

## **CHAPTER 9- CONDITIONAL USE PERMIT (CUP) STANDARDS AND REQUIREMENTS**

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### **Section 7-9-1: Purpose**

This Chapter provides procedures, general conditional use standards, and required findings for conditional uses as set forth under the base zone, any applicable overlay districts, and in accordance with the specific use standards of this Ordinance.

### **Section 7-9-2: Applicability**

- A. The regulations of this Chapter shall apply to any use that requires conditional use approval, by the Commission or the Board, as noted in the applicable base zone or overlay district or this Ordinance.
- B. Any modification or expansion of a previously approved conditional use shall require a new conditional use approval.
- C. The director may extend the sale or assignability of an approved conditional use to subsequent property owners or operators without considering and acting upon a new application to any use that:
  - 1. Requires a license to operate; or
  - 2. That cannot or will not comply with the original conditions of approval shall reapply for conditional use upon change in ownership. Conditional use approval is not transferable from one property to another.

### **Section 7-9-3: Process**

A conditional use shall be subject to a public hearing, review, and approval subject to the regulations of this Ordinance. The process shall be as follows:

- A. An application and fees, as set forth in this Ordinance, shall be submitted to the Director on forms provided by the Department.

- B. The applicant shall concurrently submit a master site plan subject to the regulations of this Ordinance, unless specifically exempt under the regulations of this Ordinance. Any accessory buildings or facilities and any outdoor storage areas shall be noted on the master site plan and reviewed as part of the conditional use application.
- C. The decision-making body, Commission and/or Board, shall apply the specific use standards listed in this Ordinance, the general conditional use standards in this Ordinance, and the findings listed in this Ordinance to review the conditional use.
- D. Prior to issuance of zoning approval, the applicant shall provide written documentation indicating the facility has been approved by all applicable public agencies.
- E. The approval shall be limited to a one (1) year period, unless some other period of time is specified in the permit, in which the applicant or owner must obtain all necessary permits, approvals and obtain zoning approval.
- F. Upon determination by the Director that all conditions of approval have been met and the conditional use is in conformance with the Ordinance, zoning approval shall be issued.
- G. The Director may approve modifications to the site plan and/or elevations for an approved conditional use when the proposed modification meets all of the applicable following standards:
  - 1. The modification represents an increase in the amount of landscaping and/or screening area and a reduction in the square footage or height of a proposed building; and/or
  - 2. The modification represents an increase in the amount of landscaping and/or screening area and a reduction in the approved parking area while still providing the number of required parking, handicapped accessible, and bicycle spaces; and/or
  - 3. The modification represents a reduction in the approved lighting plan; and/or
  - 4. The modification does not change a setback or other distance standard more than ten (10%) percent of the distance noted on the approved master site plan.
- H. The Director may approve an expansion to an approved conditional use when the proposed expansion meets all of the applicable following standards:

1. The expansion of structures represents ten (10%) percent or less of the approved gross floor;
2. The expansion of parking area represents ten (10%) percent or less of the approved parking area;
3. The expansion of the lighting plan represents ten (10%) percent or less of the approved outdoor lighting fixtures;
4. The expansion is to a landscape and/or screening area;
5. The expansion does not change a setback or other distance standard more than ten (10%) percent of the distance noted on the approved master site plan.

**Section 7-9-4: Conditional Use Standards:**

In addition to the specific use standards set forth in this Ordinance, the following standards shall apply:

- A. The applicant shall agree to comply with the approved plans and specifications.
- B. The applicant shall have a continuous obligation to maintain adequate housekeeping practices so as not to create a nuisance.
- C. Prior to review of the proposed conditional use, the applicant or owner shall obtain the written approval of the appropriate fire authority with regard to the location specifications of any proposed structure, facility, or use.
- D. No structure or facility (excluding signs) shall be located within twenty (20') feet of a residential district unless a sound wall or screen as approved by the Director is provided.
- E. A sound wall shall be included in the landscape plan for any parking areas abutting a residential district.
- F. The owner and/or operator shall maintain sanitary practices so as not to create a public nuisance and to reduce noise and odor.
- G. The owner and/or operator shall furnish evidence that any dangerous characteristics of the proposed use have been or shall be eliminated or minimized so as not to create a nuisance or be detrimental to the public health, safety, or welfare.
- H. If abutting a residential district or within a residential district, the facility hours

may be limited by the decision-making body.

- I. If abutting or within an Agricultural district, the proposed use shall not cause detrimental impacts to agriculture.
- J. The decision-making body may require additional conditions to mitigate impacts. The conditions may include, but shall not be limited to, any or all of the following:
  - 1. Standards related to the emission of noise, vibration, and other potentially objectionable impacts; and
  - 2. Limits on time of day for the conduct of the specified use; and
  - 3. The period within which the permit shall be exercised or otherwise lapse; and
  - 4. Other standards necessary to protect the public health, safety, and welfare and mitigate adverse effects on surrounding property.

**Section 7-9-5: Terms of Approval:**

- A. Within twelve (12) months or some other period of time specified within an approved permit, the holder of the permit shall:
  - 1. Acquire construction permits. The definition of construction in this context shall also include sewer lines, water lines, streets, or building foundations; or
  - 2. Commence the use permitted by the permits in accordance with the approval or conditions of approval.
- B. For projects, which require platting the following shall apply:
  - 1. A preliminary plat application shall be submitted to the Department within twelve  
  
(12) months of the approved conditional use permit;
  - 2. The final plat must be recorded within twenty-four (24) months of the approval of the preliminary plat. If applicable each remaining phase shall be recorded within twelve (12) months after the previous recording.
- C. The permit will expire and become null and void if the provisions of the section are not met. The permit holder may apply for a one-time extension outline in Title 7 Chapter 3 of this Ordinance.

**Section 7-9-6: Extensions:**

Please see Title 7 Chapter 3 of this Title for requirements.

**Section 7-9-7: Required Findings:**

- A. The decision-making body shall make the following required findings:
1. The proposed use shall, in fact constitute a Conditional Use as determined in Ordinance Table 7-2-26 (B), Elmore County Land Use Table, as contained in this Ordinance;
  2. The proposed use shall be in harmony with and in accordance with the Comprehensive Plan and this Ordinance;
  3. The proposed use complies with the purpose statement of the applicable base zone of Ordinance Section 7-2-5 and with the specific use standards as set forth in this Chapter;
  4. The proposed use shall comply with all applicable County Ordinances;
  5. The proposed use shall comply with all applicable State and Federal laws, rules and/or regulations;
  6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
  7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
  8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police protections, fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;
  9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;

10. The proposed use shall 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;
11. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.