

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR CITY PLAN COMMISSION CONSIDERATION

ITEM DESCRIPTION: Gen. Ord. No. 32-19-20 by Alderpersons Bohren and Wolf repealing and recreating Section 15.905 and Subsection 15.908 (1) of the City of Sheboygan Zoning Ordinance (SZO), so as to amend certain portions thereof so as to clarify any ambiguities in the Municipal Code relating to Conditional Use Permits, to incorporate into the Municipal Code established past practices of the Plan Commission relative to Conditional Uses, and to conform the Municipal Code to 2017 Wis. Act 67 and Sec. 62.23(7)(de), Wis. Stats.

REPORT PREPARED BY: Steve Sokolowski, Manager of Planning and Zoning

REPORT DATE: November 8, 2019

MEETING DATE: November 12, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

Staff is proposing this zoning ordinance amendment to the conditional use permit section of the zoning ordinance based on changes required by the State of Wisconsin. Although the Plan Commission has been following the state law, the City Attorney and Planning Departments have drafted the proposed ordinance amendment language in order to update the conditional use permit section of the zoning ordinance to meet the requirements of the State of Wisconsin.

STAFF COMMENTS:

The proposed ordinance amendment has been drafted in order to:

- Update the conditional use permit section of the zoning ordinance to meet the requirements of the State of Wisconsin - include statutory requirements into our current ordinance.
- Clarify and simplify the process of permit review so that site plan review and approval can occur as part as the conditional use approval process.
- Allow certain types of conditional uses that incorporate exceptions to or exceedances of certain bulk or dimensional standards, as per occasional practice, and to do so in a way congruent with new statutory requirements.

- Clarify our current requirements and broadens them to include other related issues.
- Allow site plan review and approval to occur as part as the conditional use approval process and clarifies that the zoning administrator may require site plan review and approval in certain circumstances.

ACTION REQUESTED:

Motion to recommend the Common Council approve the proposed zoning ordinance amendment (GO 32-19-20).

ATTACHMENTS:

Gen. Ord. No. 32-19-20

 Gen. Ord. No. 32 - 19 - 20. By Alderpersons Bohren and Wolf.
November 4, 2019. 6.1

AN ORDINANCE repealing and recreating Section 15.905 and Subsection 15.908(1) of the City of Sheboygan Zoning Ordinance (SZO), so as to amend certain portions thereof so as to clarify any ambiguities in the Municipal Code relating to Conditional Use Permits, to incorporate into the Municipal Code established past practices of the Plan Commission relative to Conditional Uses, and to conform the Municipal Code to 2017 Wis. Act 67 and Sec. 62.23(7)(de), Wis. Stats.;

WHEREAS, Section 15.905 of the SZO governs the procedure and requirements for the review and approval, or denial, of proposed Conditional Uses; and

WHEREAS, since the City of Sheboygan adopted its current Zoning Ordinance, Subchapter 15 of the Municipal Code, certain ambiguities and inconsistencies have been identified; and

WHEREAS, in practice, City Plan Commission has been the body with the most experience in evaluating and administering Conditional Uses as well as authorizing appropriate exceptions and/or exceedances to the Municipal Code in connection with considering and approving, denying and/or crafting conditions relating to Conditional Use Permits; and

WHEREAS, 2017 Wisconsin Act 67 created Sec. 62.23(7)(de), Wis. Stats., which provides at Subsection 20: "If an applicant for a Conditional Use Permit meets, or agrees to meet, all of the requirements and conditions specified in the City Ordinance, the City shall grant the Conditional Use Permit. Any condition imposed must be related to the purpose of the Ordinance and be based on substantial evidence;" and

WHEREAS, this Ordinance is an amendment to the Sheboygan Zoning Ordinance, which will be referred to the Plan Commission, and which will require publication of a class 2 notice and a public hearing prior to adoption; and

WHEREAS, this Ordinance is adopted to promote the health, safety, and welfare of the people of the City of Sheboygan;

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 15.905 of the City of Sheboygan Zoning Ordinance is repealed and recreated to read as follows:

