

Conditional Use Permits Discussion

10/21/2024

Process:

A conditional use must be listed as such in the zoning ordinance, along with the standards and conditions which it must meet.

A Conditional Use Permit (CUP) allows a local governing body (the planning commission/committee) to approve a land use that may be compatible in the zoning district in which it is proposed, but that should not be permitted as a matter of right because of the range of potential conflicts that such a use may create.

Because the decision to grant or deny a conditional use permit is quasi-judicial, local decision-makers must follow the rules of procedural due process. Among other things, this means that testimony should be limited to the public hearing, decisions should be based on pre-determined standards, and decision-makers should be impartial.

1. Application for conditional use permit.
2. Notice and public hearing.
3. Decision by governing body, plan commission or zoning board.
4. Filing and notice of decision.
5. Reconsideration and Appeal of Decisions

Review Criteria:

§ 520-121. - **Conditional use permits.**

G. Review criteria for conditional use permit. Each requested conditional use permit shall meet the following criteria (achieve "yes" answers) to be approved:

(1) Is the proposed conditional use in harmony with the comprehensive plan, this chapter, and any other plan, program, or ordinance adopted by the village?

Note: Wis. Stats. 66.1001(2m) (b) A conditional use permit that may be issued by a political subdivision does not have to be consistent with the political subdivision's comprehensive plan.

(2) The proposed conditional use does not, in its proposed location and as depicted on the required site plan, result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of this chapter, the comprehensive plan, or any other plan, program, map, or ordinance adopted by the village?

(3) Does the proposed conditional use maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?

(4) Is the proposed conditional use located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies serving the subject property?

(5) Do the potential public benefits of the proposed conditional use outweigh potential adverse impacts of the proposed conditional use, after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts?

Conditions:

Conditions are usually developed in one of three ways. They may be:

1. listed in the local zoning ordinance for the district,
2. recommended by zoning staff during the public hearing or in a staff report, or
3. developed by the permit review body at the conclusion of the public hearing.

Permit conditions that are routinely imposed for similar projects should be adopted by ordinance as minimum standards for approval. Incorporating standards in the ordinance allows permit applicants to anticipate and plan for design, location, and construction requirements.

What conditions may be attached to a conditional use permit?

Performance and design standards

General performance standards and specific design standards for approval of conditional uses may be provided by local ordinance. An applicant must demonstrate that the proposed project complies with each of the standards. The permit review body may impose additional conditions on development consistent with standards for approval and ordinance objectives. The review body may require an applicant to develop a project plan to accomplish specified performance standards (e.g., meet with land conservation department staff to develop an erosion control plan that contains all sediment on the site). Permit conditions that are routinely imposed for similar projects should be adopted by ordinance as minimum standards for approval of conditional uses. Incorporating standards in an ordinance allows permit applicants to anticipate and plan for design, location, and construction requirements.

The local governing body (the planning commission/committee) may attach conditions to the CUP deemed necessary or appropriate in furthering the purposes of this ordinance. Such factors to be considered may include, but are not limited to the following:

Conditions imposed as part of the conditional use permit shall be achievable, practicable and to the extent possible, measurable. Any conditions imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2017 WISCONSIN ACT 67

The Act requires a city, village, town, or county to grant a conditional use permit if an applicant meets, or agrees to meet, all of the requirements and conditions specified in the relevant ordinance or imposed by the relevant zoning board. Any such conditions must be related to the purpose of the ordinance and based on substantial evidence. In addition, the Act requires those requirements and conditions to be reasonable and, to the extent practicable, measurable.

The Act requires an applicant for a conditional use permit to demonstrate, with substantial evidence, that an application and all requirements and conditions relating to the conditional use are, or will be, satisfied. The Act then requires a city, village, town, or county to demonstrate that its decision to approve or deny the permit application is supported by substantial evidence.

“Substantial evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

Renewals, transfers and appeals:

2017 WISCONSIN ACT 67

The Act specifies that a conditional use permit may remain in effect as long as the conditions upon which the permit was issued are followed, except that a city, village, town, or county may impose conditions relating to the permit’s duration, and the ability of the applicant to transfer or renew the permit, as well as any other additional, reasonable conditions specified in the relevant zoning ordinance or by the relevant zoning board.

The Act requires a public hearing to be held on a conditional use permit application and authorizes a person whose conditional use permit application is denied to appeal the decision in circuit court.

Note: Our current ordinance allows an appeal be taken to the village board by any person, firm or corporation or any officer, department, board, commission or agency of the village who is aggrieved by the decision. A proposed ordinance amendment was brought before the Village Board on November 27, 2024, which included language for the Board of Appeals to hear Conditional Use Permit appeals instead of the Village Board. Action was delayed.

Possible Changes to Existing Language:

1. Language to address 2017 Act 67.
2. Appeal language.
3. Conditions.
4. Renewal requirements.
5. Revocation language.
6. Possible Changes to Existing Application Forms.