



DANE COUNTY PLANNING & DEVELOPMENT

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TO: ZLR Committee members
FROM: Roger Lane, Dane County Zoning Administrator
SUBJECT: Committee motions on Conditional Use Permits
DATE: May 3, 2023

Over the last several months County Staff have been going through the process of updating our staff reports for conditional use permits. As you may have notice that the reports are more robust including additional observations, findings of facts, and potential conditions. These improvements were made in order to assist the ZLR Committee in rendering the best decision on a conditional use permit and ensure compliance with the zoning ordinance. Staff hopes that the Committee finds the improvements useful.

As part of the decision on a conditional use permit, there are specific requirements found in the Wisconsin Statutes and in the Dane County Zoning Ordinance that need to be followed.

In 2018, the legislature added section 59.69(5e) to the statutes to provide requirements on conditional use permits. Under Section 59.69(5e)(b), the statutes requires approvals must be supported by evidence, the conditions must have purpose, be reasonable, and be agreeable to the applicant. If the CUP is denied, the decision must be supported by evidence as well. See below for the exact language:

59.69(5e)(b)

1. 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. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
2. The requirements and conditions described under subd. 1. 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 county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.

The statute uses the term "substantial evidence". It is important to note that substantial evidence is defined as "what a reasonable person would accept" not just speculation. See below:

59.69(5e)(a)2.

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.

The Dane County Zoning Ordinance has requirements regarding actions on conditional use permits. The ZLR Committee shall make findings of fact and make a determination on whether or not the proposal meets the 8 standards including any special requirements for the specific land use. See DCCO 10.101(7)(c)2. below:

- e. Prior to granting or denying a conditional use, the zoning committee shall make written findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the following standards:
 - i. General standards for approval of a conditional use under s. 10.101(7)(d);
 - ii. Any prescribed standards specific to the applicable zoning district.
 - iii. Any prescribed standards specific to the particular use under s. 10.103.
- f. The zoning committee must deny a conditional use permit if it finds that the standards for approval are not met.
- g. The zoning committee must approve a conditional use permit if it finds that the standards for approval are met.

The ZLR Committee rules and procedures Section V, Action Items, provides clarity to a simple motion to approve a conditional use permit, if made. The language notes the understanding that the Committee's action follows Zoning Ordinance Section 10.101(7)(c)2.

- f. In order to shorten discussion, the following general rules of motion making shall apply.
Conditional Use Permits – Unless otherwise indicated, a **motion to approve a Conditional Use Permit**, shall mean that the Committee has made affirmative findings of fact for the standards enumerated in §10.101(7)(d), and, if applicable, the relevant standards for particular uses in §10.103, and/or the standards applicable to conditional uses in a farmland preservation zoning district in §10.220(1)(a), Dane County Code of Ordinances.

In order to ensure compliance with the requirements, Staff is suggesting that the following motions be used:

If a motion is made in support of a conditional use permit, County Staff is suggesting that the following language be used in the motion:

Motion to approve the CUP based on the findings of fact as noted in the staff report and it has been determined that the CUP meets the 8 standards of obtaining a CUP with the conditions as noted in the staff report.

If a motion is made in opposition of the conditional use, County Staff is suggesting that the following language be used in the motion:

Motion to deny the CUP based on the findings of fact as noted in the staff report and it has been determined that the CUP does not meet Standard(s) (the staff report will list which standards failed) in obtaining a CUP.