

ORDINANCE 2019-08

**AN ORDINANCE AMENDING THE STANDARDS FOR
GRANTING CONDITIONAL USE PERMITS**

Purpose: Recent changes by the Wisconsin Legislature regarding Conditional Use Permits modified the standards in which permits are reviewed and granted by municipalities. Also known as the Landowner’s Bill of Rights, 2017 Wisconsin Act 67 provides new requirements of applicants and authorities in the review and granting of Conditional Use Permits.

Sponsor: Community Development Director Boness

Recommended Referral: Plan Commission (Required)

Public Hearing: Required; Preceded by Class 2 Notice

WHEREAS, The Plan Commission has reviewed proposed changes to the process and standards under which Conditional Use Permits are granted; and,

WHEREAS, the Village Board accepts the recommendations of the Plan Commission and Village staff and finds that it is in the public interest to amend the McFarland Municipal Code to reflect changes in Wisconsin law with respect to Conditional Use Permits.

NOW THEREFORE, The Village Board of the Village of McFarland does hereby ordain as follows:

1. Sections 62-105 through 62-116 of the McFarland Municipal Code are amended to read as follows:

Sec. 62-105. - Statement of purpose; conditional uses; definitions.

(a) The development and execution of this Article is based upon the division of the Village 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, 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.

(b) As used in this Subdivision, the term “substantial evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and

conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion. (Code 1998, § 13-1-60; Ord. No. 2003-03, § 1(13-1-60), 3-24-2003)

Sec. 62-106. - Authority of the Plan Commission; requirements.

- (a) The Plan Commission may authorize the Zoning Administrator to issue a conditional use permit for either regular or limited conditional use after review and public hearing, provided that such conditional use and involved structures 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. In the instance of the granting of a limited conditional use, the Plan Commission in its findings shall further specify the delimiting reasons or factors which resulted in issuing limited rather than regular conditional use. Such Plan Commission resolution, and the resulting conditional use permit, when, for limited conditional use, 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 Plan Commission shall make findings based upon the evidence presented that the standards herein prescribed are being complied with. The Plan Commission's findings and decision to approve or deny a conditional use permit must be supported by substantial evidence.
- (cb) 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 Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.
- (c) 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. No conditional use permit shall be issued unless the applicant provides a detailed written description and proof that all of the standards set forth in Sec. 62-111 shall be met, to the satisfaction of the Plan Commission.

(Code 1998, § 13-1-61; Ord. No. 2003-03, § 1(13-1-61), 3-24-2003)

Sec. 62-107. - Initiation of conditional use; burden.

- (a) Any person, firm, corporation or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest that 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 or more of the conditional uses in the zoning district in which such land is located.

(b) An applicant for a conditional use permit must demonstrate and prove, by substantial evidence, that the application and all requirements and conditions established by the Village relating to the conditional use are or shall be satisfied.

(Code 1998, § 13-1-62; Ord. No. 2003-03, § 1(13-1-62), 3-24-2003)

Sec. 62-108. - Application for conditional use.

- (a) *Required application materials.* An application for a conditional use shall be filed in duplicate on a form prescribed by the Village. Such applications shall be forwarded to the Plan Commission on receipt by the Zoning Administrator. Such applications shall include where applicable:
- (1) Names and addresses of the applicant, owner of the site, architect, professional engineer, contractor and all property owners of record within 100 feet.
 - (2) 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 lies.
 - (3) Plat of survey prepared by a registered land surveyor showing all of the information required for a building permit and existing and proposed landscaping.
 - (4) Additional information as may be required by the Plan Commission or other authorities, boards, commissions or officers of the Village. The 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; high-water 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.
 - (5) A detailed written description and proof meeting the substantial evidence standard showing each of the standards set forth in Section 62-111 (a) through (h) will be satisfied, including a detailed description of how each said standard is met, and how the proposed use will comply with any applicable regulations regarding light, noise, traffic, nuisance, health, safety, welfare and environment. When any applicable law, ordinance or other regulation prohibits a certain measurable level of any activity or substance, including but not limited to noise, light, dust, particulate emissions, odor, visibility, pollution, and vibration and frequency levels, the applicant shall also demonstrate and prove how the proposed use will comply with such regulations.
 - (6) Upon request by the Village Board, Plan Commission or Zoning Administrator, the applicant shall provide reports and studies, prepared by a qualified professional, addressing any applicable standard. The applicant is solely responsible for the cost of such reports and studies. A qualified professional is one with appropriate education, experience, license and/or certification pertinent to the applicable standard, and the

professional's qualifications should be provided with the report or study (e.g. a curriculum vitae or resume). (7) The fee established by the Village Board from time to time and provided in Appendix A to this Code for application for a conditional use. The applicant shall also pay all costs incurred by the Village in notifying the public and property owners pursuant to Section 62-110.

