



PLANNING STAFF REPORT

MEMO DATE: March 2, 2020

MTG. DATE: MARCH 11, 2020

TO: Village of Cottage Grove Plan Commission

CC: Village of Cottage Grove Board of Trustees
Matt Giese – Village Administrator
Lisa Kalata – Village Clerk

FROM: [Erin Ruth, AICP – Village Planning Director](#)

RE: **Conditional Use Permits – Ordinance Review**

BACKGROUND

2017 Wis. Act 67 changed state statutes regarding the issuance of conditional use permits (CUP). The full text of the statutory changes is included below, but essentially the main change is the shifting of the burden of proof regarding the suitability of a use from the applicant to the municipality. Previously, the applicant needed to prove that a proposed conditional use would not be problematic. Now a municipality must approve a conditional use permit application unless it can show the use will be problematic. Furthermore, it states that decisions to approve or deny a request must be based on ‘substantial evidence’ as defined in the statute and shall not be based on ‘personal preferences or speculation.’

2017 WIS. ACT 67 – SECTION 16

Section 16. 62.23(7)(de) of the statutes is created to read:

62.23(7)(de) Conditional Use Permits. 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 a city, 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 city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance 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 city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

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 city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.

5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e)(10).

OVERVIEW

The Plan Commission discussed this element of Act 67 in March 2019. At that time the Plan Commission chose not to alter the ordinance as the statute was still new and effects were not clear.

At this time new Village Attorney Larry Konopacki is encouraging the Village to revisit the portions of the zoning ordinance related to conditional uses. Ultimately the Village will want to handle many current conditional uses in a manner that provides the Village with more control – for example as an overlay zoning district. Any uses that remain conditional uses will require specific criteria within the ordinance. If a proposed project documents that they can meet the criteria, the conditional use permit must be approved.

STAFF RECOMMENDATION

The attached table shows all permitted and conditional uses in each district. The first step for the Plan Commission is to review the current conditional uses and discuss how each should be handled moving forward. Options include:

1. Keep it as a conditional use in a given district and establish specific criteria
2. Create an overlay district specific to the use
3. Permit the use by right within certain districts
4. Disallow the use in a given district



Planning staff presents an initial approach for each land use currently requiring a conditional use permit for the purpose of initiating discussion. However, the Plan Commission should discuss these while also considering input from the Village Attorney.

Note that most land uses are accompanied by specific regulations in 325-49. For the time being, assume that any regulations currently listed under a land use will remain in place for an overlay district.

Residential Land Uses

- *Duplex, Twin House, Two-flat, Townhouse*

In districts where these are currently a conditional use, change to permitted by right.

- *Multiplex (3 to 4 units), Apartment (3 to 4 units), Apartment (5 to 8 units)*

Change from conditional use to permitted by right in NB and NO zoning. Disallow in HR-9 zoning. Currently apartments larger than 9 units must be approved as a Planned Unit Development – consider creating an overlay for larger apartment buildings that could be applied to an MR-10 or MR-12 district. Include senior multi-family in overlays. The Village is forming a Housing Task Force which will likely have additional recommendations regarding aspects of housing including zoning.

- *Mobile home park*

Create overlay district and consider which underlying districts are appropriate.

Agricultural Land Uses

- *Intensive agriculture, and agricultural services*

Examples of intensive agriculture listed in the ordinance include feed lots, hog farms, poultry farms, fish farms, commercial green houses, etc. Examples of agricultural services include facilities similar to the Landmark campus on the south side of the Village among other similar uses. Consider creating an overlay that only applies to RH district (and possibly HI for agricultural services). Keep strict regulations limiting where this use is appropriate.

- *Clear cutting*

Currently a conditional use in all districts. Consider changing to a permit similar to amplified noise or driveway permit.

Institutional Land Uses

- *Indoor institutional, and outdoor institutional*



Indoor institutional includes public or non-profit facilities such as schools, libraries, museums, etc. Outdoor institutional includes facilities such as cemeteries, permanent green spaces, golf courses, etc. Consider creating an overlay applicable to all underlying districts.

- *Community living arrangements (1 to 8 residents), (9 to 15 residents), and (16+ residents)*

This land use specifically refers to uses defined by Wis. Stat. 46.03 such as child welfare agencies, group homes, and CBRF's. Consider creating an overlay for these uses.

