

## ARTICLE 6 CONDITIONAL USE PERMITS

### Sec. 6.01 Intent

These conditional permit review procedures are instituted to provide an opportunity to use a lot for an activity which, under certain circumstances, would be detrimental to other permitted land uses but which can be permitted under circumstances unique to the proposed location and subject to conditions acceptable to the community and providing protection to adjacent land uses. These procedures are adopted to provide guidelines for the Village Planning Commission to follow in arriving at any decision, over which such Commission has jurisdiction, and to provide for the public health, safety, morals, and general welfare, as well as to provide for the interest of the property owner.

### Sec. 6.02 Procedures

- A. An application for the approval of a conditional shall be made by an owner of an interest in the land on which the conditional use is to be located, to the Village Clerk accompanied by the necessary fees and documents as provided herein.
- B. The application shall be accompanied by a site plan complying with the requirements of Section 5.02C of this ordinance. Plot plans may be used for CUP requests involving existing buildings as outlined in Section 5.02.A
- C. If the proposed conditional use is not allowed in the district the subject parcel is zoned, the applicant must first apply for and receive the necessary rezoning, following the procedures outlined in Article 13 before a CUP application may be considered.
- D. The CUP application shall be referred by the Village Clerk at least twenty-eight (28) days prior to the Planning Commission meeting at which it shall be reviewed to the Village Planning Commission, Fire Chief, Police Chief and DPW Director for its review and comment.
- E. The Commission shall hold a public hearing and shall hear any person wishing to express an opinion on the application and review the conditional use permit application at the next regular meeting, following receipt of the application, that provides adequate time to notify adjacent property owners and post a notice of public hearing, as required.
  - a. The Zoning Administrator shall post a notice of such public hearing in a newspaper of general circulation within the Village not less than fifteen (15) days before the public hearing.
  - b. The Zoning Administrator shall mail a copy of such notices to each resident and owner of all properties as listed on the tax roll and located within three hundred (300) feet from the property involved in the application not less than fifteen (15) days before the public hearing
- F. The Commission shall, within thirty days (30) of the public hearing at which the application was considered, advise the applicant, the Village Zoning Administrator, and the Village Clerk of its finding regarding the request.
- G. Basis for Decision. In making their decision, the Planning Commission shall identify how the application does or does not meet the requirements for approval of site plans in Article 5 and for Conditional Uses in Article 6. Any proposed conditions shall be included in their decision, together with the reasons for such conditions.

### **Sec. 6.03 Standards**

No conditional use shall be approved by the Planning Commission unless they find:

- A. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or general welfare.
- B. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor shall it substantially diminish and impair property values within its neighborhoods.
- C. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- D. That adequate utilities, access roads, drainage and necessary facilities have been or are being provided.
- E. That adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
- F. That the conditional use shall, in all other respects conform to the applicable regulations of the district in which it is located, any specific requirements established for that use in Article 11 and to any additional conditions or procedures as specified in Section 6.04.

### **Sec. 6.04 Conditions and Guarantees**

- A. The Planning Commission may place conditions on approval of a conditional use permit including conditions that require conformance with the standards of another local, county or state agency such as, but not limited to, the County Drain Commissioner, County Health Department and the Michigan Department of Environmental Quality. They may do so when such conditions would achieve all of the following:
  - 1. Would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
  - 2. Would protect the natural environment and conserve natural resources and energy.
  - 3. Would ensure compatibility with adjacent uses of land.
  - 4. Would promote the use of land in a socially and economically desirable manner.
- B. In determining appropriate conditions, the Planning Commission shall ensure that there is a rational nexus and rough proportionality between the condition imposed and the impact it is mitigating. As used in this ordinance, rational nexus refers to a condition that clearly is intended to address an impact anticipated as a result of the approval of the proposed used and rough proportionality refers to the reasonable correlation between the impact of the proposed impact the extent of the condition to address that anticipated impact.
  - 1. There is a rough proportionality between the cost to the developer to provide an improvement in relationship to the impact to be mitigated.
  - 2. There is a reasonable connection between the condition imposed and the impact it is mitigating.

