

## ARTICLE VI. CONDITIONAL USES

### Sec. 95.140. Introduction.

This chapter regulates most uses through zoning districts as authorized in Wis. Stats. §62.23(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 95.123(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 town plan, the specific site, and the neighboring land, and given the public need for the particular location.

### Sec. 95.141. Approval required.

(a) *Recommendation by ETZ Committee needed for uses permitted by conditional grant.* Uses listed as permitted by conditional grant, or uses determined by the ETZ Committee to be so similar to listed uses that the unlisted uses may within the spirit and intent of this chapter be classified by the ETZ Committee under section 95.123(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 ETZ Committee, as authorized by Wis. Stats. §62.23(7) 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 evaluation by the ETZ Committee, 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 95.139, 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 ETZ Committee evaluation of compliance with the performance standards set forth in section 95.133.
- (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 ETZ Committee in complying with this provision may recommend and 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 ETZ Committee 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 town plan will be advanced, and whether the spirit of this chapter will be upheld including those factors given in section 95.141. More specifically, the ETZ Committee 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 ETZ Committee.

#### **Sec. 95.142. 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 the next available ETZ Committee agenda.

(c) *Petition content.* The petition shall be accompanied with sufficient information to enable the ETZ Committee to fully accomplish the review and advice required of it by section 95.141(b). Accordingly the ETZ Committee shall require, as appropriate, the information normally required under article V of this chapter as well as section 95.133. The ETZ Committee, 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 ETZ Committee 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 ETZ Committee may, at its sole discretion, hold a second public hearing for the purpose of learning public opinion.

(e) *Determination.* Following necessary staff and ETZ Committee review, investigation, public hearing and discussion with the petitioner, the ETZ Committee, 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 village zoning board of appeals or the ETZ Committee, 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 village zoning board of appeals as otherwise provided in article XIII of this chapter.

(g) *Guarantees and sureties.* Among the conditions the ETZ Committee 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.

(h) *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.

(i) *Termination of grants.*

(1) *Grants for specific time periods.* Where the applicant agrees, the village 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 or building inspector and review by the ETZ Committee is found to be in nonconformance with one or more of the significant conditions of the grant, the provisions of section 95.121 shall be applied in order to gain compliance. Where nonconformance to conditions continues to occur, and the ETZ Committee determines one or more of the noncompliance conditions, town/village staff may petition the ETZ Committee for termination of the entire grant or a portion of the grant.

- a. *Hearing.* The ETZ Committee shall hold a hearing on the staff'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 ETZ Committee agrees in whole or part with the staff's petition, the ETZ Committee 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.

(j) *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.