

**Sec. 42-33. Conditional use permits.**

- (a) An applicant for a conditional use permit shall have the burden of establishing that the proposed use is consistent with the public health, convenience, safety and public welfare of the surrounding community. The conditional use permit shall be subject to such conditions as the town council deems necessary to carry out the intent of this chapter.
- (b) Written application for a conditional use may be made by any property owner, tenant, or department, board or bureau of any government.
- (c) Applicants for conditional use permits, at the time of application, provide satisfactory evidence that all real estate taxes which have assessed against the property which is the subject of the application and all other town charges due and owing from the property owner and applicant have been paid.
- (d) The application shall be filed with the zoning administrator on forms provided by the town.
- (e) The applicant shall submit 15 copies of a concept plan, drawn to a scale not greater than one inch to 50 feet, containing the information set forth in this subsection. The zoning administrator may waive the submission of one or more of the requirements if he determines that proper evaluation of the application does not require such information.
  - (1) Boundaries of the entire property and total area of the property in square feet and acres.
  - (2) Location of all existing and proposed structures including, but not limited to, lighting, signs and buildings.
  - (3) Locations of all known belowground structures including, but not limited to, wells, sewage disposal systems, utilities and fuel tanks if excavation or grading of the property is proposed by the applicant.
  - (4) Location and distance of all off-site structures within 100 feet of the property.
  - (5) All required minimum yards and the distances of all existing and proposed structures to the lot lines.
  - (6) Proposed means of ingress and egress to the property from a public street.
  - (7) Parking spaces, existing and/or proposed, indicating minimum distance from the nearest property line.
  - (8) Existing zoning designation and use of subject and adjacent properties.
- (f) The applicant shall submit a written statement describing the proposed use and the hours of operation.
- (g) The council may require satisfactory evidence and guarantee or bond that the conditions stipulated will be and will continue to be complied with.
- (h) The council may impose conditions and safeguards as deemed necessary for the protection of the general welfare and individual property rights, and to ensure compliance with the intent and objectives of this chapter.
- (i) The procedures for approval of a conditional use permit shall generally be the same as those prescribed for zoning map amendments, including the requirement for a public hearing and recommendation by the planning commission before final action is taken by the town council. A public hearing shall be held, whether jointly or separately, prior to either the planning commission or town council acting on any application for a conditional use permit in accordance with provision set forth herein.
- (j) All applications for conditional use permit shall be evaluated using the following criteria:
  - (1) Whether the proposed application and conditional use in the underlying zoning district is consistent with the comprehensive plan;

- (2) Whether the proposed use at the specified location is consistent with the purpose and intent of the zoning district in which the use is proposed to be located, will contribute to the welfare and convenience of the public, and will not adversely affect health, safety or the general welfare of the public, including from any noise or odor emanating from the site;
  - (3) Whether the proposed use is in harmony with the character of adjacent properties, surrounding neighborhoods and other existing and proposed development in the immediate vicinity of the subject property;
  - (4) Whether the proposed use is adequately served by essential transportation services, as applicable, such as streets and facilities for pedestrians and bicyclists, including connections to such existing facilities, and whether the pedestrian, bicycle and vehicular traffic generated by the proposed use will be hazardous or conflict with the existing and anticipated traffic in the neighborhood and on streets and transportation facilities serving the site;
  - (5) Whether the proposed use will be served adequately by essential public facilities and services including drainage, public safety, fire protection, and public water and sewer facilities; and
  - (6) Whether the proposed use will be sited and landscaped so that the use will not hinder or discourage the appropriate development or use of adjacent properties and surrounding neighborhoods or adversely affect the use or values of surrounding properties and structures.
- (k) Upon receipt of a properly filed conditional use permit request or petition, the zoning administrator shall set a time and place for a public hearing by the planning commission on said conditional use permit and direct that public notice be given as required by Code of Virginia, § 15.2-2204. Costs of any notice required shall be billed to the applicant.
  - (l) Applicant shall be responsible for notifying all adjacent and adjoining property owners pursuant to the Code of Virginia of the date, time, subject and location of the public hearing. Costs of any notice required shall be taxed to the applicant.
  - (m) Following the public hearing, the planning commission shall forward the proposed conditional use permit to the council together with its recommendation and a statement fully setting forth its reasons for such recommendations. Failure of the planning commission to make a recommendation within 90 days after the first such meeting of the commissioners subsequent to receipt of a proposed recommendation or such shorter period as may be set by the council shall be deemed approval by the commission of such conditional use.
  - (n) The town council may hold a separate public hearing on said application or may hold a joint public hearing with the planning commission with required notice given in accordance with by Code of Virginia, § 15.2-2204.

