

CHAPTER 16.12

CONDITIONAL USES

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16.12.010 Authorization to grant or deny conditional uses.

Conditional uses are those which may be appropriate, desirable, convenient or necessary in the zoning district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed. Applications for uses designated in this title as conditional uses may be granted, granted with modifications or denied by the Planning Commission in accordance with the standards and procedures set forth in this chapter.)

16.12.020 Authorization to impose conditions.

In approving an application for a conditional use or the modification an existing and functioning conditional use, the city may impose, in addition to those standards and requirements expressly specified by this title, any additional conditions which the city considers necessary to assure that the use is compatible with other uses in the vicinity and to protect the city as a whole. These conditions may include but are not limited to:

- A. Changing the required lot size or yard dimensions;
- B. Limiting the height of the building(s);
- C. Controlling the location and number of vehicle access points;
- D. Requiring additional right-of-way areas or changing the street width;
- E. Requiring public improvements, including, but not limited to streets, sidewalks, sewer and water line extensions, and bike paths;
- F. Changing the number of off-street parking and loading spaces required;
- G. Limiting the number, size and location of signs;
- H. Requiring diking, fencing, screening or landscaping to protect adjacent or nearby property;
- I. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;
- J. Limiting the hours, days, place and manner of operations;
- K. Limiting or setting standards for the location and intensity of outdoor lighting;
- L. Setting requirements on the number, size, location, height and lighting of signs;
- M. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas and drainage areas.

16.12.030 Existing uses.

In the case of a use existing prior to the effective date of the ordinance codified in this title and which is classified in this title as a conditional use, any alteration of the structure shall conform with the requirements dealing with conditional uses.

16.12.040 Approval standards for conditional uses.

The approval of all conditional uses shall be consistent with:

- A. The comprehensive plan;
- B. The purpose and dimensional standards of the zone except as those dimensional standards have been modified in authorizing the conditional use permit;
- C. That the site size and dimensions provide adequate area for the needs of the proposed use;
- D. That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses;
- E. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;
- F. All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant;
- G. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district;
- H. All other requirements of this title that apply.

16.12.050 Conditional use cannot grant variances.

A conditional use permit shall not grant variances to the regulations otherwise prescribed by this title. A variance application may be filed in conjunction with the conditional use permit by filing an application with the city using forms prescribed for that purpose.

16.12.060 Application for a conditional use.

The applicant for a conditional use proposal shall be the recorded owner of the property or an agent authorized in writing by the owner. They may initiate a request for a conditional use permit or the modification of an existing, functioning conditional use permit by filing an application with the city using forms prescribed for that purpose.

In addition, the following shall be supplied by the applicant:

- A. One (1) copy of the site development plan(s) drawn to scale and necessary data or narrative which explains how the development conforms to the standards;
- B. The required fee;
- C. The conditional use plan, data and narrative shall include the following:
 - 1. Existing site conditions,
 - 2. A site plan for all proposed improvements,
 - 3. A grading plan,
 - 4. A landscape plan,
 - 5. Architectural elevations of all structures,
 - 6. A sign plan,
 - 7. A copy of all existing and proposed restrictions or covenants;
- D. In the case where any or all of the above are unnecessary, as in the case of a change of use in an existing structure, the planning director shall determine which items in

subsection (C)(1) through (7) of this section will not be required for application. The Planning Commission may request additional items if they determine that these additional items are necessary to understand and make a decision on the application.

16.12.070 Major modifications to approved plans.

- A. An applicant may request approval of a modification to an approved plan by:
 - 1. Providing the planning director (director) with five copies of the proposed modified conditional use plan;
 - 2. For all exhibits larger than eleven (11) inches by seventeen (17) inches, twelve (12) copies are required;
 - 3. Providing a narrative addressing the proposed changes as listed in subsection B of this section;
- B. The director shall determine that a major modification has resulted if one or more of the changes listed below have been proposed:
 - 1. A change in land use;
 - 2. An increase in dwelling unit density;
 - 3. A ten (10) percent change in the ratio of the different types of dwelling units to the number of units;
 - 4. A change in the type of commercial or industrial structures;
 - 5. A change in the type and location of access ways and parking areas where off- site traffic would be affected;
 - 6. An increase in the floor area proposed for nonresidential use by more than ten (10) percent where previously specified;
 - 7. A reduction of more than ten (10) percent of the area reserved for common space and/or usable open space;
 - 8. A reduction of specified setback requirements by more than twenty (20) percent;
 - 9. An elimination of project amenities by more than ten (10) percent where the plan specified they were to be provided, such as:
 - a. Recreational facilities,
 - b. Screening, or
 - c. Landscaping provisions;
 - 10. A ten (10) percent increase in the approved density; or
 - 11. Any modification to conditions imposed at the time of the approval of the conditional use permit.
- C. Upon the director’s determination that the proposed modification to the conditional use plan is a major modification, the applicant shall submit a new application for a conditional use permit.
- D. The director’s decision may be appealed as per Chapter 16.04.

