

Town of LaPointe Official Zoning Ordinance  
Revision to Section 8.4.2 and Repeal of Section 15

2. Conditional Uses

1. Purpose.

- A. One of the purposes of this Ordinance is to divide the Town of LaPointe into districts within which the use of land and buildings, and the bulk and location of buildings in relation to the land are mutually compatible, and substantially uniform. Generally, two categories of land uses are allowed in each zoning district: permitted uses and conditional uses. A permitted use is allowed as a matter of right in all locations in a district provided it complies with general standards for the district and any overlay district. Authorization by the zoning administrator is non-discretionary if a project meets the standards. Additional conditions on design or construction may not be imposed. A permitted use is authorized by a land use permit.
- B. The terms *special exception* and *conditional use* are used synonymously. In designating conditional uses, the town, by ordinance, has determined that such uses are not suited to all locations in a zoning district but may be authorized if adaptable to the limitations of a particular site and adjacent land uses. In short, they must be custom tailored to a specific location. Conditional uses are limited to those listed in this ordinance for each zoning district. They may include uses of land (e.g. a public safety facility in a residentially zoned area) and specified construction activities (e.g., filling and grading in excess of 10,000 square feet adjacent to water bodies). There are certain uses that may be entirely appropriate and not necessarily incompatible with the basic use permitted in any district, but not at every or any location therein or without restrictions or conditions being imposed by reason of unique problems the use of its particular location presents from a zoning standpoint, including the impact of those uses upon neighboring land, and the public need for the particular use at a particular location. Such uses may be necessary or desirable to be allowed in a particular district provided that due consideration is given to their location, development, and operation. ~~Those uses are hereby classified as Conditional Use but are a matter of discretionary judgment by the Town Board of Supervisors acting upon the recommendation of the Town Plan Commission. Conditional Use is not "as of right".~~ The decision to grant or deny a conditional use permit (CUP) is discretionary i.e., a permit may be denied if the project cannot be tailored to a site without significant harm to ordinance objectives. It is within the power of The Town Plan Commission and Town Board of Supervisors to may determine that there are no conditions which would allow a use in a specific location. to coexist with its neighbors. General performance standards and specific design standards for approval are provided in this ordinance for conditional uses. An applicant must demonstrate that the proposed project complies with each of the

standards. The Town Plan Commission or the Town Board of Supervisors may impose additional limitations (conditions) on development consistent with standards for approval and ordinance objectives and may require an applicant to develop a project plan to accomplish specified performance standards (e.g., develop an erosion control plan that contains all sediment on the site). The provisions procedure to be followed for application, review, and approval, and appeal are specified set forth herein.

- C. ~~The Town Plan Commission, and~~ Town Board of Supervisors, ~~and Board of Appeals~~ shall consider the overall effect of such grant of Conditional Use on the health, general welfare, safety, and economic prosperity of the town and the immediate area in which such use would be located, including such considerations as the effect on the established character and quality of the area, its physical appearance, existing topography, drainage features, erosion potential, vegetative cover, the prevention and control of water pollution, the location with respect to floodplains, the movement of traffic, the demand for related services and the possible hazardous, harmful, noxious, offensive or nuisance effects resulting from the requested use.

2. Conditional Use Permit.

The following ~~process~~ procedure shall be ~~used~~ followed where a new Conditional Use Permit (CUP) is sought or where the holder of an existing CUP seeks modification of the existing CUP, ~~or a complainant seeks to have a CUP revoked (see my suggestions regarding revocation).~~ Modification shall include any amendment, revision, expansion, or any change to the existing CUP.

- A. Applications for a conditional use permit approval shall be made on application forms ~~developed and~~ approved by the Plan Commission.
- B. ~~An~~ The application fee, as established by the Town Board of Supervisors in the Town Fee Schedule, shall be paid at the time the application is filed and shall not be refundable unless the application is withdrawn prior to consideration by the Town Plan Commission. Any expense incurred by the Town ~~for~~ in publishing notices prior to the withdrawal of the application will be deducted from the refund. Applications originated by the Town shall be exempt from the application fee.
- C. Applications and supporting documents shall be submitted in twelve (12 copies) to the Zoning Administrator who shall receive the application and conduct a review and research of the application and documents. The Town Plan Commission and/or Zoning Administrator may require the applicant to submit other pertinent data and information they deem necessary to properly evaluate the request. Within thirty (30) days of the date the Zoning Administrator receives a properly completed application, the Zoning Administrator shall make a preliminary inspection of the property to confirm the accuracy of the application and identify potential issues or considerations. Within ten

(10) days after the Zoning Administrator's completion of the review, the Zoning Administrator shall transmit the application and related materials to the Town Plan Commission for its review and consideration. (This should be clarified. What does transmitting entail, the physical delivery of all twelve copies to the Chairman of the Town Plan Commission, or what?)

