

## CHAPTER 9

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### Conditional Uses

(Adopted Ordinance 2022-23; 10/03/22)

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#### **SEC. 16-9-1 RIGHT TO CONDITIONAL USES**

- (a) A conditional use, as provided for in this chapter, is a use which may be permitted in a particular zoning district. It is not permitted until approved in the manner provided in this chapter.
- (b) If a use or structure is not specifically permitted or prohibited and is of a character that could be compatible with the principal use or structure, such use may be allowed as a conditional use.
- (c) If an applicant for a conditional use meets or agrees to meet all of the applicable requirements and conditions specified in this Title or those imposed by the Village Board, the Village shall grant the conditional use. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence. A conditional use once granted shall run with the land and shall not transfer to another parcel with the tenant or operator of the conditional use unless otherwise approved by the Village Board.

#### **SEC. 16-9-2 APPLICATION**

- (a) An application for a conditional use shall be made by submitting two hard copies and one in electronic/digital format to the zoning administrator on a form established by the Village and shall include the following:
  - (1) Names and addresses of the applicant, owner of the site, architect, professional engineer, contractor and all opposite and abutting property owners of record.

- (2) A description of the subject site by lot, block and recorded subdivision or by metes and bounds; parcel identification number of the subject site; address of the subject site; type of structure; proposed operation or use of the structure or site; proposed building, site, operational and parking plans, number of employees if applicable; screening, drainage and sewerage preliminary plans; operational control devices where necessary to eliminate noise, dust, odor, smoke, or other objectionable operating impacts; and the zoning district within which the subject site lies.
- (3) A plat of the survey prepared by a registered land surveyor showing all of the information required under Sec. 16-2-2 for a permit and, in addition, the mean and historic high water lines on or within 40 feet of the subject premises, and existing and proposed landscaping.
- (4) Fee receipt from the zoning administrator for the application fee set by the Village Board from time-to-time.
- (5) In addition to all submittal requirements as set forth, the Zoning Administrator may require the Applicant to submit a written report demonstrating that the proposed use and overall development of the property is compatible with the Village's adopted Comprehensive Plan, as amended from time-to-time and any Detailed Subarea Plans for the area (the "Compatibility and Impact Report"). The precise format, content, and submission procedures for the Compatibility and Impact Report are available from the Zoning Administrator. Among other elements, the Compatibility and Impact Report shall include:
  - a. A description of how the proposed development is compatible with adopted Village Plans, including the Village's Comprehensive Plan, as amended from time to time detailed Subarea Plans and other plans officially adopted by the Village;
  - b. An analysis of traffic impacts;
  - c. An analysis of economic and fiscal impacts, including:
    - i. Identification and assessment of the impacts of proposed project, including positive, negative, and indirect impacts;
    - ii. Proposed measures to mitigate adverse impacts and/or maximize positive impacts including provision of infrastructure or public services improvements;
    - iv. Costs arising from increased demand for and required improvements to public services and infrastructure; and
    - v. Value of improvements to public services and infrastructure to be provided by the project.
- (6) Additional information as may be required by the Plan Commission, Village Board, engineer or Zoning Administrator for the purpose of assisting the Plan Commission and Village Board in their review of the application.

### **SEC. 16-9-3 REFERRAL TO PLAN COMMISSION**

Each application for a conditional use shall be referred to the plan commission, which shall review it pursuant to section 16-9-4, and shall make a recommendation to the Village Board prior to Village Board Action on the conditional use permit.

**SEC. 16-9-4 PUBLIC HEARING**

Upon submission of a complete application under this Chapter, the Zoning Administrator shall fix a reasonable time and place for a public hearing before the Plan Commission on the application for a conditional use and shall give public notice thereof in the same manner as for a change or amendment to this Title under Sec. 16-17-2 including the notice to property owners within 300 feet of any part of the land included in the conditional use at least ten (10) days prior to the date of the public hearing. A copy of all notices for public hearing on applications for conditional uses in the floodplain districts, including a copy of the application, shall be transmitted to the Wisconsin Department of Natural Resources ("DNR") for review and comment. Final action on floodplain applications shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first.

**SEC. 16-9-5 STANDARDS FOR REVIEW**

In reviewing the proposed conditional uses, the plan commission shall be guided by the following standards and requirements:

- (1) All conditional uses must be in accordance with the purpose and intent of this Title and shall not be hazardous, harmful, offensive, or otherwise adverse to the environmental quality, water quality, shoreland cover, or property values in the village.
- (2) A review of the site, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, waste disposal, water supply systems, and the effect of the proposed use, structure, operation, and improvement upon flood damage protection, water quality, shoreland cover, natural beauty, and wildlife habitat.
- (3) Conditions, such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, location, size and number of signs, water supply and waste disposal systems, higher performance standards, street dedication, certified survey maps, floodproofing, ground cover, diversions, silting basins, terraces, stream bank protection, planting screens, operational control, hours of operations, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or additional parking may be required by the plan commission upon its finding that these are necessary to fulfill the purpose and intent of this Title and the State Water Resources Act of 1965 and to meet the provisions of state's floodplain, shoreland and wetland management programs. The Zoning Administrator may require a traffic impact analysis to be conducted and a report prepared.
- (4) Except as may be specifically otherwise provided, compliance with all other sections of this Title, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards, shall be required of all conditional uses.
- (5) The requirements and conditions described under this chapter must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the

application and all requirements and conditions established by the Village relating to the conditional use are or shall be satisfied, both of which shall be supported by substantial evidence.

