

## Article D: Conditional Uses

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

The development and execution of this Article is based upon the division of the Village of Elk Mound into 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 of 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.

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

- (a) The Village Board hereby authorizes the Zoning Administrator to issue a conditional use permit after review, public hearing, and approval from the Plan Commission 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 and Plan Commission action, and the resulting conditional use permit 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 and Plan Commission shall make findings based upon the evidence presented that the standards herein prescribed are being complied with.
- (b) Any development 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 Village Board or Plan Commission 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) 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 required by the Village Board upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.

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- (d) 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.**

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 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.

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

An application for a conditional use shall be filed on a form prescribed by the Village, with fee payment a prescribed in Section 1-3-1. The application shall be accompanied by a plan showing the location, size and shape of the lot(s) involved and of any proposed structures, the existing and proposed use of each structure and lot, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed conditional use shall conform to the standards set forth in Section 13-1-66 hereinafter. The Village Board or Plan Commission may require such other information as may be necessary to determine and provide for an enforcement of this Chapter, including a plan showing contours and soil types; highwater mark and groundwater conditions; bedrock, vegetative cover, specifications for areas of proposed filling, grading, and lagooning; location of buildings, parking areas, traffic access, driveways, walkways, open spaces and landscaping; plans of buildings, sewage disposal facilities, water supply systems and arrangements of operations.

**Sec. 13-1-64 Hearing on Application.**

All requests for conditional uses shall be applied for with the Village Clerk or the Village Board or Plan Commission can, on its own motion, apply conditional uses when applications for rezoning come before it. Nothing in this Chapter shall prohibit the Village Board on its own motion from referring the request for conditional use to the Plan Commission. Upon receipt of the application and statement referred to in Section 13-1-63 above, the Plan Commission shall hold a public hearing on each application for a conditional use at such time and place as shall be established by the Commission. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Plan Commission shall, by rule, prescribe from time to time.

### **Sec. 13-1-65 Notice of Hearing on Application; Determination.**

- (a) Notice of the time, place and purpose of such hearing shall be given by publication of a Class 1 Notice under the Wisconsin Statutes 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.
- (b) The Plan Commission shall report its action to the Village Board within forty-five (45) days after a matter has been referred to it, after which the Village Board shall take formal action.

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

- (a) **Standards.** No application for a conditional use shall be granted by the Village Board or recommended by the Plan Commission unless the Village Board or Plan Commission shall find all of the following conditions are present:
  - (1) 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.
  - (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 the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
  - (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.
  - (4) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
  - (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.
  - (6) That the conditional use shall, except for yard requirements, conform to all applicable regulations of the district in which it is located.
  - (7) That the proposed use does not violate flood plain regulations governing the site.
  - (8) 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 or 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.

- (c) **Additional Considerations.** In addition, in passing upon a Conditional Use Permit, the Village Board or Plan Commission 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 when so requested, those standards that are not met and enumerate reasons the Commission and/or Village Board has used in determining that each standard was not met.

### **Sec. 13-1-68 Conditions and Guarantees.**

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. In all cases in which conditional uses are granted, the Village shall require such evidence and guarantees as it may deem 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; or
  - (18) Any other requirements necessary to fulfill the purpose and intent of this Chapter.
- (b) **Site Review.** In making its recommendation, the Plan Commission shall evaluate each application and may request assistance from any source which can provide technical assistance. The 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) **Alteration of Conditional Use.** No alteration of a conditional use shall be permitted unless approved by the Village Board, upon the recommendation of the Plan Commission.
- (d) **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.
- (e) **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.

### **Sec. 13-1-69 Validity of Conditional Use Permit.**

Where a conditional use application has been approved or conditionally approved, such approval shall become null and void within twenty-four (24) months of the date of the approval unless 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 forty-five (45) days prior to the automatic revocation of such permit, the Zoning Administrator shall notify the holder by certified mail of such revocation. The Village Board may extend such permit for a period of ninety (90) days for justifiable cause, if application is made to the Village at least thirty (30) days before the expiration of said permit.

