

## SECTION 4

### ADMINISTRATION - CONDITIONAL USE PERMITS

#### Section

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20-4-1: **PURPOSE:** The purpose of a conditional use permit is to provide the City of Otsego with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health and safety. In making this determination, whether or not the conditional use is to be allowed, the City may consider the nature of the adjoining land or buildings, the effect upon traffic into and from the premises, or on any adjoining roads, and all other or further factors as the City shall deem a prerequisite of consideration in determining the effect of the use on the general welfare, public health and safety.

<sup>72</sup>20-4-2: **PROCEDURE:**

- A. Request for a conditional use permit shall be filed with the City on an official application form and processed in accordance with this Section and Minnesota Statutes 15.99.
  - 1. An application shall be accompanied by a fee as provided for by Section 2-4-2 of the City Code.
  - 2. Such application shall also be accompanied by detailed written and graphic materials fully explaining the proposed change, development, or use including the information required by Section 20-9-6 of this Chapter.
  - 3. The request shall be considered as being officially submitted when the Zoning Administrator determines that all the information requirements are complied with.
  - 4. The City Council, the Planning Commission, and the City staff shall have the authority to request additional information from the applicant or to retain expert testimony at the expense of the applicant and said

information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter.

5. Failure on the part of the applicant to supply all necessary supportive information may be grounds for denial of the request.
- B. Proof of Ownership or Authorization: The applicant shall supply proof of title and the legal description of the property for which the conditional use permit is requested, consisting of an abstract of title or registered property abstract currently certified together with any unrecorded documents whereby the petitioners acquire a legal ownership or equitable ownership interest and as applicable supply documented authorization from the owner(s) of the property in question to proceed with the requested conditional use permit.
- C. Upon receipt of said application, the City Clerk shall set a public hearing to be conducted by the Planning Commission following proper hearing notification as applicable.
1. Notice of said hearing shall consist of a legal property description and description of request, and be published in the official newspaper at least ten (10) days prior to the hearing.
  2. Written notification of said hearing shall be mailed to surrounding area property owners within three hundred fifty (350) feet of the property in question at least ten (10) days prior to the hearing.
  3. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the records of the proceeding.
  4. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Section provided a bona fide attempt has been made to comply with the notice requirements of this Section.
- D. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where applicable, and provide general assistance in preparing a recommendation on the action to the Planning Commission and City Council.
- E. The applicant or a designated representative thereof shall appear before the Planning Commission and City Council in order to answer questions concerning the proposed request. Failure by the applicant to attend meetings at which the application is to be considered by the Planning Commission or City Council may be grounds for denial of the request.
- F. The Planning Commission and City Council shall consider possible adverse effects of the proposed conditional use. Their judgment shall be based upon (but not limited to) the following factors:

1. The proposed action's consistency with the specific policies and provisions of the Otsego Comprehensive Plan.
  2. The proposed use's compatibility with present and future land uses of the area.
  3. The proposed use's conformity with all performance standards contained within the Zoning Ordinance and other provisions of the City Code.
  4. Traffic generation of the proposed use in relation to capabilities of streets serving the property.
  5. The proposed use can be accommodated by existing public services and facilities and will not overburden the City's service capacity.
- G. The Planning Commission shall make a finding of fact and recommend such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of the Chapter.
- H. The City Council shall not consider or act upon a conditional use permit until they have received a report and recommendation from the Planning Commission or until sixty (60) days after the first regular Planning Commission meeting at which the request was considered.
- I. Upon completion of the report and recommendation of the Planning Commission, the request shall be scheduled for consideration on the agenda of the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
- J. Upon receiving the report and recommendation of the Planning Commission and City staff, the City Council shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded finding of fact and may impose any condition it considers necessary to protect the public health, safety and welfare.
- K. If, upon receiving said reports and recommendations of the Planning Commission and City staff, the City Council finds that specific inconsistencies exist in the review process and thus the final recommendation of the City Council will differ from that of the Planning Commission, the City Council may before taking final action, refer the matter back to the Planning Commission for further consideration.
- L. Approval of a request shall require passage by a majority vote of the City Council.

- M. The Zoning Administrator shall provide the applicant and property owner with written notice of the City Council's findings of fact and decision regarding the application.
- N. If a request for conditional use permit receives approval of the City Council, the City Clerk, at the applicant's expense, shall record such with the appropriate Wright County office. No building permits for the property in question will be granted until recording of the action has been completed.
- O. Whenever an application for a conditional use permit has been considered and denied by the City Council, a similar application for the conditional use permit affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least one (1) year from the date of its denial, except as follows:
  - 1. If the applicant or property owner can clearly demonstrate that the circumstances surrounding the previous conditional use permit application have changed significantly.
  - 2. If the City Council determines that the circumstances surrounding a previous application has changed significantly.
  - 3. If the City Council decides to reconsider such matter by a four-fifth's (4/5's) vote of the entire City Council.

