

# Memo

To: Plan Commission, Village Board

Fr: Trevor Fuller, Planning and Zoning Administrator

Re: ACTION RE: APPROVAL OF AMENDMENT TO ARTICLE VII OF CHAPTER 475 OF THE VILLAGE ORDINANCES, CONDITIONAL USES

Date: 20 October 2017

The Plan Commission has been discussing amending Chapter 475 of the Village Ordinances; the Zoning Code. Recent discussions have been around stop-gap solutions to allow for more mixed-use development. Both Brown County and the Center for Land Use Education have recommended adding additional uses to the Commercial District by way of a Conditional Use Permit as a possible stop-gap solution.

Before additional uses can be added as conditional uses, it is suggested that our Conditional Use Permit process be updated to be more specific in required plans needed to make an informed decision. Attached is the Special (Conditional) Use Permit ordinance from the City of West Allis.

The Plan Commission is asked to review the language from West Allis and make the recommendation of whether or not staff should pursue incorporating some of the requirements into our Conditional Use ordinance.

*The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.*

#### **12.16 Special Uses.**

- (1) Purpose. Within the Zoning District, there are various permitted uses. There are also various other uses which are required for the public convenience but are potentially incompatible with permitted uses and which can have a deleterious impact on the surrounding area. This impact cannot be predetermined or controlled by general regulations. In addition, these special uses cannot always be confined to specific Zoning Districts. Therefore, in order to ensure compatibility with the neighborhoods in which they may be located, it is necessary that these special uses not be permitted as a matter of right, but only after appropriate review and approval as provided by this Section.
- (2) Authority to Grant. Following due notice and a public hearing, special uses may be granted by the Common Council, as provided under the provisions of the Section, in the respective Zoning Districts in which they are permitted.
- (3) Application. An application for a special use shall be filed with the office of the City Clerk on a form prescribed by the Common Council. The application will include the information prescribed by the Common Council as well as a written statement by the applicant and appropriate supporting materials sufficient to demonstrate that the proposed use will conform to the standards set in Subsection (8) below.

The application will also be accompanied by a designated filing fee. A schedule of fees has been set by the Common Council and is available in the office of the City Clerk.

- (4) Application Materials. Where appropriate, any or all of the following materials shall accompany an application for a special use. An applicant shall confer with the office of the City Planner prior to submittal to determine which materials are necessary for the specific application.

#### **Application for Special Use Permit**

##### **Application Checklist**

- Completed Special Use Application
  - Written Statement to Common Council Stating Reasons for the Request
  - Filing Fee
  - Current Property Survey
  - Scaled Site Plan (See Sec. 12.13 for Site Plan Requirements)
  - Elevations of Structures
  - Schedule and Examples of Exterior and Interior Materials
  - Landscaping Plan Including Fencing, Screening, Plantings, Paving and Parking
  - Maps Showing Existing and Proposed Topography
  - Map Showing All Easements
  - Signage and Lighting Plans
  - Storm Drainage Plan for Site
- (5) Application Process. Upon receipt of a proper application and appropriate supporting materials, the Common Council shall refer the application to the City Plan Commission and the Safety and Development Committee of the Common Council for their recommendations. The Common Council shall then, within a reasonable time, schedule and hold a public hearing on each request for a special use. The Common Council may elect to hold the public hearing itself or it may designate either the Safety and Development Committee of the Common Council or the City Plan Commission to hold

the public hearing. If either of these latter bodies are designated to hold the public hearing, the Common Council will be presented with written proposed findings of fact and written recommendations of the hearing prior to making a final decision on the application.

- (6) Notice of Public Hearing. Due notice of a public hearing will be as follows:
  - (a) The City Clerk will give notice of the hearing by publication as a Class II Notice, under Chapter 985 of the Wisconsin Statutes, in the official City newspaper.
  - (b) The City Clerk will mail the notice of the hearing to the applicant, his agent or attorney, at least ten (10) days before the date of the public hearing.
  - (c) The City Clerk shall also, to the extent practical, mail the notice of public hearing to the owners of record, as listed in the office of the City Assessor, of all property within two hundred (200) feet of the property for which the special use has been requested. Compliance with this paragraph shall not be a requirement of proper legal notice and no hearing or action taken as a result of a hearing shall be invalid or illegal because of a failure to mail the notice provided for in this paragraph.
- (7) Decision.
  - (a) The Common Council will render its written decision within sixty (60) days of the close of the public hearing. The written decision will include all the reasons for granting or denying the permit, including specific reference to the standards found in Subsection (8) below and a record of the vote of the Common Council. The City Clerk will mail the written decision to the applicant.
  - (b) A majority vote of the Common Council is necessary to permit or deny a special use. [**Ord. 6606, 2/5/2002, repeal of (c)**]
- (8) Standards for Approval of a Special Use. No application for a special use shall be granted by the Common Council unless it finds that all of the following conditions are present:
  - (a) That the establishment, maintenance or operation of the special use will not be detrimental or endanger the public health, safety, morals, comfort or general welfare and will not otherwise conflict with the purpose and intent of this Subchapter.
  - (b) That the use, value and enjoyment of other property in the surrounding area for permitted uses will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use.
  - (c) That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for permitted uses in the Zoning District.
  - (d) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
  - (e) That adequate measures have been or will be taken to provide ingress and egress as designated so as to minimize traffic congestion in the public streets.
  - (f) That the special use will comply with all additional regulations imposed on it by the particular provision of this Subchapter authorizing such use. [**Ord. 6606, 2/5/2002**]
- (9) Regulations, Conditions and Restrictions. [**Ord. 6606, 2/5/2002**]
  - (a) In granting any special use, the Common Council shall have the authority to change the minimum or maximum requirements specified for such uses in the respective Zoning Districts and shall establish such regulations and impose such conditions and restrictions on the use as are reasonably necessary