- D. The Town Plan Commission shall establish a date for a public hearing on the application to be held within thirty (30) days of receipt of the completed application and related documents. Class 2 notice shall be given prior to such hearing. Notice of the public hearing shall be mailed to all owners of record of lots or parcels within 300 feet of the property, except as may be extended or expanded otherwise at the discretion of the Zoning Administrator and/or the Town Plan Commission. If the property is within 1,000 feet from Lake Superior, the Wisconsin Department of Natural Resources and the Ashland County Zoning Administrator shall be mailed a notice. (This should be clarified. Does the whole Town Plan Commission have to meet just to set a date for the hearing? It states that public hearing is to be held within 30 days of the receipt of the completed application (from the Zoning Administrator?) but does not say how many days' notice is to be given prior to the public hearing. The reference to a class 2 notice should state "A class 2 notice under Chapter 985 Wisconsin Statutes". A class 2 notice requires two insertions but does not specify the number of dates over which those insertions are published. Should the notice of public hearing be published as a class 2 notice under Chapter 985 Wisconsin Statutes once each week for two consecutive weeks with the last insertion occurring at least \_\_\_\_\_ days prior to the public hearing, or what? Should service of the notice of public hearing be by first class mail, either within or without the state, at least \_\_\_\_\_ days before the public hearing? Should the notice of hearing be published at the La Pointe Town Hall at least \_\_\_\_\_ days prior to the public hearing? I was uncertain how to word this as I am not aware as to who will assist with scheduling, typing, mailing, publishing and posting of notices and performing other clerical-type duties. Will the Zoning Administrator or her staff, if any, or the Town Clerk, or his staff, be involved? Also, I am not aware of where the files will be physically kept – in the Zoning Administrator's office, the Town Clerk's office, or what?)
- E. All members of the Town Plan Commission shall personally inspect the proposed site before the Public Hearing on the matter. (In a past court proceeding, an issue was raised whether the record showed all involved had inspected the site prior to the public hearing. Is it the Town's intent that the failure of one member of the Town Plan Commission to inspect would be grounds for an applicant to appeal and overturn the entire proceeding?)

- F. Unless the applicant waives the right to timely action in writing, within ten (10) days of the public hearing, the Town Plan Commission shall meet to consider the application and make a recommendation to the Town Board of Supervisors. The recommendation shall be in the form of a motion approved by a majority of the Town Plan Commission members. If the recommendation is for approval, the motion shall include any terms or conditions recommended to be included in the Conditional Use Permit. These conditions may address the site plan, timetable of development, operation of the proposed use, surety requirements for performance of required activities, or other considerations relevant to applicable standards. The decision of the Plan Commission shall be recorded in the minutes and shall contain a written statement of reasons specifically related to the standards of this chapter or of documents related to this chapter by each Plan Commission member voting on the matter. (I wonder whether it makes sense to develop a written form that would assist the Town Plan Commission in making its decision? An opinion that adequately expresses reasoning in which the requisite number of Commission members join is the decision of the Board.)
- G. Within five (5) days of a motion taking action on an application, the Commission shall notify the applicant, all owners of record of lots or parcels within 300 feet, any objector of record, and the Town Board of Supervisors of the recommendation and conditions included therein and shall post the recommendation at the designated Town posting sites. The complete file shall be forwarded to the Town Board of Supervisors. (You want to make sure that the obligation is not placed on the Town to be certain that a person actually receives notice as opposed to simply obligating the Town to send the notice out by mail. What if it provides that within 5 days after the Town Plan Commission decides to recommend issuance of a CUP, or the denial of an application for a CUP, the Commission shall provide notice by personal delivery or by mail to the applicant, all owners of record of lots or parcels within 300 feet of the property, each objector of record and the Town Board of Supervisors and shall post such notice at the La Pointe Town Hall. The complete file shall be forwarded to the Town Board of Supervisors. (What exactly does that entail? It is not clear to me where the file is kept. Does the file physically go from the Chair of the Town Plan Commission to the Town Chair, to the Town Clerk, or who? Perhaps the ordinance should designate who is responsible for performing these tasks so there is no misunderstanding.)
- H. Within twenty-one (21) days of ~~notification~~, its receipt of notice that the Town Plan Commission has made a recommendation, the Town Board of Supervisors shall act on the recommendation of the Town Plan Commission. What if the Town Board is too busy and fails to act within 21 days? Should some leeway be inserted in the ordinance?

