ORDINANCE 2018-03

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AMENDING CHAPTER 17 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF PRAIRIE DU CHIEN, CRAWFORD COUNTY, WISCONSIN

The Common Council of the City of Prairie du Chien, Crawford County, Wisconsin, does ordain that Chapter 17 of the Municipal Code be amended as follows:

Section 1:

SECTION 7.0 (NONCONFORMING USES, STRUCTURES AND LOTS)

7.6 (SUBSTANDARD LOTS)
In any Residential District a one-family detached dwelling and its accessory structure may be erected on any legal lot or parcel of record in the office of the County Register of Deeds before the effective date or amendment of this ordinance, provided that the area, width and depth of such existing lot shall be no less than sixty-six and two-thirds percent (66 2/3) of the required minimum set for the district in which it is located. If in separate ownership, all the district requirements shall be complied with in-so-far as practical but shall not be less than the requirements of the district in which it is located. Where an existing single family or two family dwelling is located on a substandard lot, the total lot coverage to accommodate detached accessory structures and additions to existing dwelling may be increased 5% above the minimum as set forth in the district, however, all construction shall meet the minimum side, corner side, rear and front setback requirements for the district.

SECTION 8.0 (CONDITIONAL USES)

8.1 (PERMITS)
The City Plan Commission may authorize the Zoning Administrator to issue a zoning permit for a conditional uses after review and a public hearing, provided that such conditional uses and associated structures are in accordance with the purpose and intent of this ordinance, are based on substantial evidence, and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community.

8.2 (APPLICATION AND FEE)
Applications for zoning permits for conditional uses shall be made to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the information required by Section 9. A permit fee receipt from the Treasurer in the amount of $50.00 shall be rendered at time of application.

8.3 (HEARINGS)
The City Plan Commission shall hold a public hearing upon each conditional use application following publication in the City of a Class 2 Notice under Wis. Stats. Chapter 985.

8.4 (REVIEW AND APPROVAL)
(a) The Plan Commission shall use the following standards when reviewing applications for conditional uses:
   a) That the establishment, maintenance, or operation of the conditional use will not create a nuisance for neighboring uses or reduce the values of other property.
   b) That adequate utilities, access roads, parking drainage, landscaping and other necessary site improvements are being provided.
   c) That the conditional use conforms to all applicable regulations of the district in which it is located.
   d) That the conditional use conforms to the purpose and intent of the City Master Plan.

(b) Conditions such as the permit’s duration, transfer or renewal, landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational 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 ordinance and that the condition is based upon substantial evidence. Such conditions shall be reasonable and, to the extent practicable, measurable. An applicant must demonstrate that the application and all requirements and conditions established by the Plan Commission relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.
(3) Compliance with all other provisions of this ordinance, such as lot and area, yards, height, parking loading, traffic, and highway access shall be required of all conditional uses. Variances shall only be granted as provided in Section 10.0.

(4) Following the public hearing and review of the conditional use application, the Plan Commission shall approve, deny, or further conditionally approve the application. The Plan Commission’s decision to approve, deny, or conditionally approve an application must be supported by substantial evidence. A simple majority approval by the Plan Commission constitutes final approval of the conditional use. No further action by the City Council is required.

(5) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the Plan Commission may impose conditions such as the permit’s duration, transfer, or renewal, in addition to any other conditions specified in the Zoning Code.

(6) Records of all Plan Commission actions on conditional use applications shall be maintained by the City Clerk and shall be referred to in regard to enforcement and modification of conditional use approvals.

(7) If the Plan Commission denies a person’s conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in Wis. Stats. Sec. 62.23(7)(e)(10).

SECTION 10.0 (BOARD OF ZONING APPEALS)

10.0 (ESTABLISHMENT)
There is established a Board of Zoning Appeals for the City for the purpose of hearing appeals and applications, and granting variances and exceptions to the provisions of this ordinance in harmony with the purpose and intent of this ordinance.

10.1 (MEMBERSHIP)
Refer to Section 1.20 (Board of Zoning Appeals) of the Municipal Code.

10.2 (ORGANIZATION)
(1) The Board of Zoning Appeals shall organize and adopt rules of procedures for its own governance in accordance with the provisions of this ordinance.

(2) Meetings shall be held at the call of the chairperson and shall be open to the public.

(3) Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board’s determination, and its findings of facts. These records shall be immediately filed in the office of the Board and shall be a public record.

(4) The concurring vote of three (3) members of the Board shall be necessary to correct an error, grant a variance, make interpretation and permit utility, temporary, unclassified or substituted use.

10.3 (POWERS)
The Board of Zoning Appeals shall have the following powers:
(a) Appeals. To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the Zoning Administrator or Plan Commission.
(b) Variances. To hear and grant appeals for variances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this ordinance shall be observed and the public safety, welfare and justice secured. Use variances shall not be granted.
(c) Interpretations. To hear and decide applications for interpretation of the zoning regulations and the boundaries of the zoning districts after the City Plan Commission has made a review and recommendation.
(d) Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses, provided no structural alterations are to be made. Whenever the Board permits such a substitution, the use may not thereafter be charged without application.
(e) Unclassified uses. To hear and grant applications for unclassified and unspecified uses, where a clear determination cannot be made by the Zoning Administrator, provided that such uses are similar in character to the principal uses permitted in the district.

