

ORDINANCE NO. 2023-5

**AN ORDINANCE TO REPEAL AND RECREATE CERTAIN SECTIONS OF
CHAPTER 35 OF THE MUNICIPAL CODE OF THE VILLAGE OF ROCHESTER
TO CLARIFY ALLOWABLE ACCESSORY STRUCTURE PLACEMENT AND
HEIGHT IN LOTS NOT SERVED BY MUNICIPAL SEWER**

WHEREAS, the Village of Rochester seeks to update certain sections of the Village of Rochester Zoning Code for the sake of clarification, consistency, and to remedy oversights within the Village of Rochester Zoning Code; and

WHEREAS, various provisions of Chapter 35 of the Village of Rochester Municipal Code reference allowable placement and height of accessory structures in unsewered lots; and

WHEREAS, the various Code provisions referencing accessory structure height and placement create some conflicts of interpretation; and

WHEREAS, the Village staff have recommended adopting clarifying language to resolve the conflicts of interpretation and simplify administration and enforcement of the Code; and

WHEREAS, this zoning amendment was initiated pursuant to Section 35-220 B. of the Village of Rochester Zoning Code; and

WHEREAS, the matter was duly referred to the Village of Rochester Plan Commission for report and recommendation pursuant to Section 35-220 D. of the Village of Rochester Zoning Code, and the Plan Commission has reviewed the matter and offered its recommendation to the Village Board; and

WHEREAS, a public hearing was conducted by the Village Board of the Village of Rochester on April 10, 2023 as required by Section 35-220 F. of the Village of Rochester Zoning Code, upon due notice as required by Section 35-240 of the Village of Rochester Zoning Code and Section 62.23(7)(d), Wisconsin Statutes; and

WHEREAS, the Village Board finds that this change to the Village of Rochester Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, the Village Board for the Village of Rochester finds that the public necessity, convenience, general welfare, and good zoning practice require the amendment to the Village Code described herein; and

NOW, THEREFORE, the Village Board of the Village of Rochester, Racine County, Wisconsin, does hereby ordain as follows:

Section 1: Chapter 35 of the Village of Rochester Zoning Code entitled “Planning and Zoning,” Section 35-21 entitled “Use Restrictions,” Subsection B. entitled “Accessory uses, buildings and structures,” Paragraph 3. Entitled “Accessory Buildings and Structures Located on Unsewered Lots,” Subdivision c. is hereby repealed and re-created to read as follows:

c. Detached accessory structures constructed in residential districts shall not be closer than ten feet to the principal structure; not closer five feet to a side or rear lot line; not closer than five feet to an alley line; shall not exceed 15 feet in building height; shall not occupy more than 20 percent of the rear yard area; and are permitted in the rear and side yards only, except as follows:

(1) Accessory structures are permitted in the street yard portion of waterfront lots provided that they are not placed within the required minimum street yard setback.

(2) For lots with multiple street yards and no defined rear yard area, accessory structures are permitted in the street yard portion of the secondary or non-access street provided that they are not placed within the minimum required street yard setback.

(3) Any portion of an accessory structure placed or constructed in a side yard area of a nonconforming principal structure shall not encroach into the minimum required street yard setback.

(4) See Sections [35-130](#) to [35-151](#) for Solar Energy Systems, Wind Energy Systems, and Tower regulations.

Section 2: Chapter 35 of the Village of Rochester Zoning Code entitled “Planning and Zoning,” Section 35-21 entitled “Use Restrictions,” Subsection B. entitled “Accessory uses, buildings and structures,” Paragraph 3. Entitled “Accessory Buildings and Structures Located on Unsewered Lots,” Subdivision d. is hereby repealed and re-created to read as follows:

d. Detached accessory structures constructed in nonresidential districts shall not be closer than ten feet to the principal structure; not closer than one-half of the building height to a side or rear lot line, or in accordance with the yard setbacks of the zoning district, whichever is greater; are limited in height to that listed for the principal structures in the zoning district, although a greater building height may be approved through a site plan review process and as allowed in Section 35-180; shall not occupy more than 20 percent of the rear yard area; and are permitted in the rear and side yards only, except as follows:

(1) Accessory structures are permitted in the street yard portion of waterfront lots provided that they are not placed within the required minimum street yard setback.

(2) For lots with multiple street yards and no defined rear yard area, accessory structures are permitted in the street yard portion of the secondary or non-access

street provided that they are not placed within the minimum required street yard setback.

(3) Any portion of an accessory structure placed or constructed in a side yard area of a nonconforming principal structure shall not encroach into the minimum required street yard setback.

(4) See Sections [35-130](#) to [35-151](#) for Solar Energy Systems, Wind Energy Systems, and Tower regulations.

Section 3: Chapter 35 of the Village of Rochester Zoning Code entitled “Planning and Zoning,” Section 35-21 entitled “Use Restrictions,” Subsection B. entitled “Accessory uses, buildings and structures,” Paragraph 3. Entitled “Accessory Buildings and Structures Located on Unsewered Lots,” Subdivision e. is hereby created to read as follows:

e. The aggregate total footprint area for all accessory structures constructed in the unsewered areas shall not exceed the following square footage for the stated lot size, exclusive of road right-of-way:

Lot Size / Accessory Structure(s) Maximum Aggregate Total Footprint Area

Less than 10,000 sq. ft. lot:	720 square feet
10,000 sq. ft. to less than 20,000 sq. ft. lot:	1,000 square feet
20,000 sq. ft. to less than 1 acre lot:	2,600 square feet
1 acre to less than 2 acre lot:	4,000 square feet
2 acre to less than 3 acre lot:	5,000 square feet
3 acre to less than 4 acre lot:	6,000 square feet
4 acre to less than 5 acre lot:	7,500 square feet
5 acre to less than 10 acre lot:	four percent of lot area
10 acre lot or more:	five percent of lot area

Note: A greater amount of square footage per lot size may be allowed if approved as part of a conditional use permit or site plan review when needed as an integral part of the plan of operation and where said structure(s) is used solely accessory to the permitted principal or conditional use on said lot.

Section 4: CONTINUATION OF PROVISIONS

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution, or proceeding brought for the

enforcement of any right or liability established, accrued, or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provision is stayed pending the final resolution of such actions, including appeals.

Section 5: SEVERABILITY

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

Section 6: EFFECTIVE DATE

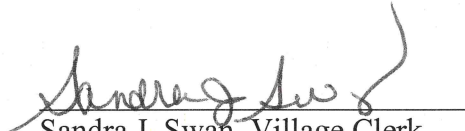
This ordinance shall take effect on April 10, 2023 after passage and posting and/or publication as provided by law.

Passed and adopted this 10th day of April, 2023.

VILLAGE OF ROCHESTER


Edward Chart, Village President

ATTEST:


Sandra J. Swan, Village Clerk