

ARTICLE VII
CONDITIONAL USE PERMITS

175-21. Conditional Use Permits.

- A. The purpose and intent of a Conditional Use permit is to allow certain uses that are not normally permitted under conventional zoning provisions. Specifically authorized conditional uses appear in Section 175-53, Table of Land Uses. A Conditional Use shall be approved if the application is found to be in compliance with the approval criteria in Section 175-23. Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town. The Planning Board shall make findings of fact, based on the evidence presented by the applicant, Town staff, and the public, respecting whether the Conditional Use is or is not in compliance with the approval criteria of Section 175-23
- B. No structure, building or land requiring a conditional use permit shall be used, constructed, altered or expanded unless a conditional use permit specifically required by this chapter has been authorized by the Planning Board and issued by the Town Planner.
- C. Any use that was lawfully established prior to the adoption, extension or application of this chapter and is now permitted by this chapter subject to a conditional use permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of this chapter. A conditional use permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot on which said use is located.
- D. Structures or buildings devoted to any use permitted under the terms of this chapter subject to the securing of a conditional use permit, may not be altered, added to, enlarged, expanded or moved from one location to another on the lot without securing a new conditional use permit.

175-22. Procedures.

A. *Application.*

- 1. Application for a conditional use permit may be made by the owner of the affected property, or his or her designated agent, on a form obtainable from the Town Planner.
- 2. The completed application and fee as set by the Town Council shall be submitted to the Town Planner or his or her designee. Said fee is nonrefundable.

B. *Procedure for Consideration.*

- 1. After receipt by the Town Planner or his or her designee, the completed application shall be transmitted to the Planning Board staff for their review and evaluation.
- 2. The planning staff shall set a public hearing date and post a notice advertising the public hearing before the Planning Board on the Town website. Public notice shall be made at least ten (10) calendar days prior to the meeting of the Planning Board at which the application is to be considered.
- 3. The planning staff shall also mail written notice, by verified mail, to all abutting and adjacent property owners within three hundred (300) feet of the subject property and a sign measuring two by three (2 x 3) feet shall be placed on the property by the applicant not less

than ten (10) calendar days prior to the time of the public hearing by the Planning Board. The sign shall remain on the property until the conclusion of the public hearing. This sign shall be visible from the most heavily traveled street right-of-way adjacent to the property. The sign shall state the date of the public hearing, the time, the location and the action to be considered. (Where the subject property abuts a public right-of-way, the three hundred (300) foot measurement shall be in addition to the right-of-way along the abutting side.)

4. Any written comment shall be specific when maintaining that the granting of the conditional use permit would adversely or injuriously affect the writer's personal and legal interests.
5. The Planning Board shall consider the application at its next regular meeting following the public notice process.
6. Where development approval for a conditional use includes subdivision or site plan approval by the Planning Board, the application and review procedure for a conditional use permit shall be made concurrently and in accordance with the procedures specified in the Subdivision Regulations or Site Plan Regulations as applicable to the particular development.

C. *Approval of Application and Granting of Conditional Use Permit.* At least five (5) members must vote in favor of the issuance of a Conditional Use Permit for an application to be approved. Upon rendering a decision to grant a conditional use permit with conditions of approval that must be adhered to by the applicant, the Town Planner shall send a notice to the applicant of the board's decision, which shall include all conditions of approval. The application and all subsequent information, correspondence, evaluations, recommendations and decisions shall then be placed on permanent file in the office of the Town Planner. The Conditional Use Permit Findings of Fact and Conditions of Approval shall be recorded at the Strafford County Registry of Deeds.

D. *Revocation.* In the event of a violation of any of the provisions of these regulations or amendments thereto or in the event of a failure to comply with any prescribed condition of approval or stipulations placed upon such approval, the Zoning Administrator, in coordination with the Town Planner, shall suspend any conditional use permit immediately, shall notify the Planning Board and shall set a date for a hearing to determine if such suspensions shall be lifted or if the conditional use permit shall be revoked. The Planning Board shall be the hearing body. In the case of a revocation of a conditional use permit, the determination of the Planning Board shall be final, unless recourse is sought in a court of competent jurisdiction.

E. *Termination and Transferability.* Once granted, a conditional use permit, with its terms and conditions, shall:

1. Run with the lot, building, structure or use and shall not be affected by changes in ownership.
2. Terminate twelve (12) months from the date of authorization if the authorized use has not begun:
 - a. Unless otherwise spelled out in the conditions of approval; or
 - b. Unless the applicant can demonstrate good reason(s) at a public hearing before the Planning Board why the permit should be extended.

3. Terminate after twelve (12) consecutive months of nonuse.
- F. ***Denial of application.*** In the event that an application is denied by the Planning Board, no resubmittal of an application for a conditional use permit for the same or similar use may be made for one (1) year from the date of said denial, unless sufficient new evidence or conditions are offered to the Zoning Administrator, in consultation with the Town Planner, to demonstrate that the circumstances have altered and that further consideration of the application is warranted. In such an event, the resubmitted application shall follow the same procedures as the original and shall be treated as a new application.

175-23. Approval Criteria.

- A. ***Planning Board Decision Based on Findings.*** Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a conditional use permit shall be based upon findings of fact and conditions of approval. The findings of fact and conditions of approval shall be supported in the records of its proceedings. The criteria enumerated in Subsection C are required to be met in any matter upon which the Planning Board is required to pass under these regulations. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall be deemed not to be in compliance with these regulations.
- B. ***Burden on applicant.*** The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence, through testimony, or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.
- C. ***Criteria Required for Consideration of a Conditional Use Permit.*** A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following conditional use permit criteria (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application):
 1. ***Site suitability:*** The site is suitable for the proposed use. This includes:
 - a. Adequate vehicular and pedestrian access for the intended use.
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
 - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
 2. ***External impacts:*** The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.
4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.
5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.
6. Impact on property values: The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.
7. Availability of Public Services & Facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
8. Fiscal impacts: The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.

D. ***Conditions of Approval.*** Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary to further the objectives of this ordinance and the Master Plan, or which would otherwise allow the general conditions of this article to be satisfied. Conditions of approval shall be stated in writing in the issuance of a permit. The conditions shall, if applicable, include, but are not limited to, the following:

1. Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.
3. Landscaping in excess of any minimum requirements of this Ordinance.
4. Modification of the exterior features of buildings or other structures.

5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
6. Footprint or lot coverage less than the allowed maximum of this Ordinance.
7. Limitations on the number of occupants and methods and times of operation.
8. Grading of the premises for proper drainage.
9. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
10. Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance.
11. Other performance standards as appropriate.

175-24. Appeals.

Any persons aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5 III)