

ENROLLED ORDINANCE 173-075

AMEND THE TEXT OF THE TOWN OF LISBON ZONING CODE
RELATING TO CONDITIONAL USE PERMITS (RZ1701F)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Lisbon Town Board on November 26, 2018; and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

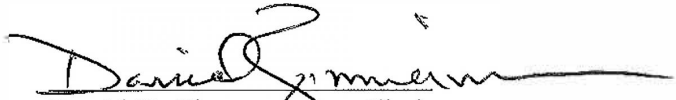
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Lisbon Zoning Code, adopted by the Town of Lisbon on April 9, 2010, is hereby amended relating to Conditional Use Permits, more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference RZ1701F, is hereby approved.


BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Lisbon.


BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

AMEND THE TEXT OF THE TOWN OF LISBON ZONING CODE
RELATING TO CONDITIONAL USE PERMITS (RZ1701F)

Presented by:
Land Use, Parks, and Environment Committee



David D. Zimmermann, Chair

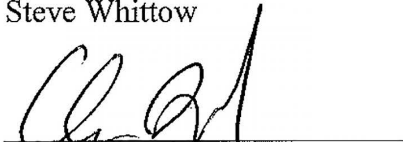

Kathleen M. Cummings


Keith Hammitt

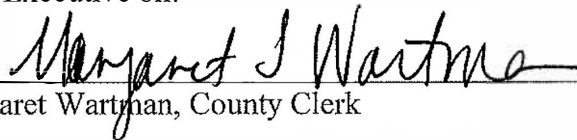

William A. Mitchell


Thomas J. Schellinger


Steve Whittow


Chuck Wood

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: January 22, 2019, 
Margaret Wartman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed: _____

Date: 1/29/19, 
Paul Farrow, County Executive

COMMISSION ACTION

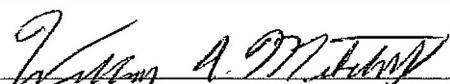
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Lisbon Zoning Code hereby recommends **approval** of **RZ1701F (Text Amendment/Town of Lisbon Board)** in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION


December 6, 2018

Absent

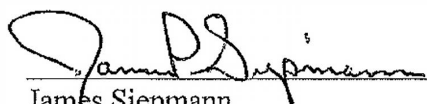
Robert Peregrine, Chairman



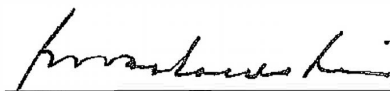
William Mitchell, Vice Chairman




Richard Morris



James Siepmann



William Maslowski



Thomas Michalski

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
TEXT AMENDMENT

DATE: December 6, 2018

FILE NO.: RZ-1701F

NAME OF PETITIONER: Town Board of Lisbon
Lisbon Town Hall
W234 N8676 Woodside Road
Lisbon, WI 53089

REQUEST:
Text Amendment to the Town of Lisbon Zoning Code relating to Conditional Use Permits (CUPs).

PUBLIC HEARING DATE: October 11, 2018

PUBLIC COMMENT:

There were no comments from the public, but a Plan Commission member questioned why there was nothing in the proposed Ordinance regarding termination or expiration of Conditional Use Status. *It should be noted this information is found in Section 4(k) of the proposed Ordinance.* The Town Attorney also answered that the Town could add a condition regarding the term for which a CUP would be valid. The Town Attorney stated that with these revisions, the new owner of the property would assume the (conditional) use on the property. *The proposed Ordinance allows for transferability in Section 4(g).*

TOWN PLAN COMMISSION ACTION:

On October 11, 2018, the Town of Lisbon Plan Commission unanimously recommended approval of the text amendment to the Town Board and Waukesha County.

TOWN BOARD ACTION:

On October 22, 2018, the Lisbon Town Board of Supervisors unanimously approved Ordinance No. 10-18 regarding the amendments to the Conditional Use section of the Town's Zoning Ordinance.

Subsequent to a meeting with the Waukesha County Planning and Zoning Division and Town staff, on November 26, 2018, the Lisbon Town Board of Supervisors unanimously (re)approved Ordinance No. 10-18 regarding the amendments to the Conditional Use section of the Town's Zoning Ordinance with minor edits.