to secure compliance with the standards set forth in this section and subchapter. [Ord. 6651, 1/7/2003]

- (b) The regulations that are established and any conditions and restrictions that are imposed shall be expressly set forth in the resolution granting the special use and shall govern the development, use and occupancy of the property, subject to such other required permits and approvals, including, but not limited to site and architectural approvals under Section 12.13 of this Subchapter and a building permit under Chapter 13 of this Code.
- (10) Modifications. No alteration, extension or other modification of a special use shall be permitted unless specifically approved by the Common Council. For the purpose of this section, the term "use" shall include buildings, structures and improvements located on the premises. Any application for an alteration, extension or other modification will be filed and processed as an original application under this section. Maintenance, repair or renovation of existing buildings, structures or improvements and alterations, extensions or other modifications of such buildings and structures which do not increase, intensify, expand or substantially change the character of the special use do not require approval by the Common Council. [Ord. 6606, 2/5/2002]
- (11) Limitation. [Ord. 6606, 2/5/2002]
- (a) Any special use approved by the Common Council shall be construed to run with the land and benefit all future owners and occupants of the affected premises, unless the same shall lapse or be terminated as herein provided.
  - (b) Any special use approved by the Common Council shall lapse and become null and void one (1) year from and after that approval if the use has not commenced, construction is not underway, or the owner has not obtained a valid building permit. If construction is underway or a building permit has been granted after one (1) year from the date of approval, the approval will expire if construction is not completed within 24 months of the granting of the special use permit. The Common Council may grant an extension of these time limitations without a public hearing by resolution reauthorizing the special use in accordance with the following criteria: [Ord. O-2005-0004, 1/4/2005; Ord. O-2007-0033, 9/4/2007]
    - 1. The applicant requesting the extension shall complete a planning application available from the Department of Development and shall submit a two-hundred-fifty-dollar extension fee. The fee may be waived at the discretion of the Director of the Department of Development.
    - 2. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start.
    - 3. The request for extension shall be submitted within sixty (60) days of the expiration of the special use permit.
    - 4. The extension, if granted, shall be valid for a period of six (6) months. If no building permit has been issued and construction has not commenced within six (6) months from and after the extension has been granted, the special use shall become null and void.
  - (c) Any special use approved by the Common Council shall lapse and become null and void if the use has been abandoned or discontinued for a period of one (1) year.
- (12) Effect of Denial. No application for a special use which has been denied, wholly or in part, by the Common Council may be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of new information or changed conditions which are found to be of a material nature by the Common Council. Once the Common Council has determined that the information or changed condition is material, the applicant is entitled to a rehearing upon submission of one-half

(1/2) of the filing fee for a new special use application. **[Ord. 6651, 1/7/2003]**

- (13) Termination of Special Use. The Common Council may terminate a special use after a public hearing is held before the Safety and Development Committee and a recommendation is given by the Committee to the Common Council, if any of the following determinations are made: **[Ord. 6606, 2/5/2002; Ord. O-2008-0027, 7/1/2008]**
- (a) The special use has not continued in conformity with the conditions imposed in the approval or in any subsequent amendments to it.
  - (b) A change in the character of the surrounding area or in the special use itself has caused the special use to become incompatible with the surrounding uses.
  - (c) The special use has had a demonstrably negative impact upon the surrounding area. **[Ord. 6651, 1/7/2003]**
  - (d) Construction is not underway or the application has not been granted for a valid building permit after one (1) year of Common Council approval. If construction is underway or a building permit has been granted after one (1) year from the date of approval, the approval will expire if construction is not completed within twenty-four (24) months of the Common Council decision. **[Ord. O-2007-0033, 9/4/2007]**
  - (e) The person or entity granted the special use violates, allows or suffers the violation of the ordinances of the City of West Allis, the State of Wisconsin or the United States on the premises covered by the special use. **[Ord. O-2010-0008, 9/20/2011]**
- (14) Appeals. Any person aggrieved by a decision of the Common Council on an application for special use permit may seek judicial review of the decision as provided by law. **[Ord. 6278, amend, 12/17/1996; Ord. 6606, 2/5/2002]**