

## ORDINANCE NO. 2020-2

### AN ORDINANCE TO REPEAL AND TO RECREATE SECTION 4.0 OF CHAPTER 9 (ZONING) OF THE MUNICIPAL CODE OF THE VILLAGE OF HIGHLAND, IOWA COUNTY, WISCONSIN RELATING TO CONDITIONAL USES

THE VILLAGE BOARD OF THE VILLAGE OF HIGHLAND, IOWA COUNTY, WISCONSIN, DO ORDAIN AS FOLLOWS:

**Section I:** Section 4.0 of Chapter 9 of the Municipal Code of the Village of Highland shall be and hereby is repealed and recreated to read as follows:

#### **"SECTION 4.0 CONDITIONAL USES**

##### **4.01 STATEMENT OF PURPOSE**

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 particular 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 of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities. The following provisions are then established to regulate those conditional uses which require special consideration.

##### **4.02 DEFINITIONS**

(a) *"Conditional Use"* is a use allowed under a conditional use permit, special exception, or other special zoning permission issued by the Village, but does not include a variance.

(b) *"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. The applicant must demonstrate that the application and all requirements and conditions established by the Plan Commission and/or Village Board related to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.

#### 4.03 PERMIT

(a) The Village Board, after a public hearing, shall, within a reasonable time, grant or deny any application for conditional use. Prior to granting or denying a conditional use, the Village Board shall make findings of fact based on evidence presented and issue a determination whether the prescribed standards are met. No permit shall be granted when the Village Board determines that the standards are not met, nor shall a permit be denied when the Village Board determines that the standards are met. Written findings of fact shall, at minimum, address the standards enumerated in s. 4.06. All findings shall be based solely upon the evidence within the public record.

(b) If the applicant meets or agrees to meet all of the requirements and conditions specified in this Chapter or those imposed by the Plan Commission and/or Village Board pursuant to Section 4.06, the Village Board shall grant the conditional use permit. The Village Board's decision to approve or deny the conditional use permit must be supported by substantial evidence; i.e., 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.

(c) The Village Board shall issue a conditional use permit after review and public hearing, provided that such conditional use and involved structure(s) are found to meet the standards set forth in this Article, 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 determination, and the resulting conditional use permit, shall specify the name of the permittee, the location and legal description of the affected premises, the nature of the permission granted, the duration of the permit (if limited), and any conditions or requirements imposed on the conditional use by the Village Board. Prior to the granting of a conditional use, the Village Board shall make findings based upon substantial evidence that the standards herein prescribed are being complied with.

(d) In addition to the standard conditions set out in Sec. 4.06, the Village Board may impose requirements and conditions on the conditional use to promote the public health, safety and general welfare of the community and to secure compliance with the standards and requirements specified in Sec. 4.06. Any condition imposed must be reasonable, related to the purpose of the ordinance, measurable (to the extent practicable), and based on substantial evidence. Such conditions may relate to issues including, but not limited to, 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, type of shore cover, specified sewage disposal and water supply systems, piers and docks, and/or increased setbacks, yards or parking requirements. The Plan Commission may also impose conditions such as the permit's



duration, transfer, or renewal. The applicant must demonstrate using substantial evidence that all requirements and conditions established by the Plan Commission related to the conditional use are or shall be satisfied. If the applicant meets or agrees to meet all of the requirements or conditions, then the Plan Commission must grant the conditional use permit.

(e) 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.

#### **4.04 APPLICATION**

Applications for Conditional Use Permits shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator. Such applications shall be forwarded to the Village Board and Plan Commission on receipt by the Zoning Administrator. Such applications shall include the following:

Name and Addresses: The applicant, owner of the site, architect, professional engineer, contractor, and all owners of property located within 100 feet of the property for which the permit is sought.

Description of the Subject Site: by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site is located.

Plat of Survey: prepared by a registered land surveyor showing all the information required for a Building Permit under Section 2.05 and existing and proposed landscaping.

Additional Information: as may be required by the Village Board, Village Plan Commission or Zoning Administrator.