Commercial Land Uses

- *Indoor sales or service*

Consider permitting by right in PO and NO. Consider whether this use is appropriate in PI district – if so, permit by right.

- *Outdoor display*

Consider creating an overlay for this use.

- *In-vehicle sales and service*

Consider permitting by right where currently a conditional use.

- *Indoor commercial entertainment*

Consider permitting by right where currently a conditional use.

- *Indoor sales or service*

Consider permitting by right in PO and NO. Consider whether this use is appropriate in PI district – if so, permit by right.

- *Outdoor commercial entertainment*

As a primary use, this refers to large scale outdoor facilities such as a go-kart track or mini-golf course. Consider creating an overlay for such uses.

- *Commercial animal boarding*

Consider keeping this a conditional use and provide specific criteria to ensure that it is tied to a specific business.



- *Commercial indoor lodging*

The two current hotel proposals are seeking approval as Planned Unit Developments due to the size of the buildings. Consider creating an overlay district or permitting by right.

- *Bed and breakfast*

Consider keeping this a conditional use with specific criteria to ensure it is tied to a specific business.

- *Group daycare (9+ children)*

Consider permitting by right in a commercial, office, or light industrial district with specific criteria or as part of an indoor institutional overlay if associated with a school or church.

- *Commercial indoor lodging*

The two current hotel proposals are seeking approval as Planned Unit Developments due to the size of the buildings. Consider creating an overlay district or permitting by right.

- *Campground*

Consider creating an overlay for the RH district.

- *Boarding house*

This use is defined by the ordinance as “any residential use renting rooms which do not contain private bathroom facilities (with the exception of approved bed-and-breakfast facilities).” More research should be done to determine if this remains a viable residential use.

- *Sexually oriented land use*

Case law has established that these types of businesses are generally protected under freedom of speech and cannot be completely banned from a community. Current best practices should be investigated and followed.

- *Vehicle repair and maintenance*

Consider permitting by right in some districts with regulations that ensure compatibility with surrounding uses.

- *Artisan studio*

Consider permitting by right in districts where this is currently a conditional use.



- *Payday lender*

This use is subject to statutory guidelines. Consider keeping this a conditional use with specific criteria based on the statutes including restrictions on how close together these types of businesses can be.

Storage & Disposal Land Uses

- *Outdoor storage, personal storage facility, junkyard or salvage yard, waste disposal facility, and composting operation*

Consider creating overlay districts for these uses.

Transportation Land Uses

- *Off-site parking lot, airport/heliport, freight terminal, and distribution center*

Consider creating overlay districts for each of these uses.

Industrial Land Uses

- *Communication tower*

Consider keeping as a conditional use with specific criteria.

- *Extraction Use*

Consider creating an overlay district for this use.

Accessory Land Uses

- *Commercial apartment*

Consider permitting by right in some districts or create a mixed-use overlay. The Village is forming a Housing Task Force which will likely have additional recommendations regarding aspects of housing including zoning.

- *Company provided on-site recreation*

Consider permitting by right with regulations to protect adjacent property owners.



- *Outdoor display incidental to indoor sales or service*

Consider permitting by right with regulations to protect adjacent property owners.

- *In-vehicle sales and service*

Consider changing to permitted by right in districts where this is currently a conditional use.

- *Light industrial incidental to indoor sales*

An example of this might be a clothing retailer that has a small screen printing set up in the back. Consider permitting by right with regulations to protect adjacent property owners.

- *Intermediate day care (9 to 15 children)*

Consider keeping a conditional if adequate criteria can be developed to protect adjacent property owners.

- *Outdoor display incidental to indoor sales or service*

Consider permitting by right with regulations to protect adjacent property owners.

- *Migrant labor camp*

Confirm whether state statutes require this land use to be included. Consider overlay.

- *Private residential kennel, and private residential stable*

Consider making this permitted by right within RH district only, with regulations related to number of animals and distance from adjacent residential uses.

- *Septic systems*

Consider changing to permitted by right in RH district, only for systems already existing at time of annexation where municipal utilities are not available.

- *Caretaker's house*

Consider permitting by right in RH district with regulations to protect adjacent property owners or allow only existing to remain.

- *Accessory commercial outdoor entertainment*

Consider changing to an overlay district that could be applied only to districts where this is now a conditional use.