

154.07. CONDITIONAL USE PERMITS**154.07.01 Purpose**

Conditional uses are those uses that, because of their potential adverse impact upon the immediate neighborhood and the Town, as a whole, require a greater degree of scrutiny and review of site characteristics and impacts to determine their suitability in a given location. As such, the determination of conditional uses as appropriate shall be contingent upon their meeting a set of specific standards and the weighing, in each case, of the public need and benefit against the local impact, giving effect to the proposals of the applicant for ameliorating adverse impacts through special site planning and development techniques and contributions to the provisions of public improvements, sites, right-of-way and services.

154.07.02 Authority

The Board of Zoning Appeals may, in accordance with the procedures and standards set forth in this Section 154.07, and other regulations applicable to the district in which the subject property is located, approve those uses listed as conditional uses within each zoning district.

154.07.03 Parties Entitled to Seek Conditional Use

An application for a Conditional Use Permit may be filed with the Planning Director by the owner or lessee of the subject property or other person having a legal or equitable interest in the subject property.

154.07.04 Procedure for Review and Decision**A. Application**

Applications for Conditional Use Permits shall be filed in accordance with the requirements of Section 154.01 of this Code.

B. Planning Director Conducts Site Plan Review

Site Plan Review shall be conducted by the Planning Director in accordance with the requirements of Section 154.03. of this Code.

C. Public Hearing and Notice

The Board of Zoning Appeals shall hold a public hearing on the application in accordance with the requirements of 154.01. Notice for the public hearing shall be performed in the manner prescribed by 154.01.

D. Action by Board of Zoning Appeals

Within forty-five (45) days after the close of the public meeting, the Board of Zoning Appeals shall in writing either approve, approve with supplementary conditions, or disapprove the application. If the application is approved or approved with modifications, the Board of Zoning Appeals shall instruct the Planning Director in writing to issue a Conditional Use Permit listing the specific conditions specified by the Board of Zoning Appeals for approval. If the application is disapproved by the Board of Zoning Appeals, it shall notify the applicant in writing.

E. Review by Certiorari

Every decision by the Board of Zoning Appeals shall be subject to review by certiorari. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Circuit Court of Madison County a petition duly verified setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the entry of the decision or order of the Board of Zoning Appeals.

154.07.05 Standards for Conditional Uses

The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Is in fact a conditional use established within the specific zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Town's Comprehensive Plan and the Unified Development Code;
- C. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing neighboring uses;
- E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- F. Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

154.07.06 Supplementary Conditions And Safeguards

In granting any Conditional Use Permit, the Board of Zoning Appeals may prescribe conditions and limitations concerning use, construction, character, location, landscaping, screening, parking and other matters relating to the purposes and objectives of this Code upon the premises benefited by a conditional use as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject property or upon public facilities and services. However, such conditions shall not be used as a device to authorize as a conditional use that which is intended to be temporary in nature. Such conditions shall be expressly set forth in the ordinance granting the Conditional Use Permit. Any conditions prescribed by the Board of Zoning Appeals must be recorded by the applicant as a supplement to the deed for the property, in the Madison County Recorder's office. Violation of any such condition or limitation shall be a violation of this Code and shall constitute grounds for revocation of the conditional use permit pursuant to Section 154.13, Enforcement.

154.07.07 No Presumption of Approval

The listing of a conditional use within each zoning district does not constitute an assurance or presumption that such conditional use will be approved. Rather, each proposed conditional use shall be evaluated on an individual basis, in relation to its compliance with the standards and conditions set forth in this Section 154.07, and with the standards for the district in which it is located, in order to determine whether approval of the conditional use is appropriate at the particular location and in the particular manner proposed.

154.07.08 Limitations on Conditional Uses

- A. Subject to an extension of time granted by the Planning Director, no Conditional Use Permit shall be valid for a period longer than six (6) months unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion, or unless a certificate of occupancy is issued and a use commenced within that period.
- B. The approval of a proposed Conditional Use Permit by the Board of Zoning Appeals shall be deemed to authorize only that particular use at that particular location for which the conditional use was issued.
- C. Except when otherwise provided in the code for approving a conditional use, a conditional use shall be deemed to relate to, and be for the benefit of, the use and lot in question, rather than the owner or operator of such use or lot.

154.07.09 Effect of Approval

The approval of a proposed Conditional Use Permit by the Board of Zoning Appeals shall not authorize the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for such permits or approvals as may be required by the regulations of the Town, including but not limited to a building permit and a certificate of occupancy.