

**CHAPTER 1107**  
**Procedures for Zoning Certificates,**  
**Development Review and Conditional Use Approval**

<p><b>1107.01</b> Purposes.</p> <p><b>1107.02</b> Zoning certificate required.</p> <p><b>1107.03</b> Certificate of Zoning Ordinance.</p> <p><b>1107.04</b> Zoning certificate for single-Family dwelling or use 1107.20 accessory thereto.</p> <p><b>1107.05</b> Development plan review required.</p> <p><b>1107.06</b> Pre-application meeting encouraged.</p> <p><b>1107.07</b> Development plan review.</p> <p><b>1107.08</b> Plan submission requirements.</p> <p><b>1107.09</b> Development plan review procedures.</p> <p><b>1107.10</b> Public notice for development plans.</p> <p><b>1107.11</b> Criteria for review of general development plans by Planning Commission.</p> <p><b>1107.12</b> Criteria for reviewing minor and final development plans.</p> <p><b>1107.13</b> Request for additional information.</p> <p><b>1107.14</b> Simultaneous plat approval.</p> <p><b>1107.15</b> Equivalency provision.</p> <p><b>1107.16</b> Significance of an approved plan; plan revisions.</p> <p><b>1107.17</b> Expiration of development plan approval.</p>	<p><b>1107.18</b> Revisions to association documents approved by the City Attorney.</p> <p><b>1107.19</b> Appeals of Zoning Administrator decision. Appeals of Planning Commission decisions.</p> <p><b>1107.21</b> Approval of development plan requiring variances.</p> <p><b>1107.22</b> Pre-application meeting encouraged for conditional uses.</p> <p><b>1107.23</b> Submission of application for conditional use.</p> <p><b>1107.24</b> Conditional use application procedures.</p> <p><b>1107.25</b> Review of conditional use application.</p> <p><b>1107.26</b> Public hearing and notice by Planning Commission for conditional uses.</p> <p><b>1107.27</b> Burden of presenting evidence.</p> <p><b>1107.28</b> Action by Planning Commission on conditional uses.</p> <p><b>1107.29</b> Terms and duration of conditional use approval.</p> <p><b>1107.30</b> Re-application for a conditional use approval.</p> <p><b>1107.31</b> Similar uses.</p>
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**1107.01 PURPOSE.**

This Chapter includes procedures to ensure that the regulations set forth in this Planning and Zoning Code be soundly and consistently applied, and that this Code be vigorously administered. The purposes of this Chapter are:

- (a) To establish the procedures for reviewing and acting upon applications for zoning certificates, including certificates of compliance, in order to accomplish the purposes for which this Planning and Zoning Code is adopted.
- (b) To provide adequate review of proposed developments in those zoning districts where the uses are of such a nature, because of their size, scale or effect on surrounding property, that review of specific development plans is deemed necessary to protect the public health, safety and general welfare of the community.
- (c) To establish procedures for reviewing applications for a conditional use. These procedures are necessary because some uses, as set forth in the district regulations, are classified as conditional uses thereby requiring a separate review process utilizing the guidelines outlined in this Chapter. (Ord. 2006-49. Passed 5-21-07.)

**1107.02 ZONING CERTIFICATE REQUIRED.**

No building or structure shall be erected, constructed, enlarged, structurally altered, or moved in whole or in part, and no use shall be established or changed in the City of Wooster prior to the issuance of a zoning certificate. A zoning certificate shall be issued only when the plans for the proposed use, building or structure fully comply with the regulations set forth in this Planning and Zoning Code.

- (a) A zoning certificate shall be issued when:
  - (1) Single-Family Dwellings and Uses Accessory Thereto. An application for a single-family dwelling or use accessory thereto has been reviewed and approved by the Zoning Administrator according to the procedures of this Chapter.
  - (2) All Other Permitted Uses. An application for any other permitted use not described in subsection (1) above has been reviewed and approved by the Planning Commission or the Zoning Administrator according to the development plan review procedures set forth below.
  - (3) Conditional Uses. An application for a conditional use has been reviewed and approved by the Planning Commission according to the procedures set forth below.
  - (4) Variance Requests. An application for which a variance from a requirement of this Planning and Zoning Code is requested has been reviewed and approved by the Board of Building and Zoning Appeals, according to the procedures set forth in Chapter 1111.
  - (5) Similar Uses. An application for any building or use not specifically listed in this Planning and Zoning Code as a permitted or conditional use has been reviewed and approved by the Zoning Administrator according to the procedures set forth below.