### **Sec. 13-1-70 Complaints Regarding Conditional Uses.**

The Village Board shall retain continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. Such authority shall be in addition to the enforcement authority of the Zoning Administrator to order the removal or discontinuance of any unauthorized alterations of an approved conditional use, and the elimination, removal or discontinuance of any violation of a condition imposed prior to or after approval or violation of any other provision of this Code. Upon written complaint by any citizen or official, the Village Board shall initially determine whether said complaint indicates a reasonable probability that the subject conditional use is in violation of either one (1) or more of the standards set forth in Section 13-1-66 above, a condition of approval or other requirement imposed hereunder. Upon reaching a positive initial determination, a hearing shall be held upon notice as provided in Section 13-1-65 above. Any person may appear at such hearing and testify in person or represented by an agent or attorney. The Village Board may, in order to bring the subject conditional use into compliance with the standards set forth in Section 13-1-66 or conditions previously imposed by the Village Board, modify existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use. In the event that no reasonable modification of such conditional use can be made in order to assure that Standards (a) and (b) in Section 13-1-66 will be met, the Village Board may revoke the subject conditional approval and direct the Zoning Administrator and the Village Attorney to seek elimination of the subject use. Following any such hearing, the decision of the Village Board shall be furnished to the current owner of the conditional use in writing stating the reasons therefor.

### **Sec. 13-1-71 Bed and Breakfast Establishments.**

- (a) **As Conditional Use.** Bed and breakfast establishments shall be considered conditional uses and may be permitted in Residence Districts pursuant to this Article.
- (b) **Definition.** "Bed and Breakfast Establishment" means any place of lodging that provides four (4) or fewer rooms for rent for more than ten (10) nights in a twelve (12) month period, is the owner's personal residence, is occupied by the owner at the time of rental and in which the only meal served to guests is breakfast.

- (c) **State Standards.** Bed and breakfast establishments shall comply with the standards of Chapter HSS 197, Wis. Adm. Code.

## **Sec. 13-1-72 Home Occupations/Professional Home Offices.**

- (a) **Intent.** The intent of this Section is to provide a means to accommodate a small family home-based business or professional home office as a conditional use without the necessity of a rezone into a commercial district. A home occupation or professional home office exceeding the standards for a permitted use may possibly be maintained as a conditional use under Article D. The total number of home occupations or professions conducted within a dwelling unit is not limited, except that the cumulative impact of all home occupations or professions conducted within the dwelling unit or on the premises thereof shall not be greater than the impact of one (1) home occupation. The regulations of this Section dealing with home occupations and professional home offices are designed to protect and maintain the residential character of established neighborhoods while recognizing that certain professional and limited business activities may be carried on in the home. This Section recognizes that, when properly limited and regulated, such activities can take place in a residential structure without changing the character of either the neighborhood or the structure.
- (b) **Home Occupations/Professional Home Office Permitted Use; Restrictions on.** Except as provided in Subsection (c) below, home occupations and professional home offices are a permitted use in all Residential Districts, provided the requirements of the District in which the use is located and addition to the following:
- (1) The occupation or profession shall be carried on wholly within the enclosed areas of the principal building or other structure accessory thereto, but it shall utilize no more than thirty percent (30%) of the gross floor area of the building.
  - (2) There shall be no exterior alterations which change the character thereof as a dwelling and/or exterior evidence of the home occupation other than those signs permitted in the district.
  - (3) No storage or display of materials, goods, supplies or equipment related to the operation of the home occupation/profession shall be visible outside any structure located on the premises. There shall not be outside storage of any kind related to the home occupation/profession.
  - (4) No use shall create smoke, odor, glare, noise, dust, vibration, fire hazard, small electrical interference or any other nuisance not normally associated with the average residential use in the district.
  - (5) Only one (1) sign may be used to indicate the type of occupation or business as allowed by Article G of this Chapter. Such sign shall not be illuminated and shall comply with district sign regulations.

