

## Article V. Conditional Use Regulations

### Section 5.01 Intent

Many land use activities, while not inherently inconsistent with other permitted uses in a particular zoning district, may have significant impact on the surrounding area. Conditional use permits for such uses allow special conditions to be "attached" to the development to address those impacts. The conditional use permit process provides for flexibility in identifying the special conditions without making the Ordinance unreasonably complicated. The objective of the conditional use permit process is to encourage compatibility of the proposed development with the environment, and with existing and future land uses in the area.

### Section 5.02 Conditional Use Permit Required

Those uses which require a Conditional Use Permit are listed in the **Section 4.16**, and those at the discretion of the Zoning Administrator.

### Section 5.03 Issuance of Conditional Use Permit

- 5.03.01 A Conditional Use Permit may be issued only after review and approval of the submitted application, including any plans, by the Board of Adjustment. An application and plan shall only be approved upon determination that the development, if completed as proposed will comply with the provisions of this chapter.
- 5.03.02 The Conditional Use Permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use and shall incorporate by reference the approved application and plan. The permit shall contain any special conditions or requirements lawfully imposed by the Board of Adjustment. The Zoning Administrator shall record the permit with the County Recorder and shall provide the applicant with a copy of the recorded permit.
- 5.03.04 All development shall occur strictly in accordance with such approved application and plan.

### Section 5.04 Application for Conditional Use Permits

- 5.04.01 The applicant for a Conditional Use Permit must be a person with the legal authority to take action in accordance with the permit. In general, this means that applications should be made by the owners or lessees of the subject property or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits, or their agents.
- 5.04.02 The application must be submitted on an approved form and must be complete. An application shall be complete when it contains all the information necessary for the Board of Adjustment to decide whether the

development, if completed as proposed, will comply with all of the requirements of this section. Unless the Board of Adjustment informs the applicant at the hearing in what way the application is incomplete, the application shall be presumed to be complete. If incomplete, the Board of Adjustment shall offer the applicant the opportunity to complete the application, either at that hearing or at a continuation hearing.

- 5.04.03 To minimize planning costs to the developer, avoid misunderstandings or misinterpretations, and to ensure compliance with the requirements of this section, a pre-application conference between the developer and the Zoning Administrator is encouraged.

## Section 5.05 Notification

- 5.05.01 Notification will be posted as per Section 3.07.

## Section 5.06 Standards for Approval

- 5.06.01 The Board of Adjustment shall review the proposed development for conformance to the following development criteria:

1. Compatibility. The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable district.
2. Transition. The development shall provide for a suitable transition, if necessary, buffer between the proposed buildings or use and surrounding properties.
3. Traffic. The development shall provide for adequate ingress and egress with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.
4. Parking and Loading. The development shall provide all off-street parking and loading areas as required by this Ordinance, and adequate service entrances and areas. Appropriate screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes or other detrimental impacts.
5. Signs and Lighting. Permitted Signage shall be in accordance with the applicable district regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity.
6. Environmental Protection. The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable hazardous or nuisance conditions, including weeds.

- 5.06.02 If the Board of Adjustment concludes that all development criteria will be met by the development, it shall approve the application and plans unless it concludes, based on the information submitted at the hearing that if completed as proposed, there is a strong probability the development will
1. Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property, or
  2. Impair an adequate supply (including quality) of light and air to surrounding property, or
  3. Unduly increase congestion in the roads, or the hazard from fire, flood or similar dangers, or
  4. Diminish or impair established property values on adjoining or surrounding property, or
  5. Not be in accord with the intent, purpose and spirit of the Zoning Ordinance or Comprehensive Development Plan.

### **Section 5.07 Burden of Persuasion**

- 5.07.01 The burden of persuasion as to whether the development, if completed as proposed, will comply with the requirements of this chapter is at all times on the applicant. The burden of presenting evidence to the Board of Adjustment sufficient enough for it to conclude that the application does not comply with the requirements of this section is upon the person or persons recommending such a conclusion, unless the information presented by the applicant warrants such a conclusion.

