

ORDINANCE No. 18-3

AN ORDINANCE AMENDING ZONING CONDITIONAL USE PROVISIONS

The Village Board of the Village of Elk Mound, Dunn County, Wisconsin, do ordain as follows:

SECTION I. REPEAL AND ADOPTION OF PROVISIONS.

Sections 13-1-60 through 13-1-69 of the Village of Elk Mound Code of Ordinances are repealed and replaced by the following and Sections 13-1-70 through 13-1-72 are renumbered to Sections 13-1-71 through 13-1-73 respectively:

Sec. 13-1-60 Statement of Purpose—Conditional Uses.

The purpose of a conditional use is to provide a reasonable degree of discretion in determining the suitability of certain uses of a special nature, so as to make impractical their predetermination as a principal use in a district. The development and execution of this Article is based upon the division of the Village of Elk Mound into zoning districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use at a specific location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses. Such uses are classified as conditional uses, and are those uses specifically designated as conditional uses by the zoning district or which are classified as a conditional use under the review procedures in this Article. The listing of a use as a conditional use is not a legislative determination that the use is inherently in the public interest in that district. [See *AllEnergy Corp. v. Trempealeau County*, 2017 WI 52 (2017)].

Sec. 13-1-61 Authority of the Plan Commission and Village Board; Requirements.

- (a) **Authority; Intent.** The Village Board may authorize the Zoning Administrator to issue a conditional use permit after review, public hearing,

advisory recommendation from the Plan Commission and approval from the Village Board, provided that such conditional use and involved structure(s) are found to be in accordance with the purpose and intent of this Zoning Code and are further found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or the community. Such Village Board action, and the resulting conditional use permit, when, shall specify the period of time for which effective, if specified, the name of the permittee, the location and legal description of the affected premises. Prior to the granting of a conditional use, the Village Board shall make findings based upon the evidence presented that the standards herein prescribed are being complied with.

- (b) **Conditional Uses Adjacent to Freeways.** Any development for which a conditional use permit is requested within five hundred (500) feet of the existing or proposed rights-of-way of freeways, expressways and within one-half (1/2) mile of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the traffic way. The Plan Commission and/or Village Board shall request such review and await the highway agency's recommendation for a period not to exceed twenty (20) days before taking final action.
- (c) **General Authority to Require Conditions.** Per Section 13-1-68, conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operation control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards or parking requirements may be recommended by the Plan Commission and required by the Village Board upon their findings that these are necessary to fulfill the purpose and intent of this Chapter.
- (d) **Compliance With Other Zoning Conditions.** Compliance with all other provisions of this Chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards shall be required of all conditional uses.

Sec. 13-1-62 Initiation of Conditional Use Request.

Any person, firm, corporation or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest, or an exclusive possessory interest, and which is specifically enforceable in the land for which a conditional use permit is sought may file an application to use such land for one (1) or more of the conditional uses provided for in this Article in the zoning district in which such land is located, or a conditional use substantially similar to a listed conditional use.

Sec. 13-1-63 Application for Conditional Use.

- (a) **Application Filing Requirements.** An application for a conditional use permit, accompanied with the application fee prescribed by the Village, shall be filed on a form prescribed by the Village. Such applications shall be forwarded to the Plan Commission upon receipt by the Zoning Administrator or Village Clerk-Treasurer.
- (b) **Required Plans/Information.** The plans/information required for review of all conditional use permit applications shall generally consist of any or all of the following, as required by the Zoning Administrator:
- (1) **Site Development Plan.** A site development plan, which shall include and address:
 - a. Location of all buildings on lots, including both existing and proposed structures.
 - b. Location and number of existing and proposed parking spaces.
 - c. Vehicular circulation.
 - (2) **Dimension Plan.** A dimension plan, which shall include and address:
 - a. Lot dimensions and area.
 - b. Dimensions of proposed and existing structures.
 - c. Setbacks of all buildings located on property in question.
 - d. Architectural elevations.
 - (3) **Grading Plan.** A grading plan, which shall include and address:
 - a. Existing contour.
 - b. Proposed changes in contour.
 - c. Drainage configuration.
 - (4) **Landscape Plan.** A landscape plan, which shall include and address:
 - a. Location of all existing major trees, and which trees are proposed to be removed.
 - (5) **Statement.** A written statement on why the conditional use is being applied for and what use is intended for the property.
- (c) **Additional Information.** In order to secure information upon which to base its determination, the Zoning Administrator may require the applicant to furnish, in addition to the information required above and for a building permit, the following information:
- (1) **Contours; Soil Types.** A plan of the area showing contours, soil types, high water mark, ground water conditions, bedrock, slope and vegetation cover.
 - (2) **Location of Buildings; Parking Areas.** Location of buildings, parking areas, traffic access, driveways, walkways, open spaces, landscaping and lighting.
 - (3) **Building and Utilities Plans.** Plans for buildings, sewage disposal facilities, water supply systems, and arrangements of operations.
 - (4) **Filling/Grading Plan.** Specifications for areas of proposed filling, grading, lagooning or dredging.
 - (5) **Other Information.** Other pertinent information necessary to determine if the proposed use meets the requirements of this Chapter.