- (6) The home occupation shall not involve the use of commercial vehicles, other than those owned by the applicant for delivery of products or materials to and from the premises. This shall not be interpreted to include delivery and/or pickup services such as United Parcel Service, Federal Express, etc., in the conduct of their normal operations.
  - (7) To the extent that there is any sale of any item related to a home occupation, delivery of that item to the buyer should occur off the premises.
  - (8) No traffic shall be generated by such home occupation/profession in greater volumes than would normally be expected in a residential neighborhood.
  - (9) There shall be no demand for parking beyond that which is normal to the neighborhood. In no case shall the home occupation cause more than two (2) additional vehicles to be parked on or near the premises.
  - (10) The home occupation is restricted to a service-oriented business; the manufacturing of items or products or the retail sale of items or products on the premises is prohibited.
  - (11) The types and number of equipment or machinery may be restricted by the Village Board.
  - (12) No more than one (1) non-resident employee may work on the premises. The home occupation is to be conducted only by members of the family residing in the dwelling unit, plus no more than one nonresident assistant or employee employed on the premises at any one time. Persons engaged in building trades, similar fields and other activities using their dwelling units or residential premises as an office for business activities carried on off the premises, may have more employees than the limitations set forth herein if they are not employed on the premises.
  - (13) No activity associated with the home occupation may occur outside on the premises prior to 8:00 a.m. or after 8:00 p.m.
  - (14) Retail sales on premises shall be prohibited except for the retail sales of merchandise, products, supplies or goods produced or fabricated on the premises as a result of the home occupation, provided that incidental retail sales may be made in connection with other permitted home occupations. (Example: a dressmaker would be permitted to sell only clothing produced or fabricated onsite and would not be allowed to purchase stocks of dresses for sale to the general public onsite.)
- (c) **When Conditional Use Permit Required.** A home occupation or professional home office exceeding the standards prescribed in Subsection (b) above for a permitted use may apply for a conditional use permit under Article D of this Chapter. Approval of an expansion of a home occupation or professional home office as a conditional use is not automatic. The Village Board may place conditions on the continuation of such home occupation or professional home office, or may require the relocation of the business to an area that is appropriately zoned. Sale or transfer of the property shall cause the conditional use permit to be null and void.

- (d) **Permitted Home Occupations/Professions.** Permitted home occupations/professions include, but are not necessarily limited to, the following examples:
- (1) Artists or sculptors.
  - (2) Authors or composers.
  - (3) Home crafts such as model making, rug weaving and cabinet making.
  - (4) Office facility of a minister, rabbi, or priest.
  - (5) Office facility of an attorney, architect, professional engineer, surveyor, income tax preparer, accountant, landscape architect, insurance agent or real estate agent, or similar profession which serves several clients onsite per day.
  - (6) Private tutoring limited to three (3) pupils at any one time.
  - (7) Musical instruction limited to two (2) pupils at a time; this requirement limiting class size shall not be construed to prohibit occasional exceptions for events such as recitals, demonstrations and other similar gatherings.
  - (8) Dressmaking.
  - (9) Computer-oriented support services, such as consulting, clerical services, claims processing, internet-related businesses, etc.
  - (10) Day care of not more than eight (8) nonresident children.
  - (11) Office for sales representative or manufacturer's agent when no retail or wholesale goods transactions occur on the premises.
- (e) **Home Occupations/Professions Permitted With Conditional Use Permit.** The following uses, by the nature of the investment or operation, have a pronounced tendency once started to rapidly increase beyond the limits permitted for home occupations/professions and thereby impair the use and value of a residentially zoned area for residence purposes. Therefore, home occupations are permitted only after issuance of a conditional use permit, and such occupations include, but are not necessarily limited to, the following:
- (1) Barber shops, beauty salons or hair stylist.
  - (2) Antique shops.
  - (3) Stables and kennels.
  - (4) Medical offices, including, but not necessarily limited to, physicians, surgeons, dentists, chiropractors, or optometrists for the general practice of the profession, except for consultation or emergency treatment.
  - (5) Automobile or boat repair or body/paint work.
  - (6) Restaurants and bakeries.
  - (7) Taxidermy shop.
  - (8) Use that involves primarily catalog sales or order processing and which does not involve volumes of stock or merchandise being distributed at the site may be deemed a home occupation, subject to the provisions hereof, provided that such use meets the intent of all standards set forth herein.

**Sec. 13-1-73 through Sec. 13-1-79      Reserved for Future Use.**