City Plan

"Section 15.905 Conditional Use Review and Approval

(1) **Purpose:**

- (a) The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed conditional uses.
- (b) Certain uses in situations which are of such a special nature, or are so dependent upon actual contemporary circumstances, as to make impractical the predetermination of permissibility, or the detailing in this Chapter of specific standards, regulation, or conditions which would permit such determination in each individual situation, may be permitted as conditional uses.
- (c) Conditional uses are also those proposed uses which are listed as special uses, but fail to meet one of the requirements for special use approval listed in Section 15.206. (See Section 15.202(3)(b)).
- (d) If an applicant for a Conditional Use Permit meets or agrees to meet all of the requirements and conditions specified in the Municipal Code or imposed by the Plan Commission, the City shall grant the Conditional Use Permit. Any condition imposed must be related to the purpose of the Zoning Ordinance and be based on substantial evidence. Under this Section 15.905, "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. This subsection is intended to ensure compliance of Section 15.905 of the Municipal Code with 2017 Wisconsin Act 67 and Sec. 62.23(7)(de), Wis. Stats.

(2) **Initiation of Request for Approval of a Conditional Use:** Proceedings for approval of a conditional use may be initiated by an application of the owner(s) of the subject property.

(3) **Application Requirements:** All applications for proposed conditional uses shall be approved as completed by the Zoning Administrator prior to the initiation of this procedure. No placement of the application on any agenda, as an item to be

acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper, the applicant shall provide 5 copies of the complete application. Said complete application shall be comprised of all of the following:

- (a) A map of the subject property showing all lands for which the conditional use is proposed, and all other lands within 200 feet of the boundaries of the subject property, together with the names and address of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Sheboygan County. Said map shall clearly indicate the current zoning of the subject property and all other land within 200 feet, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;
- (b) A map, such as the Land Use Plan Map, showing the generalized location of the subject property in relation to the City as a whole;
- (c) A written description of the proposed conditional use, describing the type of activities, buildings, and structures proposed for the subject property and their general locations;
- (d) A site plan of the subject property as proposed for development. Said site plan shall conform to any and all the requirements of Section 15.206(1)(b) or a group development (per Section 15.208). A proposed preliminary plat or conceptual plat may be substituted for the required site plan, provided said plat contains all information required on said site plan per section 15.908. Review and approval of any site plan, preliminary plat or conceptual plat submitted with an application for a Conditional Use Permit under this Section 15.905 also shall constitute Site Plan Review and Approval under Section 15.908 of the Municipal Code.
- (e) Additionally, the applicant may wish to provide written justification for the proposed conditional use consisting of the reasons why the applicant believes the proposed

conditional use is appropriate, particularly as evidenced by compliance with the standards set forth in Subsection 15.905(4)(c)1-6.

(4) **Review by the Zoning Administrator:** The proposed conditional use shall be reviewed by the Zoning Administrator as follows:

(a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Chapter. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Chapter, he shall return the application to the applicant. If the Zoning Administrator determines that the application is complete, he shall so notify the applicant.

(b) Upon notifying the applicant that his application is complete, the Zoning Administrator shall review the application and evaluate and comment on the written justification for the proposed conditional use.

(c) The Zoning Administrator may also evaluate the application to determine whether the requested conditional use is in harmony with the recommendations of the City's Comprehensive Master Plan, particularly as evidenced by compliance with the standards of Subsection (4)(c)1-6 below:

1. How is the proposed conditional use (the use in general, independent of its location) in harmony with the purposes, goals, objectives, policies and standards of the City of Sheboygan Comprehensive Plan, this Chapter, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the City?

2. How is the proposed conditional use (in its specific location) in harmony with the purposes, goals, objectives, policies and standards of the City of Sheboygan Comprehensive Plan, this Chapter, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the City?

3. Does the proposed conditional use, in its proposed location and as depicted on the required site plan, result in a substantial or undue adverse impact on nearby property, the character of the neighborhood,

environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of this Chapter, the Comprehensive Plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the City or other governmental agency having jurisdiction to guide development?