<sup>72</sup>20-4-3: **AGREEMENT:** The approval of a conditional use permit and the stipulations, limitations and conditions therein shall be applied to the property in question. All written and graphic materials officially submitted to the City shall be treated as a formal agreement between the applicant and the City. Once approved, no changes, modifications or alterations shall be made to any plan detail, standard, or specifications without prior submission of a plan modification request to the Zoning Administrator for review and approval.

<sup>72</sup>20-4-4: **AMENDED CONDITIONAL USE PERMITS:** The owner of a property with a conditional use permit may propose an amendment to modify the conditional use at any time. No changes in the approved plans, intensity or scope of the conditional use shall, however, be undertaken without prior approval of those changes by the City. Requests for permit modifications shall be processed according to section 20-4-2 of this Chapter and shall be subject to all requirements and standards of this Chapter, except that those permit modifications meeting the following criteria, as determined by the Zoning Administrator, may be approved administratively in accordance with Section 8 of this Chapter:

- A. Only applications for preexisting uses or uses explicitly classified as allowed uses, including accessory uses, by the approved conditional use permit governing the use of the property are eligible for administrative approval.

- B. The permit modification shall not result in an increase in hours of operation, traffic, employees, or number of dwelling units, expand any principal building or otherwise increase the intensity of the use of the site.
- C. The permit modification shall comply with all requirements of the applicable zoning district and all other performance standards of this Chapter or the City Code.
- D. All applications for permit modification shall be complete and in full accordance with the requirements of section 20-9-6 of this Chapter.

<sup>72</sup>20-4-5: **EXPIRATION OF CONDITIONAL USE PERMITS:**

- A. Unless otherwise specified by the City Council at the time it is authorized, a conditional use permit shall be null and void and expire if the applicant fails to utilize such conditional use permit and fulfill each and every condition attached thereto within one (1) year from the date of its authorization unless a petition for an extension of time in which to complete or utilize the permit has been granted by the Zoning Administrator provided that:
  - 1. The extension is requested in writing and filed with the City at least thirty (30) days prior to the expiration of the initial conditional use permit request.
  - 2. The request for extension states facts demonstrating that a good faith attempt has been made to complete or utilize the use or activity permitted in the conditional use permit.
  - 3. A maximum of one (1) administrative extension shall be granted.
  - 4. The extension shall not exceed ninety (90) days from the initial conditional use permit expiration date.
  - 5. There shall be no charge for the filing of a petition for an administrative extension.
- B. Upon receiving a recommendation from the Planning Commission and City staff, the City Council may grant an extension of the conditional use permit of greater than ninety (90) days provided that:
  - 1. The conditions described in subsection 20-4-5.A.1-3 above are satisfied.
  - 2. The extension shall not exceed one (1) year from the initial conditional use permit expiration date.

3. The filing of a petition for extension is subject to fee requirements established by City Council resolution.

<sup>72</sup>20-4-6: **REVOCAION OF CONDITIONAL USE PERMITS:**

- A. The Planning Commission may recommend, and the City Council may direct, the revocation of any conditional use permit for cause upon determination that the authorized conditional use is not in conformance with the conditions of the permit or is in continued violation of this Chapter, city codes, or other applicable regulations.
- B. The City Council or Planning Commission shall initiate an application and the Zoning Administrator shall notify the responsible person that they have an opportunity to show cause why the permit should not be revoked.
- C. The application shall be processed and considered pursuant to Section 20-4-2 of this Chapter.

20-4-7: **PERFORMANCE SECURITY:**

- A. Except in the case of non-income producing residential property (excluding relocated structures), upon approval of a conditional use permit the City shall be provided, where deemed necessary by the Council, with a performance security as approved by the City Attorney prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall be non-cancelable and shall guarantee conformance and compliance with the conditions of the conditional use permit and the ordinances of the City.
- B. The security shall be in the amount equal to the Zoning Administrator's estimated costs of labor and materials for the proposed improvements or development. Said project may be handled in stages upon the discretion of the Zoning Administrator.
- C. The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the conditional use permit and ordinances of the City has been issued by the City Building Official.
- D. Failure to comply with the conditions of the conditional use permit or the ordinances of the City shall result in forfeiture of the security in whole or in part depending upon the degree of non-compliance and at the discretion of the City Council.
- E. Whenever a performance guarantee is imposed by the City, the applicant shall be required to enter into a performance agreement with the City. This agreement

is to provide authorization to the City to utilize the posted security and complete stipulated work should the applicant fail to meet the terms and conditions of the permit. Said agreement shall hold harmless the City for completion of the work and address other matters as may be determined by the City Attorney.

<sup>72</sup>20-4-8: **CERTIFICATION OF TAXES PAID:** Prior to approving an application for an conditional use permit, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates.

<sup>72</sup>20-4-9: **INITIATION:** The City Council or the Planning Commission may, upon their own motion, initiate a request for a conditional use permit in conformance with the provisions of this Section. Any person owning real estate or having documented interest therein, may initiate a request for a conditional use permit applicable to said real estate in conformance with the provisions of this Section.