- (b) Applications for zoning certificates are available in the Office of the Zoning Administrator. A completed application form accompanied by all other applicable submission requirements shall be submitted to the Zoning Administrator.
- (c) Expiration of Zoning Certificate. All zoning certificates shall expire if work there under does not progress under a schedule at least as rapid as the following:
  - (1) Six months from issuance, work shall have begun (e.g., ground shall have been broken)
  - (2) Two years from issuance, work shall be complete as shown on the approved development plan. (Ord. 2009-27. Passed 10-19-09.)

### **1107.03 CERTIFICATE OF ZONING COMPLIANCE.**

- (a) Certificate of Zoning Compliance Required. Land shall not be occupied or used and a building which has been erected or altered shall not be occupied or used until a certificate of zoning compliance has been applied for and issued as follows:
  - (1) Occupancy of a Building. A certificate of zoning compliance shall be required before a building that has been constructed, or an existing building that has been altered, moved, changed in use, or changed as to off-street parking or loading requirements may be occupied. A certificate of zoning compliance shall only be issued after the completion of the erection or alteration, or change in use of the building and the building is found, upon inspection, to conform with the provisions of this Planning and Zoning Code.
  - (2) Occupancy of Land. A certificate of zoning compliance shall be required before occupancy of the land or where use of the land has been changed to a use different from the prior use. A certificate of zoning compliance shall be issued when it is determined, upon inspection, that the use conforms with the provisions of this Planning and Zoning Code.
  - (3) Change in Nonconforming Use. A certificate of zoning compliance shall be required whenever a nonconforming use is changed, and shall not be issued until the Board of Building and Zoning Appeals has approved the change.
- (b) Temporary Zoning Compliance Permit. Pending the issuance of a permanent Zoning Compliance certificate, a temporary certificate may be issued, to be valid for a period not to exceed 6 months from its date, pending the completion of any required improvements, provided a performance bond has been provided to the City from a banking institution of sufficient amount to cover the estimated cost of materials and labor.
- (c) Certification. The certificate of zoning compliance shall document that the building or proposed use of land or building conforms to the provisions of this Planning and Zoning Code.  
(Ord. 2009-27. Passed 10-19-09.)

**1107.04 ZONING CERTIFICATE FOR A SINGLE-FAMILY DWELLING OR USE ACCESSORY THERETO.**

- (a) Submission of Applications. An application for a zoning certificate for the construction or alteration of a single-family dwelling or use accessory thereto shall include the items set forth below.
- (1) The completed application form.
  - (2) One copy of a general vicinity map.
  - (3) Three copies of a plot plan showing the following. Such plans shall be legibly drawn to scale and shall be based on an accurate survey or plot plan.
    - A. Zoning District.
    - B. Property boundary lines and the exact dimensions and area of the lot to be built upon or utilized.
    - C. Right-of-way of adjacent streets.
    - D. Location, dimensions, height, and bulk of all structures to be erected or altered.
    - E. The existing and intended use(s) of all land, buildings and structures.
    - F. Dimensions of yards, driveways and parking areas.
    - G. The location and use of buildings on adjoining lots.
    - H. Location and dimension of any easements and use of the easement.
    - I. Lot numbers of the concerned and abutting properties.
    - J. Each plan shall bear statements declaring that no part of the land involved in the application has been previously used to provide required setbacks or lot area for another structure.
    - K. Each property owner or authorized agent shall be required to attest to the correctness of the statements and data furnished with the application.
    - L. Any other pertinent data as may be necessary to determine and provide for the enforcement of this Planning and Zoning Code.
- (b) Review for Completeness. Within twenty (20) days after receiving an application, the Zoning Administrator shall review the submitted application to determine compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of necessary changes or additional information needed. When the application is deemed complete, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made.
- (c) Action by Zoning Administrator. The Zoning Administrator shall evaluate the application and approve or deny it within 30 days from the date it was determined to be complete. In evaluating the application, the Zoning Administrator may consult with any department, agency, public body, official, company, or individual necessary to determine whether the

application complies with the regulations of this Planning and Zoning Code.

