

# Conditional Use Permit Process

Each zoning section of the City Code defines permitted uses, such as single-family residential housing in R-1 or multi-family residential housing in R-3 districts. However, there are procedures to follow in order to apply for a conditional use permit, which must be approved by the Planning and Zoning Commission, for uses not automatically permitted by the City Code. Listed below is the process for applying for a conditional use permit.

## Chapter 31. Zoning

### Article XVI. Conditional Use Permits

#### Section 31-65. Conditional use permits.

[Ord. No. 1423 § 10, 3-21-1988]

A. Purpose. It is the purpose of this Section to provide for conditional use permits which may be granted only for uses expressly listed in any conditional use subsections of the zoning districts established in this Chapter.

B. Application. Application for a conditional use permit shall be made to the Planning and Zoning Commission and shall be accompanied by the following:

A completed application form.

An accurate legal description and street address of the subject property.

Plans, exhibits or other evidence, as appropriate, that indicate compliance with or ability and intention to comply with the standards set forth in Subsection (C)(11).

C. Procedure.

The applicant shall submit all necessary information and materials to the City Clerk. The City Clerk shall then refer the application to the City Administrator, who shall review the request to determine its compliance with the provisions of this Chapter. A written report on the proposal shall be made by the City Administrator to the Planning and Zoning Commission no later than the time the application is to be considered at the public hearing described below in Subsection (C)(3).

Within fifteen (15) days of filing of such application with the City Clerk, the applicant shall place a sign on the subject property in a conspicuous location. Said sign shall be of a type which will withstand the elements, not less than two and one-half (2 1/2) feet by three (3) feet in size, with the following wording clearly lettered not less than one (1) inch in height: Conditional Use Permit application made for this property for (Type or Use). Interested parties may comment verbally or in writing on application at the Planning and Zoning Commission hearing on (Date of Hearing) at City Hall. Said sign shall remain on the property until after the hearing described on the sign.

Within thirty (30) days after an application for issuance of a conditional use permit is filed with the City Clerk, the Planning and Zoning Commission shall hold a public hearing on whether to grant or deny the application, unless the applicant consents to a later hearing. Notice of the date, time and place of such hearing shall be published once in a paper of general circulation in the City at least fifteen (15) days prior to the hearing. In addition, the City Clerk shall, on or before the date of publication of the notice in a paper of general circulation, deliver written notice of the date, time and place of the hearing to the applicant and to all owners and occupants of real estate located in full or in part within one hundred eighty-five (185) feet of any of the boundaries of the subject property. Any mailed notice shall be delivered to the last known address of the addressee. The written notice shall be delivered by certified mail, return receipt requested, or by the City Clerk or his designate handing the notice to the person to be given notice or to a member of that person's family over the age of fifteen (15) years, at that person's dwelling or usual place of abode. Notice by certified mail shall be considered delivered on the date the envelope is mailed.

At the public hearing before the Planning and Zoning Commission, the applicant shall have an opportunity to appear and be heard, and present such oral and documentary evidence as shall be relevant on how the use of the subject property applied for complies with or will be in compliance with the standards set forth in Subsection (C)(11). Any other persons, including Commission members, may then have an opportunity to appear and to be heard and present oral and documentary evidence relevant to the application for the issuance of the conditional use permit. The Planning and Zoning Commission may limit the number of witnesses who present evidence that is merely cumulative in nature. The Commission secretary or his designate shall take minutes of the proceeding.

