

VILLAGE OF KRONENWETTER
Marathon County, Wisconsin
An Ordinance Amending the Code of the Village of Kronenwetter
Part II: General Legislation
Chapter 520 Zoning
Article XV Procedures and Administration
Amending Section 520-121 entitled “Conditional use permits”

The Village Board of the Village of Kronenwetter do ordain as follows:

Section 1: Part II: General Legislation, Chapter 520 Zoning, Article XV Procedures and Administration, Section 520-121 entitled “Conditional use permits” of the Code of the Village of Kronenwetter is hereby amended with new language underlined and deleted language ~~stricken~~ to provide as follows:

§ 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 of Kronenwetter'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 of Kronenwetter. 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 of Krononwetter 10 calendar days prior to the date of the Planning Commission public hearing on an application for variance request.~~
Upon receipt of a conditional use permit application, and following publication in the Village of a class 2 notice under Wis. Stat. ch. 985, the Village shall hold a public hearing on the application.

Commented [A1]: Best to use the statutory language on this. A Chapter 985 notice is a term of art. Additional notices that are optional to this ordinance are below too.

- (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 10 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 10 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. 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.
- (4) Village website. Notice of the Plan Commission public hearing shall be posted on the Village webpage. 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.

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~~ the Zoning Board of Appeals. An appeal of a decision under Subsection E may be taken to the ~~Village Board~~ Zoning Board of Appeals

Commented [A2]: This is wholly redundant as is due to the Board of Appeals. Code § 520-132. Problematic for having Board members on the Plan Commission because of due process. There is very little in the Zoning Board of Appeals § 520-132, so instead of deleting this section I just turned it into the Zoning Board of Appeal's guidance.

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 10 days after the date of the Plan Commission's written decision. In the case of an appeal:

Commented [A3]: 30 days is more usual. But it always starts after a written decision so a person can decide whether to even appeal. It's hard to have the information at hand before then.
This most recent appeal did not even have reasoning attached. The appeal is NOT a new hearing.

- (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 by the Zoning Board of Appeals.
- (3) The ~~Village Board~~ Zoning Board of Appeals 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 the Plan Commission's record 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 Plan Commission under this section. The ~~Village Board's Zoning Board of Appeals'~~ 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) In this paragraph:
 - (a) "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by the Village, but does not include a variance.
 - (b) "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.
- (2)
 - (a) If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the

Commented [A4]: This is most of the content from the required statute, Wis. Stat. § 62.23(7)(de).

Village ordinance(s) or those imposed by the Village Plan Commission, the Village shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance(s) and be based on substantial evidence.

(b) The requirements and conditions described under subd. (2)(a) 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 must be supported by substantial evidence. The Village's decision to approve or deny the permit must be supported by substantial evidence.

(4) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the Village may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance(s) or by the Village Plan Commission.

(5) If the Village denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in Wis. Stat. § 62.23(7)(e)10. a., or if the decision is on an application for an approval, as defined in Wis. Stat. § 781.10(1)(a), under the procedures described in Wis. Stat. § 62.23(7)(e)10. b.

~~(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 an ~~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?~~

Commented [A5]: Sorry for the statutory references but it was by far the best way to write this part.

Commented [A6]: Wis. Stat. § 66.1001(2m)(b) A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan.

You could still choose to refer to the Plan, but do not have to do that anymore. If you do, I hope that you are very happy with your plan. The language above already refers to the ordinances and Plan Commission. If you keep any part of this "in harmony" is way too broad; we would need substantial evidence of "harmony" in either direction.

Commented [A7]: Even beneficial things may have a substantial effect that you actually want. It is impossible to do anything that does not affect something else in some way. We just do not want a CUP to possibly ruin everything.

Commented [A8]: You may not need this now since it is very broad and not exactly substantial evidence in and of itself. Someone might be able to cite something or other but the reason ought to be strong for that.

(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?

Commented [A9]: This paragraph is nearly the same as the above paragraph. This also will be hard to have substantial evidence in either direction, whereas the more specific paragraph has something more tangible.

(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?

Commented [A10]: These are likely things that are actually provable because they are measurable and can be estimated.

~~(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?~~

Commented [A11]: How do you prove this with substantial evidence in either direction? Maybe rewording will help.

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, if any. 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 and receive no treatment as a legal prior nonconforming use. 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 section~~. 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 section~~ 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.

Section 2: If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is found invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the provision or application of this Ordinance that can be given effect without the invalid or unconstitutional provision or application.

Section 3: All ordinances and/or parts of ordinances in conflict herewith are hereby repealed.

Section 4: This Ordinance shall be in full force and effect from and after its date of adoption and notice to the public as required by law.

Section 5: Village personnel are hereby authorized and directed to make all changes to the Village Code necessary to reflect this amendment.

Adopted this ____ day of _____, 2023.

VILLAGE OF KRONENWETTER

By: _____
Chris Voll, President

ATTEST:

By: _____
Bobbi Jo Birk-LaBarge, Clerk

Noticed to the public on: _____.