

ORDINANCE 2020-3

ORDINANCE FOR CONDITIONAL USE PERMIT (CUP) PROCESS AND PROCEDURES

WHEREAS the Town Board of Deerfield understands that all areas of Dane County are assigned a zoning district classification. Each zoning district allows for specific land use to occur on the property. Some land uses are listed as "conditional uses". Conditional uses may or may not be appropriate on a property, depending on the circumstances. Due to the potential for negative impacts to adjacent properties for uses already permitted, conditional uses require special consideration and additional approvals by the Town and County.

WHEREAS the Town Board also recognizes that the Wisconsin Legislative Act 67 adds rules for processing CUPs that requires a "quasi-judicial" process.

WHEREAS the Town Board also acknowledges that the preferred method of establishing the Town of Deerfield CUP process and procedure would be inclusion in the Comprehensive Plan. This will be done the next time the Comprehensive Plan is updated as the Comprehensive Plan was just revised earlier this year at a considerable cost and time commitment.

WHEREAS the Town Board also recognizes that to maintain the integrity of the CUP process and procedure and the validity of the Town of Deerfield Board decisions, an ordinance will be adopted and followed.

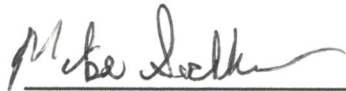
WHEREAS the Town Board realizes that many CUPs will be judged "non-controversial" if there is no opposition from anyone at the public hearing and no planning commission and town board members are in opposition to the petition.

NOW THEREFORE, the Town Board for the Town of Deerfield, Wisconsin, ordains as follows:

Section 1. The Conditional Use Permit process and procedure of the Town of Deerfield Code of Ordinances is hereby created to read as set forth in Addendum A, attached hereto.


Section 2. This ordinance shall be effective on the day after publication hereof or of an appropriate notice hereof as provided by law.

Adopted this 14 day of Sept 2020



Mike Schlobohm, Town Chair

Attest:



Bob Riege, Town Clerk

Addendum A

CONDITIONAL USE PERMIT (CUP) PROCESS AND PROCEDURES

Section 1.1 Applying for a CUP

- 1) The applicant should first contact the Dane County Planning and Development Department and follow the procedures outlined in Chapter 10.101(7) prior to contacting the Town of Deerfield.
- 2) If the applicant's request requires a rezoning petition as well as a CUP, the Town of Deerfield will hear the zoning petition separately and prior to the CUP.
- 3) As outlined in the Town of Deerfield Comprehensive Plan, the zoning petition process starts with an informal meeting with the town chair and/or planning commission chair.
- 4) For a CUP, the letter of Intent, application materials and fee are submitted to the Town by the applicant to start the review process.
- 5) The Clerk reviews the application for completeness, ensuring it includes information on how the eight standards are met or how the applicant plans to meet them.
- 6) Once it is determined that the application is complete, the Clerk schedules a Joint Town Board and Plan Commission Public Hearing at the next possible Plan Commission meeting. No action on this item will be taken at the Public Hearing unless the CUP is determined to be "non-controversial". After the Public Hearing is closed, action may be taken by a reconvened Joint Planning Commission and Town Board. Action may also be taken on other matters before the Plan Commission.
- 7) A Class II notice of the hearing is published in the paper of record and posted at the town hall and on the Town of Deerfield Website. This will consist of two insertions one week apart, the second of which is one week before the public hearing.
- 8) Township Public Hearing notices are mailed by the Town Clerk to property owners within 600 feet of the subject property. A copy of this ordinance will also be sent with the notice. Notices will also include the initial deadline for providing written feedback, with a disclaimer that the deadline may be extended depending on the date of final Town Board action. This notice and

ordinance mailing to property owners will be mailed 2 weeks prior to the public hearing. Also, approximately 3 weeks prior to the County public hearing the County will notify neighbors within 300 feet of the CUP application.