STAFF ANALYSIS:

The Town is proposing this text amendment due to the change in State Statute in 2017, which added new language (standards) regarding Conditional Use Permits (CUPs), and the Town is updating their Code to reflect these new standards. Specifically, they are repealing Section 4(a) through (g) and creating Section 4(a) through (l), and renumbering Section 4(h) to 4(m). The sections to be repealed and replaced include the generalized Conditional Use introductory paragraphs along with guidance relative to the application process, hearing notice requirements and basis for determination sections. The Town is adding language to match new statutory rules that require substantial evidence to be relied upon in the Town's decision making process. Language has also been added to specify that imposed conditions must relate to the purpose and intent of the ordinance.

The CUP process is also proposed to be modified from decisions being made by the Plan Commission only to the Plan Commission providing recommendations to the Town Board and then the Board making the final decision. County Staff recommended that the Town consider the additional time that applicants may face in awaiting decisions from an additional body; the Town ultimately elected to add Town Board approval as a requirement. Several towns within the County already require Board approval for CUPs; Planning Staff feels that this is a local preference issue and does not object to the Town's proposal to include the Town Board in the process.

County Staff also recommended that the Town consider restoring its neighbor mailing requirements to 300', rather than the 500' currently specified in the code. Most local codes require a 300' neighbor mailing requirement for zoning matters that involve public hearings. The modification to 300' provides consistency in notice mailing requirements for rezones, variances and Conditional Use requests. Law now requires publication of a Class two public hearing notice for Conditional Use requests and the Town Code includes this requirement. The Town Planner has indicated that the Town will likely examine its specific standards for individual Conditional Use types and consider subsequent amendments in the future.

STAFF RECOMMENDATION:

Based on the above analysis, the Planning and Zoning Division Staff recommends **approval** of this request in accordance with the Town of Lisbon's adopted Ordinance approving the same. The proposed amendments will provide an updated CU section in conformance with new state law and, therefore, this zoning amendment is within the purpose and intent of the Town of Lisbon's Zoning Ordinance.

Respectfully submitted,



Sandy Scherer
Senior Planner

Attachment: Town Ordinance 10-18

NOV 29 2018

STATE OF WISCONSIN

TOWN OF LISBON

DEPT OF PARKS & LAND USE
WAUKESHA COUNTY

Ord. 10-18

**AN ORDINANCE REPEALING CHAPTER 11, SECTION 4(a) THROUGH (g) AND
CREATING SECTION 4(a) THROUGH (I) OF THE ZONING CODE OF THE TOWN OF
LISBON RELATING TO ISSUANCE OF CONDITIONAL USE PERMITS**

The Town Board of the Town of Lisbon, Waukesha County, Wisconsin, does ordain as follows:

SECTION 1: Chapter 11, Sections 4(a) through (g) are repealed and Section 4(a) through (I) are hereby created to read as follows:

SECTION 4 CONDITIONAL USES

(a) **Approval Required**

Certain uses and situations which are of a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in this ordinance of the specific standards, regulations, or conditions which would permit such determination in each individual conditional use type, subject to the requirements hereinafter specified for each conditional use type, the approval of the Town Board, unless otherwise designated herein, and subject to any conditions as deemed appropriate in the approval process.

(b) **Definitions** in this subsection:

1. **Conditional Use** means a use allowed under a Conditional Use Permit, special exception, or other special zoning permission issued by a Town, but does not include a variance.
2. **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 a reasonable person would accept in support of a conclusion.

(c) **Application**

Application for Conditional Use Permits may be made by an individual property owner or group of owners or by a municipality, lake management district, sanitary district, or similar agency on behalf of a larger property area where said proposal may benefit a larger group or entire community. Application shall be made to the Town Clerk and shall include:

1. A plat of survey (preferably a topographic survey), or an accurate map of the property drawn to a scale of not less than two hundred (200) feet to one (1) inch, and properly dimensioned showing: all lands within three hundred (300) feet of the subject property; 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 ordinary high water mark of any navigable waters within one hundred (100) feet of the boundaries of the land in question; the location and use of any proposed buildings; sanitary systems and private water supplies on such land and within one hundred (100) feet of the land in question. Contact the Town Hall as to the number of copies required.

