

Conditional Use Permit Procedures

- 1) Letter of Intent, application materials and fee are submitted to the Town by applicant.
- 2) Administrator/Clerk/Treasurer reviews the application for completeness, ensuring it includes information on how the six standards are met or how they plan to meet them.
- 3) Once it is determined that the application is sufficient, Administrator/Clerk/Treasurer schedules a Joint Town Board and Plan Commission Public Hearing at the next possible Plan Commission meeting. No action on this item will be taken at the Public Hearing, but action may be taken on other matters before the Plan Commission.
- 4) A Class II notice of the hearing is published in the paper of record. This will consist of two insertions one week apart, the second of which is one week before the public hearing.
- 5) Public Hearing notices are mailed to property owners within 600 feet of the subject property. Public Hearing notices should include information regarding the new legislation and the types of evidence upon which decisions will be based. Notices will also include the initial deadline for providing written feedback, with a disclaimer that the deadline may be extended depending on the date of final Town Board action.
- 6) Public Hearing Protocol:
 - A. Role of Plan Commission and Town Board members at hearing
 1. Town Chair or designee presides over hearing
 2. Commission and Board members' role is to listen to testimony and gather information on how to address concerns raised
 3. Commission and Town Board members may ask questions of the applicant and anyone testifying, but should refrain from communicating an opinion or engaging in discussion, in order to remain impartial
 - B. Appearance slips:
 1. Should be submitted prior to the call to order of the hearing by anyone testifying during the hearing
 2. Provide name and contact information
 3. Indicate "for" or "against" or "for information only"
 4. Be retained by the Town as a record of those presenting testimony
 - C. Testimony:
 1. Substantial evidence cannot be "merely personal preferences or speculation"
 2. Testimony may require gathering additional information or quantifiable data
 - D. Record the hearing (audio recording):

1. Preserve the evidence for review and development of a written decision
2. Preserve the evidence for potential legal challenges

7) Public Hearing Procedures:

- A. Doors open no later than 15 minutes prior to start of hearing.
- B. As attendees enter the room, the Clerk/Deputy Clerk or designee asks them to sign in and provides a registration form and a public comment procedure document if they wish to speak.
- C. Clerk/Deputy Clerk or designee collects the registration forms and assigns a sequential number up until the posted hearing start time.
- D. Last call for registration forms is announced 2 minutes prior to start time.
- E. Registration forms are given to the Town Chair or designee.
- F. Public hearing is called to order at posted time by Town Chair or designee
- G. Clerk/Deputy Clerk or designee speaks about ACT 67, the need for substantial evidence, six standards, etc., using a prepared script (see attached).
- H. Applicant has five minutes to give a presentation on their CUP request which includes an explanation of how they have met, or plan to meet, the six CUP standards.
- I. Town Chair calls the names of registered speakers in the order that they were submitted to the Clerk/Deputy Clerk or designee.
 1. Speaker states their name and residence address
 2. Speaker indicates if they support, oppose or are speaking for informational purposes only
 3. Speaker directs comments to Town Board and Plan Commission in the five minute allotted time
 4. Clerk/Deputy Clerk or designee uses timer and notifies Town Chair when the time is up
 5. Town Board and Plan Commission members may ask follow up questions specifically related to the testimony. Town Board Chair ensures questions are brief and relevant.
- J. Town Chair or designee maintains order and ensures that comments are directed to the Board and Plan Commission only.
- K. Once all testimony is given, those present are notified that written comments may be submitted to townofburke@frontier.com until _____ (date of Town Board meeting that action is possible).
- L. Town Chair or designee restates for the public and for the record that no action will be taken at this time.
- M. Town Chair or designee reminds people present that this is a quasi-judicial action and Town Board and Plan Commission members cannot engage in discussion on this topic outside of the Public Hearing.
- N. Town Chair or designee informs those present that Dane County ZLR will also hold a Public Hearing on this matter and state the date if it is known.

