

## Relevant Regulations

### Town Code

#### Article 8 Division 4 Section 18-824 Conditional Use Permit

1. Conditional Use Permit Required. Any use that is indicated within Article 3 of this Chapter and is marked with a “C” on the Principal Uses or Accessory Uses Tables requires the approval of a Conditional Use Permit by the Board of Zoning Appeals prior to the issuance of a Building Permit or Certificate of Occupancy.
2. Site Plan May be Required. The Zoning Administrator will review the application and determine whether a site plan review is required prior to the commencement of review of an application for a Conditional Use Permit. See Site Plan in §18-836.
3. Conditions for Approval. The Board of Zoning Appeals may issue a use permit for any of the uses indicated, within Article 3, with a “C” (conditional) on the Use Table , provided the use for which the permit is sought:
  - A. Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
  - B. Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
  - C. Will be in accordance with the purposes of the Town’s comprehensive plan; and
  - D. Meets use-specific standards outlined in Article 3 of this chapter.
4. Action Required in Reasonable Time. The Board of Zoning Appeals shall fix a reasonable time for the hearing of an application, within ninety (90) days of the application being deemed complete. This time period is directory, rather than mandatory; the Board does not lose jurisdiction to act after the time period has passed. EFFECTIVE 01 JANUARY 2024 Article 8. Administration, Procedures, and Enforcement Zoning and Subdivision Ordinance 8 – 18 Town of Vienna, Virginia
5. Application. An application for a conditional use permit shall be submitted to the Director of Planning and Zoning on such forms as the Director may prescribe and shall include the following:
  - A. A detailed description of the operation of the proposed use, including any proposed ancillary or secondary use that the applicant is considering.
  - B. Plans to control any potential impacts of the proposed use on the nearby community, including:

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- i. Noise.
    - a. Noise levels anticipated from all uses and equipment.
    - b. A statement as to whether the anticipated noise complies with the levels permitted by the Town Code.
    - c. Plans to control these anticipated noise levels, including noise emanating from patrons or visitors to the proposed use.
  - ii. Odors. Methods to be used to control odors emanating from the use when applicable.
  - iii. Trash and litter.
    - a. The type and volume of trash and garbage the proposed use will generate.
    - b. The planned frequency of trash collection.
    - c. Planned methods to prevent littering on the property, streets and nearby properties.
  - iv. Loading/unloading.
    - a. Availability and adequacy of off-street loading facilities.
    - b. Hours and frequency of off-street loading.
  - v. Parking and Stacking.
    - a. Number of spaces available to serve residents, employees, and patrons during the hours of operation, for all primary and secondary uses being proposed.
    - b. Plan showing geometric design of stacking aisle and number of stacking spaces provided.
  - vi. Use capacity.
    - a. The estimated number of patrons, visitors, clients, pupils and other such users.
    - b. The proposed number of employees, staff and other personnel.
  - vii. Hours. The proposed hours and days of operation of all proposed uses.
  - viii. Site Plan. A proposed site plan consistent with the requirements of §18-836 shall be submitted, reviewed, and approved as part of the conditional use permit application and pursuant to the procedures and standards of this section, or an approved site plan showing compliance with the uses proposed.
  - ix. Plans and other documents exhibiting compliance with any other requirements contained in this ordinance for the conditional use proposed and as the Director of Planning and Zoning determines are necessary and desirable for adequate review.
6. Review Process.
- A. Pre-Application Meeting. The applicant is required to attend a pre-application meeting with Town staff prior to submitting an application for a Conditional Use Permit. See §18-833, Pre-Application Meeting.
  - B. Review for completeness. Applications for Conditional Use Permits are reviewed for completeness by the Director of Planning and Zoning and the Zoning Administrator. The application may be referred to the Director of Public Works if determined to be required by the Zoning Administrator.

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- C. Application deemed complete. Once the Director of Planning and Zoning and the Zoning Administrator deem the application to be complete, the application and supporting materials are transmitted to the Planning Commission.
  - D. Action by Planning Commission. The Planning Commission shall make a recommendation on the application based on Conditions for Approval outlined in §18- 824.3, and applicable Use Standards outlined in Article 3. The Zoning Administrator shall transmit the Planning Commission's recommendation with the application and supporting materials to the Board of Zoning Appeals for final review and determination.
  - E. Action by the Board of Zoning Appeals. i. Final Decision. The Board of Zoning Appeals has the final decision authority on Conditional Use Permits. ii. Board may Impose Conditions. The Board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure continued compliance with the conditions imposed.
  - F. Appeals. Decisions by the Board of Zoning Appeals may be appealed to the Fairfax County Circuit Court per Code of Virginia §15.2-2285, 1950, as amended.
7. Duration of valid permit.
- A. Permit void after six months if operation not commenced. Any use permit or amended portions of existing use permits shall become void six months after issuance if construction or operation related thereto has not commenced, unless otherwise specified by the Board of Zoning Appeals.
  - B. Extension of time allowed under certain conditions. An extension of time may be permitted by the Board of Zoning Appeals.
  - C. Termination of use. A conditional use permit shall cease to be valid if the use for which such permit is granted is not operated for a continuous period of two (2) years or more.
8. Enforcement and Compliance.
- A. Failure to Comply with Permit Conditions. Failure to comply with Conditional Use Permit conditions are zoning violations and subject to the enforcement measures within Division 6 - Enforcement, Compliance and Penalties.
  - B. Revocation of Non-Compliant Permits. The Board of Zoning Appeals may revoke a Conditional Use Permit if the board determines that there has not been compliance with the terms and conditions of the permit. No permit may be revoked except after notice and hearing as provided by Code of Virginia, §15.2-2204. EFF

### Article 3; 18-335 Outdoor Dining

Outdoor dining may be permitted on a roof garden of a principal building or at ground level tables directly adjoining a building, subject to the following provisions:

#### 1. General provisions:

- A. The property owner or property manager acting on behalf of a property owner must authorize any proposed outdoor dining located on their property.

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- B. All structures, features, furnishings, and exterior modifications shall be subject to review by the Board of Architectural Review, except for restaurants located within buildings developed under §18-236.
- C. All applications shall include to-scale plans showing the location of any outdoor dining furniture or structures.
- D. Permanent changes shall be subject to site plan control provisions under §18-836.
- E. Outdoor dining furniture and equipment shall not block pedestrian access or interfere with ADA accessible routes to and from buildings and public facilities.
- F. Outdoor dining is subject to review by the building code official.
- G. Outdoor dining furniture and equipment shall not block fire entry or exits points, fire department connections (FDC), or any other required safety exits. Outdoor dining shall not be located in or block any designated fire lanes. Outdoor dining areas are subject to review by the Fairfax County Fire Marshal.
- H. Outdoor dining is not permitted within sixty (60) feet of properties which are both residentially zoned and utilized. Outdoor dining located between sixty (60) to seventy-five (75) feet of a residentially zoned property utilized for residential uses must meet the following criteria:
- i. May not serve alcohol outside.
  - ii. May not have servers outside.
  - iii. May have no more than eight seats.
  - iv. Hours of operation ending at 7:00 p.m.
- I. All restaurants must adhere to the Town's noise ordinances set forth in §10-20.1 and §10-44 of the Town Code.
- J. Amplified sound, including music, is not permitted outdoors, except as otherwise permitted with a conditional use permit per §18-824.
- K. Permits for permanent and seasonal outdoor dining may be revoked if it is found any conditions listed in this chapter are not adhered to.
2. Permanent outdoor dining provisions:
- A. Outdoor dining with more than twelve (12) seats requires a conditional use permit and will be subject to §18-824 of this chapter.
- i. In addition to criteria set forth under §18-824, adverse impacts to surrounding properties including, but not limited to, noise and lighting shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.
  - ii. Hours of operation for outdoor dining shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.
- B. Any permanent outdoor dining seats shall count towards the parking requirement for restaurants, subject to Article 5 of this chapter.
- C. Permanent outdoor dining shall be located on a permanent surface, such as a private sidewalk, deck or patio.
- D. Permanent outdoor dining shall include adequate protection from vehicles.

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### 3. Seasonal outdoor dining provisions:

A. Seasonal outdoor dining may be permitted in off-street parking spaces from April 1 to October 31. Otherwise §18-525 shall apply.

B. Seasonal outdoor dining areas may only be active on Sundays from 10:00 a.m. to 9:00 p.m.

ii. Monday through Thursday from 9:00 a.m. to 9:00 p.m.

iii. Fridays from 9:00 a.m. to 9:30 p.m., and

iv. Saturdays from 10:00 a.m. to 9:30 p.m.

C. Seasonal outdoor dining requires the issuance of a permit, which is to be reviewed and issued annually by the Zoning Administrator. The permit may be revoked if it is found any conditions listed in this chapter are not adhered to.

D. Applicants will be required to provide written notice detailing seasonal outdoor dining plans to all business owners located within the same property/shopping center of the applicant's business. A permit may not be issued until thirty (30) days after abutting and adjacent business owners have been notified of the intention to apply for seasonal outdoor dining. A notarized affidavit shall be submitted with the application to verify that this notification requirement has been met.