Section 1.2 Public Hearing Protocol

- 1) Testimony at the Public hearing will be recorded with the recordings held for at least 2 years.
- 2) Minutes of the Public Hearing shall only show the names of those appearing and the position they have taken on the proposal.
- 3) Attendance of petitioners or their agent at the public hearing is recommended.
- 4) The role of Planning Commission and Town Board members at the hearing:
 - a) The Town Chair or designee presides over the hearing.
 - b) Planning Commission and Board members' role is to listen to testimony and gather facts and information on how to address the concerns raised.
 - c) Planning Commission and Town Board members may ask questions of the applicant and anyone testifying but should refrain from communicating an opinion. Questions should pertain to clarification of facts in the testimony.
- 5) Dane County Ordinance states that Registration forms are required to testify at the public hearing.
 - a) The forms should be submitted prior to the call to order of the hearing by anyone testifying during the hearing,
 - b) The forms will provide name and contact information of those testifying.
 - c) Those testifying must indicate "for" or "against" or "for information only" on the form.
 - d) The forms will be retained by the Town as a record of those presenting testimony.
- 6) Criteria for Testifying:
 - a) Substantial evidence cannot be "merely personal preferences or speculation".
 - b) All comments during the public hearing shall be directed to the Town Board and Planning Commission.
 - c) No exchange between attendees is permitted.
 - d) Town Board and Planning Commission members may ask questions of individuals participating in the public hearing as they speak.

- e) Speakers are limited to no more than five minutes speaking time.
- f) The order of speakers wishing to provide testimony is as follows:
 - i) All speakers wishing to speak in favor of the CUP will speak first,
 - ii) then those opposed to the CUP,
 - iii) then any Town Board and Planning Commission members with additional information
 - iv) and last, a response from the applicant.

Section 1.3 Public Hearing Procedures

- 1) Doors open no later than 15 minutes prior to start of hearing.
- 2) As attendees enter the room, the Clerk or designee asks them to sign in and provides a registration form and a public comment procedure document if they wish to speak.
- 3) Clerk or designee collects the registration forms and assigns a sequential number until the posted public hearing start time.
- 4) Last call for registration forms is announced 2 minutes prior to start time.
- 5) Registration forms are given to the Town Chair or designee.
- 6) The public hearing is called to order at posted time by Town Chair or designee.
- 7) The Clerk or designee speaks about ACT 67, the need for substantial evidence, eight standards, etc., using a prepared script
- 8) Applicant or their representative has ten minutes to give a presentation on their CUP request which includes an explanation of how they have met, or plan to meet, the eight CUP standards.
- 9) Town Chair or designee calls the names of registered speakers in the order that they were submitted by the Clerk or designee.
 - a) Speaker states their name and residence address.
 - b) Speaker indicates if they support, oppose or are speaking for informational purposes only.
 - c) Speaker directs comments to Town Board and Plan Commission in the five minute allotted time.
 - d) Clerk or designee uses timer and notifies Town Chair when the time is up.
 - e) Town Board and Plan Commission members may ask follow-up questions specifically related to the testimony. Town Board Chair ensures questions are brief and relevant.
 - f) Where any comments concerning the matter have been made objecting to the CUP application or questions have been asked, one representative of the applicant may speak in rebuttal.

- g) Town Chair or designee maintains order and ensures that comments are directed to the Board and Plan Commission only.
- h) Once all testimony is given, those present are notified that written comments may be submitted to townofdeerfield@yahoo.com until the date of the Town Board meeting that action is possible.
- i) Town Chair or designee restates for the public and for the record that no action will be taken at this time unless the Town Chair or designee has determined that the CUP may be "non-controversial".
- j) Town Chair or designee reminds people present that this is a quasi-judicial action and Town Board and Plan Commission members cannot engage in discussion on this topic outside of the Public Hearing.
- k) Town Chair or designee informs those present that Dane County ZLR will also hold a Public Hearing on this matter and state the date if it is known.
- l) Public hearing is closed.
- m) After the public hearing is closed at the joint Planning Commission and Town Board meeting, the Town Chair or designee may determine that the CUP is "non-controversial", and after verifying there is no controversy or objections from the Planning Commission or Town Board, the Town Chair or designee may entertain a motion to approve the CUP petition. If the motion is unanimously approved, sections 1.5 and 1.6 do not apply.

