



Dane County Planning & Development Zoning Division

TO: Zoning and Land Regulation Committee Members

FROM: Hans Hilbert, Assistant Zoning Administrator

DATE: November 9, 2022

RE: **Ordinance Amendment 2022 OA-044 regarding conditional use permit appeals**

I. Summary

Based on input from the Board of Adjustment, Corporation Counsel, and the Dane County Towns Association, Dane County Planning and Development staff have prepared this ordinance amendment to provide for appeals of approvals or denials of conditional use permits to circuit court rather than the Board of Adjustment, and provide a certain time for commencement of a conditional use and correction of violations of conditions.

- A. Under the current ordinance, the Board of Adjustment is responsible for hearing any appeal of the decision of the Zoning and Land Regulation Committee related to the approval or denial of a conditional use permit. This amendment removes this responsibility of the Board of Adjustment, and allows appeals directly to circuit court as provided for by state law.
- B. Under the current ordinance, the recipient of a CUP is afforded a “reasonable opportunity” to correct violations of any condition of a CUP before the Zoning Committee may revoke the permit. This OA replaces “reasonable opportunity” with a defined 30 days.
- C. Prior to 2018, if a CUP was issued and the use was not instituted within the following year the permit became null and void. The comprehensive rewrite of Chapter 10 omitted this language. This amendment restores the expiration of conditional use permits that fail to be instituted within 1 year.

II. Background

In 2011, the County Board amended the conditional use process to provide Towns the ability to approve or deny conditional use permits. The ordinance included an appeal process similar to the previous ordinance. Decisions rendered on conditional use permits could be appealed to the full County Board. Between 2011 and 2016 there were several appeals of conditional use permits that were heard by the County Board. In 2014 the County Board amended Chapter 7 establishing a procedure for conditional use permit appeal, but even with the revised procedure the process was found to be very ineffective and time consuming for the County Board. None of the appeals heard by the County Board achieved the required three-fourth vote to overturn the decision of the Zoning Committee.

In 2016, Corporation Counsel raised concerns that legal arguments would be made regarding the appeal process due to the restrictive time limits placed on the appellant and the amount of information all county board members need to digest in order to render a decision. Counsel advised the Board that

the appeal process should be amended such that appeals are filed in Circuit Court. At the October 2016 DCTA meeting it was suggested that instead of a direct petition to Circuit Court that appeals should first go to the Dane County Board of Adjustment. After consideration of Counsel and the DCTA, the County Board amended the appeal process for decisions of conditional use permits to be heard by the Board of Adjustment.

Since March of 2017, the Zoning Committee's approval of four conditional use permits have been appealed to the Board of Adjustment. In two of the appeals the decision of the Zoning Committee was upheld, one decision was reversed based on an inconsistency in the record, and the remaining appeal was dispensed with due to lack of action by the appellant. Of the two decisions that were upheld, one proceeded to Circuit Court for certiorari review which is currently pending.

In hearing these appeals, members of the Board of Adjustment have expressed the same frustration found by the County Board between 2011 and 2016: the arguments made have been redundant to the ones made as part of the Town/ZLR Committee review; The appeals focused upon personal concerns, rather than concentrating on the process of which the decision was made by the committee and Town. Moreover, if the Board of Adjustment does find that an appeal requires remedy, options are limited that are fair and that do not require that the Board of Adjustment take on the role of elected officials at the Town and County Level.

In 2017 the Wisconsin Legislature adopted Act 67 codifying into law the governing of the issuance of conditional use permits. The statute includes language that, "If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10)". This amendment aims to address the concerns of the Board of Adjustment, allow an appeal to be based on the proper process, and align the appeal procedure with what is allowed by State law.

In regards to violations of conditions of permits, it is customary to work with the permit holder to achieve compliance in a timely and practical matter. The ordinance language of "reasonable opportunity" is difficult to enforce as it is vague and ambiguous. The department's standard procedure is to allow a permit holder 30 days to comply with all conditions found in violation prior to bringing the matter to the Zoning Committee for possible revocation. This 30 day period allows the permit hold to directly comply with all conditions or to submit a measurable corrective action plan and timeframe for administrative approval. In the event that a violation of a condition presents an imminent danger to the public, other enforcement actions, other than revocation, are implemented immediately.

Conditional use permits are issued for specific uses and require specific operational and site plans. Application for a conditional use permit is not intended to be open-ended, but to be granted for a use to be instituted as approved. Similar to if a conditional use has been approved, then becomes abandoned, the permit expires in one year. This amendment will require an approved conditional use to be instituted within one year of approval. A use not instituted in this time period will require the permit holder to obtain a new permit. The new permit will allow for public comment as well as approval from Town and County officials.

III. Timeline for Town action

All amendments to Chapter 10 requires Town Board action within 30 days of the County public hearing on the amendment. Town officials, please review the attached ordinance amendment and submit a town board action report by January 12, 2023. Action on the OA will be placed on a ZLR agenda following the January 12 deadline for committee action.