

SUBCHAPTER VII - CONDITIONAL USE PERMITS

SECTION 9-701 AUTHORIZATION

The Planning Board is hereby authorized to hear and decide upon applications for Conditional Use permits.

[Derivation: Section 6.1, 1989 Zoning Ordinance]

SECTION 9-702 POWERS AND DUTIES

The Planning Board shall hear and approve, approve with modifications or conditions, or disapprove all applications for Conditional Use permits. No Conditional Use permit may be granted unless specific provision for such Conditional Use is made in a particular District. The Planning Board may meet with an applicant on an informal basis prior to the submission of a formal application.

[Derivation: Section 6.2, 1989 Zoning Ordinance]

SECTION 9-703 ACTIVITIES REQUIRING CONDITIONAL USE PERMITS

A Conditional Use permit shall be required for any land use or activity which is classified as a "Conditional Use" in a particular District. A Conditional Use permit shall also be required for any increase or expansion of any existing Conditional Use, as defined below:

1. Floor space increase of 25 percent or more within a ten year period, or
2. New materials or processes not normally associated with the existing use.

No changes shall be made in any approved Conditional Use without approval of that change by the Planning Board. In cases where expansion will not change the existing use, or the exterior dimensions of any existing building, the Planning Board may pass upon the review procedure and waive the submission requirements in order that the project may be expedited. Waivers shall be issued in writing and shall state the reasons.

[Derivation: Section 6.3, 1989 Zoning Ordinance]

SECTION 9-704 APPLICATION PROCEDURE

1. A person informed by the Code Enforcement Officer that he/she requires a Conditional Use permit shall file an application for the permit with the Code Enforcement Officer on forms provided for the purpose, together with a filing fee of twenty-five dollars (\$25) for Home Occupations and one hundred dollars (\$100) for all other Conditional Uses. All plans for Conditional Uses presented for approval under this section shall be drawn at a scale of fifty feet or less to the inch.

The Code Enforcement Officer shall review the application for completeness within five (5) business days of its receipt. The Code Enforcement Officer shall determine that the application is provisionally complete only if all of the required information set forth below has been submitted or the applicant has requested waivers for any required information not provided. Upon the completion of the application review, the Code Enforcement Officer shall notify the applicant in writing as to whether or not the application is provisionally complete. If the application is provisionally complete, the Code Enforcement Officer shall forward the application to the Planning Board and shall schedule it for the next available Planning Board meeting for consideration by the Board.

If the Code Enforcement Officer finds that the application is not provisionally complete, he/she shall notify the applicant in writing of the additional material that needs to be submitted for the application to be provisionally complete and to be considered by the Planning Board. Upon the receipt of additional information, the Code Enforcement Officer shall conduct another completeness review. This process shall be repeated, if necessary, until the Code Enforcement Officer finds that the application is provisionally complete.

The application for a Conditional Use permit shall include the information set forth below in Sections A through V unless the applicant is requesting, in writing, that the Planning Board waives specific submission requirements. The request for any waiver from the submission requirements shall state what specific submission is requested to be waived, why the applicant feels that the required information is not needed, and information for the Planning Board to evaluate the application and waiver request and determine if it conforms to the general standards of Section 9-721.

- A. The name and address of the applicant (or the authorized agent) plus the name of the proposed development, and a copy of the deed or other record of ownership.
- B. Total floor area, elevation of all structures, ground coverage, and location of each proposed building, structure, or addition.
- C. Perimeter survey of the parcel made and certified by a registered land surveyor licensed in Maine, relating to reference points, showing true north point, graphic scale, corners of the parcel, the date of the survey and the total acreage. The requirement for a perimeter survey may be waived if a deed clearly spells out the location of all lot lines such that they may easily be located on the ground
- D. All existing and proposed setback dimensions.
- E. The size, location, and direction and intensity of illumination of all major outdoor lighting apparatus and signs.