The word “shall” is used frequently. A concern may be that the Town, in establishing so many mandatory deadlines, is setting itself up to miss one of them, providing complainants with the argument that the Town did not even comply with its own ordinance. After review of the application, recommendation and complete file, the Town Board will consider the recommendation under the standards established in this chapter and may approve, approve with modification, or deny the recommendation of the Town Plan Commission. (Do you expect the Town Board members are going to have time to review every single document in the file?) The decision of the Town Board shall be recorded in the minutes and shall contain a written statement of the reasons specifically related to the standards of this chapter or related to this chapter by each Town Board member voting on the matter.

- I. Within five (5) days of the decision by the Town Board, the Town Clerk shall notify the applicant, objectors of record and owners of record of lots or parcels within 300 feet of the decision and conditions included therein and shall post the decision at the designated Town posting sites. (My comments about notice in “G” are applicable here) ~~If approved by the Town Board approves the issuance of a CUP, the Town Clerk shall prepare a legal document stating all terms and conditions approved by the Town Board to be signed by the applicant, the Town Board Chairman, and the Town Clerk~~ draft a conditional use permit which sets forth each of the conditions approved by the Town Board, which permit is to be signed by the Town Chair and Town Clerk, with an acknowledgment of the conditions placed on the property signed by the applicant. After forty-five (45) days following the Town Board’s decision to issue a conditional use permit, the Town Clerk shall ~~then~~ cause the document to be ~~filed in relationship to the property at~~ recorded in the Ashland County Register of Deeds office. ~~and all conditions shall be binding upon the property as if they were specific terms of this Ordinance. (Is the Town Clerk the most qualified person to do this?)~~ All conditions set forth in the conditional use permit shall be binding upon the property.
- J. ~~Where an~~ When a conditional use permit which has been issued approved conditional use contemplates the construction or erection of buildings and/or structures, the failure to substantially commence substantial construction within twelve (12) months after approval of a the issuance of a conditional use permit shall render the approval result in the conditional use permit being automatically null and void unless it specifically provides otherwise noted. Upon timely application and for good cause, the Town Plan Commission may grant specified extensions a specific extension of this twelve (12) month period.
- K. ~~Where~~ When a conditional use permit is discontinued for thirty-six (36) consecutive months, the conditional use permit shall be rendered void and any future use shall conform to this Ordinance. Upon timely application prior to the expiration of this thirty-six (36) month period

and for good cause, the Town Plan Commission may grant a specified specific extension of this thirty-six (36) month period.