4. Does the proposed conditional use maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?
5. Is the proposed conditional use located in an area that will be adequately served by, and will not impose an undue burden on any of the improvements, facilities, utilities or services provided by public agencies serving the subject property?
6. Do the potential public benefits of the proposed conditional use outweigh any and all potential adverse impacts of the proposed conditional use after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts?

(d) The Zoning Administrator shall forward the report to the Plan Commission for the Commission's review and use in making its decision. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Comprehensive Master Plan, the Zoning Administrator shall note this determination in the report.

(5) Review by the Plan Commission and Public Hearing:

- (a) The Plan Commission shall schedule a public hearing to consider the application within 45 days after the acceptance and determination of the complete application as determined by the Zoning Administrator, the applicant may appear in person, or by agent, and/or by attorney. Said notice shall contain a description of the subject property and the proposed conditional use. In addition, at least seven days before said public hearing, the Zoning Administrator shall mail an identical notice to the

applicant and to all owners of abutting properties. Failure to mail said notice, provided it is unintentional, shall not invalidate proceedings under this Section. Notice of the public hearing shall be published as a class 2 notice under Chapter 985, Wis. Stats.

- (b) Within 60 days after the public hearing (or within an extension of said period requested in writing by the applicant and granted by the Plan Commission), the Plan Commission shall make its findings. The Plan Commission shall state in the minutes and in a substantially issued written Conditional Use Permit or in a written notice to the applicant of denial of the Conditional Use Permit, its conclusions, findings of fact, conditions, and any substantial evidence supporting such conclusions, findings of fact, and conditions.
- (c) For existing developments that do not meet the landscaping and paving requirements of this Chapter, the Plan Commission may choose to require the development paving and landscaping to come into compliance with the requirements per Section 15.307.
- (d) Notwithstanding anything in the Zoning Ordinance to the contrary, in connection with the granting of a Conditional Use Permit under this Section 15.905, the Plan Commission may authorize the exception from, or exceedance of, any nonresidential bulk or dimensional standards set forth in Subsections 15.206(3)-(10) (Detailed Land Use Descriptions and Regulations), 15.305 (Nonresidential Intensity Standards), 15.403 (Nonresidential Bulk Standards), 15.405 (Intrusions into Required Yards), 15.406 (Exceptions to Maximum Height Regulations), 15.607 (Landscaping Requirements for Paved Areas), 15.610 (Landscaping Requirements in Bufferyards), 15.704(7) (Calculation of Minimum Required Parking Spaces), 15.705(11) (Calculation of Required Loading Spaces), 15.720(3) (Fencing Standards), or Subchapter 15-8 (Signage Regulations). Any exception to, or exceedance of, any nonresidential bulk or dimensional standards shall be determined by the Zoning Administrator to be in harmony with the City's Comprehensive Plan particularly evidenced by compliance with the standards of Subsections 15.905(4)(c) 1.-6. Any exception to, or exceedance of, nonresidential bulk or dimensional standards authorized by the Plan Commission shall not be considered a variance, provided that the exception or

exceedance and the justification for the exception or exceedance are specifically stated in the Conditional Use Permit.

- (6) **Plan Commission Action:** The Plan Commission may take final action on the application at the time of its initial consideration of the written conditional use permit, or may continue the proceedings at its discretion or at the applicant's request. The Plan Commission may approve the conditional use as originally proposed, may approve the proposed conditional use with modifications, or may deny approval of the proposed conditional use. The Plan Commission's approval of the proposed conditional use shall be considered the approval of a unique request, and shall not be construed as precedent for any other proposed conditional use.
- (7) **Effect of Denial:** No application which has been denied (either wholly or in part) shall be resubmitted for a period of 6 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.
- (8) **Termination of an approved Conditional Use:** Upon approval by the Plan Commission, the applicant must demonstrate that the Conditional Use, as established and implemented, meets all general and specific Conditional Use requirements and conditions approved under this Section, including all general and specific conditional use requirements in the site plan. Once a Conditional Use Permit is granted, no Erosion Control Permit, Site Plan approval (per Section 15.908), Certificate of Compliance, Building Permit or Occupancy Permit shall be issued for any development which does not comply with all requirements and conditions of the Conditional Use Permit. The applicant shall provide Certification of Compliance to the City staff upon completion of the development activity. Any conditional use found not to be in compliance with the terms of this Chapter shall be considered in violation of this Chapter and shall be subject to all applicable procedures and penalties. A conditional use may be revoked for such a violation by majority vote of the Plan Commission, following the procedures outlined in Subsections (2) through (7), above.
- (9) **Time Limits on the Development of Conditional Use:** The start of construction of any and all conditional uses shall be initiated