- (b) *Plans.* In order to secure information upon which to base its determination, the Plan Commission may require the applicant to furnish, in addition to the information required for a building permit, the following information:
- (1) A plan of the area showing contours, soil types, high-water mark, groundwater conditions, bedrock, slope and vegetation cover;
 - (2) Location of buildings, parking areas, traffic access, driveways, walkways, open spaces, landscaping, lighting;
 - (3) Plans for buildings, sewage disposal facilities, water supply systems and arrangements of operations;
 - (4) Specifications for areas of proposed filling, grading, lagooning or dredging;
 - (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this Chapter.
- (c) *Third party consultants.* If necessary expertise is not available from staff or other appropriate governmental agency, the Village Board, Plan Commission or Zoning Administrator may consult with a third-party consultant to effectively evaluate the application. The Zoning Administrator will select the consultant. The applicant is solely responsible for all reasonable costs and expenses associated with such consultation. Applicants retain the right to withdraw an application if they choose not to pay consultant fees.

(Code 1998, § 13-1-63; Ord. No. 2003-03, § 1(13-1-63), 3-24-2003; Ord. No. 2006-04, § 1, 2-13-2006)

Sec. 62-109. - Hearing on application.

All requests for conditional uses shall be to the Plan Commission or the Plan Commission can, on its own motion, apply conditional uses when applications for rezoning come before it. Upon receipt of the complete application and statement referred to in Section 62-108, 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 Plan 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. The Plan Commission may inform the applicant and members of the public attending the hearing of the substantial evidence standard and that statements and information will be considered subject to that standard. This may include examples that speculative opinions not based on reliable evidence or knowledge do not meet the evidentiary standard (such as a potential loss in value of a neighboring property based on pure speculation and not an appraisal, market analysis or other reliable information).

(Code 1998, § 13-1-64; Ord. No. 2003-03, § 1(13-1-64), 3-24-2003)

Sec. 62-110. - Notice of hearing on application.

Notice of the time, place and purpose of such hearing shall be given by publication of a class 2 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 100 feet of the boundaries of the properties affected, said notice to be sent at least five days prior to the date of such public hearing. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application.

(Code 1998, § 13-1-65; Ord. No. 2003-03, § 1(13-1-65), 3-24-2003)

Sec. 62-111. - Standards; conditional uses.

No application for a conditional use shall be approved by the Plan Commission or appeal granted by the Village Board unless the Plan Commission and Village Board shall find that the following conditions are present:

- (a) 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.
- (b) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use and the proposed use is compatible with the use of adjacent land.
- (c) 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.
- (d) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- (e) 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.
- (f) That the conditional use shall, except for yard requirements, conform to all applicable regulations of the district in which it is located.
- (g) That the proposed use does not violate floodplain regulations governing the site.
- (h) That the proposed use will not violate any applicable regulation in the McFarland Municipal Code or any other applicable law or regulation.
- (i) That, when applying the standards to any new construction of a building or an addition to an existing building, the Plan Commission and Board 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.

- (j) That, in addition to passing upon a conditional use permit, the Plan Commission and Village Board shall also evaluate the effect of the proposed use upon:
- (1) The maintenance of safe and healthful conditions.
 - (2) The prevention and control of water pollution including sedimentation.
 - (3) Existing topographic and drainage features and vegetative cover on the site.
 - (4) The location of the site with respect to floodplains and floodways of rivers and streams.
 - (5) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
 - (6) The location of the site with respect to existing or future access roads.
 - (7) The need of the proposed use for a shoreland location.
 - (8) Its compatibility with uses on adjacent land.
 - (9) The amount of liquid wastes to be generated and the adequacy of the proposed disposal systems.

(Code 1998, § 13-1-66; Ord. No. 2003-03, § 1(13-1-66), 3-24-2003)

Sec. 62-112. - Denial of application for conditional use permit.

When a decision of denial of a conditional use application is made, the Plan Commission shall furnish the applicant, in writing when so requested, those standards that are not met and enumerate reasons the Plan Commission has used in determining that each standard was not met.

(Code 1998, § 13-1-67; Ord. No. 2003-03, § 1(13-1-67), 3-24-2003)

Sec. 62-113. - Appeals.

Any action of the Plan Commission in granting or denying a conditional use permit may be appealed to the Village Board, if a written request for an appeal is filed within ten days after the date of the Plan Commission's action in granting or denying the permit. Such request for appeal shall be signed by the applicant or by the owners of at least 20 percent of the land area immediately adjacent extending 100 feet therefrom or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land. The request shall be filed with the Zoning Administrator who shall submit it to the Village Board at its next meeting, together with any documents and other data used by the Plan Commission in reaching its decision. The Village Board may consider the matter forthwith, refer the matter to a subsequent meeting or set a date for a public hearing thereon. In the event the Village Board elects to hold a public hearing, notice thereof shall be given by mail to the known owners of the lands immediately adjacent thereto and directly opposite any street frontage of the lot or parcel in question and by publication of a class 1 notice in the official newspaper at least ten days before the date of the hearing. The Village Board may either affirm or reverse in whole or in part the action of the Plan Commission and may finally grant or deny the application for a conditional

use permit. The Village Board's decision to approve or deny the conditional use permit must be supported by substantial evidence.

(Code 1998, § 13-1-68; Ord. No. 2003-03, § 1(13-1-68), 3-24-2003)

Sec. 62-114. - Conditions and guarantees.

The following provisions shall apply to all conditional uses:

(a) *Conditions.* Prior to the granting of any conditional use, the Plan Commission, or the Village Board on appeal, may stipulate or impose 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 62-111. In all cases in which conditional uses are granted, the Plan Commission or Village Board shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated or imposed 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 decision, the Plan Commission shall evaluate each application and may request assistance from any source which can provide technical assistance. The Plan Commission may review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems and the proposed operation/use.
- (c) *Alteration of conditional use.* No alteration of a conditional use shall be permitted unless approved by the Plan Commission.
- (d) *Architectural treatment.* Proposed architectural treatment will be in general harmony with surrounding uses and the landscape. To this end, the Plan Commission 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 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 which 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.
- (f) *Conditional uses to comply with other requirements.* Conditional uses shall comply with all other provisions of the McFarland Municipal Code such as lot width and area, yards, height, parking and loading. No conditional use permit shall be granted where the proposed use is deemed to be inconsistent or conflicting with neighboring uses for reasons of smoke, dust, odors, noise, vibration, lighting, health hazards or possibly of accident.
- (g) *Provisions applicable to all conditional uses.* In addition to any conditions imposed under sub. (a), *supra.*, the following conditions apply to all conditional use permits:
 - (1) No building or use may violate any other provision set forth in the McFarland Municipal Code, or any other applicable law or regulation.
 - (2) No building or use is permitted unless all necessary permits, licenses and approvals are obtained from the applicable regulatory authority, including but not limited to, approvals by the Wisconsin Department of Transportation for ingress and egress to the property, and permits issued by the Wisconsin Department of Natural Resources related to air, water, and other environmental regulations.

(Code 1998, § 13-1-69; Ord. No. 2003-03, § 1(13-1-69), 3-24-2003)

Sec. 62-115. - Validity of conditional use permit.

Where the Plan Commission has approved or conditionally approved an application for a conditional use, such approval shall become null and void within 12 months of the date of the

Plan Commission's action unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six months of the date of issuance and which shall not be renewed unless construction has commenced and is being diligently prosecuted. Approximately 45 days prior to the automatic revocation of such permit, the Zoning Administrator shall notify the holder by certified mail of such revocation. Extensions of up to one year each may be granted by the Plan Commission for just cause, if application is made to the Village at least 30 days before the expiration of said permit. Conditional use permits shall also expire if the use is abandoned or terminated for a period of 12 months.

(Code 1998, § 13-1-70; Ord. No. 2003-03, § 1(13-1-70), 3-24-2003)

Sec. 62-116. - Complaints regarding conditional uses.

The Plan Commission 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 Plan Commission shall initially determine whether said complaint indicates a reasonable probability that the subject conditional use is in violation of either one or more of the standards set forth in Section 62-111, 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 62-110. Any person may appear at such hearing and testify in person or represented by an agent or attorney. The Plan Commission may, in order to bring the subject conditional use into compliance with the standards set forth in Section 62-111 or conditions previously imposed by the Plan Commission, modifying existing conditions upon such use and impose additional reasonable conditions upon the subject conditional use. Additionally, the offending party may be subjected to a forfeiture as set forth in this Chapter and Section 1-16. In the event that no reasonable modification of such conditional use can be made in order to assure that Section 62-111 will be met, the Plan Commission 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 Plan Commission shall be furnished to the current owner of the conditional use in writing stating the reasons therefor. An appeal from a decision of the Plan Commission under this Section may be taken to the Village Board.

(Code 1998, § 13-1-71; Ord. No. 2003-03, § 1(13-1-71), 3-24-2003)


The above and foregoing Ordinance was duly adopted at a regular meeting of the McFarland Village Board on the 23rd day of May, 2019.

APPROVED:



Brad Czebotar, Village President

ATTEST:



Cassandra Suettinger, Village Clerk-
Treasurer

ORDINANCE 2019 -	
MOTION	SECOND
CZEBOTAR	LYTLE
ACTION	DATE
Adopted	5-28-19
Referred	
Tabled	
Withdrawn	
Defeated	
Published	
INDIVIDUAL VOTING RECORD	
Adrian - AYE	Kolk - AYE
Brassington - AYE	Lytle - AYE
Utter - NAY	Kryzenske - NAY
Czebotar - AYE	
VOTING RESULTS	
Motion Carried	5-2
Motion Defeated:	