- F. The type, size and location of all incineration devices.
- G. The type, size and location of all machinery or equipment likely to generate appreciable noise at the lot lines.
- H. The location, type, and size of all existing and proposed catch basins, storm drainage facilities, streams and water courses, and all utilities, both above and below ground.
- I. An on-site soils investigation report by a Maine Department of Human Services licensed Site Evaluator (unless the site is to be served by public sewer). The report shall identify the types of soil, location of test pits, and proposed location and design for the subsurface disposal system.
- J. The amount and type of any raw, finished or waste materials to be stored outside of roofed buildings, including their physical and chemical properties, if appropriate.
- K. All existing contours and proposed finished grade elevations of the entire site, and the system of drainage proposed to be constructed. Contour intervals shall be specified by the Code Enforcement Officer subject to confirmation by the Planning Board.
- L. The location, type, and size of all curbs, sidewalks, driveways, fences, retaining walls, parking space areas, (including spaces and aisles) and the layout thereof, together with the dimensions.
- M. All landscaped areas and features, (including fencing, piers, and open spaces), and the size and type of plant material upon the premises in question.
- N. All existing or proposed rights-of-way, easements, and other legal restrictions which may affect the premises in question.
- O. The location, names, and widths of all existing and proposed streets abutting the premises in question.
- P. Plans of sewage disposal facilities, water supply systems, storm and surface water flows, and disposal of solid waste.
- Q. The property lines of all abutting and neighboring properties within two hundred feet of the proposed development, including those properties across the street, and waterways, together with the names and addresses of the owners as disclosed on the tax maps on file in the City Offices as of the date of the development plan review application.

- R. Any other information or data necessary for proper review, as specified by the Planning Board.
 - S. An appropriate place for the signatures of the Planning Board.
 - T. An application may be required to have an accompanying traffic engineering study, should the project be considered one of substantial magnitude. Should a traffic study be requested by the Planning Board, the following data shall be included:
 - (1) The estimated summer peak-hour traffic to be generated by the proposal.
 - (2) Existing traffic counts and volumes on surrounding roads.
 - (3) The capacity of surrounding roads and any improvements which may be necessary on such roads to accommodate anticipated traffic generation.
 - (4) The need for traffic signals and signs or other directional markers to regulate anticipated traffic.
 - U. A completed building permit application, which shall include written evidence of applicant's right, title or interest in the property to be developed.
 - V. The location of any flood plains as shown on the City's Flood Insurance Rate Maps.
- 2. Following the filing of a provisional application, and before taking action on the application, the Planning Board shall consider any requests for the waiver of the submission requirements and shall determine if the requested waiver(s) should be granted. If all requested waivers are granted, the Planning Board shall proceed with the consideration of the application. If any waivers are not granted, the Planning Board shall table consideration of the application until the information is received by the Board through the Code Enforcement Officer.
 - 3. Before taking action on an application, the Planning Board may hold a public hearing on the application within thirty days of its initial consideration by the Board.
 - 4. Within sixty days of the Planning Board voting that the application is complete if no public hearing is held, or within 30 days of the public hearing if a public hearing is held, the Planning Board shall reach a decision on a Conditional Use and shall inform, in writing, the applicant, the Code Enforcement Officer and City Council of its decision and its reasons therefore. This time period may be extended by written, mutual agreement of the Planning Board and applicant.

5. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Planning Board, or deny a Conditional Use Permit.
6. A Conditional Use permit secured under the provisions of this Chapter by vote of the Planning Board shall terminate if construction is not significantly started within one year.
7. The Planning Board may require that an engineer, attorney or consultant review one or more aspects of an application for compliance with this Ordinance or to conduct independent studies or testing, and to advise the Board. It is intended that such review shall be requested only where there may be serious questions concerning methodologies, practices, opinions, or scientific principles presented by the applicant or its experts to meet its burden of proof. The engineer, attorney or consultant shall first establish the maximum cost of such review by written agreement with the City. The applicant shall then deposit with the City an amount equal to the full maximum cost, which the City shall place in an escrow account. The City shall pay the engineer, attorney or consultant from the escrow account and reimburse any remaining balance to the applicant, after final payment. Any interest accrued shall remain with the City.

[Derivation: Ord. No.: 07-02; Effective March 22, 2007]

8. Notwithstanding Subsection 1 of this Section, the application fee for a tower shall be \$50 plus \$10 per 10 feet of tower height or portion thereof plus \$10 per 100 square feet of accessory structures; and all plans shall be drawn on a scale of not less than 50 feet to the inch unless otherwise permitted by the Planning Board.