within 365 days of their approval by Plan Commission and shall be operational within 730 days of said approval. Failure to initiate development within this period shall automatically constitute a revocation of the conditional use. For the purposes of this Section, "operational" shall be defined as the granting of a Certificate of Compliance for the conditional use. Prior to such a revocation, the applicant may request an extension of this period. Said request shall require formal approval by Plan Commission and shall be based upon a showing of acceptable justification (as determined by Plan Commission).

- (10) **Discontinuing an Approved Conditional Use:** Any and all conditional uses which have been discontinued for a period exceeding 365 days shall have their conditional use invalidated automatically. The burden of proof shall be on the property owner to conclusively demonstrate that the subject conditional use was operational during this period.
- (11) **Change of Ownership:** All requirements of the approved conditional use shall be continued regardless of ownership of the subject property. Modification, alteration, or expansion of any conditional use in violation as approved per (5) above, without approval by the Plan Commission, shall be grounds for revocation of said conditional use approval per (8), above.
- (12) **Recording of Conditional Use Requirements:** Except for conditional use approvals for temporary uses, all documents associated with the written description, the approved site plan, and the specific requirements of approval, and a memorandum referring to and stating the general purpose of the conditional use (along with a legal description of the subject property), shall be recorded by the applicant with the County Register of Deeds office and submit evidence of said recordation to the City staff.
- (13) **Fee:** One or more fees are required for this procedure. Refer to Section 15.936(1)(d).
- (14) **Appeal:** If the Plan Commission denies a person's Conditional Use application, the person may appeal the decision to Sheboygan County Circuit Court under the procedures contained in Sec. 62.23(7)(e)(10), Wis. Stats."

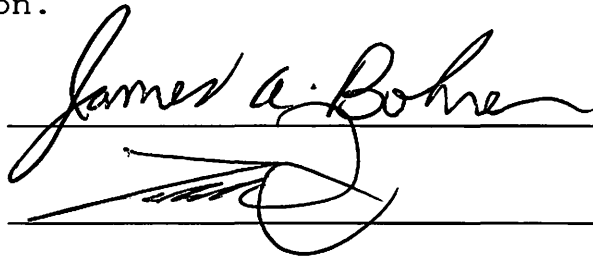
Section 2. Subsection 15.908(1) of the City of Sheboygan Zoning Ordinance is repealed and recreated to read as follows:

"Section 15.908 Site Plan Review and Approval

(1) **Purpose:** The purpose of this Section is to specify the requirements and procedures for the review and approval of site plan applications. The provisions of this Section are designed to ensure that all proposed land use and development activity complies with the requirements of this Chapter. Specifically, this Section requires that the initiation of all development activity (including building permits, zoning certificates, occupancy permits for a change of use of an existing lot or structure where there is contemplated a site plan revision, clear cutting, grading or filling) require the approval of site, building, and operational plans by the Plan Commission before the building, occupancy, and zoning permits can be issued - except, however, that development activity associated with an approved final plat of subdivision or certified survey map for single-family and/or duplex/twin home dwelling units, development activity associated with the full and complete implementation of a project approved within the PIP phase of the Planned Unit Development District (PUD), and/or development activity associated with the full and complete implementation of a Conditional Use Permit are exempt from this requirement. Site Plan Review and Approval is not required for a change of occupancy or a change in the paved area, but is required for changes to principal or accessory structures, changes to land use, or in instances which will increase traffic or change circulation.

... ."

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.



I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor