



Dane County Planning & Development Zoning Division

December 18, 2017

TO: Board of Adjustment Members
RE: Follow up on Site Inspection meeting, Appeal 3690

During our site inspection visit the question arose as to the purpose of the height regulation. The specific language regarding the height of structures existed in the original draft of the first approved zoning ordinance dated June 17, 1938, which states "Height: No building or part of a building shall be more than two and one-half stories or thirty-five feet in height except necessary mechanical appurtenances, spires and ornamental towers."

In 1950 the ordinance was substantially amended including the addition of the Rural Homes Zoning District. The new ordinance included section 10.04(2) which read:
"Height. No building or structure shall be erected, nor shall any existing building or structure be moved, reconditioned, added to or structurally altered to exceed in height the limit established by this ordinance for the district in which such building or structure is located."

10.09 RH-1 Rural Homes District 2(a) reads:
"The maximum building height, except as otherwise herein provided, shall be thirty-five feet or two and one-half stories."

The only exceptions are found in section 10.16(2)(a) which reads:
"Height. Hospitals, churches, schools, radio transmission towers, water towers, chimneys, spires, pent houses, cupolas, silos, windmills, and similar structures may be erected to a height greater than the maximum permitted in the district in which they are located, provided, however, that no part of such structure above the height limit shall be used for residential purposes."

This general exception remains in the ordinance today as worded in 1950.

Unfortunately we don't have documentation from 1938 regarding why the Zoning Committee drafted 35 feet or 2 ½ stories. The 1938 ordinance was enacted pursuant to WI SS 59.97 and 59.99. From the Statute in effect at the time of the adoption of the zoning ordinance, it read that:
"The county board of any county may by ordinance regulate, restrict and determine the areas within which agriculture, forestry and recreation may be conducted, the location of roads, schools, trades and industries, the location, height, bulk, number of stories, and size of buildings and other structures, the percentage of lot which may be occupied, size of yards, courts, and other open spaces, the density and distribution of population, and the location of buildings designed for specified uses, and establish districts of such number, shape and area, and may also establish set-back building lines, and may further regulate, restrict, and determine the areas along natural water courses, channels, streams, and creeks in which trades and industries, and the location of buildings for specified uses may be prohibited, and may adopt an official map which shall show thereon the natural water courses, channels, streams, and creeks and the areas along such natural water courses, channels, streams and creeks which may be restricted, outside the limits of incorporated villages and cities, as such county board may deem best suited to carry out the purposes of this section. For each such district, regulations may be imposed designating the location, height, bulk, number of stories, and size of buildings and other structures, percentage of lot which may be occupied, the size of yards, courts and other open spaces, and density and distribution of population, and the trades, industries or purposes that shall be included or subjected to special regulations and designating the uses for which buildings may not be erected or altered; provided, however, that the said county board shall before it adopts such ordinance or ordinances, submit the same to the town board or town boards of the town or towns in which may be situated any lands affected by such ordinance, and thereupon obtain the approval of said town board or town boards, so far as the

same affects the lands in such town or towns, and in like manner any and all ordinances, which may amend any ordinance, which have been adopted as herein provided, shall be submitted to said town boards of the towns in which said lands are located and their approval obtained as to each such change before the same shall be adopted by the county board. Such ordinance or amendments thereto may be adopted as to such town or towns which shall have given their approval thereto.”

While we might never fully understand why 35 feet or 2 ½ stories were settled upon for regulation, it might have been regulated because they could regulate such a use. At least we can find comfort in that the regulations were thoroughly vetted. We have a letter from E. G. Elvehjem, chairman of the Zoning Committee, addressed to each town board member and each town clerk in 1938, as well as to “attorneys and real estate men” who had “something to do with the county zoning ordinance”. The letter included the original draft and outlined the process necessary to adopt the ordinance. It specifically requested any and all comments (regardless of source) regarding the language, however 79 years later the regulation remains basically unchanged and is not proposed to be changed in the ongoing Chapter 10 rewrite of the ordinance.

I hope you find this information helpful,

Hans Hilbert
Assistant Zoning Administrator