

SECTION

17.0500 CONDITIONAL USES

17.0501

CONDITIONAL USE PERMITS.

Certain uses and situations are of such a special nature or are so dependent upon actual contemporary circumstances that it is impractical to predetermine the permissibility of such uses or to detail in this chapter the specific standards, regulations or conditions which would permit such uses in each individual situation. Such uses may, however, be permitted as conditional uses. The applicant for a conditional use must demonstrate 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. The Village's decision to approve or deny any such conditional use permit will be based upon substantial evidence presented at a public hearing. Only those uses specifically listed herein can be granted a conditional use. Any other uses not specifically listed shall require an amendment to this code to be considered by the Plan Commission.

17.0502

APPLICATION.

Applications for conditional use permits shall be made to the Village on forms furnished by the Village and shall include Sections A, E, F and G and may include any or all of Sections B, C, and D. as determined by the Administrator:

- A. Names and addresses of the applicant, owner of the site, or other appropriate entities or persons implementing the project as required by the Administrator.
- B. 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. For floodland conditional uses, such description shall also include information that is necessary for the Plan Commission to determine whether the proposed development will hamper flood flows, impair floodplain storage capacity, or cause danger to human or animal life. This additional information may include plans, certified by a registered professional engineer or land survey or, showing elevations or contours of the ground; fill or storage elevations; first floor elevations of structures; size, location and spatial arrangement of all existing and proposed structures on the site; location and elevation of streets, water supply, and sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream; soil types; and other pertinent information.
- C. A topographic map, drawn to a scale of not less than 200' to 1" showing the land in question, its legal description and location; location and use of existing buildings; sanitary systems and private water supplies on such land; the high water elevation of any navigable water within 100' of the land in question; and the proposed location and use of any buildings, sanitary systems and wells on such land and within 100' of such land in question.
- D. An Impact Report as outlined in Section 17.0506 A or Section 17.0506 B.
- E. A fee, as may be established and periodically modified by resolution of the Village Board, shall accompany each application. Such fee shall be paid by cash, check or money order to the Village. Costs incurred by the Village in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of conditions to be imposed shall be charged to the applicant.
- F. Where necessary to comply with certain Wisconsin Statutes, an application will be submitted at the appropriate time to the Department of Natural Resources.

- G. The site plan and plan of operation information sheet and plan of operation approval form furnished by the Village shall be submitted prior to scheduling before the Plan Commission.

17.0503

REVIEW AND APPROVAL.

The Plan Commission shall 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, the proposed operation, and other factors the Plan Commission determines are appropriate when considering a Conditional Use Permit.

- A. Conditional Use permits shall have the following process:
 - 1. The Applicant shall meet with Administrator or designee in a pre-application conference to discuss the application and plans.
 - 2. The Applicant applies for a Conditional Use Permit by completing the Village application form. Incomplete applications will not be accepted. If that threshold is met, the Administrator or designee sets the application for introduction to the Plan Commission. If the minimum threshold is not met the application is returned to the petitioner with a rationale for denial.
 - 3. The Administrator or designee introduces the CU application at the next available Plan Commission meeting after completion by the Administrator of the response to the Applicant's Impact Report if applicable under 17.0506 A or 17.0506 B. The application materials are provided to the Plan Commission along with a staff report on the matter outlining critical details of the application and code compliance. The Plan Commission concurs the application is complete and sets forth the application for public hearing or the Plan Commission finds the application incomplete and remands it to the Petitioner for completion.
 - a) Procedure for a Public Hearing before the Plan Commission:
 - 1) Refer to Section 17.1401.
 - 2) Any person may appear in person, by agent, or attorney.
 - 3) The Plan Commission shall afford the applicant and each interested person opportunity to present evidence to rebut or offer countervailing evidence.
 - 4) The Plan Commission shall take minutes of the proceedings and shall mark and preserve all exhibits. The Plan Commission shall, when requested by an applicant or a petitioner objecting to the action, cause the proceedings to be taken by a stenographer or by a recording device provided that the applicant or the petitioner objecting making the request pays any and all costs for the stenographer or recording device and any copies of the proceedings. If requested by both the applicant and the petitioner, the costs shall be split evenly unless otherwise agreed to by the parties.
 - 4. At the public Hearing the Plan Commission will hear from the applicant, Village, and the public on the application's compliance with the standards of the Code. The purpose of the hearing is to gather the record, for the Petitioner to prove with substantial evidence they meet the standards of the code or the public to prove they don't and to address concerns from the public and or Plan Commission and render a decision if appropriate or to determine what remains to be discussed at the next meeting. Only

substantial evidence may be considered by the Plan Commission. At the summation of the initial public hearing date the Plan Commission may give the following direction to the petitioner and to the public:

- a) The remaining questions/standards that need to be proved/responded to.
- b) Additional conditions to include in the CU Order that the Plan Commission deems appropriate. The Petitioner will need to prove they can meet those at the adjourned public hearing date.
- c) Direction to staff to prepare the Conditional Use Order or a finding the Petitioner does not meet the standards for approval for consideration at the next meeting. The Plan Commission may also delay either of these directions to hear more evidence at the next meeting, although such delay will result in another adjourned public hearing date for due process purposes.
- d) Adjourn the public hearing to a date certain.

5. At the adjourned public hearing date if the public hearing was extended for additional evidence collection, the Plan Commission will hear from the applicant, Village, and the public on evidence in support or opposition to items from 17.0503 A 4.(A. and B.) and to the CU Order itself. The purpose of the hearing is to gather the record on any additional standards imposed by the Plan Commission from the first public hearing and to gather evidence on the CU Order itself. Only substantial evidence will be considered by the Plan Commission. At the summation of the public hearing the Plan Commission will give direction requesting additional evidence and adjourn the public hearing to a date certain or close the public hearing.