- O. The Plan Commission and Town Board reflect on the testimony and determine the next steps.
 - P. Public hearing is closed.
- 8) Administrator/Clerk/Treasurer adds the item on the following month's Plan Commission agenda.
- A. Consult with professional staff (i.e. engineer) after Public Hearing and prior to this meeting OR invite professional staff to this meeting.
 - B. Any information gathered after the Hearing is available to the public upon request.
- 9) Plan Commission meeting procedures:
- A. Meeting packet will include any written comments received after the Public Hearing and written testimony from professionals (as applicable).
 - B. Applicant is given an opportunity to present their proposal, highlighting any changes made since the Public Hearing.
 - C. Commission members ask questions of the applicant and/or professional staff
 - D. Chair states that in accordance with Dane County Ordinance 10.255 (2)(h) the Commission will discuss the six standards of a Conditional Use Permit and possible conditions to meet the standards individually and vote on each. Chair also states that if all six standards are deemed to be met, the CUP will be approved and if any are deemed not to be met, the CUP may be denied. It may be possible for the Town and applicant to agree to certain conditions by stipulation and without having to prove that these conditions fulfill the substantial evidence standard.
- 1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
 - a. Town would want evidence demonstrating specific health or safety problems that this particular use is likely to cause to meet the substantial evidence standard.
 - 2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
 - a. Testimony from neighbors regarding their personal preferences does not constitute substantial evidence
 - b. Would likely need a consultant to give a more expert opinion

- c. This could generally be a difficult requirement upon which to base a denial
 3. 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.
 - a. Would likely need consultant testimony that this particular use would impede normal development
 4. That adequate utilities, access roads, drainage and other necessary site improvements have been made or are being made.
 - a. Would need consultant testimony to present facts that such improvements have not been made *and cannot be made* in this particular case
 - b. This requirement is one of the most supportable under the new law
 5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
 - a. See requirement 4 above
 6. That the conditional use shall conform to all applicable regulations of the district in which it is located.
 - E. Plan Commission will hear expert testimony if necessary (or review written testimony if obtained by professional experts beforehand). All standards must be deemed to be met in order to approve. Only one needs to be deemed as not met to deny.
 - F. Recommendation to approve, deny or impose conditions must be based on substantial evidence.
 - G. Plan Commission a) recommends approval with conditions based on substantial evidence, b) recommends denial based on substantial evidence, or c) tables action until the next meeting.
 - H. If the Plan Commission votes to table, the matter is placed on the next month's Plan Commission agenda.
- 10) After the Plan Commission has acted on the proposed CUP, it is scheduled for the next available Town Board meeting.
 - 11) Town Board meeting procedures
 - A. Meeting packet will include any written comments received after the Public Hearing and written testimony from professionals (as needed).
 - B. Applicant is given an opportunity to present their proposal, highlighting any changes made since the Public Hearing.

- C. Board members ask questions of the applicant and/or professional staff.
- D. Chair states that in accordance with 10.255 (2) (h) the Town Board will discuss the six standards of a Conditional Use Permit and possible conditions to meet the standards individually and vote on each. Chair also states that if all six standards are deemed to be met, the CUP will be approved and if any are deemed not to be met, the CUP may be denied. It may be possible for Towns and applicants to agree to certain conditions by stipulation and without having to prove that these conditions fulfill the substantial evidence standard.
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6. That the conditional use shall conform to all applicable regulations of the district in which it is located.
 - E. All standards must be deemed to be met in order to approve. Only one needs to be deemed as not met to deny.
 - F. Recommendation to approve, deny or impose conditions must be based on substantial evidence.
 - G. Town Board a) takes action to approve with conditions based on substantial evidence, b) takes action to deny based on substantial evidence, c) tables action until the next meeting, or d) refers the matter back to the Plan Commission for further review.
 - H. If it appears that Town action will not occur within 60 days after the Dane County Public Hearing, the Administrator/Clerk/Treasurer will provide written notification to the Dane County ZLR and request a 40-day extension.
 - I. Final action on the CUP must occur within 60 days after the Dane County Public Hearing or within 100 days if an extension has been granted.
 - J. Following action on the CUP by the Town Board, the Administrator/Clerk/Treasurer provides the Town Board Action Report to Dane County Zoning.