2. Names and complete mailing addresses, including zip codes, of the owners of all properties within three hundred (300) feet of any part of the land included in the proposed change. When the project is to include a larger area and number of property owners and the applicant is the municipality or other governmental agency representing a large number of properties, the necessity of including names and addresses for the owners of land within three hundred (300) feet of the project area is not required although there must be a listing of all properties directly included by the project. Notice of hearing will only be required to be sent to the community, DNR, and other agencies of government as set forth elsewhere in this ordinance, and the notice shall be published in the newspaper as a class 2 type notice.
3. Site Plans and Plan of Operation as required by Sub. Sec. (d) of this Ordinance.
4. A fee, as established and periodically modified by the Town under Section 37 (b) 5 shall accompany each application, except those submitted by a governmental body or agency. Such fee shall be paid by cash, check, or money order to the Town of Lisbon to defray the cost of official notification and positing of the public hearing. Costs incurred by the Town of Lisbon in obtaining legal, planning, engineering, and/or other technical and professional advice in connection with the review of conditional use applications and preparation of conditions to be imposed on such uses in accordance with Ordinance 1.14, shall also be charged to the applicant.
5. Where necessary, to comply with the Waukesha County Shoreland and Floodland Protection Ordinance, and certain regulations established by the Wisconsin Statutes and the federal government, applications will be required to be submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division, the State of Wisconsin Department of Natural Resources, and the U.S. Army Corps of Engineers.

(d) **Site Plan and Plan of Operation**

1. **Purpose, Scope and Intent.** For the purpose of protecting and promoting the public health, safety, convenience, prosperity, aesthetics, and general welfare of the community, and for promoting compatible development, stability of property values, and to prevent impairment or depreciation of property values, issuance of a conditional use shall require the submittal, review and approval of a Site Plan and Plan of Operation.

The Town Plan Commission shall review and recommend to the Town Board, and the Town Board shall approve, conditionally approve or reject the Site Plan and Plan of Operation as a part of the review process undertaken when reviewing the application for issuance of a Conditional Use Permit. The Town's review shall include but not be limited to review of the site, existing and proposed structures, detailed architectural plans, neighboring uses, utilization of landscaping and open

space, parking areas, driveway locations, loading and unloading in the case of commercial and industrial uses, highway access, traffic generation and circulation, lighting, drainage, sewerage and water systems and the proposed operation.

The Town Plan Commission may recommend changes to any proposed Site Plan and Plan of Operation, and the Town Board may approve amendments to the submitted Site Plan and Plan of Operation provided that the Town Board determines that amendments to the Site Plan and Plan of Operation are necessary to conform with the purpose and intent of this Ordinance, and comply with the Town's adopted Comprehensive Development Plan, and any other adopted plan or ordinance utilized by the Town to promote the health, safety and general welfare of the citizens by preserving and enhancing the Town's natural environment, facilitating the creation of an attractive and harmonious community, protecting and enhancing property values, and encouraging the appropriate use and orderly development of land.

2. **Site Plan.** The Site Plan shall include the following information:
 - A. Site Plan drawn to a recognized engineering scale not to exceed 1" = 60 feet.
 - B. Name of project noted.
 - C. Applicants name and address.
 - D. Total number of parking spaces and layout, including driveways and access to adjacent public roads or rights of way.
 - E. The type, size, and location of all structures with all building dimensions and distances from property lines shown.
 - F. Other information as requested by the Town.
3. **Plan of Operation.** The proposed Plan of Operation relating to any conditional use shall include the following information:
 - A. The proposed use of the land and/or structures.
 - B. Activities to occur both inside and outside all principal and accessory structures.
 - C. The frequency and duration of all activities.
 - D. The number of employees of any commercial or industrial enterprise.
 - E. The estimated number of occupants of a residential use.
 - F. The number, size and type of all vehicles associated with the use.
 - G. Plans for compliance with the performance standards set forth in this Ordinance.
 - H. The season, days and hours of operation.
 - I. The expected starting and completion dates of construction.
 - J. The proposed phasing of the project, if appropriate.
 - K. Other information as requested by the Town.