6. After the closing of the public hearing the Plan Commission during its regular meeting or at a subsequent meeting where the agenda item is duly noticed shall discuss the plans and Conditional Use Order or Findings for Denial and act on the agenda item(s). The decision shall be based upon the record from the public hearings. The burden of proof is on the applicant to prove they have met the standards of the Ordinance and those set forth by the Plan Commission during the process. The Plan Commission shall render its written determination and the reasons for the same within 95 days from completion of the public hearing unless an extension is consented to in writing by the applicant. The Clerk shall mail a copy of the determination to the applicant.

7. Conditions such as landscaping, architectural design, type of construction, flood proofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, parking requirements, or length of approval may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this ordinance.

B. Compliance with all other provisions of this ordinance, such as lot width and area, yards, height, parking, loading, traffic, and highway access shall be required of all conditional uses unless otherwise specifically authorized to be modified by this Code Variances shall only be granted as provided in Section 17.1200 of this ordinance.

C. Changes in use subsequent to the initial issuance of a conditional use permit shall

result in a need to change the initial conditions and shall require an amendment to the conditional use permit. Enlargement of a conditional use shall not be considered an amendment. If any holder of a conditional use permit wishes to extend or alter the terms of such permit, the permit holder must apply for an amendment to the conditional use permit through the procedure of application for conditional use permits detailed herein. The process for amending a permit shall generally follow the procedures for granting a permit as set forth in Sections 17.0501, 17.0502 and 17.0503, and shall require the filing of an application and a hearing as provided above. The Conditional Use Order may describe changes that can be made without requiring a new permit.

- D. Conditional Use Orders shall generally have 5 year terms unless otherwise specified by the Plan Commission. The Orders shall have an administrative renewal process established within the order to allow for streamlined renewal of the conditional use order with a provision that allows the Plan Commission to remove the Conditional Use Order from automatic renewal if there are concerns with compliance with the CU order or concerns raised by the public about the applicant's operations. If the Plan Commission pulls the CU order from automatic approval the CU order shall remain in effect while the Plan Commission provides due process to the applicant in reviewing the CU Order and its renewal.
- E. No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in a CU order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to any law, ordinance, order or rule of either the Village Board, County of Waukesha, State of Wisconsin, or the United States of America, or other duly constituted authority. A CU order does not constitute a building permit, nor shall a CU order constitute any other license or permit required by Village Ordinance or law.
- F. Continuation of Existing Conditional Use Permits. Any conditional use permit granted pursuant to conditional use authority that has since been repealed and that was in effect, and the use was in operation on the date of such repeal, that is no longer an allowed use of the property, shall be allowed to continue as a conditional use subject to all conditions stated in the conditional use order. Any such conditional use permit that requires compliance with a section of the Village of Sussex Zoning Code that has since been repealed, shall continue to require compliance with the referenced Code section as it existed immediately prior to such repeal and the repeal of such provision is stayed solely for such existing conditional use permit(s). These continuation provisions are intended to preserve the status quo for all rights and responsibilities incurred or accrued prior to the adoption of any ordinance that changes a conditional use to a prohibited use. Nothing herein shall be interpreted to prevent existing conditional use permit holders from applying to amend their conditional use pursuant to all laws in effect at the time of the application, or as set forth in the conditional use permit including those amendments requiring a public hearing.

17.0504

TERMINATION OF CONDITIONAL USE PERMIT

- 1. Conditional use status will terminate when the Plan Commission determines any of the following:
 - A. The permit holder has failed to comply with the conditions of the permit or the conditional use has otherwise not continued in conformity with the conditions of the permit.
 - B. A change in the character of the surrounding area or in the conditional use itself causes such use to be no longer compatible with the surrounding uses.

- C. The use or the characteristics of the use have changed without amending the permit and obtaining approval of the Plan Commission as provided in Section 17.0503(C).
- D. The conditional use has been discontinued for a period of 12 consecutive or 18 cumulative months in a three year period. A business of a seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (i.e., summer camps, snowmobile courses, ski areas, quarries, etc.). Upon such determination, the owner of the premises shall be required to bring all such lands and buildings into conformity with the district regulations of the district in which such former conditional use is located, and all other provisions of this chapter within 90 days from such determination.

Prior to terminating a conditional use permit, the Plan Commission shall hold a public hearing, giving public notice as specified in Section 17.1400 of this ordinance. The termination of the conditional use shall not result in any nonconforming rights and the entire use shall be ceased. The property formerly the subject of the conditional use shall thereafter be used only in conformity with the current zoning and other village ordinances and regulations.

2. A Conditional Use Permit may be terminated on request when the applicant or holder of the Conditional Use and the property owner make a request in writing to the Plan Commission that the Conditional Use be terminated and the Plan Commission agrees to terminate said Conditional Use Permit.

17.0505

HEARINGS

The Plan Commission shall hold a public hearing on each application giving public notice as specified in Section 17.1400 of this Ordinance. The Plan Commission may subsequently issue the conditional use permit with appropriate conditions, deny the permit with reasons, or require the submittal of a modified application.

17.0506

CONDITIONAL USES

A. The following agricultural, mining, commercial, industrial, and institutional uses shall be conditional uses and may be permitted as specified, but all Conditional Use applicants must produce a "Impact Report" detailing the impacts of said use to neighboring properties and to Village services from traffic, parking, and overflow parking, noise, odor, safety, crime, hours of operation, health and sanitation, and property maintenance issues. The Village Administrator shall analyze said report along with any supplemental reports from the Village, and its agents, to create an impact report for the application utilizing the Professional and Technical Trade standards for traffic, noise, dust, light, crime and fire prevention, etc. as a guide for the same. The Petitioner shall then prove by substantial evidence how their use will mitigate and address the findings of the impact report. In addition additional standards shall apply for specific types of uses as follows:

- 1. Accommodations and Food Service
 - a) Bed and breakfast establishments in the CR-1, CR-2, TS-1, RS-1, RS-2, RS-3, and RS-4 district and Rooming and Boarding Houses in the B-4 district provided that:
 - 1) A site plan and plan of operation shall be submitted to the Plan Commission. The site plan shall include a parking plan.
 - 2) Traffic conditions in the neighborhood shall not be adversely impacted by access to the property, traffic generated by the use, or any other aspects of the proposal.

