

ONEIDA COUNTY ZONING & SHORELAND PROTECTION ORDINANCE

CHAPTER 9 ARTICLE 4 - CONDITIONAL USES AND STRUCTURES / HOME OCCUPATIONS

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9.40 CONDITIONAL USES

A. Purpose

This ordinance is based upon the division of the County into districts, within which districts the use of land and buildings, and location of buildings and structures in relation to the land, are mutually compatible. However, there are certain uses that, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts without consideration of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use. 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. Conditional Use Permit

Conditional uses are allowed only upon the issuance of a conditional use permit (CUP), as provided in sections 9.41 and 9.42 of this ordinance. Where applicable, a CUP is required in addition to a zoning permit under Article 3 above.

9.41 APPLICATION FOR CUP

A. Applicant

Any person having ownership interest in property, an exclusive possessory interest, or a contractual interest in property that may become an ownership or exclusive possessory interest, may apply for a CUP. Prior to final approval of the CUP, the entire tract covered by the CUP or proposed project shall be either under single ownership, evidenced by legal title or binding sales contract or under lease or such other legal control over the land and proposed use which is sufficient to insure that the applicant will be able to carry out the proposed project

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and assume all liability for the project which would normally be assumed under full land ownership.

B. Application Fee

The application fee as periodically designated by the County Board shall be paid when the application is filed.

C. Filing of Application

Application for a CUP shall be made on forms approved by the Committee and available at the Department. A completed application, together with the applicable CUP application fee shall be filed with the Department. A minimum of 3 copies of the completed application must be filed, and the Zoning Administrator may request up to 7 additional copies without charge. The Zoning Administrator shall immediately initial and date one copy of the application when received.

D. Additional Information

In addition to the information obtained on the application, the Zoning Administrator and/or Committee may request any additional information deemed necessary or appropriate for review.

9.42 CUP APPLICATION REVIEW PROCESS (Amend #2-2008, 9-2009, 5-2019)

A. Completed Applications Referred to Committee

1. The application shall first be reviewed by the Zoning Administrator for completeness. When is deemed complete by the Zoning Administrator, a notation of completeness shall be made on the application, and it shall be referred to the Committee.

B. Town Recommendation, Notice and Public Hearing

The Committee shall seek an advisory recommendation from the town board of the town in which the proposed conditional use is located and shall hold a public hearing on the completed application. Notice of the hearing shall be published as a Class 2 notice pursuant to Ch. 985, Wis. Stats. In addition, at least 10 days prior to the date of the public hearing, written notice of the application and public hearing shall be mailed to the following:

1. The clerk of any municipality exercising extraterritorial jurisdiction where the proposed conditional use is located
2. The clerk of the town where the proposed conditional use is located

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3. The applicant

C. Issuance or Denial of Application

1. Conditional use permit applications shall be reviewed for completeness by the Zoning Administrator within 30 working days of the date the application is filed and the fee is paid. The Committee shall attempt to approve the application, conditionally approve the application, or deny the application within 60 days of receipt of the completed application. However, at its sole discretion, the Committee may extend this review time for up to a total of 180 days after receipt of the completed application.
2. The Committee may request additional information from the applicant, the town, or others after the receipt of the completed application. If any comments or recommendations are timely received from the town, the Committee, in making its decision, shall consider but is not bound by the town's input.
3. If the application is approved or conditionally approved, the Zoning Administrator shall issue a written CUP with any conditions attached. The Zoning Administrator may require that the applicant and/or property owner sign a recordable CUP agreement expressly accepting the permit conditions.
4. If the application is denied, written reasons for the denial shall be provided to the applicant along with a notice of the applicant's right to appeal the denial to the Board of Adjustment.

D. Basis of Approval or Denial

1. The Planning and Development Committee shall review each conditional use permit application for compliance with all requirements applicable to that specific use and to all other relevant provisions of this ordinance. The Committee's decision to approve or deny the conditional use permit must be supported by substantial evidence. "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." Wis.Stats.§59.69(5e)(a)(2).
2. To aid in the review of and decision-making regarding the proposed conditional use project, the Planning and Development Committee shall evaluate the following specific criteria as applicable, but shall not be limited thereto:

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- a. 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. The uses, values and enjoyment of neighboring property shall not be substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- c. The proposed conditional use is compatible with the use of adjacent land and any adopted local plans for the area.
- d. 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.
- e. Adequate utilities, access roads, drainage and other necessary site improvements have been or will be provided for the conditional use.
- f. Adequate measures have been or will be taken to provide ingress and egress so as to minimize traffic congestion in the public streets.
- g. The conditional use shall conform to all applicable regulations of the district in which it is located.
- h. The conditional use does not violate shoreland or floodplain regulations governing the site.
- i. Adequate measures have been or will be taken to prevent and control water pollution, including sedimentation, erosion and runoff.

The foregoing criteria are deemed reasonable and, to the extent practicable, measurable.

3. An applicant's failure to demonstrate, by substantial evidence, that the application and all applicable requirements in this ordinance and conditions established by the county relating to the conditional use are or will be satisfied shall be grounds to deny the conditional use permit. At all times the burden of proof to demonstrate satisfaction of these criteria remains with the applicant.