- ~~L. Any person owning land within one half mile, any member of the Town Board of Supervisors or any Town Plan Commission member may file a signed complaint of violation of the terms and conditions of a CUP. Upon receipt of a reasonable complaint, the Town Plan Commission shall evaluate possible violations of the terms and conditions of a CUP and may hold a public hearing on the matter after notice by means of a Class 1 notice. The Plan Commission may make a recommendation to the Town Board to suspend or revoke the CUP for cause. The Town Board shall, within twenty one (21) days review the recommendation and act to approve, approve with modification, or reject the recommendation. (See my later comments about revocation.)~~
- M. A conditional use application which has been denied by the Town Board shall not be accepted for re-submittal within six (6) months from the date of denial, unless there has been a significant change in the ~~proposal~~ proposed use or relevant conditions as determined by the Town Plan Commission.
- N. ~~A The decision of the Town Board in granting, denying, or revoking to approve or deny a conditional use permit application may be appealed to the Board of Appeals, as per §62.23(7), Wis. Stats. Application for such appeal shall be signed by the applicant or by persons who have protest rights under §62.23(7), Wis. Stats., were by the matter one of rezoning, or by any Town Board member. Not with standing any other provisions of this ordinance, an appeal of a decision regarding a conditional use by the Town Board shall be filed within thirty (30) days of the date of the Town Board action. The application for appeal fee, as established by the Town Board in Town Fee Schedule, shall be paid by the applicant for appeal at the time of filing. Upon such filing, the entire Plan Commission and Town Board file along with reproduced copies of the minutes of the Town Plan Commission and Town Board on the matter shall be transmitted by the Town Clerk to the Chair of the Board of Appeals who shall call a meeting of the Board. The Board of Appeals shall deal with the matter after a public hearing, at its discretion. In making its determination, the Board of Appeals shall be guided and controlled by this Section and may either affirm or reverse the action of the Town Board for cause. Such an appeal shall be in writing, be signed and dated by the appellant and shall set forth with specificity the grounds for the appeal. The appeal shall be filed within thirty (30) days of the date of the Town Board's action, in the office of the Town Zoning Administrator. A form which may be used to initiate an appeal is available in the Town Zoning Administrator's office. The filing of an appeal shall be accompanied by the appeal fee set forth in the Town Fee Schedule approved by the Town Board. Upon the filing of an appeal, a copy of the file of the~~

Town Plan Commission and Town Board and all meeting minutes relating to such matter shall be forwarded to the Board of Appeals which will act in accordance with §62.23(7)(e), Wis. Stats. and Section 10 of this ordinance.

I have concerns about including the phrase “or a complainant seeking to have a CUP revoked” which appears in 8.4.2.2.

Say a responsible, law-abiding landowner in the Town who properly obtains a CUP and, in reliance on that CUP, spends hundreds of thousands of dollars erecting a building and years of labor building a business. Does the Town want that landowner to be subject to provisions like this whereby no matter how trivial or frivolous a complaint may be, the filing of that complaint will necessarily result in that landowner having to go through a public hearing whereat his CUP may be revoked? The ordinance should take into account the fact that there may be merit-less complaints filed by competitors or troublemakers that should be winnowed out short of a public hearing.

I suggest the Town should have a different procedure addressing a situation where a landowner holds a vested interest in a CUP. For example, what if you had something like this: Any person who reasonably believes that a person or entity owning, using or occupying real property in the Town is, by act or omission, violating a land use or conditional use permit, may file a written complaint with the Town Zoning Administrator. Such written complaint shall set forth the name, address and telephone number of the complainant, the name and address of the property being complained about and a detailed statement on the grounds and basis for such complaint. Such complaint shall be signed by the complainant. Complaint forms will be available at the Town Zoning Administrator’s office.

The Town Zoning Administrator shall receive and evaluate all written complaints received at such office. The Town Zoning Administrator shall conduct a preliminary evaluation of complaints and may do any of the following:

1. Forward the matter to another agency.
2. Attempt to reconcile the matter between the complainant and the property owner, user or occupier, if it is a minor dispute.
3. Close the matter if it does not present sufficient information of cause to proceed.
4. Investigate the matter and thereafter take what action the Zoning Administrator determines is appropriate.

The Zoning Administrator shall investigate any complaint that presents significant information to support an allegation of a possible violation of this ordinance.

Upon completion of an investigation, the Zoning Administrator may do one or more of the following:

1. Dismiss the complaint for lack of sufficient cause to proceed.
2. Divert the matter to another agency.
3. With the approval of the Town Board:
  - a. Issue a stop, cease and desist order or order of correction.
  - b. Issue one or more citations for apparent violations or, with the assistance of the Town's attorney, cause such violations to be prosecuted.
  - c. Pursue such court action as is appropriate including, but not limited to, seeking an injunction, restraining order or restitution.
  - d. File a petition with the Town Plan Commission to amend, modify or revoke a conditional use permit, following the procedures set forth in Section 4.2.2.2 of this ordinance. In this event, the property owner shall be served with the petition and notice of hearing in the same manner as a summons is served in Chapter 801 Wisconsin Statutes.

Any person aggrieved by a decision of the Zoning Administrator may appeal such decision to the Board of Appeals, as per §62.23(7)(e) Wis. Stats. and Section 10 of this ordinance.