- 3) Adequate off-street parking shall be provided as set forth in Section 17.0603(K)(1) of this ordinance.
- 4) All requirements set forth in Section 254.64(1)(b) of the Wisconsin Statutes and Chapter HFS 197 of the Wisconsin Administrative Code shall be fully complied with. Necessary state permits and licenses shall have been secured.
- 5) The owner of the bed and breakfast establishment shall reside in the establishment or in the case of a Rooming or Boarding House an on-site manager shall be located at the property. No bedrooms shall be permitted to be located in an accessory structure.
- 6) No more than two (2) rooms shall be rented for such use in any establishment which is located in an area which is predominantly comprised of single-family homes.
- 7) Dwellings being considered for conversion to bed and breakfast establishments shall exhibit unique architectural or historic characteristics.
- 8) Individual rentals shall not exceed six (6) consecutive days in length.
- 9) No retail sales shall occur at the establishment.
- 10) One exterior advertising sign, not exceeding four (4) square feet in area, may be erected on the premises.
- 11) All local hotel taxes shall be paid and up-to-date or the conditional use is void.

2. Arts, Entertainment, and Recreation: Petitioners for conditional uses in the Arts, Entertainment, and Recreation section below must prove if the use involves the discharge of weapons that the building and site design have been established to both prevent any bullet, arrow, or other item from leaving the subject property and prevent anyone unauthorized; from access to where they may be impacted by the discharge of the weapon(s).

- a) Archery Ranges, bathhouses, beaches, boating, camps, conservatories, driving ranges, firearm ranges, golf courses, ice boating, marinas, polo fields, riding academies, and stadiums in the A-1 district provided that the lot area is not less than three (3) acres and all structures are not less than 50 feet from any district boundary.
- b) Music/theater halls, museums, historical sites, zoological and botanical gardens in the B-1, B-3, and A-1 districts.
- c) Commercial Recreation Facilities, such as arcades, bowling alleys, dance halls, driving ranges, gymnasiums, lodges, miniature golf facilities, physical fitness and recreational sports facilities, pool and billiard halls, racetracks, rifle ranges, tennis courts, volley ball courts, Turkish baths, swimming pools, and skating rinks, are conditional uses and may be permitted in the B-1 and B-2 Districts.

3. Agriculture and Mining

- a) Retail agricultural facilities may be permitted in the A-1 district if the following items are found; that sufficient parking is available to handle the customer base coming to the facility, that events at the facility will not unreasonably impact neighboring property owners from noise, odor, or hours of operation, and that the general purpose of the facility is to sell to the general public product grown/raised on the parcel or adjoining parcel(s) where the facility

is sited.

- b) Ready-mix and asphalt plants (when accessory to a permitted, approved, and active quarrying operation in the Q-1 District. if the following items are found; that traffic from the use will not decrease the functionality grade of any nearby intersection(s) unless the same is mitigated; that noise standards of the operations shall be at least 10% lower at the property line than the Village Ordinance, that the plant is at least 1,000 feet from a residence and that the general purpose of the facility is to support the primary quarry operations; already permitted for the site. The Plan Commission must find that the operation is screened from view and the Quarry's plan of operation and restoration plan are updated to reflect the additional operation. The petitioner must show the extent and duration of any odor from the operation and The Plan Commission shall weigh this information in considering additional conditions to the CU.

4. Educational, Health Services, and Social Services

- a) Public, parochial, and private elementary and secondary schools and religious facilities in all Residential Districts, provided the lot area is not less than two (2) acres and all principal structures and uses are not less than 50 feet from any lot line. Furthermore the design of the structures shall fully adhere to the Design Standards of the Village.
- b) Elementary and secondary schools, colleges, universities, and professional schools in the B-4 district.
- c) Outpatient, advanced medical services, Hospitals, ambulance services in the I-I and the OP-1 districts if the following items are found: that traffic from the use will not decrease the functionality grade of any nearby intersection(s) without the same being mitigated; that noise standards of the operations shall be at least 10% lower at the property line than the Village Ordinance. The Plan Commission must also find the design standards of the Village have fully been adhered to, and that the operation of such a facility will not add to cost of municipal operations without those costs being fully covered by the applicant through an agreement in a form acceptable to the Village.

5. Finance, Insurance, Real Estate, and Leasing

- a) Mini-Warehousing, small cubicle storage, and indoor storage facility
 - 1) Mini-Warehousing, small cubicle storage, and indoor storage facility in the M-1 district, if the following items are found: that traffic from the use will not reduce the functionality grade of any nearby intersection(s) without the same being mitigated; that the site is paved where any vehicles will travel, that a report from the Director of Police Services shows no substantial impact to police services or crime in the community from the operation of the facility, and that noise standards of the operations shall be at least 10% lower at the property line than the Village Ordinance. The Plan Commission must also find the design standards of the Village have fully been adhered to, and that the operation are as limited below:

- 2) Indoor storage facility in the M-1 districts provided that no perishable products, no flammable or explosive materials, and no sales of merchandise or operation of businesses may be conducted within the facility and its sub-leased spaces. The type of facility described in this section is like a mini-warehousing or small cubicle storage, but the rental spaces are all combined together within one larger building that has the appearance of an office/industrial building. The Site for said use must be of such a remote nature that the site operations do not detract from the appearance of the surrounding business park or neighboring properties.
- b) Car, truck, RV rental, and Construction, mining, and forestry machinery and equipment rental and leasing in the B-3 district, if the following items are found that traffic from the use will not reduce the functionality grade of any nearby intersection(s) without the same being mitigated; and that noise standards of the operations shall be at least 10% lower at the property line than the Village Ordinance. The Plan Commission must find that the buildings are fully adhere to the design standards of the Village and the lot is screened such that the parked vehicles or equipment are not visible from any residential district.

