

## Ordinance 070620-02

### An Ordinance Amending Section 18-246 Regarding Conditional Use Permit

The Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin, do ordain as follows:

#### SECTION 1.

Section 18-246., Conditional use permit shall be amended as follows:

Sec. 18-246. - Conditional use permit.

- (a) *Purpose.* Pursuant to Wis. Stats. § 62.23, the purpose of this section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed conditional uses.
- (b) *Explanation of conditional uses.* Certain uses are of a special nature or certain circumstances make impractical the predetermination of permissibility. In these cases, specific standards, regulation, or conditions may be established in these individual situations.
- (c) *Limited conditional uses.* Limited conditional uses are those in which the village board has found that any of the following should be of lesser permanence than regular conditional uses, and the duration or term of existence may be established until time certain or be limited to a future happening or event at which time the same shall terminate:
  - (1) Their particularly specialized nature.
  - (2) Their particular locations within a district.
  - (3) The peculiar unique relationships or needed compatibility of uses to involved individuals.
  - (4) Any other reason(s) the board deems specially relevant and material to delimit the scope thereof.
- (d) *Initiation of request.* Proceedings for approval of a conditional use may be initiated by an application of the owner(s) of the subject property.
- (e) *Application.* Conditional use permit applications shall be printed on an application form provided for the purpose and filed with the village clerk. Said application shall be accompanied by a fee in accordance with the village fee schedule. In addition to all information required on the application form, the applicant shall supply the following:
  - (1) A map of the subject property at a scale of not less than one inch = 800 feet depicting:
    - a. All lands for which the conditional use is proposed and all other lands within 200 feet of the boundaries of the subject property.
    - b. Names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County.
    - c. Current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control.
    - d. All lot dimensions of the subject property.

- e. A graphic scale and a north arrow.
  - (2) Written description of the proposed conditional use including the type of activities, buildings, structures, and off-street parking proposed for the subject property and their general locations.
  - (3) A site plan of the subject property if proposed for development. Said site plan shall conform to all requirements of section 18-245. If the proposed conditional use is a group or large development (per section 18-167), a proposed preliminary plat or conceptual plat may be substituted for the required site plan, provided said plat contains all information required on said site plan.
  - (4) Written justification for the proposed conditional use, including evidence that the application is consistent with the comprehensive plan.
- (f) *Review by the zoning administrator.*
- (1) The zoning administrator shall determine whether the application is complete and fulfills the requirements of this chapter. If the application is determined to be incomplete, the zoning administrator shall notify the applicant.
  - (2) The zoning administrator shall review the application and evaluate whether the proposed amendment:
    - a. Is in harmony with the recommendations of the comprehensive plan.
    - b. Will result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety or general welfare, either as they now exist or as they may in the future.
    - c. Maintains the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.
    - d. The conditional use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities or services provided by public agencies serving the subject property.
    - e. The potential public benefits outweigh any and all potential adverse impacts of the proposed conditional use, after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts.
  - (3) The zoning administrator shall prepare a written report addressing subsections (e)(2)a. through (e)(2)e., above, to be forwarded to the plan commission for the commission's review and use in making its recommendation to the village board. If the zoning administrator determines that the proposal may be in conflict with the provisions of the comprehensive plan, the zoning administrator shall note this determination in the report.
- (g) *Public hearing.* Within 60 days of filing of a complete application, the plan commission shall hold a public hearing in compliance with section 18-242 to consider the request.
- (h) *Review and recommendation by the plan commission.*
- (1) Within 60 days after the public hearing, the plan commission may make a written report to the village board, and/or may state in the minutes its recommendations regarding the application. Said report and/or minutes may include a formal finding of facts developed and approved by the plan commission concerning the requirements of subsection (e)(2), above.

In evaluating a request for conditional use permit, the plan commission shall review the application in regard to the following factors in making its recommendation to the village board:

- a. Consistency with the comprehensive plan,
- b. Site plan layout,
- c. Existing and proposed structures,
- d. Potential impacts on surrounding properties,
- e. Compatibility with the nearby pattern of development,
- f. Design of parking areas,
- g. Driveway locations and access to adjacent roads/roadway system,
- h. Traffic generation, circulation and potential congestion,
- i. Infrastructure/utilities including drainage, sewerage, and water systems,
- j. Proposed business operations,
- k. Landscaping,
- l. Lighting,
- m. Type of construction,
- n. Construction commencement and completion dates, and
- o. Sureties.

(2) If the plan commission fails to make a report within 60 days after the filing of a complete application, the village board may hold a public hearing within 30 days after the expiration of said 60-day period. Failure to receive said written report from the plan commission shall not invalidate the proceedings or actions of the village board. If a public hearing is necessary, the village board shall provide notice per the requirements so section 18-242.