### **Section 5.08 Recommendations on Application**

- 5.08.01 Before being presented to the Board of Adjustment, an application for a conditional use permit shall be referred to the Zoning Commission for recommendation. When presented to the Zoning Commission, the application shall be accompanied by a report from the planning staff setting forth findings concerning the application's conformance to this chapter, and any recommendations for the requirements or conditions to be imposed on the proposed development by the Board of Adjustment.
- 5.08.02 The Zoning Commission shall consider the application at a public hearing. The public hearing shall be scheduled according to standard agenda procedures.
- 5.08.03 After reviewing the application at a public hearing, the Zoning Commission shall report to the Board of Adjustment whether it concurs in whole or in part with the Zoning Administrator's proposed findings and recommendations. To the extent the Zoning Commission does not concur, the Zoning Commission shall propose its own recommendations *and provide supporting reasons*.

### **Section 5.09 Board of Adjustment Action on Application**

In considering whether to approve an application for a Conditional Use Permit, the Board of Adjustment shall proceed according to the following format:

- 5.09.01 The Board of Adjustment shall establish a finding of facts based upon information (written evidence) contained in the application, the staff report, the Zoning Commission recommendation, and presented at the Zoning Commission or Board of Adjustment hearings.
- 5.09.02 The Board shall consider such *reasonable requirements or conditions* to the permit as will ensure the development will *satisfy the requirements of this chapter*. A vote may be taken on such conditions before consideration of whether the permit should be approved or denied for any of the reasons set forth in 5.09.03 or 5.09.04.
- 5.09.03 The Board of Adjustment shall consider whether the application complies with all of the applicable development criteria set forth in **Section 5.06**. *Separate votes may be taken with respect to each criterion*. If the Board of Adjustment concludes that the *application fails to meet one or more of the criteria*, the application shall be denied.
- 5.09.04 If the Board of Adjustment concludes that *all such criteria have been met*, the application shall be approved unless it adopts a motion that the application fails to meet any of the approval standard set forth in **Section 5.06**. *Separate votes may be taken with respect to each standard*.

Any such motion regarding compliance or noncompliance of the application to the development criteria or approval standards shall specify the supporting reasons for the motion. It shall be presumed the application complies with all criteria and standards not specifically found to be unsatisfied.

Without limiting the foregoing, the Board of Adjustment *may attach to a permit a condition limiting the duration of the permit*. All conditions or requirements shall be entered on the permit.

### **Section 5.10 Expiration of Conditional Use Permits**

- 5.10.01 A Conditional Use Permit *shall expire automatically* if
  1. Within one (1) year after issuance, substantial action has not been taken to accomplish the purpose for which the permit was granted, or
  2. After substantial action has been taken and subsequently such work is discontinued for a period of one (1) year, the permit shall immediately expire, or
  3. If the Conditional Use has been established and subsequently is discontinued for a period of one (1) year, the permit shall immediately expire.

### **Section 5.11 Effect of Permit on Successors and Assigns**

A conditional use permit authorizes the permit holder the use of land or structures in a particular way and subject to certain conditions. *As such, it is transferable*. However, no person (including successors or assigns of the original permit holder) may make use of the land or structures covered under such permit *except in accordance with all terms and requirements of the permit, so long as the permit remains in effect*.

## Section 5.12 Amendments and Modifications

- 5.12.01 Insignificant modifications to the approved permit are permissible upon *authorization by the Zoning Administrator*. A *modification is insignificant* if it has *no discernible impact* on neighboring properties, the general public or those intended to use or occupy the proposed development.
- 5.12.02 *Minor modifications* to the approved permit are permissible with the *approval of the Board of Adjustment*. Such permission may be obtained *without a formal application, public hearing or payment of fees*. A modification is minor if it has *no substantial impact* on neighboring properties, the general public or those intended to use or occupy the proposed development.
- 5.12.03 All other requests for modifications to the approved permit will be processed *as new applications*. New conditions may be imposed by the Board of Adjustment, but the *applicant retains the right to reject such new conditions by withdrawing the request for modifications* and proceeding under the terms and conditions of the original permit.