Section 1.4 Official Records

- 1) The "record" is composed of the following sources of information:
 - a) All written or documentary evidence submitted to the Planning Commission and Town Board at the public hearing and received by the Chair.
 - b) Testimony heard by the Committee during the public hearing.
 - c) The Chair shall have the discretion to exclude evidence that is redundant, immaterial, or irrelevant to the application. The Town Board and Planning Commission may take official notice of the Dane County Code of Ordinances and Comprehensive Plan, town ordinances and plans, the zoning and location of the subject property and geological features or other facts that are common knowledge in the county or can be verified by reference to the public record.
 - d) Materials submitted for inclusion in the record shall be no larger than 11 inches x 17 inches.
 - e) Except as authorized, information in any form which is presented outside

the public hearing is not part of the record. Materials may not be submitted by e-mail for inclusion in the record.

- f) Once the public hearing is concluded no additional evidence or testimony will be received into the record, except as authorized by the Chair at a future meeting where the item is listed as an item of business and there is new information or good cause for the information not to be presented at the public hearing.
- g) Materials received via e-mail prior to or between meetings are not automatically entered into the record. If a member of the Town Board and Planning Commission chooses to do so, he or she shall make a motion to enter one or more of the documents received into the official record.

Section 1.5 Post Public Hearing Planning Commission meeting procedures.

- 1) Clerk adds the CUP item to the following month's Planning Commission agenda.
- 2) Meeting packet will include any written comments received after the Public Hearing and written testimony from professionals (as applicable).
- 3) Applicant is given an opportunity to present their proposal, highlighting any changes made since the Public Hearing.
- 4) Planning Commission members ask questions of the applicant.
- 5) Chair states that in accordance with Dane County Ordinance 10.255 (2)(h) the Commission will discuss the eight standards of a Conditional Use Permit and possible conditions to meet the standards individually and vote on each. Chair also states that if all eight standards are deemed to be met, the CUP will be approved and if any are deemed not to be met, the CUP will be denied.
- 6) Plan Commission will hear expert testimony if necessary (or review written testimony if obtained by professional experts beforehand).
- 7) Recommendation to approve, deny or impose conditions must be based on substantial evidence. The Planning Commission and applicant may agree to specific imposed conditions to meet the standards without being able to prove that these conditions fulfill the substantial evidence standard.
- 8) Plan Commission a) recommends approval with conditions based on substantial evidence, b) recommends denial based on substantial evidence, or c) tables action until the next meeting.
- 9) If the Plan Commission votes to table, the matter is placed on the next month's Planning Commission agenda.

Section 1.6 Town Board meeting procedures upon receiving the approved CUP from the Planning Commission

- 1) Meeting packet will include any written comments received after the Public Hearing and written testimony from professionals (as needed).
- 2) Applicant is given an opportunity to present their proposal, highlighting any changes made since the Public Hearing.
- 3) Town Board members ask questions of the applicant and/or professional staff.
- 4) The Town Chair states that in accordance with 10.255 (2) (h) the Town Board will discuss the eight standards of a Conditional Use Permit and imposed conditions to meet the standards individually and vote on each. The Town Chair also states that if all eight standards are deemed to be met, the CUP will be approved and if any are deemed not to be met, the CUP will be denied.
- 5) Recommendation to approve, deny or impose conditions must be based on substantial evidence. The Town Board and applicant may agree to additional imposed conditions in addition to those recommended by the Planning Commission to meet the standards without being able to prove that these additional conditions fulfill the substantial evidence standard.
- 6) Town Board a) takes action to approve with conditions based on substantial evidence, b) takes action to deny based on substantial evidence, c) tables action until the next meeting, or d) refers the matter back to the Planning Commission for further review.
- 7) If the Town Board votes to table, the matter is placed on the next month's Town Board agenda.
- 8) If the Town Board votes to refer the matter back to the Planning Commission, the matter is placed on the next month's Planning Commission agenda.
- 9) If it appears that Town action will not occur within 60 days after the Dane County Public Hearing, the Clerk will provide written notification to the Dane County ZLR and request a 40-day extension.
- 10) Final action on the CUP must occur within 60 days after the Dane County Public Hearing or within 100 days if an extension has been granted.
- 11) Following action on the CUP by the Town Board, the Clerk provides the Town Board Action Report to Dane County Zoning.