(f) Assistance. The Board of Zoning Appeals may request assistance from other municipal officers, departments, boards and commissions, or may seek outside professional opinion and pay for same provided funds for said consultation services are made available by the City Council.

(g) Oaths. The chairperson may administer oaths and compel the attendance of witnesses.

(h) Temporary Uses. To hear and grant applications for temporary uses, in any District, provided that such uses are of a temporary nature; do not involve the erection of a substantial structure; and are compatible with the neighboring uses; and the Plan Commission has made a review and recommendations. The permit shall be temporary, revocable, subject to any conditions required by the Board of Appeals, and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this ordinance shall be required.

(i) Permits. The Board may reverse, affirm wholly or partly modify the requirements appealed from and may issue or direct the issue of a permit.

10.4 (APPEALS AND APPLICATIONS)
Appeals from the decision of the Zoning Administrator or the Plan Commission concerning the literal enforcement of this ordinance may be made by any person aggrieved or by an officer, department, board or bureau of the City. Such appeals shall be filed with the secretary within thirty (30) days after the date of written notice of the decision of the Zoning Administrator or Plan Commission. Applications may be made by the owner or lessee of the structure, land or water to be affected at any time and shall be filed with the secretary. Such appeals and applications shall include the following:

(a) Name and address of the appellant or applicant and all abutting and opposite property owners on record, and owners on record, and owners within three hundred (300) feet of the property in question;

(b) Site plan as required under Section 9.0 for a zoning permit;

(c) Additional information required by the City Plan Commission, City Engineer, Board of Zoning Appeals or Zoning Administrator.

(d) The right to an appeals hearing shall be contingent upon applicant’s prepayment of a fee of $50.00. Said payment to be made at time of application.

10.5 (APPEALS – HEARINGS)
The Board of Zoning Appeals shall fix a reasonable time and place for the hearing, give public notice thereof at least seven (7) days prior to the hearings by publication as a Class I Notice and shall give due notice to the parties having interest, the Zoning Administrator, and the City Plan Commission. At the hearing the appellant or applicant may appear in person, by agent or by attorney.

10.6 (VARIANCE – APPEALS – FINDINGS)
A. The Municipal Code recognizes two types of variances:

(1) An area variance is a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure.

(2) A use variance is an authorization for the use of land for a purpose that is otherwise not allowed or is prohibited by the Zoning Code.

B. The property owner applying for a variance bears the burden of proving unnecessary hardship. No variance to the provisions of this ordinance shall be granted by the Board unless it finds beyond a reasonable doubt that all of the following facts and conditions exist and so indicates in the minutes of its proceedings:

(1) For an area variance, the property owner must demonstrate that strict compliance with the Zoning Code would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the Zoning Code unnecessarily burdensome as distinguished from a mere inconvenience.

(2) For a use variance, the property owner must demonstrate that strict compliance with the Zoning Code would leave the property owner with no reasonable use of the property in the absence of a variance.

(3) In all cases, the property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property and would not be applicable generally to other properties within the same zoning classification, rather than
considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Further, the purpose of the variance shall not be based exclusively upon a desire for economic or other material gain by the applicant or owner.

(4) In order to grant a variance the Board must find that the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public right-of-way, negatively impact public safety, or substantially diminish or impair property values within the neighborhood.

10.7 (APPEALS – DECISION)

(1) The Board of Zoning Appeals shall decide all appeals and applications within thirty (30) days after the final hearing and shall transmit a signed copy of the Board’s decision to the appellant or applicant, Zoning Administrator, and City Plan Commission.

(2) Conditions may be placed upon any zoning permit ordered or authorized by this Board.

(3) Variances, substitutions, or use permits granted by the Board shall expire within twelve (12) months unless substantial work has commenced pursuant to such grant.

(4) Any person or persons aggrieved by a decision of the Board of Appeals may present to the court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Zoning Administrator.

SECTION 12.0 (DEFINITIONS)

(27) CONDITIONAL USES. A conditional use is a use allowed under a conditional use permit, special exception, or other special zoning permission issued by the City, but does not include a variance.

(103A) SUBSTANTIAL EVIDENCE. 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.

Section 2: Any Ordinance or parts thereof, inconsistent herewith are hereby repealed.

Section 3: This Ordinance shall be published as required by law after passage by the Common Council.

Passed and approved this 6th day of March, 2018.

David Hemmer, Mayor

ATTEST:

Chad Abram, City Administrator

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Certification

I, Tina Fuller, am the duly qualified and acting City Clerk of the City of Prairie du Chien, Crawford County, Wisconsin. I hereby certify that the aforementioned is a true and exact reproduction of the original ordinance or resolution adopted by the Common Council.

IN WITNESS WHEREOF, I have executed this Certificate in my official capacity on this ___th day of ______________________, 2018.