### **Sec. 6.05 Performance Guarantees**

The Planning Commission shall have the right and authority to require the developer to file with the Village Zoning Administrator, at the time of application for a building permit, a performance bond in such amounts as may be determined by the Planning Commission to ensure the development of the site in accordance with the approved site plan, conditioned upon such

property construction and development. Such bond, if required, shall continue for the duration of the construction and development of the site and shall be in a face amount which covers the estimated total cost of construction and site development.

- A. Performance guarantee as used herein shall mean a cash deposit, certified check or irrevocable bank letter of credit in the amount of the estimated cost of the improvements to be made as determined by the applicant and verified by the Zoning Administrator.
- B. Where the Planning Commission requires a performance guarantee, said performance guarantee shall be deposited with the Village Treasurer prior to the issuance of a zoning permit. The Village of Otisville shall deposit the performance guarantee, if in the form of a cash deposit, certified check or performance bond in an account.
- C. An approved site plan shall also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building permit.
- D. In the event the performance guarantee deposited is a cash deposit or certified check, the Village of Otisville shall rebate to the applicant fifty (50) percent of the deposited funds when sixty (60) percent of the required improvements are completed as confirmed by the Zoning Administrator, and the remaining fifty (50) percent of the deposit funds when one hundred (100) percent of the required improvements are completed as confirmed by the Zoning Administrator. If a request is made by the applicant for a temporary certificate of occupancy without completion of required exterior improvements, the performance guarantee may be applied by said applicant to assure compliance with Zoning Ordinance standards and the specifications of the approved site plan.
- E. Upon the satisfactory completion of the improvements for which the performance guarantee was required, as determined by the Zoning Administrator, the Treasurer shall return to the applicant the performance guarantee deposited and any interest earned thereon.
- F. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the Village, the Village shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements. If the performance guarantee is not sufficient to allow the Village to complete the improvements for which it was posted, the applicant shall be required to pay the Village the amount by which the costs of completing the improvements exceeds the amount of the performance guarantee. Should the Village use the performance guarantee or a portion thereof, to complete the required improvements, any amount remaining after said completion shall be applied first to the Village's administrative costs in completing the improvement with any balance remaining being refunded to the applicant. If the applicant has been required to post a performance guarantee or bond with another governmental agency other than the Village of Otisville to ensure completion of an improvement associated with the proposed project prior to the Village's approval, the applicant shall not be required to deposit with the Village of Otisville a performance guarantee for that specific improvement. At the time the performance guarantee is deposited with the Village and prior to the issuance of a building permit, the applicant shall enter into an agreement incorporating the provisions hereof with the Village of Otisville regarding the performance guarantee.

**Sec. 6.06 Effect of Denial of a Conditional Use**

No application for a conditional use which has been denied wholly or in part by the Planning Commission shall be resubmitted for a period of one year from the date of said order of denial, except on the grounds of new evidence or proof of change or conditions found to be valid by the Planning Commission.

**Sec. 6.07 Time Limits**

In any case where a conditional use has not been established within 18 months after the date of granting such use, or when the use is abandoned for twelve consecutive months authorization of that use shall automatically be null and void without further action by the Planning Commission.

**Sec. 6.08 Revocation of Permit**

In any case where a conditional use is constructed or operated in a manner that violates the conditions placed on its approval or the general requirements of this ordinance, the Zoning Administrator shall schedule a public hearing before the Planning Commission following the notice requirements in Section 6.02E of this article for the applicant to show cause why their permit should not be revoked. If the Planning Commission determines that the property is out of compliance with the terms of its permit or this ordinance and that a procedure to bring them into compliance agreeable to the Planning Commission is not identified, the Planning Commission shall revoke the Conditional Use Permit.

**Sec. 6.09 Changes to Conditional Use Permit**

Any changes to the Conditional Use Permit, including changes in the uses permitted, revisions to the conditions for approval or changes to the site plan that require Planning Commission review must follow the application, review and approval process outlined in this article.