

## **Article XV Conditional Use Regulations**

### **Sec. 70- 153 Purpose and Intent of Article**

To provide for certain uses that either have unusual characteristics or have characteristics that are sufficiently different from those of their surroundings, or are generally of a public or semi-public nature, conditional use permits are authorized by this chapter in certain circumstances and upon the exercise of planning judgment respecting location, site plan, compatibility with existing uses, effect on surrounding areas, and other factors. The purpose of this Article is to establish procedures for those uses which are specifically authorized and listed as “Permitted Uses with a Conditional Use Permit” in the zoning district regulations of the district wherein the applicant seeks such a conditional use permit, or are otherwise specified as requiring a conditional use permit by this chapter. The regulations set forth in this Article apply only to use specifically indicated in this chapter which require conditional use permits, and such permits shall be in addition to required zoning permits and zoning certificates.

### **Sec. 70- 154 General Standards**

In considering the issuance of a conditional use permit, the Council will engage in a highly fact-specific discernment of the proposed use or structure. Every property (and every application for a conditional use permit) presents unique facts, and the Council will consider each situation on its own merits. The Council will grant a conditional use permit only if it is well convinced that the proposed use or structure will further the Town’s objectives as expressed in Section 70-4 and will be in conformity with all standards set forth in this chapter for conditional use permit uses. In addition, the following general standards will be met by the proposed use:

- (a.) Such use shall be consistent with the health, safety, convenience and general welfare of the persons residing or working in the neighborhood of the proposed use.
- (b.) Such use shall be found to be in harmony with the general purposes and intent of this chapter.
- (c.) Such use shall not have undue adverse impact on the surrounding neighborhood or be unduly injurious to property values or improvements in the neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes, and vibration, with due regard for hours of operation, screening, or other matters which might be regulated to mitigate adverse impact.
- (d.) Adequate public services, including streets and other traffic ways, utilities, police and fire protection, are or reasonably will be available to support the proposed use.
- (e.) Such use shall be of such size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.
- (f.) Such use shall not be in conflict with the policies and principles of the town’s Comprehensive Plan.

### **Sec. 70-154.1 General Standards Concerning Adult Businesses**

In considering the application for a conditional use permit for an Adult Business, the Council may consider the following factors as well as other appropriate land-use considerations, including all considerations set forth in Section 70-154 and the Town's other ordinances:

- (a.) The nature of the surrounding area and the extent to which the proposed use might significantly impair its present or future development;
- (b.) The proximity of dwellings, churches, schools, parks or other places of public gathering;
- (c.) The probable effect of the proposed use on the peace and enjoyment of people in their homes;
- (d.) The preservation of cultural and historical landmarks and trees;
- (e.) The probable effect of noise and glare upon the uses of surrounding properties;
- (f.) The conservation of property values, and
- (g.) The contribution, if any, such proposed use would make toward the deterioration of the area and neighborhoods.

Sec. 70- 155 Application

- (a.) The applicant, who shall be a record owner or contract owner with written approval of the owner of the land involved, shall make application for the conditional use permit to the zoning administrator on the form provided for that purpose. The applicant shall give all information required by the form, and such other information as the zoning administrator may deem necessary for the consideration of the project for which the permit is desired. Such application form shall require that the applicant provide such data and information to:
  - 1. Demonstrate that the proposed use, when complemented with additional measures, if any, will be in harmony with the purposes of the specific district in which it will be placed;
  - 2. Demonstrate that there will be no undue adverse impact on the surrounding neighborhood in terms of public health, safety or general welfare and show measures to be taken to achieve such goals;
  - 3. Show the nature and extent of existing and proposed use and development; and
  - 4. Show that the proposal meets the applicable specific and general standards required by this chapter.
- (b.) The application shall be accompanied by a site plan.
- (c.) If the application is made by a contract owner, a copy of said contract shall be filed with and made a part of the application.
- (d.) There shall be attached to the application form the names and addresses of the owner or owners of the property of the proposed conditional use, and of all abutting property and property immediately across the street or road from the property affected.
- (e.) The application shall be accompanied by the payment of fees, as established in Sec. 70-189 of this chapter.

#### Sec. 70- 156 Procedures for Review

The same procedure for consideration for an application for a conditional use permit is substantively the same as the procedure required for the consideration of an amendment to this chapter, as provided in Sec. 70-188 of this chapter.

