

Town of Rutland Conditional Use Permit Procedures

Adopted: Date 1/5/2022

- 1) Letter of Intent, application materials and fees are submitted to Dane County Zoning Division by applicant. Once Dane County deems the application is complete, it will be sent directly to the township. Information needed is as follows:
 - Application form and written statement addressing all applicable standards for approval of the CUP
 - Written Legal Description
 - Site plan meeting including, at a minimum, the requirements specified in section 10.101(6) of the county zoning code
 - Operation plan including, at a minimum, the requirements specified in section 10.101(7)(b)4 of the county zoning code, as follows:
 - Hours of operation.
 - Number of employees, including both full-time equivalents and maximum number of personnel to be on the premises at any time.
 - Anticipated noise, odors, dust, soot, runoff or pollution and measures taken to mitigate impacts to neighboring properties.
 - Descriptions of any materials stored outside and any activities, processing or other operations taking place outside an enclosed building.
 - Compliance with Dane County storm water and erosion control standards under Chapter 11 or Chapter 14, Dane County Code.
 - Sanitary facilities, including adequate private onsite wastewater treatment systems and any manure storage or management plans approved by the Madison & Dane County Public Health Agency and/or the Dane County Land and Water Resources Department.
 - Facilities for managing and removal of trash, solid waste and recyclable materials.
 - Anticipated daily traffic, types and weights of vehicles, and any provisions, intersection or road improvements or other measures proposed to accommodate increased traffic.

- A listing of hazardous, toxic or explosive materials stored on site, and any spill containment, safety or pollution prevention measures taken.
 - Outdoor lighting and measures taken to mitigate light-pollution impacts to neighboring properties.
 - Signage, consistent with s. 10.800 of the Dane County zoning ordinance.
 - Any other information as may be deemed necessary by the Zoning Administrator to evaluate operation of the proposed conditional use.
- 2) Dane County reviews the application for completeness, ensuring it includes information on how the eight standards are met or how the applicant plans to meet them with measurable objectives.
 - 3) Once it is determined that the application is sufficient, the township determines whether the CUP will require a Joint Town Board and Plan Commission Public Hearing or if the CUP hearing can be held at an individual meetings of the Planning Commission and Town Board. The CUP MUST be submitted at a minimum one month before being placed on Planning Commission agenda. Once complete application is submitted, the town has 15 days to send out legal notification to residents within 600 linear feet of the property within the Town of Rutland. At this point, residents have 10 days to submit letters of either opposition or approval. Below are the criteria in which would require the CUP Hearing be held JOINTLY. If none of the criteria apply, the CUP public hearing will be held during normal Planning Commission/Town Board meetings.
 - 1) The CUP has 3 or more letters of opposition
 - 2) The Property is within 600 linear feet of another Municipality.
 - 3) The CUP is a direct application from a complaint or zoning violation.
 - 4) A notice of the hearing is published in two public places and on the town website at least 10 days prior to the CUP hearing.
 - 5) *Public Hearing notices are mailed to property owners within 600 feet of the subject property. Public Hearing notices will also be available on the town website. 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. Notices will only be sent to Town of Rutland residents.

6) Public Hearing Protocol:

A. Role of Plan Commission and Town Board members at Hearing

1. Planning Commission Chair, Town Board Chair or designee (if Chair is absent) presides over hearing. Chair of Commission to appoint designee.
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. Debate/discussion among public attendees will not be allowed.

B. Appearance slips:

1. Should be submitted to the Town Clerk prior to "Call to Order" of the Hearing by anyone testifying during the hearing.
2. Provide name, address, contact information, and indicate if attendance is via Zoom or in person
3. Indicate "for" or "against" or "for information only"
4. Are retained by the Town as a record of those presenting testimony

C. Testimony:

- Substantial evidence cannot be "merely personal preferences or speculation". Duplication of material or evidence will not be heard.
- 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. If attending by Zoom, appearance slips must be submitted to Clerk prior to meeting. Once meeting has been called to order, appearance slips will not be accepted.
- B. As attendees enter the room, the 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 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 for in person attendees.
- 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 or designee speaks about ACT 67, the need for substantial evidence, eight 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 eight CUP standards.
- I. Town Chair calls the names of registered speakers in the order that they were submitted to the 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 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. Board Chair ensures questions are brief and relevant.
- J. Board Chair or designee maintains order and ensures that comments are directed to the Board or Plan Commission only.

- K. In the event of a joint Board Hearing, once all testimony is given, those present are notified that written comments _____ may be submitted to clerk@town.rutland.wi.us until (date of Town Board meeting that action is possible).
 - L. In the event of a joint Board Hearing, Board Chair or designee restates to the public and for the record that no action will be taken at this time.
 - M. In the event of a joint Board Hearing, Board 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. Board 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. In the event of a joint Board Hearing, The Plan Commission and Town Board reflect on the testimony and determine the next steps separately.
 - P. Public hearing is closed. No further discussion on CUP
- 8) Clerk adds the item on the following month's Plan Commission agenda unless the item is already part of the same 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.
 - C. Commission members ask questions of the applicant and/or professional staff
 - D. PC Chair states that in accordance with Dane County Ordinance 10.101 (7) the Commission will discuss the eight standards of a Conditional Use Permit and possible conditions to meet the standards individually and vote on each. PC Chair also states that if all eight 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. 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
- 2. 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.
- 1 1) 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 Eight standards of a Conditional Use Permit and possible conditions to meet the standards individually and vote on each. Chair also states that if all eight 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.

- 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 requires 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
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 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.
7. That the conditional use is consistent with the adopted Town and County Comprehensive Plans. The Town and the County may have specific policies on

the development of particular areas of the county. Please provide any specifics that relate to the conditional use.

8. If the conditional use is to be located in a Farmland Preservation District, the conditional use must meet the findings as listed below. If the property is located in the FP-35, FP-1, or FP-B Zoning district, additional information is needed.
 - 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 Clerk 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 Clerk provides the Town Board Action Report to Dane County Zoning.