E. No more than twenty (20) percent of the required off-street parking spaces for a restaurant may be utilized for outdoor dining. If there are excess parking spaces above the minimum number of off-street parking spaces required per §18-531, those spaces may also be utilized for outdoor dining.

F. Seasonal outdoor dining shall be protected from vehicular traffic with rigid barriers.

G. Total number of seats shall not exceed the number of parking spaces utilized for outdoor dining, multiplied by eight (8).

H. Outdoor dining cannot interfere with the use of a refuse storage area or the use of a loading space.

I. Only non-permanent structures, such as tents, are allowed to take up said parking spaces and parking spaces must be able to be easily converted back to be used for parking.

J. Parking lot striping shall not be changed without site plan approval.

K. ADA spaces shall not be used or moved for outdoor dining without site plan approval.

### Article 8. Section 18-831 Outdoor Dining Permits

1. Types of Permits Required to Establish Outdoor Dining. Outdoor Dining requires review and permits to ensure compliance with all applicable requirements.

A. Permanent Outdoor Dining, 12 seats or Fewer. Outdoor dining utilizing 12 seats or fewer may be approved by the Zoning Administrator as part of a new or revised Site Plan and Certificate of Occupancy, subject to compliance with use standards outlined in Article 3, §18-335.

B. Permanent Outdoor Dining, More than 12 seats. Outdoor dining utilizing more than 12 seats must apply for a Site Plan and Conditional Use Permit, following the procedures outlined in §18-836 and §18-824, and is subject to compliance with use standards outlined in Article 3, §18-335.

C. Seasonal Outdoor Dining. Seasonal outdoor dining within off-street parking spaces, which may be

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utilized from April 1 to October 31 annually, requires approval of a Seasonal Outdoor Dining Permit by the Zoning Administrator. See §18-335.3.

2. Site Plan May be Required. Outdoor Dining Permit applications shall be associated with a site plan showing the site modifications or redevelopment in accordance with the requirements of this Chapter. The Zoning Administrator may determine that some applications do not require site plan review. See Site Plan in §18-836.

3. Board of Architectural Review Required. All features of outdoor dining must be approved by the Board of Architectural Review per §18-821, Board of Architectural Review Certificate of Approval.

4. Seasonal Outdoor Dining Permit Process.

A. Issued by Zoning Administrator Annually. Seasonal outdoor dining requires issuance of a permit, which is to be reviewed and issued annually by the Zoning Administrator. The permit may be revoked if there is found to be lack of adherence with any conditions listed in this Chapter.

B. Use Specific Standards for Seasonal Outdoor Dining. Seasonal Outdoor dining must meet all applicable standards within §18-335 of Article 3 of this Chapter.

C. Completeness and Compliance Review. Applications for Seasonal Outdoor Dining Permits are reviewed by the Director of Planning and Zoning and the Zoning Administrator for completeness and compliance with all applicable requirements of this Chapter. Review of an application by the Director of Public Works may also be required.

D. Board of Architectural Review Required. All features of Seasonal Outdoor Dining must be approved by the Board of Architectural Review per §18-821, Board of Architectural Review Certificate of Approval.

E. Final Decision. After determining that the application meets the requirements of this Chapter, the Zoning Administrator may issue a permit stating any conditions of the permit approval. The permit must be displayed in a visible location during such time that outdoor seating is in place during the outdoor dining season.

F. Appeals. The zoning decisions on Outdoor Dining applications may be appealed by the process within §18-820 Appeals of Zoning Administrator Decision.

### Article 4B. Development Standards; Division 5, Parking and Loading – Section 18-475 Off-Street Parking Generally

1. Required off-street parking for properties located in the RMU zone may be located in any of the following or a combination thereof:

- A. On a private driveway;
- B. In a private carport or garage; or
- C. In a shared parking facility, including a surface lot or parking structure located on the same site as the principal structures.

2. Off-site parking agreements are not permitted for RMU-zoned properties.

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3. Parking shall not overflow out of designated parking spaces into any sidewalks, landscaping, open space, streets, or required setbacks.
4. Accessible parking spaces shall be provided in off-street parking facilities as required by Americans with Disabilities Act of 1990 (ADA) Standards for Accessible Design.
5. Required parking for all principal and accessory uses must be maintained at all times, consistent with all site plans and permits.
6. Any request for Modification of Requirements applicable to parking areas and loading spaces must be approved by Council, after receiving recommendation from the Planning Commission. See Article 8 §18-830 for application and procedures.