#### **SEC. 16-9-6 DECISIONS.**

The Village's decision to approve or deny the conditional use must be supported by substantial evidence in accordance with Sec. 62.23(7)(de), Wis. Stat. and any approval shall be subject to conditions as set forth this Chapter or other applicable Chapter of this Zoning Code. The Village Board shall decide all applications for conditional uses, except applications for floodplain conditional uses, within 60 days after the public hearing. Decisions on floodplain district applications shall be made as soon as is practicable, but not more than 60 days after the required public hearing. Decisions on floodplain district applications shall not be made for 30 days or until the DNR has made its recommendation, whichever comes first.

#### **SEC. 16-9-7 WRITTEN DECISIONS.**

All conditional uses shall be acted upon by resolution of the Village Board. Such resolution shall be in writing and shall state the reasons for denial in the case of a denial, or the reasons for approval in the case of an approval including all conditions which are imposed, all variations if any from underlying zoning requirements and all agreements made by owners. All resolutions acted upon by the Village Board shall be transmitted by the Zoning Administrator to the applicant and the Village Clerk within days of adoption of the resolution. A copy of all decisions granting or denying applications for a conditional use or a temporary use for property located in a floodplain shall be transmitted by the Zoning Administrator to the DNR within ten days.

#### **SEC. 16-9-8 EXPIRATION**

All conditional uses or temporary uses granted pursuant to this Chapter shall expire within 12 months of the date of the written approval unless substantial work has commenced pursuant to such grant. For purposes of interpretation of substantial work, the Zoning Administrator shall review the individual circumstances of the conditional use permit and make a determination on whether substantial work has commenced. A business of a seasonal nature shall not be deemed to be discontinued during periods in which it is normally inactive (e.g., summer camps, ski areas, marinas, etc.).

#### **SEC. 16-9-9 APPLICATION TO EXISTING USES**

- (a) The grant of a conditional use shall be based upon the existing conditions at that time and any expansion or change in use shall require an application to amend the conditional use.
- (b) Applications to amend may be made at any time for expansion or other change of the conditional use and such application shall not prejudice the existing grant as herein authorized.
- (c) Conditional use status granted under previous zoning regulations (known as grandfathering) shall be considered in effect under this ordinance subject to the conditions

established by the original grant. Any expansion or other change, however, shall be subject to the provisions of this ordinance.

#### **SEC. 16-9-10 TERMINATION**

Any conditional use granted under this Chapter that is discontinued or terminated for a period of twelve (12) consecutive months or eighteen (18) cumulative months in a three (3) year period (A conditional use of a seasonal nature shall not be deemed to be discontinued during periods in which it is normally inactive, i.e. summer camps, snowmobile courses, ski areas, marinas, quarries, etc.) shall be considered abandoned and any future use thereof will require additional Village review and approval.

#### **SEC. 16-9-11 FAILURE TO COMPLY**

- (a) No person, firm or corporation shall violate, disobey, neglect or refuse to comply with or abide by the terms and conditions of a conditional use permit.
- (b) The failure of any person, firm or corporation to obtain a conditional use permit when required shall constitute a violation of this chapter.
- (c) In the event of a violation of subsection (a), above, the zoning administrator or his designee may initiate revocation procedures for such conditional use, whether or not a citation for violation of the approval or this Title is issued or injunctive relief is sought.

#### **SEC. 16-9-12 CONDITIONAL USE PERMIT REVOCATION**

Should a permit applicant, or the applicant's heirs or assigns, fail to comply with the conditions of the conditional use permit issued by the Village Board or should the use, or characteristics of the use be changed without prior approval by the Village Board, the conditional use permit may be revoked. The process for revoking a permit shall follow the same procedures as those required for granting a conditional use permit as set forth in this Section. Additional grounds for revocation shall include, but not be limited to, the following:

- (1) A change in conditions affecting the public health, safety, and welfare since adoption of the conditional use permit; or
- (2) Fraudulent, false, or misleading information supplied by the applicant or his agent for the conditional use permit; or
- (3) Improper public notice of the conditional use permit public hearing(s) when the permit was considered by the Plan Commission and Village Board.

#### **SEC. 16-9-13 APPEAL**

If the Village denies an application for a conditional use, the applicant may appeal the decision to the Racine County Circuit Court under the procedures contained in Sec. 62.23(7)(e)10, Wis. Stat.