Sec. 13-1-64 Plan Commission Review.

Upon receipt of the application and the information required by Section 13-1-63 above, the request for a conditional use permit shall be placed on the agenda of the first Plan Commission meeting occurring after ten (10) days from the date of submission. The request shall be considered as being officially submitted when all the information requirements, including the payment of all applicable fees, are complied with. At such meeting, the Plan Commission shall make an advisory recommendation regarding the application and a record of the proceedings shall be kept in such a manner and according to such procedures as the Plan Commission shall prescribe from time to time. The Village Board and/or Plan Commission can, on their own motion, apply conditional uses when applications for rezonings come before their bodies.

Sec. 13-1-65 Public Hearing on Application; Notice.

- (a) **Hearing Requirements.** A public hearing shall be held on all conditional use permit applications. The public hearing may be held either by the Plan Commission or Village Board. Notice of the time, place and purpose of such hearing shall be given by publication of a Class 2 Notice under Chapter 985, Wis. Stats., a minimum of ten (10) days prior to the public hearing in the official Village newspaper. Notice of the time, place and purpose of such public hearing shall also be sent to the applicant, the Zoning Administrator, members of the Village Board and Plan Commission, and the owners of record as listed in the office of the Village Assessor who are owners of property in whole or in part situated within one hundred (100) feet of the boundaries of the properties affected, said notice to be sent at least ten (10) days prior to the date of such public hearing, except that in the case of livestock facility siting conditional use hearings, such notice shall be sent to owners of property within three hundred (300) feet.
- (b) **Incomplete Notice.** Failure to fully comply with the notice to adjacent property owners shall not, however, invalidate any previous or subsequent action on the application.

Sec. 13-1-66 Standards—Conditional Uses.

- (a) **Standards.** No application for a conditional use shall be recommended for approval by the Plan Commission, or approved by the Village Board, unless the following conditions are present:
 - (1) That the applicant has demonstrated 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. Per Sec. 62.23(7)(de)b., Wis. Stats., "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.

- (2) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - (3) 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 the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
 - (4) 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.
 - (5) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
 - (6) 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.
 - (7) That the conditional use shall conform to all applicable regulations of the district in which it is located.
 - (8) That the proposed use does not violate floodplain regulations governing the site.
 - (9) That adequate measures have been or will be taken to prevent and control water pollution, including sedimentation, erosion and runoff.
- (b) **Application of Standards.** When applying the above standards to any new construction of a building or an addition to an existing building, the Village Board and Plan Commission shall bear in mind the statement of purpose for the zoning district such that the proposed building or addition at its location does not defeat the purposes and objective of the zoning district and the Village Comprehensive Plan.
- (c) **Additional Considerations.** In addition, in passing upon a conditional use permit application, the Plan Commission and Village Board shall also evaluate the effect of the proposed use upon:
- (1) The maintenance of safe and healthful conditions.
 - (2) The prevention and control of water pollution including sedimentation.
 - (3) Existing topographic and drainage features and vegetative cover on the site.
 - (4) The location of the site with respect to floodplains and floodways of rivers and streams.
 - (5) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
 - (6) The location of the site with respect to existing or future access roads.
 - (7) The need of the proposed use for a shoreland location.
 - (8) Its compatibility with uses on adjacent land.

