

## ARTICLE VI. CONDITIONAL USES

### Sec. 94.140. Introduction.

This chapter regulates most uses through zoning districts as authorized in Wis. Stats. § 66.23(7)(b), wherein the regulations are uniform within each district for each class or kind of buildings and for the use of land throughout each district. However, as set forth in section 94.123(b)3, it is recognized that there are certain uses, called conditional uses and regulated in this article, in each district that cannot be properly classified as uses by right everywhere in that district, but which have to be given individual consideration in each case whether the use would be suitable at a specific location given the village plan, the specific site, and the neighboring land, and given the public need for the particular location.

(Ord. of 11-18-1991)

### Sec. 94.141. Approval required.

(a) *Recommendation by planning commission needed for uses permitted by conditional grant.* Uses listed as permitted by conditional grant, or uses determined by the planning commission to be so similar to listed uses that the unlisted uses may within the spirit and intent of this chapter be classified by the commission under section 94.123(c) as permissible by conditional grant in specific districts, may be permitted in the district in which listed or classified, upon petition to and after careful review and recommendation by the planning commission, as authorized by Wis. Stats. § 62.23(7)(e)1 and approval by the village board.

(b) *Basis for approval.*

- (1) *Building, site and operational plan approval supplanted.* Processing of a conditional use grant application under this article shall require applicant submittal and village evaluation particularly by the planning commission, of at least the same information as required by review and approval under article V approval of building site and operational plans; therefore separate processing under article V shall not be required unless certain issues not critical to the permissibility of the grant are treated for staged approval under article V as permitted by section 94.138, in which case the grant shall be contingent upon satisfying fully article V.
- (2) *Compliance with performance standards.* Processing of a conditional use grant application shall particularly require applicant submittal and planning commission evaluation of compliance with the performance standards set forth in section 94.133.

- (3) *District regulations modifiable.* Processing of a conditional use grant application shall ordinarily be in accordance with the applicable numerical regulations (lot size, open space, setbacks, side and rear yards, height, etc.) of the district in which the use is being contemplated; however, the planning commission in complying with this provision may recommend and the zoning board of appeals may grant variances in such individual numerical requirements up or down as the spirit of this chapter requires. For example, the grant may impose greater yard requirements for a large use going into a district with smaller buildings, or the grant may waive the minimum building floor area for a utility substation structure.
- (4) *Standards.* The principal criteria guiding the planning commission in reaching its recommendation and the village board in acting in each case upon petitions for conditional use grants shall be whether implementation of the village plan will be advanced, and whether the spirit of this chapter will be upheld including those factors given in section 94.140. More specifically, the planning commission in recommending and the Village board in acting shall not approve an application and set conditions unless it is first found that:
- a. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or general welfare.
  - b. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor noticeably diminish and impair property values or esthetics within the neighborhood.
  - c. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
  - d. Adequate utilities, access roads, street access that does not impede public traffic flow, drainage and other necessary facilities have been or are being provided.
  - e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
  - f. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the village board pursuant to the recommendations of the planning commission.

(Ord. of 11-18-1991; Ord. of 6-22-2006)

**Sec. 94.142. Procedure.**

(a) *Petition.* A request for conditional use grant shall begin with a petition by an applicant capable of agreeing to and abiding by the conditions the village shall impose upon the use. If the applicant is other than the owner of the site upon which the grant is proposed, the applicant shall demonstrate that the applicant has an interest in the land, such as a prospective lease or purchase agreement which is specifically enforceable should the applicant's petition be granted.

(b) *Filing of petition.* The petition shall be filed with the zoning administrator, who shall place it on a planning commission agenda after first being assured by village professional staff review that the application is complete and that it addresses concerns, which the staff, on the basis of this chapter, finds the planning commission or village board will or should raise.

(c) *Petition content.* The petition shall be accompanied with sufficient information to enable the planning commission to fully accomplish the review and advice required of it by section 94.141(b). Accordingly the planning commission shall require, as appropriate, the information normally required under article V of this chapter as well as section 94.133. The planning commission, with village board approval, may establish administrative forms and applications to aid in the processing of such petitions, and may require any other information, as it deems necessary to fulfill this article.

(d) *Hearing.* Before concluding its findings and decision on each application, the planning commission shall hold a public hearing on the petition, following the same notice provisions contained in this chapter for petition to rezone a property.