6. General Services

- a) Animal Boarding in the M-1 and B-3 districts provided that the animals are domestic pets including (dogs, cats, hamsters or similar pet rodents, pet fish, reptiles and pet birds). In no way shall the operation be allowed to board wild animals or any pets not included in the list above. The boarding shall be for limited periods of time with no animal allowed to be continually boarded for longer than 3 weeks in row. No boarding facility may sell, trade, or in any other way exchange animals. The Plan Commission when determining the appropriateness of the site for animal boarding shall take into account the available space for outside animal activity and the impact the noise of such a facility will have on adjacent properties In the M-1 district an animal boarding operation shall be at least 1,000 feet and in the B-3 district an animal boarding operation shall be at least 750 feet from a residential zoned property, measured from the closest point where any boarded animal may be located to the closest residential zoning district property line.

The Plan Commission recognizes that customer's demands of animal boarding services and the culture related to taking care of pets is regularly evolving. These changes make is improbable to list all of the accessory uses of an animal boarding operation in the Code; therefore, the Plan Commission may consider accessory uses to the animal boarding operation such as, but not limited to; animal grooming, animal physical rehab, animal photography studios, retail sales of animal related products as part of the conditional use if the Plan Commission finds the following:

- 1) The accessory use is consistent with the intent of the zoning district.
- 2) The accessory use is clearly established by the petitioner to be interrelated to and an accessory use of

the principal animal boarding operation.

- 3) The site and or building are appropriately designed and located, or will be made so, to accommodate the accessory use and any impacts thereof.

7. Manufacturing

The following manufacturing Conditional Uses have a significant potential for impacts to adjacent properties and in addition have the potential for significant public safety challenges. In order to grant approval the Plan Commission will review and add the conditions found from:

- a) A report from the Fire Chief that the proposed use and its plan of operation are sufficiently designed to prevent life safety issues to the public, first responders, and those operating in the facility, including sprinklering of the building.
- b) A report highlighting what if any odors and noise, intensity, duration and or times, and general area of odor(s) and noise from the proposed operations and what if any dangers to the public exist from said operation, and ways to mitigate the same.
- c) A report from the Wastewater Utility/Water Utility on impacts to these services from stated operations including any necessary treatment systems required.

The Plan Commission must also find the following items: that traffic from the use will not reduce the functionality grade of any nearby intersection(s) without the same being mitigated; and that noise standards of the operations shall be at least 10% lower at the property line than the Village Ordinance. The Plan Commission must find that the buildings fully adhere to the design standards of the Village and the lot is screened such that the parked vehicles or equipment are not visible from any residential district and the street.

- a) Manufacturing/Processing of abrasives, acetylene, acid, alkalis, batteries, beverages (alcoholic, coffee, soda, tea, water), biological products, bleach, bone, building materials, candles, celluloid, cement and brick products, charcoal, chemicals, coke, cordage, dog and cat food, dextrin, disinfectants, dry ice, dye and pigment, excelsior, flammables, food products, fuel, furs, gasoline, gelatin, glucose, hair products, ice, ink, lard, lime, linoleum, matches, meat, oil cloth, paint, perfume, plaster of paris, plastics, polish, potash, rubber, shellac, soap, starch, stove polish, turpentine, varnish, vinegar and yeast in the M-1 district.
- b) Manufacturing/Processing of bakery and flour products, beverages (alcoholic, coffee, soda, tea, water), biological products, candles, celluloid, disinfectants, dry ice, excelsior, food products, furs, gelatin, glucose, grain, seed and plant oil, cereal, chocolate confections, fruit, vegetable, and nut, dairy products, snack food, syrups, flavorings, extracts, spices and dressings, hair products, ice, ink, lard, linoleum, matches, meat, paper (non pulp), perfume, polish, potash, plastics, shellac, soap, starch, stove polish, textiles, toiletries, turpentine, varnish, vinegar and yeast in the BP-1 district.

8. Public Administration and Government Services

- a) Governmental and cultural uses such as fire and police stations, community centers, public works garages, government administration buildings, parks, playgrounds, in all residential districts. The Plan Commission must have a finding from the Village Board stating the location is in the best interest of the

Village.

9. Retail Trade
 - a) Vehicle sales, vehicle service, service of vehicle parts, vehicle parts sales including vehicle washing, vehicle repair stations, service of vehicle parts and vehicle parts sales in the B-2, B-3 and B-4 Districts No outside storage shall be permitted for vehicle parts sales even by issuance of a conditional use permit as set forth in 17.0506(A)(15)(e) of this Ordinance. All other outside storage that may be granted by CU shall be on a hard paved surface and shall be screened from view, or in the case of vehicle sales the landscaping shall be aesthetically pleasing to minimize the visual impact of a parking lot of vehicles.
 - b) Gasoline service stations in the B-2 and B-3 districts provided that the use shall include traffic control measures to ameliorate-- traffic congestion; that lighting and glare shall not extend into adjacent residential neighborhoods; and that service islands shall comply with the minimum setback requirements of the district. Canopies over a gasoline service island may extend into front, side or rear yard areas, but shall not encroach more than six (6) feet into any required yard. In no case, may a canopy extend into a street right-of-way.

10. Transportation and Warehousing
Petitioners for conditional uses in the Warehousing section must:
 - a) In the BP-1 district, truck terminals, warehousing, wholesale and distribution centers, and mail-order centers when not accessory to a BP-1 district permitted use. The Plan Commission must also find the following items: that traffic from the use will not reduce the functionality grade of any nearby intersection(s) without the same being mitigated; and that noise standards of the operations shall be at least 10% lower at the property line than the Village Ordinance. The Plan Commission must find that the buildings fully adhere to the design standards of the Village and the lot is screened such that the parked vehicles or equipment are not visible from any residential district and the street.

