

**PART 13**  
**CONDITIONAL USES**

**Section 13.1 Conditional Uses**

This Ordinance provides for a number of uses to be located by right in each general purpose zoning district subject to the use meeting certain area, height, yard and off-street parking requirements. In addition to these uses, the Ordinance allows some uses to be allowed in these districts subject to the issuance of a conditional use permit. The purpose of having such "conditional uses" is to insure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located.

**Section 13.2 Reserved**

**Section 13.3 Procedures**

The procedures for securing a conditional use permit shall be as follows:

- a. Ten (10) copies of a completed written application for a conditional use permit shall be filed with the Administrator. The application shall be submitted on official forms provided by the Administrator and shall be accompanied by the following items:
  1. A scaled boundary survey showing the total acreage, and present zoning classifications for the property(ies) for which the conditional use permit is sought, date and north arrow. On this survey shall be sketched the information required by this Section.
  2. All existing easements, rights-of-way and required setbacks for the lot(s) for which the conditional use permit is sought.
  3. Proposed use, size, layout and setbacks of all proposed structures and proposed uses of land. For residential uses this shall include the number of units and an outline of the area where all principal and accessory structures will be located. For nonresidential uses, this shall include the approximate gross floor areas of all structures and an outline of the area where the structures will be located.
  4. Traffic, parking and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.
  5. Landscape plan showing proposed screening and landscaping, including location of walls, fences, berms and natural plantings as well as treatment of any existing natural features within the site (See Sections 5.2 and 5.3 of this Ordinance).
  6. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps.
  7. Proposed number, size, type and location of freestanding signs.
  8. Proposed phasing, if any, and approximate completion time of the project.

9. The owner's names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties.
  10. A sketch vicinity map with north arrow shall be included showing the relationship between the proposed use and surrounding area.
  11. Other information as the Planning Board may request as provided for in Section 13.3(e).
- b. No application shall be considered complete unless it contains or is accompanied by all items listed in Section 13.3 of this Ordinance and a fee, in accordance with a fee schedule approved by the City Council for the submittal of conditional use permit applications.
  - c. All completed applications shall be submitted to the Administrator at least fifteen (15) days prior to the Planning Board meeting at which it is to be reviewed. This requirement may be waived by a unanimous vote of the Planning Board membership present at a meeting of the Planning Board occurring less than fifteen (15) days prior to the date of submission. In no case, shall the meeting at which the Planning Board initially reviews the application occur greater than sixty (60) days after the required number of copies of the completed application have been submitted by the applicant to the Administrator.
  - d. If the conditional use permit application is for a property located within an HO-Historic Overlay District the Administrator shall, upon his receipt of said application, promptly notify the Chairman of the Historic District Commission and submit copies of the application to the Historic District Commission in order that the Historic District Commission may review and make a recommendation on said application in accordance with Section 7.23.7 of this Ordinance.
  - e. The Planning Board shall have a maximum of forty-five (45) days from the date at which it initially met to review the application to submit its recommendation to the City Council. If a recommendation is not made during said forty-five (45) day period, the application shall be forwarded to the City Council without a recommendation.
  - f. When dealing with the conditional use permit process and with the rezoning of properties to a conditional use district, it may be necessary to request information in addition to that listed in Section 13.3 in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board (and/or City Council) may request such additional information of the applicant, as it deems necessary.

A request for such additional information shall stay any further consideration of the application by the Planning Board or City Council. This information may include (but not be limited to) the following:

1. Permanent and construction phase plans for the control of sedimentation and erosion control (for projects subject to State Sedimentation Pollution Control Act) and plans for the control of storm water drainage and run-off.
2. Existing and proposed topography at four-foot contour intervals or less;
3. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development;

4. Proposed number, type, and location of signs;
5. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
  - a. existing traffic conditions within the study area boundary.
  - b. the distribution of existing and proposed trips through the street network;
  - c. analyses of the capacities of intersections located within the study area boundary;
  - d. recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way.
  - e. Other pertinent information, including but not limited to noise, and impacts on air quality and other natural resources.
  - f. traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average daily traffic levels;

#### **Section 13.4 City Council Decision**

Once a recommendation has been received from the Planning Board, or the forty-five (45) day Planning Board review period has expired, the City Council shall hold (after notice) a public hearing concerning the application for a conditional use permit.

Notice of said public hearing shall be as follows:

- a. A notice shall be published in a newspaper having general circulation in the Lincolnton area once a week for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the public hearing. In computing such time, the date of publication is not to be included, but the date of the hearing shall be included.
- b. A notice shall be conspicuously placed by the City in the Lincolnton City Hall not less than ten (10) days nor more than twenty-five (25) days before the date established for the public hearing.
- c. The City shall conspicuously post a notice on the subject property at least ten (10) days but not more than twenty-five (25) days prior to the public hearing.
- d. At least ten (10) but not more than twenty-five (25) days prior to the public hearing, a notice of the proposed zoning change and hearing shall be sent by the City by first class mail to the applicant, the property owner of the property in question (if different than the applicant) and to all contiguous property owners.