#### **4.05 REVIEW AND APPROVAL**

(1) In reviewing an application for a Conditional Use Permit, the Village Board shall refer the proposed use to the Village Plan Commission. The Village Plan Commission shall review the site plan, existing proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water service information as required by this ordinance and the proposed operation in light of the standards specified under s. 4.06. Meetings of the Village Plan Commission shall be held on an as needed basis as determined by the Commission.

(2) After evaluation of the permit application, the Village Plan Commission shall make a recommendation to the Village Board. The Village Board shall then hold public hearing on the proposed conditional use. A Class 2 public notice of time and place of such hearing shall be posted prior to said hearing.

(3) The Village Clerk shall notify all abutting or opposite property owners, as listed by the applicant in the original application of the time, date and subject matter of the hearing. Failure to comply with this provision shall not, however invalidate any previous or subsequent action on the application.

(4) Following the public hearing and review of the conditional use application, the Village Board shall approve, disapprove, or further conditionally approve the application as provided under Sec. 4.03 and 4.06. A simple majority approval by the Village Board constitutes final approval of the conditional use.

#### **4.06 STANDARDS**

(1) Except as provided under s. (2), no conditional use shall be granted by the Village Board unless the Village Board shall find that the applicant has provided substantial evidence that all the conditions specified in s. (a) through (e) are met. The Village Board may also impose conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate using substantial evidence that all requirements and conditions established by the Village Board related to the conditional use are or shall be satisfied. If the applicant meets or agrees to meet all of the requirements or conditions, then the Village Board must grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence. Any condition imposed must be reasonable and, to the extent practicable, measurable. Conditions that must be met are:

(a) That the conditional use will not be detrimental or endanger the public health, safety, comfort or general welfare or the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood.

(b) 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.

(c) That adequate utilities, access road, drainage and/or necessary facilities or site improvements have been or are being provided.

(d) 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.



(e) That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

(2) In appropriate circumstances, the Village Board may determine that a conditional use is reasonable in order to accommodate disabled persons. In such a case, the Village Board may grant a conditional use permit based on a finding that the grant of the conditional use permit provides a reasonable accommodation to disabled persons irrespective of whether all of the conditions specified in s. (1) are met.

#### **4.07 ADDITIONAL REQUIREMENTS**

Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planning screens, operation control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards or parking requirements, may be required by the Village Board upon its finding that these are necessary to fulfill the purpose and intent of this ordinance.

#### **4.08 RESUBMISSION OF DENIED APPLICATION**

No application for a conditional use that has been denied wholly or in part shall be resubmitted for a period of one (1) year from the date of said order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Building Inspector.

#### **4.09 TIME LIMIT TO ESTABLISH CONDITIONAL USE**

In any case where a conditional use has not been established within one (1) year after the date of granting the permit for such use, then, without further action by the Village Board, the conditional use or authorization shall be null and void.

#### **4.10 COMPLIANCE**

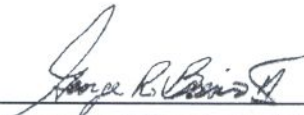
Any conditional use hereafter granted shall thereby remain in a conditional use and is to be handled and governed thereafter as a conditional use. The failure of any person receiving a Conditional Use Permit, or such person's successors in interest or assigns, to comply with the requirements of the permit may result, in addition to any other penalty provided by this ordinance, in revocation or modification of the permit by the Village Board after the permittee, or the permittee's successor or assigns, has been given notice of an opportunity to be heard on the alleged noncompliance. The Zoning Administrator shall maintain a record of all Conditional Use Permits issued and applications for which conditional use permits have been denied. The Village Board may require that conditional use permits be recorded with the Register of Deeds for Iowa County.

#### 4.11 APPEAL

Any person aggrieved by the denial of a conditional use permit may appeal the decision of the Village Board to the court of record as provided under Wis. Stat. sec. 62.23(7)(de)5. within thirty (30) days of the filing of the Board's decision."

**Section II:** This ordinance shall be effective upon its passage and posting as required by law.

Adopted and approved this 1<sup>st</sup> day of July 2020.

  
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George Breiwa, Village President

COUNTERSIGNED:

  
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Becky Fredericks, Village Clerk

Date Adopted:	July 1, 2020
Date Recorded:	July 2, 2020
Date Posted:	July 2, 2020
Date affidavit filed:	July 2, 2020
Effective Date:	July 3, 2020