(i) *Review and action by the village board.*

(1) The village board shall consider the plan commission's recommendation regarding the proposed conditional use. The village board may request additional information and/or reports from the plan commission, zoning administrator, and/or the applicant. The board may take final action on the application at the time of its initial meeting, or may continue the proceedings.

(2) The village board may approve the conditional use as originally proposed, may approve the proposed conditional use with modifications, or may deny approval of the proposed conditional use. A proposed conditional use shall be denied unless the applicant can demonstrate to the satisfaction of the village that the proposed conditional use will not create undesirable impacts on nearby properties, the environment, or the community as a whole. Any imposed conditions must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. Any imposed condition must also be related to the purpose of the ordinance and be based on substantial evidence. The applicant must demonstrate that the application and all requirements and conditions established by the village relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The Village's decision to approve or deny the permit must be supported by substantial evidence. 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. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the village ordinance or those imposed by the plan commission, the village shall grant the conditional use permit.

- (3) Any action to amend the provisions of proposed conditional use requests requires a majority vote of the board. The village board's approval of the requested conditional use permit shall be considered the approval of a unique request, and shall not be construed as precedent for any other proposed conditional use.
- (4) If the village board wishes to make significant changes in the proposed text amendment, as recommended by the plan commission, then the procedure set forth in Wis. Stats. § 62.23(7)(d) shall be followed prior to board action.
- (j) *Effect of denial.* No application which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the zoning administrator.
- (k) *Initiation of land use or development activity.* Upon approval by the village board, the applicant must demonstrate that the proposed conditional use meets all general and specific conditional use requirements in the site plan required for initiation of development activity on the subject property per section 18-245. Once a conditional use is granted, no erosion control permit, site plan approval, occupancy permit, or building permit shall be issued for any development which does not comply with all requirements of this chapter.
- (l) *Termination of an approved conditional use.* Any conditional use found not to be in compliance with the terms of this chapter shall be considered in violation of this chapter and shall be subject to all applicable procedures and penalties. A conditional use may be revoked for such a violation by majority vote of the village board.
- (m) *Time limits on the development of conditional use.* The start of construction of any and all conditional uses shall be initiated within 365 days of their approval by the village board and shall be operational within 730 days of said approval. Failure to initiate development within this period shall automatically constitute a revocation of the conditional use. For the purposes of this section, "operational" shall be defined as the granting of an occupancy permit for the conditional use. Prior to such a revocation, the applicant may request an extension of this period. Said request shall require formal approval by the village board and shall be based upon a showing of acceptable justification (as determined by the village board).
- (n) ~~Reserved.~~ *Duration, transfer, or renewal.* Conditions of approval may include limiting the conditional use permit to a particular person, company or use, and to also place a "sunset date" time limit on the conditional use permit.
- (o) Reserved.
- (p) *Formerly approved conditional uses.* A use now regulated as a conditional use which was approved as a legal land use, either permitted by right or as a conditional use, prior to the effective date of this chapter shall be considered as a legal, conforming land use so long as the previously approved conditions of use and site plan are followed. Any modification of the previously approved conditions of use or site plan shall require application and village consideration under this section.
- (q) *Discontinuing an approved conditional use.* Any and all conditional uses which have been discontinued for a period exceeding 365 days shall have their conditional use invalidated

automatically. The burden of proof shall be on the property owner to conclusively demonstrate that the subject conditional use was operational during this period.

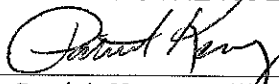
- (r) *Change in ownership.* All requirements of the approved conditional use shall be continued regardless of ownership of the subject property. Modification, alteration, or expansion of any conditional use without approval by the village board shall be considered in violation of this chapter and shall be grounds for revocation of said conditional use approval. For bed and breakfast land uses, the granting of a conditional use permit shall be valid while said property is owned by the owner at time of conditional use approval.
- (s) *Successor conditional uses.* A successor conditional use is an instance where a use regulated as a conditional use is proposed for the same location as the same type of land use, where the original use has been granted a conditional use permit. Successor conditional uses shall require a new conditional use permit for a change in business ownership.
- (t) In instances where the zoning administrator determines that a land use permitted by right or other form of development violates the purpose or intent of this chapter as described in sections 18-3 and 18-4, the zoning administrator may request in writing that said use or development be subject to the requirements of this section. This request shall be reviewed and acted upon by the village board. A majority vote of the village board shall be sufficient to apply the requirements of this section.

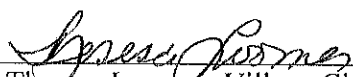
## SECTION 2.

This Ordinance shall be in full force and effect upon its passage, approval and publication as required by law.

**PASSED AND ADOPTED** by the Village Board of the Village of Fontana-on-Lake Geneva, Walworth County, Wisconsin, this 6<sup>th</sup> day of July, 2020.

VILLAGE BOARD OF THE VILLAGE OF  
FONTANA-ON-GENEVA LAKE

By:   
Patrick Kenny, Village President

Attest:   
Theresa Loomer, Village Clerk