board, using the attorney designated by the Village. Notwithstanding this provision, the opinions of the County Attorney regarding County implementation of the model code and this agreement will be provided to the Village for the Village's information. Under those circumstances where the text of the model ordinance is directly challenged, the County will consider authorizing the County Attorney to provide assistance in defending the text of the code, in order to relieve the Village of the burden of defending the model ordinance on behalf of the County.

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**3 VILLAGE POLICIES**

It is the policy of the Village to require the construction of waste storage facilities, or the abandonment thereof, be installed in a timely manner that minimizes soil erosion, environmental damage and future maintenance problems. The County will ensure that applicable Village policies are adhered to during the preparation and implementation of waste storage facilities through the model ordinance.

**4 LONG TERM MAINTENANCE OF WASTE STORAGE FACILITIES**

The following procedures are aimed to ensure the proper long-term maintenance of animal waste storage facilities and management of waste stored in these facilities within the Village. Proper maintenance will help minimize structure failure and possible damages and ensure that each facility continues to serve their designed function; the development of an annual nutrient management plan by the responsible party will help ensure the land application of stored animal waste is done environmentally and in an agronomically acceptable manner.

- 4.1 **Database.** The County will create and maintain a computerized map and database of all waste storage facility permits issued in the Village, including: basic design data, the year it was installed, ownership and maintenance responsibilities, and a record of any inspections completed.
- 4.2 **Inspections.** The County will conduct periodic on-site inspections of waste storage facilities and review of nutrient management plans, and produce a written report concerning the current condition of each facility inspected. During the inspection, the County may complete simple maintenance measures such as clearing debris and brush in and around structures.
- 4.3 **Notification.** If other maintenance action is recommended, the County will discuss the needs with the Village and jointly establish deadlines for the work to be completed by the responsible party. All this information will be included in the County inspection report, which will be provided to the responsible party by certified mail, with a copy to the Village.
- 4.4 **Enforcement.** The Village and the County will jointly enforce any maintenance requirements outlined in the inspection report, including using municipal equipment and/or contracting with a competent, professional contractor to complete maintenance work that is not completed by the responsible party within the established deadlines. The Village will use their special assessment authority to recover all County or Village costs incurred if necessary.
- 4.5 **Disclaimer.** It is understood that the County does not certify the design, construction or performance of any waste storage facility in the Village, regardless of the conditions noted in an inspection report.

**5 MISCELLANEOUS PROVISIONS**

- 5.1 **Entire Agreement.** This Agreement contains the entire agreement of the parties and may not be modified unless such a modification is in writing, approved by the governing body of each party and duly executed by the authorized representative.
- 5.2 **Previous Agreement.** To the extent that the parties have previously agreed upon any matter which is the subject of this Agreement, this Agreement shall supersede all previous verbal or written agreement between the parties as to that issue or issues.
- 5.3 **Effective Date.** The effective date of this Agreement shall be the date upon which it is executed by both parties.

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- 5.4 **Agreement Terms.** This Agreement shall remain in effect unless terminated by either party in accordance with the procedures below. The specific terms of this Agreement shall be reviewed annually by both parties and renegotiated or updated in writing as necessary.
- 5.5 **Termination.** The County or the Village may terminate this Agreement at any time upon sixty (60) days written notice to the other.
- 5.6 **Effect of Agreement.** The County and the Village recognize that this Agreement is the product of a unique set of circumstances. Accordingly, it is mutually acknowledged that many of the provisions contained herein are unique unto themselves and should not be seen as precedent for any future agreement between the County and other entities.
- 5.7 **Conflict Resolution.** Any conflict between the parties arising out of this agreement or the model ordinance shall be first referred to the Village Attorney and County Attorney for review. The County Attorney and Village Attorney shall report to the Land Conservation Committee and Village Board making their joint or separate recommendations regarding the dispute. If a dispute remains, the parties shall enter mediation to attempt to resolve any dispute.
- 5.8 **Severability.** If any clause, provision or section of this Agreement is declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions of this Agreement.
- 5.9 **Binding Agreement.** This Agreement when fully executed shall be binding upon the parties hereto, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Each party hereto represents and warrants that they have the right, power, legal capacity and authority to enter into and perform their respective obligations set forth herein. This agreement has been approved by the Village of Germantown on \_\_\_\_\_ (date) and the Land Conservation Committee on \_\_\_\_\_ (date)

**Signed by the Village of Germantown:**

_____	_____
, Village President	Date
_____	_____
, Village Administrator	Date

**Signed by Washington County:**

_____	_____
Richard P. Gundrum, County Board Chair	Date
_____	_____
Ashley Reichert, County Clerk	Date