At a meeting of the Planning and Zoning Commission immediately following the public hearing unless said meeting is continued as provided below, the Planning and Zoning Commission shall grant the application for issuance of a conditional use permit with whatever stipulated conditions deemed necessary by a majority of the Commission members in attendance to carry out the provisions and intent of this Chapter if

a. The Commission by a majority vote of the members in attendance at a meeting where a quorum is present decides that all provisions have been met or will be met to obtain the permit, including the provisions of Subsection (C)(11), and

b. No person (including the applicant) attending the public hearing objects at the Commission meeting to the issuance of the permit with whatever stipulated conditions are proposed to be made part of the permit by the said majority vote of the Planning and Zoning Commission. Commission members may object to the issuance of the permit only in their private capacity as citizens and only by signing the document referred to below. An objection shall be made by an objecting person signing a document prepared by the Planning and Zoning Commission and available at the meeting indicating objection to the permit. All persons attending the meeting

desiring to object to the issuance of the permit shall be allowed to sign the document or a copy thereof. Unless said meeting is continued as provided below, no objection shall be allowed to be made by any person at a time after the adjournment of the meeting of the Planning and Zoning Commission where the permit application was considered. If the meeting is continued, an objection also may be made as provided above at the continued meeting. The Commission, to permit negotiated compromise with the applicant, objectors and/or the Commission, may continue the meeting to another date before granting or denying the application for issuance of a conditional use permit, provided all persons who attend the meeting are advised by the Commission orally or in writing at that meeting of the time, date and place of the continued meeting. If no person objects to granting the permit but a majority of the Commission members in attendance vote that not all provisions have been met to obtain the permit, the application shall be rejected by the Commission. The applicant may resubmit an application at a later date for consideration by the Planning and Zoning Commission, but all application procedures shall be followed for the resubmitted application before said application may be considered by the Planning and Zoning Commission another time.

6.If a signed objection is received by the Planning and Zoning Commission to an application for issuance of a conditional use permit under the procedure set forth in Subsection (C)(5) or if a majority of the Commission members in attendance vote to deny the application under the procedure set forth in Subsection (C)(5), then no conditional use permit may be granted to the applicant by the Planning and Zoning Commission. The applicant then shall inform the City Clerk in writing as to which of the following ways the applicant desires to proceed: That the application is being withdrawn, that the application will be amended and resubmitted to the Planning and Zoning Commission, or that the application be transferred to the Board of Adjustment for consideration. If an application is transferred to the Board of Adjustment, the Planning and Zoning Commission Chairman shall deliver to the City Administrator the application, all documents received at the public hearing on the application by the Planning and Zoning Commission and the minutes of the Planning and Zoning Commission meeting where the application was considered. The City Administrator shall review the various documents to determine if the submitted documents comply with the provisions of this Chapter. A written report on the proposal shall be made by the City Administrator to the Board of Adjustment, and said written report shall contain a summary of the Planning and Zoning Commission public hearing and any reasons given for objection to or denial of the application. The report shall be delivered to the Board of Adjustment no later than the time the application is to be considered at the public hearing before the Board of Adjustment described below in Subsection (C)(8).

7. At least fifteen (15) days before the date of the public hearing before the Board of Adjustment described below in Subsection (C)(8), the applicant shall place a sign on the

subject property in a conspicuous location. Said sign shall be of a type which will withstand the elements, not less than two and one-half (2 1/2) feet by three (3) feet in size, with the following wording clearly lettered not less than one (1) inch in height:

Conditional Use Permit application made for this property for (Type or Use). Interested parties may comment verbally or in writing on application at the Board of Adjustment hearing on (Date of Hearing) at City Hall.

Said sign shall remain on the property until final disposition of the application.

8. Within thirty (30) days after the applicant informs the City Clerk in writing that the application is to be transferred to the Board of Adjustment, the Board of Adjustment shall hold a public hearing on whether to grant or deny the application, unless the applicant consents to a later hearing. Notice of the date, time and place of such hearing shall be published once in a paper of general circulation in the City at least fifteen (15) day prior to the hearing. In addition, the City Clerk shall, on or before the date of publication of the notice in a paper of general circulation, deliver written notice of the date, time and place of the hearing to the applicant and to all owners and occupants of real estate located in full or in part within one hundred eighty-five (185) feet of any of the boundaries of the subject property. Any mailed notice shall be delivered to the last known address of the addressee. The written notice shall be delivered by certified mail, return receipt requested, or by the City Clerk or his designate handing the notice to the person to be given notice or to a member of that person's family over the age of fifteen (15) years, at that person's dwelling or usual place of abode. Notice by certified mail shall be considered delivered on the date the envelope is mailed.