- (9) The amount of liquid wastes to be generated and the adequacy of the proposed disposal systems.

Sec. 13-1-67 Denial of Application for Conditional Use Permit.

When an advisory recommendation of denial of a conditional use application is made by the Plan Commission or an actual denial by the Village Board, the Plan Commission and/or Village Board shall furnish the applicant, in writing, those standards that are not met and enumerate reasons the Plan Commission and/or Village Board has used in determining that each standard was not met. Such findings may be in the form of meeting minutes.

Sec. 13-1-68 Conditions and Guarantees Applicable to All Conditional Uses.

The following conditions shall apply to all conditional uses:

- (a) **Conditions.** Prior to the granting of any conditional use, the Plan Commission may recommend and the Village Board may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in Section 13-1-66 above. Any condition imposed must be related to the purpose of the Zoning Code and be based on substantial evidence. In all cases in which conditional uses are granted, the Plan Commission may recommend and the Village Board shall require such evidence and guarantees as deemed necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such conditions may include specifications for, without limitation because of specific enumeration:
 - (1) Landscaping;
 - (2) Type of construction;
 - (3) Construction commencement and completion dates;
 - (4) Sureties;
 - (5) Lighting;
 - (6) Fencing;
 - (7) Operational control;
 - (8) Hours of operation;
 - (9) Traffic circulation;
 - (10) Deed restrictions;
 - (11) Access restrictions;
 - (12) Setbacks and yards;
 - (13) Type of shore cover;

- (14) Specified sewage disposal and water supply systems;
 - (15) Planting screens;
 - (16) Piers and docks;
 - (17) Increased parking;
 - (18) Conditions pertaining to permit duration, transfer or renewal; or
 - (19) Any other requirements necessary to fulfill the purpose and intent of this Chapter.
- (b) **Site Review.** In reviewing each application and making its recommendation, the Plan Commission shall evaluate each application and may request assistance from any source which can provide technical assistance. The Plan Commission may review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation/use.
- (c) **Signage.** Signage shall be in compliance with municipal sign regulations.
- (d) **Extent of Use.** At no time shall the proposed conditional use utilize more than thirty-five percent (35%) of the gross floor area of the conforming use.
- (e) **Alteration of Conditional Use.** No alteration of a conditional use shall be permitted unless first approved by the Village Board.
- (f) **Architectural Treatment.** Proposed architectural treatment will be in general harmony with surrounding uses and the landscape. To this end, the Village Board may require the use of certain general types of exterior construction materials and/or architectural treatment.
- (g) **Sloped Sites; Unsuitable Soils.** Where slopes exceed six percent (6%) and/or where a use is proposed to be located on areas indicated as having soils that are unsuitable or marginal for development, on-site soil tests and/or construction plans shall be provided that clearly indicate that the soil conditions are adequate to accommodate the development contemplated and/or that any inherent soil condition or slope problems will be overcome by special construction techniques. Such special construction might include, among other techniques, terracing, retaining walls, oversized foundations and footings, drain tile, etc.
- (h) **Conditional Uses to Comply with Other Requirements.** Conditional uses shall comply with all other provisions of this Zoning Code such as lot width and area, yards, height, parking and loading. No conditional use permit shall be granted where the proposed use is deemed to be inconsistent or conflicting with neighboring uses for reasons of smoke, dust, odors, noise, vibration, lighting, health hazards or significant potential of accidents.

Sec. 13-1-69 Plan Commission Recommendation; Board Action.