[Derivation: Section 6.4, 1989 Zoning Ordinance sub 6: Amended: Ord. No.: 01-10, effective July 19, 2001]

[Derivation: Ord. No.: 08-02; Effective March 20, 2008]

SECTION 9-705 TOWER DESIGN PLAN

An application to construct, erect, or enlarge a tower shall contain, in addition to all other requirements of this Subchapter, a tower design plan, which shall include the following:

1. The location and dimensions of the tower, demarcation of the drop zone from the base of the tower (circle with radius equal to the height of the tower) and location and type of tower supporting structures;
2. An elevation of the tower (in scale) showing the relative size and number of antennas and any accessory structures that are proposed to be built;
3. The specific design of the tower including building materials selected, and pertinent technical, engineering, economic, and other factors influencing the final design;

4. The total anticipated capacity of the structure, including the number and types of antennas that can be accommodated;
5. Evidence of tower design structural integrity;
6. Failure factors of the tower and demonstration that the site and setbacks are of adequate size to contain debris;
7. Mitigation measures for ice and other hazards, including setbacks and de-icing equipment;
8. Demonstration that the height of the proposed tower is the minimum height necessary to accommodate the requirements of the use;
9. Evidence of the amount of non-ionizing electromagnetic radiation (NIER) emissions that will be experienced at the perimeter of the site;
10. A location map of the tower and site in respect to the Augusta Airport, indicating airport flight paths;
11. Evidence that the tower will not create a navigational hazard to aviation, or other hazard to the operation of the Augusta Airport;
12. Evidence that the planned equipment will not cause radio frequency (RF) interference to residential communications and other electronic equipment. Evidence that the planned equipment will not cause RF interference with other existing or planned equipment of this tower or surrounding towers.
13. Names and addresses of all property owners within 500 feet of the edge of the property line;
14. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time; and
15. Written evidence of compliance or plans for compliance with all standards contained in Sections 9-641 and 9-721.

[Derivation: Section 6.4-A, 1989 Zoning Ordinance as adopted 9/28/92]

SECTION 9-706 WASTE FACILITY PLAN

An application to construct, operate or maintain a waste facility as defined in section 9-643 shall contain, in addition to all other requirements of this section, all of the following:

1. Certification that the applicant has received, or will receive after Planning Board approval, all necessary permits and licenses from the municipal officers and any applicable State and Federal agencies.

2. Copies of all applications, plans and exhibits relating thereto submitted to any State or Federal agency or to the municipal officers with respect to the waste facility.
3. A detailed written description of all aspects of the operation of the waste facility.
4. A listing and description of all machinery, equipment and vehicles to be used on site.
5. A detailed description of on-site circulation patterns for loading and unloading of waste product.
6. A description of the proposed vehicle routes within the City with respect to waste and product to and from the waste facility.
7. A detailed written description of special operational controls, emergency power systems, liquid and leachate containment, and any other measures utilized to mitigate adverse impacts to the neighborhood and the environment.
8. Evidence, satisfactory to the Planning Board, of the applicant's financial ability to construct and operate the waste facility.
9. A written closure plan or plan for removal of all waste on the site in the event of termination of the operations of the waste facility for any reason.

[Derivation: Ord. No. 12-11, eff. 10/19/2012]

SECTIONS 9-707 THROUGH 9-720 (RESERVED)

SECTION 9-721 GENERAL STANDARDS

The Planning Board shall approve, approve with conditions, or deny all applications for a conditional use permit. The applicant shall have the burden of proving that his or her application is in compliance with the requirements of this Chapter and that none of the conditions listed below would result from the approval of the Conditional Use permit. Failure of the applicant to submit required information shall constitute a basis for denial without a review of the remainder of the application. After the submission of a complete application and a review of the required submissions, the Planning Board shall approve the application or approve it with conditions if the application meets the following standards:

1. The proposed use meets specific requirements set forth in this Chapter and would be in compliance with applicable State or federal laws;
2. The proposed use would not create fire safety hazards by providing adequate access to the site, or to the buildings on the site, for emergency vehicles;
3. The proposed exterior lighting would not create hazards to motorists traveling on adjacent public streets or is adequate for the safety of occupants or users of the site

