

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

- A. *Initiation of conditional use permit.* Any person, firm, corporation, or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest that may become a freehold interest or an exclusive possessory interest, and that is specifically enforceable on the land for which a conditional use is sought, may file an application to use such land for one or more of the conditional uses in the zoning district in which such land is located.
- B. *Application for conditional use permit.* No application for a conditional use permit shall be placed on any agenda as an item to be acted upon unless the zoning administrator has certified acceptance of a complete application. Prior to publication of the required notice of public hearing, the applicant shall provide the zoning administrator with the complete application certified by the zoning administrator, including an easily reproducible electronic copy plus hardcopies in a quantity directed by the zoning administrator. Said complete application shall be composed of all of the following:
- (1) A completed conditional use permit application form furnished by the zoning administrator.
  - (2) A written description of the proposed conditional use describing the type of activities, buildings, and structures proposed for the subject property and their general locations.
  - (3) A site plan of the subject property, with any alterations as may be proposed to accommodate the conditional use. If the conditional use will make use of existing site improvements only, a site plan need only be of sufficient detail to confirm the portion of the site used by the conditional use.
  - (4) Written justification for the proposed conditional use consisting of the reasons why the applicant believes the proposed conditional use is appropriate, particularly as evidenced by compliance with the approval criteria set forth in this section.
  - (5) Any other plans and information deemed necessary by the zoning administrator or the plan commission to ensure that the intent of this chapter is fulfilled.
  - (6) A fee as established by the village board and stated in the village's fee schedule.
- C. *Zoning administrator review and recommendation.*
- (1) The zoning administrator shall determine whether the application is complete and fulfills the requirements of this chapter. Only a complete application in the determination of the zoning administrator shall entitle a public hearing under subsection D. The zoning administrator shall inform the applicant if the application is incomplete in his or her determination.
  - (2) Once the zoning administrator determines that the application is complete, the zoning administrator or designee shall authorize the public hearing and prepare a written evaluation of the application based on the criteria for evaluating conditional use permits in subsection G below. The zoning administrator shall forward a copy of the evaluation to the plan commission.
- D. *Notice of public hearing.*
- (1) *Legal ad (per existing ordinances).* The notice of the time, date, and location of the planning commission public hearing shall be published by the village at least two times in a newspaper of general circulation in the village. Publications shall occur 14 calendar days and seven calendar days prior to the date of the planning commission public hearing on a conditional use permit or a zoning change request. The notice of the time, date, and location of the planning commission public hearing shall be published by the village at least one time in a newspaper of general circulation in the village ten calendar days prior to the date of the planning commission public hearing on an application for variance request.
  - (2) *Public notice.* Notice of the plan commission public hearing shall be sent by regular mail to the applicant, each landowner adjoining the subject property and each landowner within 500 feet of the subject property. Notice of the planning commission public hearing shall be sent at least ten calendar days prior to the planning commission public hearing. The notice shall be prepared and mailed by the village. The failure of any person required by this section to receive the notice shall not invalidate or otherwise have any effect upon a public meeting or public hearing or action taken on the application.
  - (3) *Local government notice.* The village shall send one copy of the application at least ten calendar days prior to the plan commission public hearing to the adjoining local government for review and comment when the project affects another municipality, or the primary access to the affected property is through an adjoining municipality.
  - (4) *Village website.* Notice of the plan commission public hearing shall be posted on the village webpage.
- E. *Review and action by plan commission.* Within 60 days after the public hearing, or an extension of said period requested in writing or electronic format by the applicant and granted by the commission, the plan commission shall take final action on the conditional use permit request. The commission may approve the conditional use as originally proposed, may approve the proposed conditional use with conditions or modifications, or may deny approval of the proposed conditional use and include reasons for denial. Any action to approve or amend the proposed conditional use permit requires a majority vote of commission members in attendance.
- F. *Appeal to village board.* An appeal of a decision under subsection E may 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. Such appeal shall be made in writing to the zoning administrator within ten days after the date of the commission's decision. In the case of an appeal:
- (1) The zoning administrator and building inspector shall issue no permits to enable commencement or continuation of building and other activities authorized by the conditional use permit and shall issue a stop-work order for any such activities already commenced.
  - (2) The zoning administrator shall immediately notify the applicant and property owner of the appeal in writing and shall schedule the appeal for village board consideration.
  - (3) The village board shall, by resolution, make a final decision to grant, with or without conditions, or to deny each application for a conditional use permit after receiving and reviewing the commission's findings and making its own findings as to whether or not the proposed use will satisfy the standards for approval set forth in subsection G and shall have all of the powers of the commission under this section. The village board's determination shall be final and subject to appeal to the circuit court under any procedure authorized by statute.
- 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?
  - (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?
- H. *Issuance and recording of permit.* Within 30 days following the granting of a conditional use permit, the zoning administrator shall issue to the applicant a written conditional use permit enumerating the details of the conditional use permit, including what land use(s) and/or development was approved and any conditions of approval. The zoning administrator shall record the conditional use permit against the property, assigning all costs thereof to the applicant.
- I. *Effect of denial.* No conditional use permit application that has been denied shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the zoning administrator.
- J. *Termination of approved conditional use.* Once a conditional use permit is granted, no erosion control permit, site plan approval, certificate of occupancy, zoning permit, or building permit shall be issued for any development that does not comply with all requirements of the conditional use permit and this chapter. Any conditional use found not to be in compliance with the terms of this chapter or the approved conditional use permit shall be considered in violation of this chapter and shall be subject to all applicable procedures and penalties. A conditional use permit may be revoked for such a violation by the plan commission, following the procedures outlined for original granting of a conditional use permit.
- K. *Time limits on development of conditional use.* The start of construction of any and all conditional uses shall be initiated within 365 days of approval of the associated conditional use permit and shall be operational within 730 days of said approval. Failure to initiate development within this period shall automatically constitute a revocation of the conditional use permit. For the purposes of this section, "operational" shall be defined as occupancy of the conditional use.
- L. *Renewals.* The permit holder may submit an application for renewal along with the appropriate fee for renewal prior to the expiration of the time limit on the permit. No conditional use permit renewal shall be required to go through a new public hearing.
- M. *Discontinuance of approved conditional use.* Any and all conditional uses that have been discontinued for a period exceeding 365 days shall have their conditional use permit automatically invalidated. The burden of proof shall be on the property owner to conclusively demonstrate that the conditional use was operational during this period.
- N. *Change of ownership.* All requirements of the approved conditional use permit shall be continued regardless of ownership of the subject property and shall run with the land, except as otherwise limited by this chapter or by a specific condition attached to the conditional use permit. Modification, alteration, or expansion of any conditional use in violation of the approved conditional use permit, without approval by the plan commission, shall be considered a violation of this chapter and shall be grounds for revocation of said conditional use permit.
- O. *Uses now regulated as conditional uses that were legal land uses (permitted by right or as conditional uses) prior to effective date of this chapter.* A use now regulated as a conditional use that was a legal land use — either permitted by right or as a conditional use — prior to the effective date of this chapter shall be considered as a legal, conforming land use so long as any previously approved conditions of use and site plan are followed. Any substantial modification of such use or any previously approved condition of such use, in the determination of the zoning administrator, shall require application and village consideration of a new conditional use permit under this section.

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