(Ord. of 9-21-2006, § 10-7)

**Sec. 42-34. Amendments.**

- (a) Whenever the public necessity, convenience, general welfare or good zoning practice requires, the council may amend, supplement or change the regulations of the zoning ordinance, or the zoning boundaries or classification of property on the zoning map, in conformity with the provisions of Code of Virginia, § 15.2-2286.A.7.

- (b) Amendments to the text of the ordinance and/or changes in the zoning boundaries or classification of properties shown on the zoning map may be initiated by resolution of the town council, motion of the planning commission, or by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor of the property which is the subject of the proposed zoning map amendment, addressed to the town council.
- (c) Petitions for zoning map amendments shall be on a standard form provided by the town. Applicants shall submit a written statement of justification describing: (1) the appropriateness of the proposed uses based on the comprehensive plan; (2) the existing character and use of the subject property and suitability for various uses, compatibility of proposed uses with uses permitted and existing on other properties in the immediate vicinity, and degree to which the proposed uses are anticipated to affect the fiscal situation of the Town of Lovettsville and property values in the immediate vicinity of the subject property; and (3) adequacy of, and the needs and requirements for, new, additional or upgraded public utilities, streets, sidewalks, trails, parks, playgrounds, recreational areas and other public facilities or services attributable to the proposed use(s). Any such petition or application for a zoning map amendment involving a "new residential development" or "new residential use" pursuant to subsection (e) of this section shall include in the statement of justification a description of how any "onsite proffers" submitted in connection therewith address an impact that is specifically attributable to the proposed new residential development or other new residential use for which the application was submitted in accordance with the Code of Virginia, § 15.2-2303.4.
- (d) Prior to filing an application pursuant to this section an applicant shall meet with the zoning administrator and appropriate staff to discuss the applicant's intentions with regard to a given application and questions regarding the procedures or substantive requirements of this chapter. The zoning administrator may waive the pre-application conference requirement in cases where the zoning administrator finds that such waiver is not anticipated to affect the submission or review of the proposed application. A request for a pre-application conference, or to waive the pre-application conference, shall be made in writing to the zoning administrator and shall be accompanied by a concept plan of the site illustrating the location of proposed uses, a description of the proposed project or use, and a list of the issues to be discussed at the conference or justification for the waiver. No matters discussed at said meeting shall be binding on either the applicant or the town. The zoning administrator shall respond to each written request for a pre-application conference or waiver within ten business days. Applicants shall, at the time of request or upon filing an application for zoning map amendment, provide satisfactory evidence that all real estate taxes which have been assessed against the property which is the subject of the application and all other town charges due and owing from the property owner and applicant have been paid.
- (e) The conditional zoning provisions set forth in Code of Virginia, §§ 15.2-2297, 15.2-2303 and 15.2-2299—15.2-2303.4, as amended and as applicable, are incorporated as part of this chapter as if set forth fully herein. As part of an amendment to the zoning map by legislative action for any property subject to this chapter, the town may request, consider and accept reasonable conditions and amendments thereto governing the use of such property as set forth in §15.2-2303 when the same are proffered by the landowner as part of his application for a zoning map amendment, provided that the provisions of §15.2-2303 shall not apply to any such application involving a "new residential development" or "new residential use" as those terms are defined in §15.2-2303.4. Reasonable conditions or amendments thereto proffered as part of any application for an amendment to a zoning map involving a "new residential development" or "new residential use" shall be subject to the limitations set forth in §15.2-2297 of the Code of Virginia and shall only include submission by the applicant, and consideration and acceptance by the town, of "onsite proffers" not deemed unreasonable pursuant to §15.2-2303.4. Proffered conditions and amendments thereto shall be proffered in writing in advance of the public hearing before the town council and signed by all persons having an ownership interest in the property which is the subject of the zoning map amendment. Proffered conditions submitted in accordance with this section shall be submitted to the zoning administrator at least seven days prior to a public hearing before the planning commission or town council, and may include written statements, development plans, profiles, elevations, or other demonstrative materials. The planning commission and town council may also accept amended proffers after the public hearing has begun if the amended proffers impose a more restrictive