If the City Council should find, after conducting a public hearing, that a conditional use permit should be granted, the City Council may impose such additional reasonable and appropriate

special conditions upon such conditional use permit, as it deems necessary. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation and access systems, screening and buffer areas, landscaping, the timing of development and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval may include dedication of any rights-of-way or easements for, or construction of streets, water, sewer or other public utilities necessary to serve the proposed development. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the City Council. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found elsewhere in this Ordinance.

#### **13.4.1 Burden of Proof**

The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Subsection 13.4.2, paragraphs (b) and (d) of this Ordinance require. If any person submits evidence allegedly contrary to any of the facts or conditions listed in Subsection 13.4.2, paragraphs (a) and (c) of this Ordinance, the burden of proof for overcoming such evidence shall rest with the applicant.

#### **13.4.2 Required Findings for All Conditional Use Permits**

The City Council shall issue a conditional use permit only after having evaluated an application and having determined that:

- a. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- b. The use meets all required conditions and specifications, and
- c. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- d. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincoln Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

#### **Section 13.5 Additional Review Criteria**

The following specific review criteria for each of the following conditional uses shall be addressed by the City Council in addition to those general review criteria set forth in Subsection 13.4.2 (Note: The City Council recognizes that these review criteria may in some respects duplicate the general review criteria set forth in 13.4.2 but that these criteria are provided to more specifically address issues that are particularly critical to certain uses).

##### **13.5.1 Planned Residential Developments**

- a. The location and character of the development will be in keeping with the stated purpose for allowing Planned Residential Developments as set forth in 12.1.1 of this Ordinance.

- b. The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non collector/non thoroughfare streets).

#### **13.5.2 Manufactured Home Parks**

- a. The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non collector/non thoroughfare streets).
- b. The manufactured home park will not only meet the minimum screening specifications set forth in this Ordinance but that the result of such screening will be to screen the manufacture home park from view from adjoining properties and adjoining street rights-of-way.

#### **13.5.3 Manufacturing Uses**

- a. The use will not overly impact the ability of the City to collect and/or treat any wastewater generated by the use or the ability of the City to treat and distribute any potable water needed by the use.
- b. The use will not overly impact (impact beyond capacity) the system of streets serving the use or that improvements will be made to such streets in consort with the development of said use, the result of which will be adequate handling of the additional traffic generated.
- c. t not only will the use meet the minimum screening requirements of this Ordinance, but also that such additional screening will be installed, as necessitated by the visual characteristics of the particular use, such that the use will be screened from view of adjoining residential districts, or that the nature of the topography makes the screening from distant view from such residential areas impossible and that other measures such as heavy on-site landscaping will be taken to lessen any near or distant visual impacts.

#### **13.5.4 Arcade or Amusement Center or Game Room**

- a. That if such use is not located in a Class C Shopping Center, it will be located no closer than three hundred (300) feet from any Residential (R) District.
- b. That the hours of operation will be limited to the hours between eight o'clock in the morning (8:00 a.m.) and twelve o'clock midnight (12:00 a.m.).

#### **13.5.5 Multi-Family Developments**

- a. The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non collector/non thoroughfare streets).

#### **13.5.6 Communication Towers**

- a. That the tower will not result in interference with the safe operation of aircraft in relation to existing or planned airport facilities.

### **13.5.7 Adult Establishments**

- a. No such business shall locate within 1000 feet of any other adult establishment as measured in a straight line from property line to property line, with no considerations as to intervening structures, roads or landforms.
- b. No adult establishment shall be located within 1000 feet of a church, public or private elementary or secondary school, child day care or nursery school, public park or playground, or residentially zoned property. The 1000-foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads, or landforms.
- c. There shall not be more than one (1) adult establishment on the same property or in the same building, structure or portion thereof.
- d. No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any adult establishment.
- e. No printed material, slide, video, photograph, written material, live show, or other visual presentation shall be visible, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.
- f. Wall signs as permitted in Part 9.10.1 and 9.13.1 a (2) are permitted as a means for advertising adult establishments. No freestanding signs shall be permitted. No other advertisements, displays, or signs or other promotional materials shall be visible to the public from pedestrian sidewalks, walkways, and vehicular areas.
- g. Maximum gross floor area of the principal building shall be 5,000 square feet.
- h. Adult establishments shall not be allowed a variance from the minimum separation requirements of this section.

### **Section 13.5.8 Social Clubs and Lounges**

No such business shall locate within 300 feet of a church, public or private elementary and secondary schools, child day care or nursery school, public park or playground, or residentially zoned property. The 300-foot distance shall be measured on a straight line from property line to property line, with no consideration to intervening structures, roads, or landforms.