16.12.080 Minor modification(s) of a conditional use permit.

- A. Any modification that is not within the description of a major modification as provided in Section 16.12.070(B) shall be considered a minor modification.
- B. A minor modification shall be approved, approved with conditions or denied following the director’s review based on the findings that:
 - 1. No provisions of this title will be violated; and
 - 2. The modification is not a major modification.
- C. Procedures for the notice of the director’s decision and the appeal process are contained in the zoning ordinance. The decision may be appealed as per Chapter 16.04. (Amended during 2000 codification.)

16.12.090 Standards governing conditional uses.

A conditional use shall comply with the standards and purpose of the zone in which it is located except as these standards may have been modified in authorizing the conditional use or as otherwise provided as follows:

- A. Yards. In any zone, additional yard requirements may be imposed.
- B. Height Exception for Churches and Governmental Buildings. In any zone where offered as a conditional use, a church or governmental building may be built to exceed the height limitation of the zone in which it is located to a maximum height of fifty (50) feet if the total floor area of the building does not exceed one-and-a-half times the area of the site and if the yard dimensions in each case are equal to at least two-thirds of the height of the principal structure.
- C. Limitation on Access to Property. The Planning Commission may limit vehicle access from a conditional use to a street.
- D. Signs. See Chapter 17.90 Signs
- E. Church. A church may be authorized as a conditional use after consideration of the following factors:
 - a. Sufficient area provided for the building;
 - b. Required yards and off-street parking (related structures and uses such as a manse, parochial school or parish house are considered separate principal uses with additional lot area required);
 - c. Location of the site relative to the service area of the church;
 - d. Probable growth and growth needs;
 - e. Site location relative to land uses in the vicinity and adequacy of access from principal streets, together with the probable effect on traffic volumes of abutting and nearby streets.
- F. Public Utility or Communication Facility. A public utility or communication facility such as a substation, pumping station, radio or television studio or transmitter, or a utility transmission line shall require an easement or right-of-way twenty (20) feet or more wide. In considering an application for a public utility facility, the Planning Commission shall determine that the site, easement or right-of-way is located so as to best serve the immediate area, and in the case of a right-of-way or easement, will not result in uneconomic parceling of land. As far as possible, transmission towers, poles, overhead wires, pumping station and similar gear shall be so located, designed and installed as to minimize their effect on scenic values.
- G. Trailer, Recreational Vehicle, Mobile home or Manufactured Home Park (herein referred to as "park"). A park may be permitted as a conditional use provided it meets the requirements of the State of Oregon. In addition, the following minimum standards shall apply:
 - a. Parking Space Requirement. A parking space shall be provided for each site in the park. In addition, guest parking spaces shall also be provided in every park within two hundred (200) feet of the sites served and at a ratio of one parking space for each two sites. Parking spaces shall have durable and dustless surfaces adequately maintained for all weather use and properly drained.
 - b. Fencing and Landscaping. A sight-obscuring fence or hedge not less than six feet high shall enclose the park except at points of ingress and egress and at vision clearance areas. A build-up fence, as distinguished from an evergreen hedge, shall be so located as to conform to front and side yard requirements of the zone and suitable landscaping shall be provided in the required yards.
 - c. Area. The minimum area for a park shall be forty thousand (40,000) square feet. The average area of sites within a park shall be not less than two thousand (2,000) square feet, exclusive of washrooms, recreation areas, roadways and other accessory facilities. No site shall be less than one thousand six hundred (1,600) feet in area.

- H. Multifamily Housing. When considering a conditional use for multifamily housing, conditions shall not be placed which would exclude needed housing, unnecessarily decrease density, or allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delays.
- I. Drive-Up Uses. Drive-up uses are a conditional use in the general commercial zone. All drive-up uses shall comply with the following provisions:
 - a. All drive-up uses shall provide at least two designated parking spaces immediately beyond the service window to allow customers requiring excessive waiting time to receive service while parked.
 - b. All drive-up uses shall provide a means of egress for vehicular customers who wish to leave the waiting line.
 - c. The grade of the stacking area shall be flat or downhill to eliminate excessive fuel consumption.
 - d. The drive-up shall be designed to provide natural ventilation for dispersal of exhaust fumes.
- J. Bed and Breakfasts and Bed and Breakfast Inns. Bed and breakfasts and bed and breakfast inns are conditional uses in the CD-1, CD-2, and CD-3 zones and they shall comply with all of the provisions pertaining to vacation rentals as listed in subsection K of this section.
- K. Vacation Rental Dwellings. Vacation rental dwellings (VRDs) are a conditional use in the CD-1, CD-2, CD-3, and C-3 zones, and are subject to the requirements of this chapter. Conditional use permits are a discretionary decision by the City subject to review by the Planning Commission.

Definitions: "Owner" for the purposes of this chapter, means the natural person or legal entity that owns and holds legal and/or equitable title to the property. If the owner is a natural person, or where the natural person has transferred their property to a trust where the natural person is the trustor, that person can have an ownership right, title, or interest in no more than one dwelling unit that has a VRD permit. If the owner is a business entity such as a partnership, corporation, a limited liability company, a limited partnership, a limited liability partnership or similar entity, any person who owns an interest in that business entity shall be considered an owner and such person can have an ownership right, title, or interest in no more than one dwelling unit that has a VRD permit.

