



Town Code

- **Sec. 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.
- 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. 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:
 - 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.
- 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.
- **Sec. 18-830. - Modification of Requirements.**
 - 1. **Purpose.** Applications for modifications of requirements, in which the proposed development cannot be achieved within the requirements of the Zoning Code, must submit a narrative and Major Site Plan demonstrating the requested modifications to any of the following standards:
 - A. Setbacks per Article 2.
 - B. Lot Area per Article 2.
 - C. Lot Coverage per Article 2.
 - D. Number of units per Article 2.
 - E. Height of an architectural feature per Article 2.
 - F. Open space standards per Article 2.
 - G. Screening or landscaping standards per [Articles 4B](#), 5A and 5B.
 - H. Parking standards per [Articles 4B](#), 5A and 5B.
 - 2. **Application and Review Process.**
 - A. **Requests must be in writing.** Requests for Modifications of Requirements shall be submitted to the Director of Planning and Zoning, accompanied by a



written statement including the code sections from which relief is sought and setting forth the reasons therefor.

- B. **Completeness and Compliance.** Applications for modifications of requirements are reviewed for completeness and compliance with the Code of Vienna by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
- C. **Transmission to Planning Commission.** Once staff review is complete, the application will be transmitted to the Planning Commission for review at a regular meeting. The Planning Commission shall make a recommendation on the application to the Town Council, which shall include reviewing for consistency with the Comprehensive Plan and the integrity of the Town Code.
- D. **Final Decision by Town Council.** The application and Planning Commission's recommendation are then transmitted to the Town Council for review and determination at a public hearing. The Town Council's review shall include, but not necessarily be limited to, determining whether the requested modifications would, if approved, be consistent with the Comprehensive Plan and would not impair the integrity of the Town Code.
- E. **Notification.** Prior to the Town Council granting or denying any such modification, notification letters by certified mail to adjoining property owners and those abutting across a public street shall be sent not less than five days prior to council's consideration of the request for modification. See also Division 5.
- F. **Final Approval Required before the Issuance of Other Permits.** Applications for modifications of requirement must be approved by Town Council and the final site plan must be stamped as approved prior to the issuance of building permits or a Certificate of Occupancy.
- G. **Referral to Board of Architectural Review.** All site plans, except those for single-unit residential properties, may require referral to the Board of Architectural Review prior to approval. See [§ 18-821](#).

Virginia State Code

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location,



character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.2-353 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within 10 days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within 60 days from its filing. A majority vote of the governing body shall overrule the commission.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. 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 that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