9. At the public hearing before the Board of Adjustment, the applicant shall have an opportunity to appear and be heard, and present such oral and documentary evidence as shall be relevant on how the use of the subject property applied for complies with or will be in compliance with the standards set forth in Subsection (C)(11). Any other interested persons, including Board members, may then have an opportunity to appear and to be heard and present oral and documentary evidence relevant to the application for the issuance of the conditional use permit. The Board may limit the number of witnesses who present evidence that is merely cumulative in nature. The applicant and the Board shall have the right to cross-examine any person presenting evidence. All documentary evidence shall be numbered consecutively as exhibits. All testimony, objections thereto and rulings thereon shall be taken down by a reporter employed by the Board of Adjustment for that purpose, who shall receive reasonable compensation for such from the City. Transcripts shall be furnished in accordance with the provisions of Section 31-60. A certified copy of the applicable zoning ordinances shall be placed in evidence at the public hearing by the Board of Adjustment. The application and all material submitted with the application shall be placed in evidence at the public hearing by the applicant, as exhibits.

10. At a meeting of the Board of Adjustment on the same day of the public hearing before the Board of Adjustment or on some later day, the Board of Adjustment shall issue a

written decision on whether to grant or deny the application for issuance of a conditional use permit, and as part of that decision, shall make findings of fact and conclusions of law in support of the decision made. No findings of fact, conclusion of law or decision may be made except as based on evidence presented at the public hearing before the Board. The findings of fact and conclusions of law shall address each standard set forth in Subsection (C)(11) and, if the application for issuance is approved, each condition imposed as part of the conditional use permit.

11. The Planning and Zoning Commission or the Board of Adjustment shall grant or deny an application for issuance of a conditional use permit and may grant a conditional use permit with stipulated conditions deemed necessary to carry out the provisions and intent of this Chapter, after giving due consideration and regard to the following standards:

a. The proposed conditional use is in compliance with all provisions of the applicable zoning district.

b. The proposed conditional use will be in conformance with the character of the adjacent area within the same zoning district in which it is located. In making such a determination, consideration may be given to the location, type and height of buildings or structures and the type and extent of landscaping and screening on the site.

c. Off-street parking and loading areas, if applicable, are provided in accordance with the applicable standards set forth in the Sections that are in Article XIV of this Chapter.

d. Adequate utilities, drainage, and other such facilities are provided.

e. Adequate access is provided and is designed to prevent traffic hazards and minimize traffic congestion.

f. 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.

g. The conditional use will not be injurious to the use and enjoyment of other property in the adjacent area for the purposes already permitted nor substantially diminish and impair property values within the adjacent area.

h. The establishment of the conditional use will not impede the normal and orderly development and improvement of property in the adjacent area for uses permitted in the applicable zoning district.

D. Duty to Comply with Other Laws. Approval and issuance of such permit shall not be deemed to relieve the permit holder of the duty to comply with the provisions of other laws and ordinances.

E. Violation. The violation of any condition imposed by the conditional use permit shall constitute a violation of this Chapter.

F. Tenure of Permits. The granting of a conditional use permit is to allow that use of the specific site. If the use (including conditions ordered by either the Planning and Zoning Commission or the Board of Adjustment) is not substantially altered, it shall be allowed on the site regardless of

ownership. A conditional use permit may not be transferred to any other site.

G. Amendment. Amendment or addition to any conditional use permit is subject to the same procedures as those which apply to a new application. Minor adjustments to an approved conditional use permit may be authorized by the City Administrator at his discretion, provided that such adjustments are consistent with the above standards in Subsection (C)(11).

[1] Cross Reference — Also see §§ 31-19(B), 31-21(B), 31-23(B), 31-25(B), 31-27(B), 31-43.2(B) and Ch. 31, Art. XVII of this Code.

## Supporting Documents

Application for Conditional Use Permit 497.4 KB