(e) **Plan Commission Review**

The Town Plan Commission shall hold a public hearing, and shall publish notice of said hearing once each week for two (2) consecutive weeks in a newspaper of general circulation in the area of the proposed conditional use. The notice of the public hearing shall contain the purpose, time and place of the meeting. Notice of the public hearing shall be given by regular mail to the owners of all lands within three hundred (300) feet of any part of the land included in such conditional use at least seven (7) days before such public hearing.

The Town Plan Commission shall review the site, the size and location of 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 site plan and plan of operation. Conditions such as, but not limited to, landscaping, architectural design, dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased setbacks and offsets, natural resource features, or parking requirements may be recommended by the Town Plan Commission; provided however, that any condition recommended by the Plan Commission must be related to the purpose of the Ordinance and be based upon substantial evidence.

(f) **Final Determination and basis for Approval or Denial**

The Town Board may, after receiving the recommendation of the Plan Commission, approve issuance of a Conditional Use Permit for conditional uses if any applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in this Ordinance, and any additional provisions required by the Town Board, provided however, that any condition required by the Town Board must be related to the purpose of the Ordinance and based on substantial evidence.

The decision of the Town Board to approve or deny a Conditional Use Permit must be supported by substantial evidence, and the Town shall notify the applicant, in writing, of any decision to approve or deny issuance of the Conditional Use Permit.

(g) **Issuance of Conditional Use Permit**

Upon approval of a Conditional Use Permit, the Town shall issue a Conditional Use Permit in recordable form which shall be recorded by the Town in the Waukesha County Register of Deeds and upon such recording, the Conditional Use shall become effective. Any requirement or condition required for issuance of the Conditional Use Permit must be reasonable, and to the extent practical, measurable and may include conditions such as the permits duration, transfer or removal. The Conditional Use Permit shall not be issued unless or until the applicant demonstrates that the applications and all requirements and conditions established by the Town Board relating to the Conditional Use Permit are or will be satisfied, both of which must be supported by substantial evidence.

(h) **Compliance**

Conditional Use Permit, once issued, shall remain in effect as long as the conditions upon which the permit were issued are followed, or upon the expiration of a term noted in the Conditional Use Permit. Issuance of any Conditional Use Permit shall be contingent upon compliance with all other provisions of this Ordinance, such as, but not limited to, lot width and area, setbacks, offsets, height, parking, loading, traffic, signage, and highway access requirements.

(i) **Existing Permits**

All uses existing at the effective date of this Ordinance which would be classified as a conditional use in the district concerned if they were to be established after the effective date of this Ordinance, and are legally operated under the terms and conditions of their Conditional Use Permits, are hereby declared to be conforming conditional uses to the extent of their existing operation. Any proposed change in the existing operation shall be subject to the conditional use procedures as if such use were being established anew.

(j) **Amendments**

Changes subsequent to the initial issuance of a Conditional Use Permit which would result in a need to change the initial conditions shall require an amendment to the Conditional Use Permit. Enlargement of a conditional use shall be considered an amendment. The procedure and standard governing issuance of a Conditional Use Permit shall be followed when considering any amendment to an existing Conditional Use Permit.

(k) **Termination or Expiration of Conditional Use Status**

Any Conditional Use Permit shall terminate upon occurrence of any of the following events:

1. The conditional use authorized by the Conditional Use Permit did not commence within twelve (12) months after issuance of the Conditional Use Permit.
2. The conditional use authorized by the Conditional Use Permit has been discontinued for a period of twelve (12) consecutive months.
3. The term of any Conditional Use Permit shall have expired.