E. Conditions

The Committee may attach conditions to the CUP deemed necessary or appropriate in furthering the purposes of this ordinance. Such factors to be considered may include, but are not limited to the following:

1. Landscaping
2. Type of construction
3. Sureties
4. Lighting
5. Fencing

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6. Planting
7. Screening
8. Operational control
9. Period of operation
10. Improved traffic circulation
11. Deed restrictions
12. Free and unlimited access to the project site during daylight hours to any Committee member or any Planning and Zoning employee investigating the project's construction, operation or maintenance
13. Written notification of the Department at least five days before the project is started and five days after each phase of the project is completed.
14. Parking requirements
15. Erosion control
16. Stormwater management
17. Signage
18. Construction schedule
19. An acknowledgment that the nature and extent of the conditional use shall not change from that described in the application and approved in the CUP

Conditions imposed as part of the conditional use permit shall be achievable, practicable and to the extent possible, measurable. Any conditions imposed must be related to the purpose of the ordinance and be based on substantial evidence.

F. Reapplication After Denial

1. No CUP application which has been denied by the Committee shall be considered again within one year of the written denial.
2. An applicant may file a CUP application if the application does not involve a request for a similar project or project of similar size, scope and design, or where the application no longer conflicts with any ordinance provisions.

G. Recording of CUPs

The Zoning Administrator shall keep a complete record of all CUPs issued by the County. The Zoning Administrator may record notice of a CUP with the register of deeds as appropriate.

H. Lapse of CUP

A CUP shall lapse and be void unless the use permitted by the CUP has been substantially commenced within three years from the date of issuance of the CUP and has been completed within the time period specified in the CUP.

9.43 HOME OCCUPATIONS (#1-2023)

A. Purpose

The purpose of this section is to provide limited and reasonable accommodation for owner or residential tenant-occupied businesses in a residential district without the necessity of obtaining a rezoning into a commercial district, while also balancing the interests of the residential users.

B. Home Occupation Standards

A home occupation is an allowed accessory use in all residential districts, subject, however, to review and approval by the Zoning Administrator and compliance with the provisions of this ordinance. The following special standards shall be complied with:

1. The home occupation shall be conducted only within the enclosed area of the dwelling unit or an attached or detached garage.
2. There shall be no exterior alterations that change the character of the dwelling unit or an attached or detached garage. Nor shall there be any visible evidence from the exterior of the dwelling unit or an attached or detached garage that indicates it is being utilized for any purpose other than that of a dwelling unit or an attached or detached garage, other than those signs permitted in the district.
3. No storage or display of materials, goods, supplies, or equipment related to the operation of the home occupation shall be visible outside any structures located on the premises.
4. The home occupation must not create smoke, odor, glare, noise, dust, vibration, fire hazard, small electrical interference, electrical emissions, any nuisance not associated with the normal residential use in such a district, or other fire or safety hazards that are noticeably out of character with those normally associated with the typical residential use of such a district.
5. The home occupation shall not require the use of commercial vehicles for more than occasional delivery of materials to or from the property, and traffic generated by the home occupation may not exceed that which is normally associated with the typical residential use of such a district.

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6. The sale of goods from the location of the home occupation shall be limited to items produced on-site, and the sale of personal care and home care products made off-site, such as Tupperware, Shaklee, Amway and Avon, or other similar products that are customarily sold from a residence, as determined by the Zoning Administrator.
7. A home occupation shall not occupy more than 50% of the total floor area of the dwelling unit (excluding the garage). If an attached or detached garage or other accessory structure is used for a home occupation, the entire floor area of the attached or detached garage or accessory structure can be occupied by the home occupation.
8. Persons employed at the home occupation site shall be limited to resident family members and not more than one (1) non-resident employee at any given time.
9. Under no circumstances shall a vehicle repair or bodywork business qualify as a home occupation.
10. The home occupation must be clearly secondary and incidental to the residential use of the property.
11. The home occupation must not unreasonably interfere with residential occupancy of other parcels in the neighborhood.
12. Signage for the home occupation is governed by the sign regulations of this ordinance.
13. Garage sales as a type of home occupation are allowed in all residential districts provided that not more than three (3) such sales are held at a single dwelling unit per calendar year and that each sale shall not exceed four (4) consecutive days in duration.
14. Day care is allowed as a home occupation on residential premises. Standards may be imposed, and conditional use approval may be required, however, consistent with s. 66.304, Wis. Stats., if applicable.
15. No production of items on-site shall be conducted if that production is of a type typically permitted only in the industrial zoning districts.
16. For home occupations conducted by a residential tenant, the property owner's written permission is required as part of the compliance checklist required below.

C. Home Occupation Compliance Checklist / Review Fee

Prior to commencing any home occupation in a residential district, a compliance checklist shall be completed on a form approved by the Committee and available from the Department. The compliance checklist shall be signed by the owner and/or residential tenant of the property on which the home occupation takes place. The completed compliance checklist shall be filed with the Department, along with the review fee as periodically designated by the County Board. The completed checklist shall be reviewed by the Zoning Administrator to determine compliance with the requirements of this ordinance. If the

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proposed home occupation complies, the Zoning Administrator shall approve the home occupation and sign the checklist. If the proposed home occupation does not comply with this ordinance, the Zoning Administrator shall not approve the home occupation and shall not sign the checklist.

D. Continuing Compliance

If, at any time, the Zoning Administrator believes that any of the above standards or other provisions of this ordinance are being violated, the general enforcement, violation and penalty provisions of this ordinance shall apply.

- 9.44 [Reserved for future use]
- 9.45 [Reserved for future use]
- 9.46 [Reserved for future use]
- 9.47 [Reserved for future use]
- 9.48 [Reserved for future use]
- 9.49 [Reserved for future use]