- (1) The planning commission may have the draft conditions completed by the time of the hearing in order to gain public input, or the planning commission may hold the hearing before the formulation of draft conditions for purpose of gaining public suggestions.
- (2) Where the planning commission holds a hearing prior to the drafting of conditions, or where the planning commission in its judgment makes substantial revisions to the conditions as drafted and presented at public hearing, the planning commission may, at its sole discretion, hold a second public hearing for the purpose of learning public opinion.

(e) *Determination.* Following necessary staff and planning commission review, investigation, public hearing and discussion with the petitioner, the planning commission, as soon as practical, shall render its recommendation to the village board in writing. The village board shall then approve, approve with additional or differing conditions, or deny the petition. Such decision shall include an accurate and complete description of the use

as permitted, including all the applicable conditions, or if disapproved, the principal reasons for disapproval.

(f) *Determination not appealable.* As provided for in Wis. Stats. § 62.23(7)(e), where the power to approve or deny conditional use grant applications as special exception uses may be assigned by ordinance to the zoning board of appeals or the planning commission, applications denied, or conditions approved under this article, because of the close relationship intended by this chapter between the specificity of those conditions and the permissibility or impermissibility of the petitioned use under this article, shall not be appealable to the zoning board of appeals as otherwise provided in article XIII of this chapter.

(g) *Administrative review.* Decisions of the zoning board of appeals in its disposition of petitions for conditional use grant shall not be subject to administrative review.

(h) *Guarantees and sureties.* Among the conditions the planning commission may set in approving an application for conditional use grant may include performance bonds, letters of credit, cash deposits, or similar financial sureties related to ensuring that certain conditions will be met, or that material or workmanship improvements covered by the conditions are guaranteed, as further authorized in this chapter.

(i) *Mapping and recording.* When a conditional grant is approved, the zoning use and occupancy permits shall be appropriately noted and such grant shall be applicable solely to the structures, use and property as described. Indication of such a grant shall also be made on the zoning map by appropriate code number or symbol. An official record of such grant shall be prepared by the zoning administrator on a prescribed form, which shall include the description of the use for which the grant is given and all conditions as well as a copy of the resolution approving the grant. A land covenant form provided by the village shall be recorded at the county register of deeds as a covenant on the title of the premises involved, referring to the existence of the grant.

(j) *Termination of grants.*

(1) *Grants for specific time periods.* Where the applicant agrees, the board may set as one of the conditions that the use will only exist for a stated period of time or until described circumstances are fulfilled.

(2) *Failure to comply with conditions.* Where the use upon inspection by the zoning administrator and review by the planning commission is found to be in nonconformance with one or more of the significant conditions of the grant, the provisions of section 94.121 shall be applied in order to gain compliance. Where nonconformance to conditions continues to occur, and the planning commission determines that one or more of the noncompliance conditions are of an essential nature to the granting of the original application, the planning

commission may petition the village board for termination of the entire grant or a portion of the grant as the planning commission shall nominate.

a. *Hearing.* The village board shall hold a hearing on the commission's petition for termination as set forth in subsection (d) of this section, giving the holder of the grant ample opportunity to explain the circumstances related to the alleged noncompliance.

b. *Modification or revocation.* Where the village board agrees in whole or part with the planning commission's petition, the village board may modify or revoke the original grant of conditional use in whole or part, causing the recordation of the grant on the title of the property to be accordingly amended.

(k) *Application to existing uses.*

(1) A use that existed lawfully on a lot at the time the lot was placed in a district where such use would be permitted only as a conditional grant may be granted conditional use status under the procedures of this article.

(2) The grant of conditional use in such case shall be based upon the existing conditions at that time; however, the planning commission may require improvements in general building appearance, in proper storage of outside materials, in the provision of more satisfactory off-street parking, in the use of planting and fencing screens where necessary, and in operational matters relating to the control of noise, dust, odor, smoke and excessive glare or illumination of lighting, provided that such measures be within the reasonable economic capacities of such a use. Any expansion or change in use shall require changing of the conditional use grant.

(l) *Expansion or modification of existing conditional use grants.* Petitions may be made at any time for expansion or other change of the conditional use grant, and such petition shall not prejudice the existing grant as authorized in this article.

(Ord. of 11-18-1991; Ord. of 6-22-2006)