- (a.) The zoning administrator shall review any application for a conditional use permit in the light of the standards set forth in this Article and shall make a report of his findings and recommendations to the planning commission.
- (b.) After public notice as required by law, the planning commission and town council shall hold a joint public hearing, in accordance with the Code of Virginia, Sec. 15.2-2204, as amended. In addition to the public hearing being advertised, written notice shall be mailed by the zoning administrator at least five (5) days prior to the hearing to the owner or owners, their agent, or the occupant of each parcel abutting the property and parcels immediately across the street or road from the property for which the conditional use permit is requested, whether such adjacent property is located in the town or lies in the county; except that if there are more than twenty-five (25) such abutting parcels or parcels across the street or road, such written notice shall not be required.
- (c.) After the joint public hearing, the planning commission shall review and make recommendations to the town council concerning approval or disapproval of the application for the conditional use permit. Such recommendation shall be made within sixty (60) days from and after the submission to it to such application, and failure of the commission to make such recommendation within the sixty (60) day period shall be deemed by the governing body to be approval of the conditional use.
- (d.) After notice and public hearing, and after the recommendations of the planning commission have been received, the town council may grant an application for a conditional use permit, provided that the applicant's request is in harmony with the purposes and standards stated in this chapter.
- (e.) Notwithstanding any other provision of this section, unless the applicant consents to a longer period of review, an application for a conditional use permit for an Adult Business must be approved or denied by the Council within 90 days of the filing of a complete application. The failure of the Council to approve or deny such application within such time period shall be deemed a denial of such conditional use permit.
- (f.) If an application for a conditional use permit for an Adult Business is denied and the applicant desires to appeal the denial, the Town will facilitate the applicant's obtaining prompt review of the decision from the Circuit Court of Shenandoah County. Unless the applicant agrees to an extension, the Town will file a responsive pleading within 10 days of service upon the Town of an appeal, will file a responsive brief within 15 days of service of the applicant's brief and will agree to any reasonable expedited trial or hearing date.

#### Sec. 70- 157 Conditions

The town council may attach such conditions to its approval of a conditional use permit as it deems necessary to bring the proposal into conformity with the purposes and standards of this chapter.

No zoning certificate will be issued until all conditions placed upon the conditional use permit are met to the satisfaction of the zoning administrator. Such conditions will be designed to:

- (a.) Abate or restrict noise, smoke, dust or other elements that may affect surrounding property;
- (b.) Establish setback, side and front yard requirements exceeding the minimum as may be necessary for orderly expansion and to prevent traffic congestion;
- (c.) Provide for adequate parking and ingress and egress to public streets and roads;
- (d.) Provide adjoining property with a buffer or shield from view of the proposed use if such use is considered to be detrimental to adjoining property;
- (e.) Prevent such use and its external appearance from substantially changing the character and established pattern of development of the community; and
- (f.) Establish hours of operation of a business use if such action is deemed necessary to prevent or limit particular noise, traffic, or other objectionable effects.

#### Sec. 70- 158 Issuance

If the town council approves the application for a proposed conditional use, the zoning administrator shall issue a conditional use permit, including the nature of the use and any conditions. The applicant may thereafter conduct the uses for which the permit was granted only in such a manner as the permit shall specify. The conditional use permit shall be valid for only the specific use it covers in the specific location designated, and shall not be transferable to any other property. The conditional use permit and any conditions attached thereto shall apply to the property for which it was issued so long as such property is used for the purpose requiring the conditional use permit.

#### Sec. 70- 159 Violation of Conditions

The town council may revoke the conditional use permit upon failure of the owner or operator of the use to observe any requirements of law or any conditions imposed or approved by the governing body. Prior to the revocation of a permit, the zoning administrator shall give at least ten (10) days written notice of violation. This Section shall not be construed as the exclusive remedy to enforce violations of any conditions of a conditional use permit. Rather, the town shall have all other remedies, as set forth in this chapter.

#### Sec. 70- 160 Expiration

Conditional use permits granted by the town council pursuant to the provisions of this Article shall expire and be considered null and void upon the occurrence of any of the following conditions:

- (a.) Non-Use In the event that the construction or operation of the building or use for which the permit was granted has not commenced to a degree that clearly establishes the intent to utilize the granted conditional use permit within one (1) year from the date of permit approval, unless otherwise provided in the permit, the approval shall expire. Upon written request from the applicant, a one time, six month extension may be granted by the town council, upon recommendation by the planning commission.

- (b.) Cessation If a conditional use should cease for any reason for a period of two (2) years, the conditional use permit shall automatically terminate.

Sec. 70- 161 Reapplication

No application for a conditional use permit shall be considered by the town council within one year from the date that an application for the same or substantially the same use on the same parcel of land was denied. This provision, however, shall not impair the right of the planning commission or town council to propose a conditional use permit on its own motion.