- (a) **Plan Commission Advisory Recommendation.**
 - (1) Following referral of conditional use permit applications, the Plan Commission may recommend that the Village Board authorize the Zoning Administrator to issue a conditional use permit for conditional uses specified in this Chapter after review and a public hearing, provided such uses are in accordance with the purpose and intent of this Chapter, and, more specifically, the standards for conditional uses established in this Article.
 - (2) The Plan Commission shall make findings of fact and recommend such actions or conditions relating to the request as the Commission deems necessary to carry out the intent and purpose of this Chapter.
- (b) **Village Board Action.**
 - (1) Upon receiving the recommendation of the Plan Commission, the Village Board shall place such recommendation(s) on the agenda for the next subsequent Board regular meeting. Such recommendations, including findings of standards not met as required by Section 13-1-67, shall be entered in and made part of the permanent written record of the Village Board.
 - (2) If, upon receiving the recommendations of the Plan Commission, the Village Board finds that specific inconsistencies exist in the review process or significant new facts have now been made available and thus the final determination of the Village Board will differ from the advisory recommendation of the Plan Commission, the Village Board shall, before taking final action, refer the matter back to the Plan Commission with the written record or separate statement/report explaining the specific reasons for referral. This referral action shall only be permitted one (1) time with each conditional use permit application.
 - (3) At the Village Board's discretion, the Board shall have the option to set and hold an additional public hearing at the next subsequent Village Board meeting. Such hearing shall be noticed and conducted as prescribed in this Chapter in compliance with the requirements of this Chapter and the Wisconsin Statutes. The Village Board shall make, and record in the minutes of the Board or in a separate statement/report, findings of fact and may impose and require any conditions the Village Board considers necessary to protect the public health, safety and welfare when approving and issuing a conditional use permit. The Village Board's decision to approve or deny the permit must be supported by substantial evidence.
- (c) **Reapplication.** No application for a conditional use permit which has been denied in whole or in part by the Village Board shall be resubmitted for a period of one (1) year from the date of such denial, except on the grounds that substantial new evidence or proof of changes that would result in

compliance with applicable conditions is included in the resubmitted application.

Sec. 13-1-70 Validity of Conditional Use Permit.

- (a) Where the Village Board has approved or conditionally approved an application for a conditional use permit, such approval shall become null and void within eighteen (18) months of the date of the approval unless the Village Board has specified a different timeline in its approval or the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six (6) months of the date of issuance and which shall not be renewed unless construction has commenced and is being diligently prosecuted. Approximately thirty (30) days prior to the automatic revocation of such permit, the Zoning Administrator shall notify the holder by certified mail of such revocation.
- (b) A conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, by the Village may impose conditions such as, but not limited to, permit duration, transfer or renewal, in addition to any other conditions specified in granting the conditional use permit.
- (c) The Village Board may extend such permit for a period of ninety (90) days for justifiable cause if the conditional use permit included a permit duration condition, if application is made to the Village Board at least thirty (30) days before the expiration of said permit.

SECTION II. ADOPTION OF PROVISIONS.

Section 13-1-74 of the Village of Elk Mound Code of Ordinances is created to read as follows:

Sec. 13-1-74 Appeals Regarding Conditional Use Decisions.

Any action of the Village Board in granting or denying a conditional use permit application may be appealed to the Zoning Board of Appeals. In the alternative, any action of the Village Board in denying a conditional use permit application may be appealed directly to circuit court per Sec. 62.23(7)(e)10., Wis. Stats. In the case of appeals to the Zoning Board of Appeals, a written request shall be made within ten (10) days after the date of the Village Board's action granting or denying the permit. Such request for appeal to the Zoning Board of Appeals shall be filed and reviewed pursuant to the procedures in Article N of this Chapter.

SECTION III. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION IV. EFFECTIVE DATE.

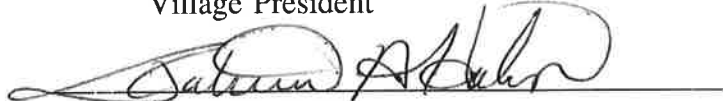
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 21 day of March, 2018.

VILLAGE OF ELK MOUND, WISCONSIN



Village President



Village Clerk-Treasurer

INTRODUCED: 3/21/18

PASSED: 3/21/18

PUBLISHED: 3/26/18
(POSTED)

State of Wisconsin :

County of Dunn:

I hereby certify that the foregoing Ordinance is a true, correct and complete copy of an Ordinance duly and regularly adopted by the Village Board of the Village of Elk Mound on the 26 day of March, 2018, and that said Ordinance has not been repealed or amended and is now in full force and effect.

Dated this 26 day of March, 2018



Pat Hahn, Village Clerk-Treasurer