(l) **Revocation of Conditional Use Permit**

Should a permit applicant, his heirs or assigns, fail to comply with the conditions of the permit issued by the Town or should the use, or characteristics of the use be changed without prior approval by the Town, the Conditional Use Permit may be revoked. The procedure for revocation of a Conditional Use Permit shall follow the same application procedure required when considering a new Conditional Use Permit. The holder of the Conditional Use Permit shall be provided notice of any reason or reasons that will be considered by the Town as a basis for revoking the Conditional Use Permit, a Public Hearing shall be conducted by the Plan Commission, and the holder of the Conditional Use Permit shall have an opportunity to appear before the Town Plan Commission and present evidence and testimony opposing any recommendation to revoke the Conditional Use Permit. The Town Board shall review any recommendation of the Plan

Commission to revoke the Conditional Use Permit, and the Town Board may, after reviewing that recommendation, revoke the Conditional Use Permit provided that there exists substantial evidence to support the revocation of the Permit. Any decision of the Town Board to revoke the Conditional Use Permit shall be reduced to writing and provided to the holder of the Conditional Use Permit. The revocation of the Conditional Use Permit shall likewise be recorded by the town in the Waukesha County Register of Deeds to be effective.

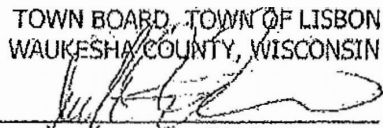
SECTION 2: Chapter 11, Section 4(h) Conditional Uses Permitted is renumbered as Section 4(m), and all references in the Zoning Code to this Section are renumbered accordingly.

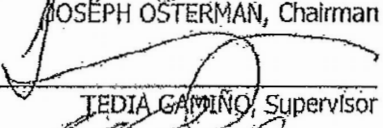
SECTION 3: All ordinances or parts of ordinances conflicting with or contravening the provisions of this ordinance are hereby repealed.

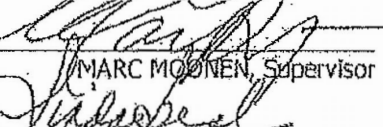
SECTION 4: This ordinance shall take effect upon passage and posting as provided by law.

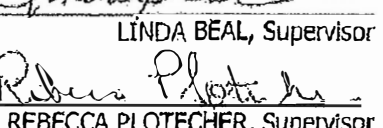
RE-Adopted by the Town Board of the Town of Lisbon, Waukesha County, Wisconsin this 26th day of November, 2018.

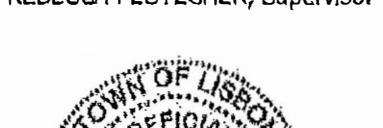
TOWN BOARD, TOWN OF LISBON
WAUKESHA COUNTY, WISCONSIN

BY: 
JOSEPH OSTERMAN, Chairman

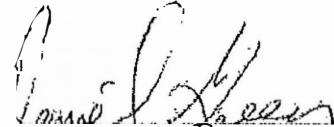
BY: 
TEDIA GAMINO, Supervisor

BY: 
MARC MOONEN, Supervisor

BY: 
LINDA BEAL, Supervisor

BY: 
REBECCA PLOTECHER, Supervisor

ATTEST:

BY: 
Daniel Green, WCMC
Town Clerk





Voting Results for 173-O-075

Amend The Text Of The Town Of Lisbon Zoning Code Relating To Conditional Use Permits (RZ1701F)

Passed By Majority Vote

AYE: 23 NAY: 0 ABSTAIN: 0 ABSENT: 2

D1 - Foti	AYE	D14 - Wood	AYE
D2 - Zimmermann	Motion	D15 - Mitchell	AYE
D3 - Morris	ABSENT	D16 - Crowley	AYE
D4 - Batzko	Second	D17 - Paulson	AYE
D5 - Dondlinger	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Cummings	AYE
D7 - Grant	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Gaughan	AYE
D9 - Heinrich	AYE	D22 - Wysocki	AYE
D10 - Swan	AYE	D23 - Hammitt	AYE
D11 - Howard	AYE	D24 - Whittow	ABSENT
D12 - Wolff	AYE	D25 - Johnson	AYE
D13 - Decker	AYE		