

CONDITIONAL USE PERMITS (CUP)



What Is A Conditional Use

Land use zoning is used by jurisdictions to indicate uses either “Allowed Outright” or allowed as “Conditional Uses”. Specific areas are given zoning designations such as Suburban Residential, Single Family Residential, General Commercial etc. Each of the zones has uses “Allowed Outright” and uses allowed as “Conditional Uses”. Uses “Allowed Outright” may need a building permit or business license prior to initiating the use. These uses are reviewed and handled administratively.

“Conditional Uses”, although allowed in the zone, require a land use decision made by the Planning Commission. Specific “conditions of approval” to mitigate any impacts and render the proposal compatible in the zone may be incorporated in the decision approving the application.

It is possible that some uses, such as a church, may be compatible with and fit into a residential neighborhood; however, the specific nature of the use must be reviewed, for example the size of the building, noise, and if the streets can handle the traffic generated by the use. Because a church can be compatible with residential development, it may be listed in a residential zone as a “conditional use” which means that the City Planning Commission must issue a conditional use permit to place that use in the residential zone. In issuing this permit, the Planning Commission may require a number of conditions which must be met if the use is allowed, thus the term “conditional use”. If the conditions are not met or if the applicant fails to abide by the conditions while undertaking the use, the Planning Commission has the ability to revoke the permit and stop the use. The Brookings Land Development Code provides a list of conditional uses for each of the City’s land use zones.

Obtaining A Conditional Use Permit

The first step you should take is to visit the Planning Department and discuss your project with a City Planner. This will serve a number of purposes, the most important of which is to determine if your project has a chance of being approved by the Planning Commission. Although most conditional use permits are approved, some are denied, and you should not spend the time, effort and cost if your project does not meet the requirements for approval. The Planning Director will discuss the requirements your project must meet, help you decide if it is realistic in the proposed location, and answer any questions you may have.

If you decide to proceed you can obtain a land use application packet from the Planning Department. The packet consists of two pages - the application itself and a page that contains a list of materials that may need to be submitted with your application. The following is a brief description of each page and how it is used.

Land Use Application

The first page of the packet provides the Planning Staff with basic information about you, your project, and the property where your project will be located. The final section of this page requires a signature of the property owner to assure the Planning Staff the owner is aware of the proposed conditional use permit request.

Land Use Application Submittal Requirements

You will review the second page of the application packet, titled Land Use Application Submittal Requirements, with Staff to determine which materials need to be submitted with your application. Prior to submitting these materials, it can be helpful to discuss your proposal with the neighbors and answer any questions they may have.

THE REVIEW PROCESS

When all of the materials necessary for your particular application are ready, the application must be submitted to the Planning Department. The Planning Staff will review the application to determine all the required materials are included. Staff will contact you regarding any missing material. When all materials are provided and staff deems the application complete, the review process begins.

Site Plan Committee

The City's Site Plan Committee, which consists of the City Manager, Public Works Staff, Building Official, Fire Chief, and Planning Staff, will review your application within ten working days of your submission. This Committee reviews each application for a number of things that will vary depending on the type of application, including but not limited to, completeness, compatibility with existing uses, and condition of utilities and bordering streets. The Site Plan Committee may also recommend conditions to be applied to your CUP should the Planning Commission approve your project.

Once the Site Plan Committee has reviewed and cleared your application for hearing, the Planning Staff will then prepare a staff report analyzing your application for the Planning Commission. A copy of this staff report and a hearing agenda will be mailed to you a week prior to the hearing date.

Hearing Notice

State law requires that the City publish a hearing notice in the local newspaper and mail a hearing notice to all property owners within 250 feet of the boundaries of the subject property. This mailing provides notice to the public that you are requesting a permit for a land use activity on your property and informs them that they may review your application and the staff report at the Planning Department and may participate in the public hearing held for your application. You will also receive a copy of the hearing notice which serves to inform you of when and where the hearing on your application is to be held. You or your representative will need to be present at the hearing to answer any questions the Planning Commission members may have regarding your application. Without answers, the Planning Commission may deny your application.

THE HEARING PROCESS

The hearing notice and the staff report have been distributed. The next step is the public hearing. The City Planning Commission meets on the first Tuesday (and the third Tuesday if needed) of each month at Brookings City Hall, Council Chambers, at 7:00 PM. Your application will fall under the Public Hearings section of the agenda and each case will generally be heard in the order in which

they appear on the agenda. An information sheet, included in your staff report packet and available near the Council Chamber doors, tells you how the hearings will be conducted and what part you and the general public can play in the process. The Chairperson will also review this hearing procedure prior to the opening of the hearing.

Once your agenda case is announced the public hearing will proceed as follows:

- The Planning Staff will give a presentation describing the desired activity, enter into the record any written public comments received prior to the hearing, state the criteria that the Planning Commission must consider to decide the request, and give a staff recommendation to approve, approve with conditions, or deny the application. The Planning Commission members may ask questions of the Planning Staff.
- You or your representative will be given an opportunity to present your case and explain how it meets the necessary criteria. The Planning Commission members may ask you questions about your application.
- All of the public, that is present at the hearing, who are in favor of your project will be given an opportunity to speak and may be asked questions by the Planning Commission members.
- All of the public, that is present at the hearing, who are in opposition to your application will be given an opportunity to speak and may be asked questions by the Planning Commission members.
- All other interested parties that wish to comment on the application will be given an opportunity to speak and may be asked questions by the Planning Commission members.
- You or your representative will be given an opportunity to rebut the statements of those that spoke in opposition.
- The Chairperson will ask the Planning Staff if there are any further comments.
- At this point, if no party has requested the record be left open for additional testimony to be submitted, the Chairperson will close the public hearing portion of the meeting and deliberation among the Planning Commission members will begin. If a request to leave the hearing open is received, the Chairperson will announce the date and time the hearing will reconvene.
- Once the deliberation has ended, the Chairperson will ask for a motion and one of the Planning Commission members will make a motion to approve, approve with conditions, or deny the application and a vote is taken.
- Staff will generally have a final order prepared, that with possible minor alterations, the Planning Commissioners may move and vote to approve.

At this point the Planning Commission has made their decision regarding your application. If your application is approved, upon expiration of a 15 day appeal period, you may proceed to establish the approved use on your property. If your application is approved with conditions, upon expiration of

the appeal period, you may proceed to satisfy those conditions prior to establishing the use. If your application is denied or you disagree with the conditions of approval, you may appeal to the City Council within 15 days.

APPEAL PROCESS

The Planning Commission's decision is final unless it is appealed to City Council. You, as the applicant, or any person that participated either orally or in writing in the Planning Commission hearing, can file an appeal of the Planning Commission's decision within fifteen days of that decision. If an appeal is filed, Staff will schedule a public hearing before the City Council at the next regular Council meeting that allows for the required notices to be given. In the City of Brookings, all appeals to the City Council are held "de novo" which means that it is a new hearing and allows new evidence to be submitted by all parties. The City Council hearing will be conducted in much the same manner as the Planning Commission's hearing. Decisions made by the City Council may be appealed to the Oregon Land Use Board of Appeals (LUBA). Appeals to LUBA must be filed within 21 days of the City Council's decision. Hearings held at LUBA are "on the record" which means that only evidence submitted at the Planning Commission and City Council hearings can be submitted- no new evidence can be submitted.