11. Miscellaneous Items (Towers/Antenna and Outside Storage)
 - a) Commercial Use Outside Storage. Outside storage maybe permitted for commercial uses in the B-1, B-2, B-3, B-4, BP-1, and OP-1, districts. All outside storage areas shall be at least 100 feet from residential, park, and institutional districts located in the Village or adjacent community. In all cases, outside storage shall be screened from all sides. All screening plans are subject to Plan Commission review and approval. Screening shall be a permanent opaque wall matching the materials of the building and may include fencing as deemed appropriate by the Plan Commission. The Plan Commission may allow vegetative screening in part or in whole, where it determines the vegetative screening shall provide sufficient and aesthetically pleasing screening and said screening is appropriate for the type of items being screened from view. The height of the wall necessary shall be sufficient to screen the product(s) in the outside storage area. The Plan Commission shall set the appropriate height of any fencing based upon the site conditions and the types of outdoor storage to be screened. Outside Storage shall not be construed

to include the temporary or seasonal outdoor sales or services allowed as part of a Village approved outdoor sales and services permit.

- b) Industrial Use Outside Storage. Outside storage maybe permitted for industrial uses in the M-1, and BP-1 districts. All outside storage areas shall be at least 600 feet from residential, park, and institutional districts located in the Village or adjacent Towns. The Plan Commission may waive or reduce the 600-foot separation requirement. In all cases, outside storage should be screened. All screening plans are subject to Plan Commission review and approval. Screening should be a permanent predominantly evergreen planting screen, the individual trees to be of such a number and so arranged that they will have formed a dense screen within ten years or by a fence or wall or by a combination of trees and wall and fencing. The Plan Commission shall set the appropriate height of any fencing based upon the site conditions and the types of outdoor storage to be screened. Individual trees shall be capable of reaching a height of ten feet within two years. Furthermore, no use shall be granted a modification of the separation requirement if the Plan Commission determines that the use will have a high risk of fire, explosion, noise, vibration, odor, or if the use will generate traffic volumes in excess of those reasonably expected in a residential neighborhood. Outside Storage shall not be construed to include the temporary or seasonal outdoor sales or services allowed as part of a Village approved outdoor sales and services permit.

B. RESIDENTIAL CONDITIONAL USES

The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified in this section. Petitioners for conditional uses in the residential section must produce an "Impact Report" detailing the impacts of said use to neighboring properties and to Village services from traffic, parking, and overflow parking, noise, odor, safety, crime, hours of operation, health and sanitation, and property maintenance issues. The Village Administrator shall analyze said report along with any supplemental reports from the Village, and its agents, to create an impact report for the application utilizing the Professional and Technical Trade standards for traffic, noise, dust, light, crime and fire prevention, etc. as a guide for the same. The Petitioner shall then prove by substantial evidence how their use will mitigate and address the findings of the impact report. In addition additional standards shall apply for specific types of uses as follows:

1. Clubs, fraternities, lodges, and meeting places of a noncommercial nature in any residential districts and the I-1 districts provided all principal structures and uses are not less than 25 feet from any lot line.
2. Rest Homes, nursing homes, and clinics in any residential district provided all principal structures and uses are not less than 50 feet from any lot line.
3. Housing for the Elderly, including community-based residential facilities, rest homes and nursing homes in the Rm-1 and B-4 districts. Elderly housing shall not exceed a density of more than 17.4 dwelling units per acre in the Rm-1 district or more than 22 units per acre in the B-4 district. Upon recommendation of the Architectural Review Board the Plan Commission may reduce the number of required parking spaces for elderly housing in the B-4 district when parking shared with adjacent businesses is provided, however, parking dedicated to the elderly housing use shall

not be less than 0.5 parking spaces per dwelling unit.

4. Community Living Arrangements and community-based residential facilities which have a capacity for nine (9) or more persons in the Rs-1, Rs-2, Rs-3, Rd-1, and Rd-2 Residential districts and B-4 district or 16 or more persons in the RM-1 Residential District.
5. Accessory Apartments in all single-family residential districts provided that:
 - a) The principle dwelling has a minimum living area of 1,000 square feet, excluding the accessory dwelling unit;
 - b) The principle dwelling unit is owner occupied;
 - c) There may be only one accessory apartment per principle dwelling unit;
 - d) The accessory apartment shall have a minimum living area of 600 square feet and no more than one bedroom; and,
 - e) The accessory apartment shall be occupied by a person related to the owner of the principle dwelling unit by blood, marriage or adoption.

C. ENVIRONMENTAL PROTECTION CONDITIONAL USES

The following uses are conditional uses within environmental protection districts or for environmental protection in general and may be permitted as specified.

1. Floodland Uses Refer to Chapter 14 Sections 14.900 to 14.990
2. Lowland Conservancy Uses the following uses are conditional uses in the LCO Lowland Conservancy Overlay District and may be permitted as specified:
 - a) The Construction of Streets Which Are Necessary for the Continuity of the Village Street System, necessary for the provision of essential utility and public safety services, or necessary to provide access to permitted open space uses in the LCO District, provided that:
 - 1) The street cannot as a practical matter be located outside the conservancy district;
 - 2) The street is designed and constructed to minimize adverse impact upon the natural functions of the wetland as listed in Section 17.1308(B) of this Ordinance;
 - 3) The street is designed and constructed with the minimum cross-section practical to serve the intended use;
 - 4) The street construction activities are carried out in the immediate area of the roadbed only; and
 - 5) Any filling, flooding, draining, dredging, ditching, tiling, or excavating that is done must be necessary for the construction or maintenance of the street.
 - b) The Construction and Maintenance of non-residential buildings used solely in conjunction with raising of waterfowl, minnows, or other wetland or aquatic animals or used solely for some other purpose which is compatible with wetland preservation, provided that:
 - 1) The building cannot as a practical matter be located outside the conservancy district;
 - 2) The building is not designed for human habitation and does not exceed 500 square feet in area; and
 - 3) Only limited filling or excavating necessary to provide structural support is conducted.