- or would not damage the value and diminish the usability of adjacent properties;
4. The provisions for buffers and on-site landscaping provide adequate protection to neighboring properties from detrimental or unsightly features of the development;
 5. The proposed use would not have a significant, detrimental effect on the use and peaceful enjoyment of abutting property as the result of noise, vibrations, fumes, odor, dust, glare, hours of operation, or other causes;
 6. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets would not create hazards to public safety;
 7. The proposed use would generate a volume of traffic that can reasonably be accommodated by the existing road network, or would not create unreasonable traffic hazards or would not exacerbate an existing traffic hazard, or would not create unreasonable traffic congestion;
 8. The proposed use would not have a significant, detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the proposal;
 9. The proposed use would not have an adverse impact on the privacy of the residents of the immediate area (within 500 feet) which could be avoided by reasonable modification of the proposal;
 10. The proposed use would be in compliance with Hallowell's Comprehensive Plan.
 11. The proposed use would not have an adverse impact on the community relative to architectural design, scale, bulk and building height, identity and historical character, or visual integrity, which could be avoided by reasonable modification of the proposal;
 12. The design of the site would not result in significant flood hazards or flood damage or would be in conformance with applicable flood hazard protection requirements;
 13. Adequate provision has been made for disposal of waste water or solid waste or for the prevention of ground or surface water contamination;
 14. Adequate provision has been made to control erosion or sedimentation.
 15. Adequate provision has been made to handle storm water run-off or other drainage problems on the site; and the proposed Development will not unduly burden off-site surface water systems.
 16. The proposed water supply would meet the demands of the proposed use for fire protection purposes.

17. Adequate provision has been made for the transportation, storage, and disposal of hazardous substances and materials as defined by State law;
18. The proposed use would not have an adverse impact on scenic vistas or on significant wildlife habitat which could be avoided by reasonable modification of the proposal;
19. When located in the Shoreland District or in the Resource Protection District, the proposed use would meet State shoreland zoning objectives, including:
 - A. the prevention and control of water pollution and sedimentation;
 - B. the control of building sites, placement of structures, and land use;
 - C. the protection of spawning grounds, fish, aquatic life, bird, and other wildlife habitat; and
 - D. the conservation of shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

Approval of the Planning Board is dependent upon and limited to proposals and plans contained in the application, supporting documents and testimony provided by the applicant as well as oral agreements noted in the minutes between the Board and the applicant at the time of hearing and/or decision. Any variations from the plans, proposals, and supporting material, except de minimus changes, as determined by the Code Enforcement Officer, which do not affect approval standards, are subject to the review and approval of the Planning Board prior to implementation.

[Derivation: Section 6.5, 1989 Zoning Ordinance; Ord. No. 12-11, eff. 10/19/2012; Ord. No. 15-07, eff. 07/23/2015]

SECTION 9-722 CONDITIONS ATTACHED TO CONDITIONAL USES

The Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that would mitigate any adverse effects on adjoining or neighboring properties, which might otherwise result from the proposed use. These conditions may include, but are not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; periods of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions; locations of piers, docks, parking and signs; type of construction; or any other conditions, restrictions, or safeguards that would uphold the spirit and intent of this Chapter.

[Derivation: Section 6.6, 1989 Zoning Ordinance]

SECTION 9-723 PERFORMANCE GUARANTEES

1. At the time of approval of the application for a Conditional Use Permit, the Planning Board may require the applicant to tender a performance guarantee in the form of a certified check payable to the City, a letter of credit payable to the City, or a performance bond payable to the City issued by a financial institution or surety company acceptable to the Planning Board in an amount adequate to cover the total costs of all required improvements, taking into account the time-span of the performance guarantee and the effects of inflation upon costs. Required improvements may include but shall not be limited to monuments, street signs, streets, sidewalks, parking lots, water supply, sewerage disposal and storm drainage facilities and required landscaping. The conditions and amount of the certified check, letter of credit or bond shall be determined by the Planning Board with advice from the Code Enforcement Officer.

2. Prior to the release of the check, letter of credit, or bond, or any part thereof, the Planning Board shall determine to its satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. Any interest accumulated on an escrow account shall be returned to the applicant after it has been determined that the proposed improvements meet all design and construction requirements.

3. If, with respect to the performance guarantee, the Planning Board determines that any of the improvements have not been constructed in accordance with plans and specifications filed by the applicant, the Planning Board shall then notify the applicant, and take all necessary steps to preserve the City's rights.

4. At least five (5) days prior to commencing construction of any required improvements, the applicant shall pay to the City an inspection fee equal to two (2%) percent of the cost of such improvements. The applicant shall notify the Code Enforcement Officer in writing of the time when he proposes to commence construction of the improvements, so that the Code Enforcement Officer can ensure that all municipal specifications and requirements are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities, required by the Board. If the inspection costs amount to less than the fee collected, the surplus shall be returned to the applicant when inspections are completed.

[Derivation: Section 6.7, 1989 Zoning Ordinance]