### **Section 13.5.9 Paintball Gaming Facility, outdoor**

- a. Gaming areas shall be a minimum of 200 feet away from any residential structure. Screening shall be required adjacent to all residential structures.
- b. Reserved
- c. The use of tires as barriers is strictly prohibited. Not outdoor storage shall be allowed.
- d. No outdoor public address system shall be allowed.

- e. The use shall be limited to operation between the hours of 9:00 a.m. and 6:00 p.m. Night activities are prohibited.

#### **Section 13.5.10 Indoor Shooting Ranges**

- a. The use shall be located at least 150 feet from any existing dwelling or property holding valid building permits for a dwelling. (Measure shall be from building to building not property line to property line.
- b. The use shall not be located within 150 feet from the property line of a school, daycare, or place of worship.
- c. The application for a conditional use permit shall include information which demonstrates what measures will be implemented so that the use will not pose a hazard off site, including guarantees that the walls will be lined with a sound absorbing material certified by an acoustical professional.
- d. When allowed, the shooting range shall be the primary use and not be an accessory use to a gun store. Shooting ranges may provide repair and sales as an accessory activity.
- e. The use shall provide all parking on site. At least one space shall be provided for each shooting lane and for each employee on the shift of greatest employment.
- f. All measures shall be taken to recover any ammunition that could pose a danger to the environment.
- f. The City Council may impose any additional standards or safeguards it feels necessary to protect the general welfare of the citizens as a part of the use permit process.

#### **Section 13.5.11 Outdoor Shooting Ranges**

- a. The use shall be located at least 150 feet from any existing dwelling or property holding valid building permits for a dwelling. (Measurement shall be from building to building not property line to property line).
- b. The use shall not be located within 150 feet from the property line of a school, daycare, or place of worship.
- c. The application for a conditional use permit shall include information, which demonstrates what measures will be implemented so that the use will not pose a hazard off site.
- d. When allowed, that shooting range shall be the primary use and not be an accessory use to a gun store. Shooting ranges may provide repair and sales as an accessory activity.
- e. The use shall provide all parking on site. At least one space shall be provided for each shooting lane and for each employee on the shift of greatest employment.
- f. All measures shall be taken to recover any ammunition that could pose a danger to the environment.
- g. The City Council may impose any additional standards or safeguards it feels necessary to protect the general welfare of the citizens as a part of the use permit process.

### **Section 13.6 Binding Effect**

Any conditional use permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the City Council. However, minor changes in the detail of the approved plan which (a) will not alter the basic relationship of the proposed development to adjacent property, and (b) will not alter the uses permitted or increase the density or intensity of development, and (c) will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site may be made with the approval of the Administrator. Such changes shall not be deemed to materially change the Conditional Use Permit. An increase in building size not to exceed 10% of the existing floor area on the site or 1,000 square feet of gross floor area on the entire site, whichever is less, and provided such expansion does not violate any of the standards of this Ordinance, shall be deemed a minor change as described in this section.

### **Section 13.7 Certificate of Occupancy**

No certificate of occupancy shall be issued for any building or land use on a piece of property which has received a conditional use permit unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the City Council. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

### **Section 13.8 One-Year Limitation on Re-application**

If a request for a conditional use permit is denied by the City Council, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the City Council. This waiting period shall not be applicable where the application for a conditional use permit is substantially different from the application that most previously had been denied.

### **Section 13.9 Change in Conditional Use Permit**

Any request to materially change (a change other than a minor change as set forth in Section 13.6) the conditional use permit once it has been issued by the City Council shall first be reviewed by the Planning Board in accordance with Section 13.3 of this Ordinance. The City Council may thereafter change or amend any previously approved conditional use permit, only after having held a public hearing. Notice of the public hearing shall be in accordance with Section 13.4 of this Ordinance. Amendment by the City Council of a previously issued conditional use permit shall be subject to the same considerations as provided for in Section 13.4 of this Ordinance.

### **Section 13.10 Implementation of Conditional Use Permit**

Unless the City Council issues a conditional use permit which either is specifically exempted from any time constraints or has some other specified time period for implementation, the applicant shall have a period of twenty-four (24) months from date of issuance of the conditional use permit to secure a building permit for the project. If the applicant shall fail to obtain a building permit within the time allowed, the Administrator shall notify the applicant of such a finding, and within sixty (60) days of said notification, the Planning Board shall make a recommendation concerning the recession of the conditional use permit to the City Council. The

City Council, after having conducted a public hearing to consider the recession, may then rescind the conditional use permit, or extend the life of the conditional use permit for a specified period of time. Due notice of said public hearing shall be given as prescribed in Section 13.4 of this Ordinance.

**Section 13.11 Changes in Conditional Uses Within Shopping Centers**

When there is a change in use in a shopping center and the change is for a use listed as a conditional use in the Zoning District in which the shopping center is located then a conditional use permit is required for the change in use.