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MEMORANDUM

To: Palmer Lake Planning Commission

From: Scotty P. Krob, Town Attorney

Date: May 9, 2024

Re: Conditional Use Permits

Palmer Lake's existing code only provides guidance on what can and cannot be included as a condition of a conditional use permit in the definitions section of the code:

17.08 Definitions

Conditional Use means a use which within certain zoning districts specified in this Code is not permitted as a matter of right but may be permitted by approval by the board of trustees upon the recommendation of the planning commission. The planning commission shall recommend approval or denial of conditional uses to the board of trustees. The board of trustees shall have final authority to deny or grant such a conditional use. The applicant for conditional use shall follow the same procedure as set forth in an application for zone change including the publication of legal notice.

It is my understanding the Planning Commission may want to recommend to the Board of Trustees that it adopt a more robust, separate section addressing conditional use permits. The following draft section would allow the Planning Commission to recommend, and the Board of Trustees, to impose limitations on whether the CUP applies only to the applicant or it extends to successors or assigns; whether it is for a limited time period or perpetual, operational limitations (such as hours of operation or lighting limitations or noise limitations, for example), as well as design requirements. One condition that some of our municipalities routinely require for conditional use permits is that the applicant enter into a conditional use agreement with the Town. The benefit of having an agreement is that the Town then has

something it can point to that has been signed by the applicant and shows that the applicant knew of and agreed to the conditions associated with their specific use or property. I have included a provision allowing the Planning Commission and Board Of Trustees to consider whether to require a special use agreement in a particular case.

Here is some suggested language for your consideration:

Section _____ - Conditional use permit.

A. *Applicability and scope.* A conditional use permit provides flexibility for different uses within a zoning district and allows the potential for additional uses subject to specific conditions and a case-specific review. Approval of such uses may involve imposition of a variety of conditions, including but not limited to specific design, operational limitations, additional mitigation to ensure the use is appropriate in a specific location. A special use may be granted for a finite period of time or it may be permanent. It may be limited to a particular applicant and may or may not extend to their successors or assigns. The appropriate conditions shall be reviewed and recommended by the Planning Commission, and approved by the Board of Trustees, based on how the review criteria set forth below apply to the applicant and/or the property, A conditional use permit must be initiated by the property owner.

If conditions of a conditional use permit require site modifications, a site plan review may be required prior to commencement of the use.

B. *Review criteria.* A conditional use permit shall be reviewed according to the following criteria:

1. The use is identified as requiring a conditional use permit in Table _____, Section _____.
2. The application is consistent with the Master Plan such that the long-range plans for the surrounding area are not negatively impacted by the proposed use.
3. The application is compatible with the area in terms of operating characteristics such as hours of operation, visible and audible impacts, traffic patterns, intensity of use, and other potential impacts on adjacent property.
4. The use will not have an adverse impact on surrounding property values.
5. The use is not likely to create a nuisance.
6. The on and off-site mitigation measures needed to alleviate impacts due to the development and operations of the use.
7. Any other criteria deemed appropriate by the Planning Commission or Board of Trustees.

C. *Review procedure.* In addition to the general requirements in Section _____, the following additional requirements are specific to conditional use permit applications:

1. Applications shall be accompanied by a narrative and conceptual site plan to review any performance criteria for the particular uses when applied to the site or building.
2. The planning commission may recommend and the board of trustees may require the applicant to enter into a written contract or other assurance which the board may, in its discretion, deem advisable as a condition for the granting of such conditional use permit.

D. *Effect of decision.* Approval of a conditional use permit shall authorize the applicant to apply for a building permit and other applicable development or construction permits.

E. *Revocation.* A conditional use permit may be revoked or suspended by the board of trustees at a public hearing upon a finding of one or more of the following:

1. Failure to obtain permits, or otherwise achieve substantial completion of improvements, or commence the conditional use as approved within three years of approval or a different amount of time specified in the approval resolution.
2. The conditions of approval have not been met, the site is out of compliance with the site plan, or that the use has otherwise violated the provisions of this Code.
3. Ceasing the use for a period of more than three (3) consecutive years.

F. Minor changes to an approved conditional use permit may be approved by the [Planning Commission/Board?] upon finding all of the following:

1. There is not a significant increase in the intensity of the use that could adversely impact adjacent property;
2. The change does not exceed the limits or violate any specific conditions of the original approval; and
3. The change complies with all other provisions of this Code, including the Site Plan criteria in Section _____

Any other changes to the use shall require an amendment to the conditional use permit as a new application.