1. All vacation rental dwelling shall comply with the following approval criteria:
 - a. VRDs are only allowed in single-family detached dwellings. Any dwelling proposed as a VRD shall be at least three years old, calculated from the date of issuance of a certificate of occupancy from the City of Bandon;
 - b. Including the subject property, the saturation rate within a 250-foot radius of the subject property must be less than 30%. The saturation rate is calculated using the following ratio:

Numerator: Subject property + permitted VRD units (each unit within a multi-family VRD is counted individually).

Denominator: Subject property + eligible properties (single-family detached dwellings).

- c. In the CD-1 zone, dwelling units proposed for VRD status may be located only in the VRD-overlay zone as indicated on the attached map. VRD's are allowed as a conditional use in all areas of the CD-2 and CD- 3 zones;
- d. The VRD Conditional Use Permit is valid for a specific owner of a specific dwelling and is not transferable. The permit shall become null and void when the owner sells or transfers the real property. No owner shall be issued a new VRD permit who holds another VRD permit;
- e. VRD's with shared beach access shall provide written permission from all persons with an interest in a private beach access to be used by the VRD or positive action to notify renters of the location and required use of public beach access points shall be taken;
- f. VRD's using a joint access driveway shall provide evidence that all other owners of property utilizing the private access agree to the proposed vacation rental dwelling using the private access;
- g. The applicant shall provide evidence that the VRD will be maintained at or above the level of surrounding dwellings in the neighborhood, including landscaping, signage and exterior maintenance;
- h. The applicant shall provide evidence that the property can accommodate one off-street parking space for each bedroom in the VRD, with a minimum of two off-street parking spaces. A bedroom is defined as an enclosed sleeping area with a built-in closet. Approved off-street parking areas shall be available to accommodate full occupancy of the VRD without the use of on-street parking. The Planning Commission may limit the allowable parking area and the number of parked cars on-site;
- i. Occupancy of any VRD shall not exceed 3 people per bedroom up to a maximum of 10 people. The occupancy determined by the Planning Commission may be less than the maximum allowed;
- j. Property owners shall be required to comply with the requirements of all other permitting agencies.

2. General Regulations:

- a. There shall be an owner or designated local management person immediately available to handle complaints and problems on a 24-hour basis. Contact information of the designated local management person shall be updated annually and kept on file in the Planning Department. The owner or management person shall be available by phone and physically able to respond to the VRD within a reasonable time period;
- b. Compliance with all reporting and accounting requirements of the transient occupancy tax ordinance shall be done in accordance with the City of Bandon requirements;

- c. If the VRD activity ceases for a period of one year, or fails to be rented for more than 10 nights within a calendar year, as determined by the transient occupancy tax receipts and rental documentation, the VRD becomes null and void;
- d. Carbon monoxide and smoke detectors shall be provided in all potential and actual sleeping areas, whether or not such detectors are required by the building code;
- e. No more objectionable traffic, on-street parking, noise, smoke, light, dust, litter or odor may be emitted from the VRD than a normal neighborhood dwelling;
- f. Weekly solid waste collection service shall be provided during all months that the dwelling is available as a rental pursuant to this chapter. The property must provide a 96-gallon receptacle for solid waste. Receptacles must be removed from the City right-of-way within 24-hours after pick-up;
- g. Tsunami preparedness – all VRD's shall post the Bandon Tsunami Evacuation Route map in a conspicuous location within the dwelling;
- h. At the direction of the City Manager, other informational materials may be required to be posted in a conspicuous location within the dwelling. The City shall provide such materials at no cost to the property owner;
- i. A rental permit shall be posted within the dwelling adjacent to the front door. The permit shall state the name, address, and telephone number of the contact person required by this chapter. The permit shall also identify the address of the VRD, the maximum number of occupants permitted to stay overnight, the day(s) established for solid waste collection, and non-emergency Bandon Police number.

3. Compliance

- a. Vacation Rental Dwellings that are out of compliance with the requirements of 16.12.090(K)(2) as of the effective date of the ordinance codified in this section shall, within 120 days after said date, be brought into compliance.
- b. Violation of the requirements specified herein shall constitute grounds for revocation of the permit. Additionally, the city may institute appropriate actions or proceedings to prevent, restrain, correct, abate, or remove any unlawful location or a vacation rental dwelling in violation of this chapter. The owner(s) of a building where a violation has been committed shall be guilty of a violation of this title and shall be subject upon conviction of a fine of \$750, per BMC 1.04. Each day under which the violation continues shall be considered a separate offense.

16.12.100 Time limitation

- A. A conditional use permit shall become void one (1) year after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permit activity is being regularly conducted on the premises.

- B. The Planning Commission may extend a use permit for an additional period of one (1) year, subject to the requirements of this title.
- C. A conditional use permit shall become void if the use is discontinued for a period of one year.

16.12.110 Violation of conditions

The Planning Commission, on its own motion, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Chapter 16.04. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit.