

**Proposed Zoning Ordinance Amendments
Conditional Use Permits
Version November 9, 2018**

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 — Zoning Ordinance, Article 2 – Administration and Enforcement, be amended by inserting a new Section 10.240 as presented on the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Section 10.240 – Conditional Use Permits”, dated _____.

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

Proposed Amendments to the Portsmouth Zoning Ordinance
Sections 10.240 – Conditional Use Permits
Revised DRAFT 11/9/18

NOTE: New revisions since October Planning Board meeting are indicated in red.

10.240 Conditional Use Permits

10.241 General

- 10.241.10 A conditional use is a use of land or buildings within a zoning district that may be authorized by ~~the Planning Board~~this Ordinance subject to additional requirements. A conditional use permit allows the Planning Board or other such Board or person as may have jurisdiction to consider uses which may be desirable or appropriate in particular cases, but which are not allowed as a matter of right within a zoning district.
- 10.241.20 This Ordinance authorizes the following~~three~~ general types of conditional use permits:
- 10.241.21 Conditional use approval is required for any use designated “CU” in Section 10.440 – Table of Uses.
- 10.241.22 Conditional use approval is required for most uses, activities and alterations in a wetland or wetland buffer (Article 10, Section 10.1010 – Wetlands Protection).
- 10.241.23 Conditional use approval may be granted to allow flexibility of site or building design where specifically authorized by the Ordinance but not listed in Section 10.440. These include the following provisions:
- (a) Character Districts (Article 5A)
- Increase in allowed building footprint subject to specified development standards;
 - Provision of required community space on a different lot than the development;
 - Crediting or assignment of excess community space in an Incentive Overlay District.
- (b) Gateway Districts (Article 5B)
- More than 24 dwelling units in a building;
 - More than one principal building or building type on a development site;
 - Increased housing density, building height, or footprint.
- (c) Off-Street Parking (Article 11)
- Less than the minimum number of required spaces or more than the maximum number of allowed spaces;
 - Shared parking.

- 10.241.30 No structure, building or use requiring a conditional use permit under this Ordinance shall be used, constructed, altered or expanded unless the required conditional use permit has been granted by the Planning Board or other such Board or person as may have jurisdiction.
- 10.241.40 A structure, building or use authorized by a conditional use permit may not be added to, enlarged, expanded or moved to another part of the lot without securing a new conditional use permit.

10.242 Basis for Approval

- 10.242.10 The Planning Board or other such Board or person as may have jurisdiction may grant a conditional use permit if the application is found to be in compliance with the general approval criteria in Section 10.243 or, if applicable, the specific standards or criteria as set forth and with any additional criteria specified in this Ordinance for the particular use or activity. The Planning Board or other such Board or person as may have jurisdiction shall make findings of fact, based on the evidence presented by the applicant, City staff, and the public, respecting whether the conditional use is or is not in compliance with the approval criteria of Section 10.243.
- 10.242.20 The applicant shall ~~bear the burden of persuasion~~provide, through the introduction of sufficient evidence, through testimony, or otherwise, that the proposed use ~~or~~development, or activity, if completed as proposed, will ~~comply~~ satisfy the general and specific requirements ~~for the use as~~ contained in the Ordinance.

10.243 Approval Criteria

- 10.243.10 A conditional use permit shall be granted only if the Planning Board or other such Board or person as may have jurisdiction determines that the proposal conforms to all applicable conditional use permit criteria, as set forth below or in other sections of this Ordinance.
- 10.243.20 Conditional uses designated in Section 10.440 – Table of Uses, as well as other conditional uses for which no specific criteria are set forth in the Ordinance, shall comply with all of the following criteria:
- 10.243.21 The design of proposed structures, their height and scale in relation to the site's surroundings, the nature and intensity of the proposed use or activity, and the layout and design of the site will be compatible with adjacent and nearby properties, buildings and uses, will complement or enhance the character of surrounding development, and will encourage the appropriate and orderly development and use of land and buildings in the surrounding area.
- 10.243.22 All necessary public and private utility infrastructure and services will be available and adequate to serve the proposed use.

- 10.243.23 The site and surrounding streets will have adequate vehicular and pedestrian infrastructure to serve the proposed use, ~~and any existing deficiencies will be corrected.~~
- 10.243.24 The ~~impacts of the~~ proposed structures, ~~and uses, or activities~~ will not have significant adverse impacts on abutting and surrounding properties ~~will be no greater than the impacts of other uses permitted in the zoning district. This shall include, but not be limited to, on account of~~ traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.
- 10.243.25 The proposed structures and uses will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat, ~~scenic views and viewsheds.~~
- 10.243.26 The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.
- 10.243.30 Where specific standards or criteria are set forth in this Ordinance for the particular use permitted by conditional use permit, those standards and criteria shall apply in lieu of the general standards in Section 10.243.20.

10.244 Conditions of Approval

Conditional use permits may be granted subject to appropriate conditions, including but not limited to the following:

- 10.244.10 Front, side and rear yards in excess of the minimum requirements of this Ordinance;
- 10.244.20 Landscaping and/or screening of the premises from the street or adjacent property in excess of the minimum requirements of this Ordinance;
- 10.244.30 Modification of the exterior features, buildings or other structures;
- 10.244.40 Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance;
- 10.244.50 Off-street parking and loading spaces in excess of the minimum requirements of this Ordinance;
- 10.244.60 Regulation of the number, size, lighting of signs more stringent than the requirements of the Ordinance; and
- 10.244.70 Other performance standards as may relate to the standards and criteria for approval appropriate.

10.245 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a conditional use permit concerning features of proposed buildings, structures, parking or uses ~~which are~~ shall be deemed conditions upon such conditional use permit.

10.246 Expiration and Abandonment of Approvals

10.246.10 A conditional use permit shall expire unless a building permit is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The Board may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.

10.246.20 Failure to use a property for a use authorized by a conditional use permit for a period ~~exceeding of~~ eight months ~~shall create a presumption of abandonment of the use and~~ shall result in the termination of the conditional use permit.

10.247 Repetitive Application

If an application for a conditional use permit is denied by the Planning Board ~~or other such Board or person as may have jurisdiction~~, no application for a conditional use permit for the same or similar use may be made for one year from the date of said denial, unless the applicant demonstrates to the satisfaction of the Board that the circumstances have altered and that further consideration of the application is warranted. In such an event, the resubmitted application shall follow the same procedures as the original and shall be treated as a new application.