- c) The Establishment and Development of Public and Private Parks and recreation areas, recreation trails, public boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves, and private habitat areas, provided that:
 - 1) Any private recreation or wildlife habitat area must be exclusively for that purpose;
 - 2) No filling is to be done; and
 - 3) Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game preserves, and private wildlife habitat areas, but only for the purpose of improving wildlife habitat or to otherwise enhance the value of a wetland or other natural resource.
- d) The Construction and Maintenance of Electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, provided that:
 - 1) The transmission and distribution lines and related facilities cannot as a practical matter be located outside the conservancy district; and
 - 2) Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the utility, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.
- e) The Construction and Maintenance of Railroad Lines, provided that:
 - 1) The railroad lines cannot as a practical matter be located outside the conservancy district; and
 - 2) Any filling, draining, dredging, ditching, or excavating that is done must be necessary for the construction or maintenance of the railroad, and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the conservancy area.
- f) Notice to DNR: The Plan Commission shall transmit a copy of each application for a conditional use in the "Shoreland" portion of the LCO Lowland Conservancy Overlay District to the Wisconsin Department of Natural Resources (DNR) at least 10 days prior to the public hearing. Final action on the application shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions related to "shoreland" conditional uses in the LCO district shall be transmitted to the DNR within 10 days of such decision.

3. UPLAND CONSERVANCY USES

The following uses are conditional uses in the UCO Upland Conservancy Overlay District and may be permitted as specified.

- a) Any Permitted Use, Permitted Accessory Use, or Conditional Use Permitted in the Underlying Basic Use District, including structural uses, providing that the development will serve to implement the purpose and intent of the UCO district and foster the preservation of woodlands, wildlife habitat, rough topography, and scenic areas. To this end, the Plan Commission may permit the transfer of densities within the property boundaries of a given project. Individual lot sizes and per-unit lot areas may be reduced, provided that the density of the project does not exceed the

maximum density permitted in the underlying basic use district. The institutional mechanism and limits of density transfer shall be the same as those specified in Section 17.0434 of this Ordinance. The Plan Commission shall require the same procedural requirements set forth in that section. The Plan Commission shall require appropriate legal measures to ensure that the open spaces and natural resource elements preserved by the transfer of density will be inviolate.

- b) Earth Movements involving the disturbance of more than 10,000 square feet in area on slopes of 12 percent or more, provided that the Plan Commission has determined that such earth moving is necessary to the public interest, will not result in undue negative impact on the natural resource base, and further provided that the Plan Commission has approved an operational plan submitted by the petitioner that will serve to minimize erosion and sedimentation, and preserve the natural beauty of the site. The Plan Commission shall require the applicant to furnish a surety to enable the Village to carry out land restoration work in the event of default by the applicant in carrying out the approved operational plan.

4. ENERGY CONSERVATION USES

The following energy conservation uses are conditional uses and may be permitted as specified:

- a) Wind Energy Conversion Systems, commonly referred to as "windmills" which are used to produce electrical power may be permitted in any district provided that the following information requirements and standards shall apply:
 - 1) Application: Applications for the erection of a wind energy conversion system shall be accompanied by a plat of survey for the property to be served showing the location of the generating facility and the means by which the facility will provide power to structures. If the system is intended to provide power to more than one premise, the plat of survey shall show all properties to be served and the means of connection to the wind energy conversion system. A copy of all agreements with system users off the premises shall accompany the application. The application shall further indicate the level of noise to be generated by the system, and provide assurances as to the safety features of the system. Solar easements shall accompany the application.
 - 2) Construction: Wind energy conversion systems shall be constructed and anchored in such a manner to withstand wind pressure of not less than 40 pounds per square foot in area.
 - 3) Noise: The maximum level of noise permitted to be generated by a wind energy conversion system shall be fifty (50) decibels, as measured on a dB(A) scale, measured at the lot line.
 - 4) Electro-Magnetic Interference: Wind energy conversion system generators and alternators shall be filtered and/or shielded so as to prevent the emission of radio-frequency energy that would cause any harmful interference with radio and/or television broadcasting or reception. In the event that harmful interference is caused subsequent to

the granting of a conditional use permit, the operator of the wind energy conversion system shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.

- 5) Location and Height: Wind energy conversion systems shall be located in the rear yard only and shall meet all setback and yard requirements for the district in which they are located and, in addition, shall be located not closer to a property boundary than a distance equal to their height. Wind energy conversion systems are exempt from the height requirements of this ordinance, however, all such systems over 75 feet in height shall submit plans to the Federal Aviation Administration (FAA) to determine whether the system is to be considered an object affecting navigable air space and subject to FAA restrictions. A copy of any FAA restrictions imposed shall be included as a part of the wind energy conversion system conditional use permit application.
 - 6) Fence Required: All wind energy conversion systems shall be surrounded by a security fence not less than six (6) feet in height. A sign shall be posted on the fence warning of high voltages.
 - 7) Utility Company Notification: The appropriate electric power company shall be notified, in writing, of any proposed interface with that company's grid prior to installing said interface. Copies of comments by the appropriate utility company shall accompany and be part of the application for a conditional use permit.
 - 8) Compliance with Electrical Code: The electrical portion of the installation shall comply with all provisions of Electrical Code of the Village adopted as Chapter 15 of the Municipal Code.
- b) Solar Energy Conversion Systems, commonly referred to as "active" or "passive" solar collection and heating systems and including all systems as defined by Section 101.57 (8) (b) of the Wisconsin Statutes when such systems are erected as an accessory structure may be permitted in any district.
- 1) Application: Applications for the erection of a solar energy conversion system shall be accompanied by a plat of survey for the property to be served showing the location of the conversion system and the means by which the energy will be provided to the structure or structures.
 - 2) Construction: Solar energy conversion systems shall be constructed and installed in conformance with all applicable state and local building and zoning codes.
 - 3) Location and Height: Solar energy conversion systems shall meet all setback and yard requirements for the district in which they are located. Solar energy conversion systems shall conform to all height requirements of the zoning code unless otherwise provided in the conditional use permit issued pursuant to this section.
- c) Earth Sheltered Structures, commonly referred to as "earth homes" which are built partially or totally into the ground for the purpose of using the insulating value of the soil to conserve energy may be permitted in the A-1, Rs-1, Rs-2 and Rs-3 districts.