standard and do not materially affect the overall proposal. Proffered conditions shall be notarized and contain a statement that the owners voluntarily enter into the conditions contained therein and that the conditions do not contain any unreasonable proffers as set forth in §15.2-2303.4 of the Code of Virginia.

- (f) Upon approval of a zoning map amendment with proffers, any site plan, subdivision plat, construction drawings or other application for development thereafter submitted shall be in substantial conformance with all proffered conditions. After adoption, any amendment of the conditions may be made only in accordance with the requirements imposed in this chapter and in Code of Virginia, title 15.2, ch. 22 (Code of Virginia, § 15.2-2200 et seq.).
- (g) Upon receipt of a properly filed amendment request or petition, the zoning administrator shall set a time and place for a public hearing by the planning commission on said amendment and direct that the public notice be given as required by Code of Virginia, § 15.2-2204. Costs of any notice required shall be taxed to the applicant.
- (h) Applicant shall be responsible for notifying all adjacent and adjoining property owners pursuant to the Code of Virginia of the date, time, subject and location of the public hearing. Costs of any notice required shall be taxed to the applicant.
- (i) Following the public hearing, the planning commission shall forward the proposed amendment to the council together with its recommendation and a statement fully setting forth its reasons for such recommendations. Failure of the planning commission to make a recommendation within 90 days after first such meeting of the commissioners subsequent to receipt of a proposed recommendation or such shorter period as may be set by the council shall be deemed approval by the commission of such amendment.
- (j) The town council may hold a separate public hearing on said application or may hold a joint public hearing with the planning commission with required notice given in accordance with by Code of Virginia, § 15.2-2204. The council may approve or deny an amendment as submitted, rezone to a classification other than that requested by the applicant (provided that all notice requirements have been met) or may rezone only a portion of the area proposed for rezoning in the original petition.
- (k) In addition to the relevant criteria of Sec. 42-33 (j) above for applications for conditional uses, all applications for zoning map amendments shall be evaluated using the following criteria:
  - (1) Whether the proposed application is consistent with trends in growth and development, the current and future requirements of the community as to land for various purposes as determined by population, transportation, economic and other studies, and most appropriate use of land throughout the locality;
  - (2) The existing character and use of the subject property and suitability for various uses, compatibility with uses permitted, planned and existing on other property in the immediate vicinity, and conservation of land values;
  - (3) Adequacy of sewer and water, transportation, parks, recreational areas, stormwater management, and other public services and infrastructure necessary to serve the uses that would be permitted on the property if it were reclassified to a different zoning district;
  - (4) Whether reclassification of the property for the proposed use(s) will result in the preservation or damage of any existing habitats, vegetation, topographic or physical, natural, scenic, archeological, or historic feature of significant importance; and
  - (5) Whether reclassification of the property for the proposed use(s) will impact existing water quality or air quality.

- (l) Limitation on filing new petition after denial. No new petition concerning any or all of the same property shall be filed within 12 months of the date of denial by the council of a substantially identical petition.
- (m) Withdrawal of petition. Any petition pursuant to subsection (b) of this section and section 42-33 may be withdrawn upon written request by the applicant any time upon payment in full of any outstanding permit or review fees and advertising costs, as applicable.

(Ord. of 9-21-2006, §§ 1-4, 10-8; Ord. No. 2018-07-0001, 7-19-2018)