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December 3, 2024

VIA EMAIL

Supervisor Michele Doolan
Chair, Zoning and Natural Resources Committee
Dane County Board of Supervisors
City-County Building, Room 362
Madison, WI 53703
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RE: ZLR Consideration of Conditional Use Permit Applications

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Dear Supervisor Doolan:

You have requested an opinion as to whether the Zoning and Land Regulation Committee (ZLR) should consider every conditional use permit (CUP) application, regardless of whether the respective town has voted to deny the application. In my opinion ZLR is required by state law to consider and act on every CUP application. Dane County Code of Ordinances (DCO) § 10.101(7)(c) sets forth a procedure for consideration of applications for conditional use permits. It includes a provision in § 10.101(7)(c)3bi that states that if the respective town denies the application "...the committee need take no further action." That provision is inconsistent with current state law that requires the zoning committee to make a decision on each application.

Prior to 2008, a town's role in the CUP approval process was advisory. Dane County Ordinance § 10.255(2)(c) stated that "the recommendations and findings of the town will be advisory to the committee." In 2008, the County Board adopted ORD. AMDT. 54, 07-08, that in effect made a town's denial of a CUP application binding on the County Board. Ordinance Amendment 54 amended § 10.255(2)(c)2 to state, "Either the town board or the zoning committee may deny an application for conditional use permit. If the town board action is denial no further action by the zoning committee is required." This provision was adopted under Wis. Stat. § 59.69(6) that authorizes a county to adopt such other additional procedures not in conflict with § 59.69. At that time there were no statutory procedures for consideration of conditional use permits.

In 2017, the Legislature adopted 2017 Act 67 which added statutory procedures for conditional use permits to Wis. Stat. § 59.69. That legislation created § 59.69(5e)(b)1 which states, "If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit." There is no statutory authority for the county to defer to the decision of a town. The statute is quite clear, if the applicant meets the standards in the zoning ordinance and any conditions imposed by the zoning committee, "...the county shall grant the conditional use permit." *See also* DCO

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§ 10.101(7)(c)3f. Inversely, “the zoning committee must deny a conditional use permit if it finds that the standards for approval are not met.” DCO § 10.101(7)(c)3e.

In 2019, the County Board adopted a comprehensive revision of the Zoning Ordinance. Dane County Ordinance § 10.101(7)(c)3bi now provides that, “If the town board denies the conditional use permit within the timeframes described in s. 10.101(7)(c)2, the zoning committee need take no further action.” Although the current provision does not state that the town’s decision is binding, it does give the zoning committee the option of not considering and rendering a decision on the CUP application.

In my opinion the language of DCO § 10.101(7)(c)3bi is inconsistent with state law. Wisconsin Stat. § 59.69(5e)(b)1 clearly requires the zoning committee to render its own decision on every CUP application. If the application meets the standards in the zoning ordinance and any conditions imposed by the committee, the county shall grant the application. The statute does not allow the zoning committee to simply defer to the town’s decision. Certainly, the committee can consider a town recommendation, but it cannot be bound by it. Therefore, even if a town has denied a CUP application under the current ordinance, the ZLR should independently review and render a decision on every CUP application.

Please contact me if I can provide additional assistance regarding this matter.

Sincerely,

David R. Gault

David R. Gault
Deputy Corporation Counsel