This section does not include conventional homes with exposed basements, split-levels or similar types of construction and provided further that the following information requirements and standards shall apply:

- 1) Application: Applications for the construction of an earth sheltered structure shall be accompanied by all of the information required to obtain a building permit with special attention to be given to the bearing strength of the structure, provision of proper drainage for sanitary, storm and ground water and wastes, proper ventilation, grading of the lot and its affect on adjacent properties, proper exit availability and exterior renderings of the structures to determine its visual affect on adjacent structures. Such standards shall be certified by a registered engineer or architect.
- 2) Construction: Earth sheltered structures shall be constructed in conformance with all applicable state and local building and zoning codes. A registered engineer or architect shall certify that the design of the structure is in conformance with all applicable state and local codes.

17.0507

LEGAL NONCONFORMING USES

A. Legal nonconforming uses may be granted conditional use status upon petition of the owner where such use is determined to not be any of the following:

1. Adverse to any of the following:
 - a) public health,
 - b) safety, or
 - c) welfare;
2. In conflict of the spirit or intent of this chapter; or
3. Otherwise detrimental to the community and particularly the surrounding neighborhood.

B. Legal nonconforming conditional uses and affiliated structures in the B-4 district. Upon petition from a property owner, the Plan Commission may grant special exception to allow for the expansion of both the conditional use and affiliated structure housing said use in the B-4 Central Mixed Use District, subject to all of the following conditions:

1. This subsection 17.0507(B) only applies to properties that have been granted a conditional use permit pursuant to Section 17.0507(A) (Legal Nonconforming Conditional Use) and are located in the B-4 Central Mixed Use District.
2. This subsection only applies to properties that have a non-residential principal use and where the owner of the business with the Legal Nonconforming Conditional Use is also the owner of the structure and property.
3. The expansion of the use/affiliated structure shall be less than a 50% increase in the footprint from the use/affiliated structure prior to expansion area. Any expansion of a structure is subject to Architectural Control Board approval, and maybe expanded into areas of the lot where the expansion fully complies with all offset and setback requirements of the B-4 district, provided that the expansion is otherwise in compliance

with all applicable laws. In passing upon such matters, the Architectural Control Board shall consider all of the following factors: the size of the lot; the size and location of the existing legal nonconforming structure; nature of the expansion of the use; the size and location of any other structures on the lot; the size and location of the proposed expansion; the impact, if any, that the expansion may have upon neighboring properties; whether the proposed expansion would violate the intent of the Zoning Ordinance or Design Standards; and such other matters as the Architectural Control Board finds to be relevant in the interests of the public health, safety, welfare, and protection of property values of the Village.

4. The special exception to expand the use/affiliated structure is prohibited if the requested location, structure, or use thereof, would conflict with any applicable federal, State of Wisconsin, or County of Waukesha codes, statutes, rules, ordinances or lawful orders, or with any Village ordinances other than the matters noted in this section, 17.0507.

5. Any special exception requested under this subsection is prohibited if the special exception would conflict with the express requirements of the conditional use permit affecting the property.

6. The Plan Commission shall either grant or deny the special exception, or grant the special exception upon specified reasonable conditions. To grant or conditionally grant the special exception, the Plan Commission must find that the requested expansion of the legal nonconforming conditional use/affiliated structure will not be adverse to the public health, safety or welfare; will not be in conflict with the spirit or intent of this Chapter; and will not otherwise be detrimental to the Village or the immediate neighborhood where the accessory structure would be located. The Plan Commission shall issue its decision in writing, including any conditions of approval, and shall provide a copy of the decision to the petitioner. The decision of the Plan Commission shall be final, and cannot be appealed to the Zoning Board of Appeals.

7. A special exception granted herein shall be effective once it is recorded against the property by the property owner, and shall run with the land in perpetuity unless stated otherwise in the Plan Commission's decision, and subject to subsection (8), below.

8. Should a use and/or structure or the expansion of the use and/or structure approved by special exception be abandoned in any manner, or discontinued in use for twenty four (24) months, or continued other than in strict conformity with the conditions of the original approval, or should a change in the character of the surrounding area or of the structure itself cause it to be no longer compatible with the surrounding areas, or for similar cause based upon considerations of public health, safety or welfare, the special exception may be terminated by action of the Village Board following referral to the Plan Commission for recommendation and a public hearing thereon.

17.0508 ADULT-ORIENTED ESTABLISHMENTS

Adult-oriented establishments are conditional uses and may be permitted in the M-1 Industrial District provided:

A. The building, site plan and plan of operation have been submitted to and approved by the Plan Commission.

- B. A license to operate an adult-oriented establishment has been issued for the subject property.
- C. No adult-oriented establishment shall be located within 1,000 feet of any public or private school, religious facility, religious institution, daycare center or public park. No adult-oriented establishment shall be located within 500 feet of any residential district or any other adult-oriented establishment. The above-noted distances shall be measured in a straight line without regard to intervening structures or objects from the closest point of the structure or portion of the structure occupied or proposed for occupancy by the adult-oriented establishment to the nearest point of the parcel of property or land use district boundary from which the proposed land use is to be separated

17.0509

WIRELESS TELECOMMUNICATIONS MOBILE SERVICE FACILITIES.

- A. Purpose. This section is intended to regulate mobile service facilities to the full extent allowed by Wisconsin Statutes Section 66.0404 and other applicable laws. Nothing herein is intended to regulate or to authorize the regulation of mobile service facilities in a manner that is preempted or prohibited by Wisconsin Statutes Section 66.0404 or other applicable laws.
- B. Definitions. All terms used herein shall have the meaning described in Wisconsin Statutes Section 66.0404(1).
- C. New Towers and Facilities. The applicant is not subject to the requirements of Section 17.0502 or 17.0503, and instead the siting and construction of a new mobile service support structure and facilities shall be subject to the following requirements:
 - 1. Application Process. The applicant shall submit a written application which shall include all of the following information:
 - a) The name and business address of, and the contact individual for, the applicant.
 - b) The location of the proposed tower.
 - c) The location of the mobile service facility.
 - d) A construction plan which describes the tower, equipment, network components, antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
 - e) An explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
 - 2. Determination of Completeness within 10 Days of Submittal. The Village Administrator shall review the application and determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Village Administrator shall notify the applicant in writing within ten days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their applications as often as necessary until it is complete.

3. Conditional Use Review Procedure. The wireless telecommunications mobile service facility shall be a conditional use, however it is not subject to Section 17.0502 or 16.0503 of this code, and instead shall be reviewed pursuant to the following procedures:
 - a) Public Hearing. Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Plan Commission pursuant to this chapter.
 - b) Fee. Any petition shall be accompanied by a fee as set from time-to-time by the Village Board to defray the cost of notification and holding of public hearing. Costs incurred by the Village in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).
 - c) Requirements.
 - 1) Conditional use status shall not be granted to communication towers unless the tower is located so that there is sufficient radius of clear land around the tower so that its collapse shall be completely contained on the property, subject to the following. Except as provided in Subsection (4), below, if an applicant provides the Village with engineering certification showing that the tower is designed to collapse within a smaller area than the radius equal to the height of the tower, the smaller area shall be used unless the Village has and provides to the applicant substantial evidence that the engineering certification is flawed.
 - 2) All facilities shall meet all local, State and federal codes.
 - 3) Aesthetic Requirements. All users of the Village right-of-way shall comply with the following aesthetic standards:
 - a. In areas where facilities are currently nonexistent or underground, undergrounding is required.
 - b. No new above ground structures, including co-locations on existing structures, shall be placed within 500 feet of historic structures or historic districts designated by the National Register of Historic Places in Wisconsin or listed on the State Register of Historic Places. The 500-foot separation is waived for installations that are completely concealed from view, or are not visible from locations where the historic structure can be observed.
 - c. Attachments to existing structures shall be designed to be flush with the existing structure as much as can reasonably be done, shall be a color that matches the existing structure and shall be the smallest size possible to reasonably accommodate the intended purpose. If the structure to which the attachment is made changes color due to repainting, resurfacing or other means, the attachment shall be modified to match the new color.
 - d. Any party objecting to the requirements of this

Subsection (3) shall have an opportunity to demonstrate that the requirement constitutes an effective prohibition in violation of State or Federal law, in an appeal made pursuant to Subsection 4.

- 4) Any tower that is constructed on or adjacent to a parcel of land on or adjacent to which single-family residential use is permitted shall be setback from every lot line of a parcel for which single-family residential use is permitted by a distance that equals or exceeds the height of the tower.
 - d) Determination. The Plan Commission shall make a decision on the application within a reasonable time after the public hearing, provided further that final action shall be taken within 90 days of receipt of a complete application unless the time extended by the Petitioner. When making said decision the Plan Commission shall take into consideration the following: i. When redeveloping a property the effect that a tower has on said redevelopment. ii. The impacts on surrounding properties. iii. The need for service in the area. iv. The ability to co-locate and why co-location was not chosen, if it was not. v. The construction plan of the tower and its adherence to the design standards of the Village. Said decision shall be stated in writing and a copy made a permanent part of the Village records. If conditional use status is not granted, the reasons therefor will be included in such record.
 - e) Changes or Additions. Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition constitutes a substantial alteration, a public hearing before the Plan Commission shall be required and notice thereof be given pursuant to this Chapter.
 - f) Conditions. Conditions such as landscaping, architectural design, type of construction, flood proofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, among other issues as deemed appropriate may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter; subject to the limitations of Section 17.0509(C)(4), below.
4. Limitations upon Authority. The Village review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Sections 66.0404(4) and 66.0414, as applicable. In the event the applicant believes the Village has exceeded its authority in this regard, the applicant shall notify the Plan Commission in writing and the Plan Commission reserves the right to reconsider the matter, to ensure that applicable laws are followed.
- D. Modifications. The construction of modifications to an existing mobile service support structure or mobile service facility shall be subject to the following requirements:
1. Substantial Modification.
 - a) Application and Review Process. The application and review

process for a substantial modification is identical to the application and review process for a new tower, as described in Section 17.0509(C), above, except that the required plans should describe the proposed modifications, rather than describe the new structure.

2. Not Substantial Modifications.
 - a) Application Information. The applicant shall submit a written application that describes the applicant's basis for concluding that the modification is not substantial, and all of the following information:
 - 1) The name and business address of, and the contact individual for, the applicant.
 - 2) The location of the affected support structure.
 - 3) The location of the proposed facility.
 - b) Completeness Determination within Five Days. The Village Administrator will determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Village Administrator must notify the applicant in writing within five (5) days of receiving the application if it is found not to be complete, specifying in detail the required information that was incomplete. The applicant may resubmit as often as necessary until it is complete.
 - c) Fee. Any petition shall be accompanied by a fee as set from time-to-time by the Village Board to defray the cost of review. Costs incurred by the Village in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).
 - e) Determination. The Plan Commission shall make a decision on the application within a reasonable time, provided further that final action shall be taken within 45 days of receipt of a complete application unless the time extended by the Petitioner. Said decision shall be stated in writing and a copy made a permanent part of the Village records. If approval is not granted, the reasons therefor will be included in such record.
 - f) Limitations Upon Authority. The Village review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4), and such other laws as may apply which may include Wisconsin Statutes Section 66.0414, and 47 USCA §1455. In the event the applicant believes the Village has exceeded its authority in this regard, the applicant shall notify the Plan Commission in writing and the Plan Commission reserves the right to reconsider the matter, to ensure that applicable laws are followed.