- (1) Approval. The Zoning Administrator shall issue a zoning certificate upon finding that the building, structure or use, as proposed, complies with the provisions of this Planning and Zoning Code. At that time, the applicant shall pay an application fee.
- (2) Denial. If it is determined by the Zoning Administrator that the proposed building, structure or use would violate one or more provisions of this Planning and Zoning Code, then the zoning certificate shall not be issued. The Zoning Administrator shall inform the applicant of the reason for the denial, including the regulation(s) which would be violated by the proposed use or structure. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.05 DEVELOPMENT PLAN REVIEW REQUIRED.**

Review of a general development plan and/or final development plan shall be conducted in compliance with the following:

- (a) General Development Plan. A general development plan that indicates the general concept of development for an entire site including the general location of use areas, open space and circulation pattern, shall be required for all proposed planned developments and any project that includes multiple buildings or phased development. If in the opinion of the Zoning Administrator, a general development is not warranted, the Zoning Administrator may waive the requirement to submit a General Development Plan. Applicants for other types of projects may but are not required to submit a general development plan.
- (b) Final or Minor Development Plan. A final/minor development plan that indicates, among other things, the exact location of buildings, landscaping, parking areas, access drives, signs, and outdoor storage areas shall be required for the following:
  - (1) Planned developments or any proposed development for which, according to subsection (a) above, a general development plan is required;
  - (2) New construction of all permitted uses in community facility, multi-family, commercial, and industrial districts;
  - (3) New construction of all conditional uses;
  - (4) Any existing or previously approved development meeting the criteria of subsections (1) through (3) above that proposes to alter, reconstruct, or otherwise modify a use or site including expanding the floor area of the permitted use; increasing the number of dwelling units in a multi-family development; or changing the use which requires an increase in the amount of parking or a change in the site's circulation.
- (c) Re-occupancy of an existing structure when there is no change in the bulk of the structure; or in a previously approved final development plan; and

no change in the parking required is exempt from the development plan review procedures. (Ord. 2006-49. Passed 5-21-07.)

**1107.06 PRE-APPLICATION MEETING ENCOURAGED.**

The applicant is encouraged to meet with the Zoning Administrator, or his/her designee prior to submitting an application for general development plan review or final development plan review. The purpose of this meeting is to discuss early and informally with the applicant the purpose and effect of this Planning and Zoning Code and the criteria and standards contained within. However, no action shall be taken at such a meeting and no opinions, suggestions, or recommendations discussed shall be relied on by the applicant to indicate subsequent approval or disapproval of the development plan. (Ord. 2006-49. Passed 5-21-07.)

**1107.07 DEVELOPMENT PLAN REVIEW.**

- (a) Minor Development Plan Review. The Zoning Administrator shall have final decision-making authority for the following uses and developments. However, if the Zoning Administrator so desires, he/she may require any of the following uses and developments to be heard and approved by the Planning Commission.
- (1) When a site contains conforming land, buildings, structures, or conditions:
    - A. All non-residential developments or expansions containing up to 10,000 square feet in gross floor area, provided the development is not adjacent to single-family residential districts;
    - B. All off-street surface parking lots;
    - C. Alterations to site conditions, including but not limited to alterations to landscaping areas and the location or relocation of trash collection areas, up to 24,000 square feet;
    - D. Multi-unit residential developments up to five (5) units; and,
    - E. Whenever expressly required by any other part of this Planning and Zoning Code.
  - (2) When a site contains non-conforming land, buildings, structures, or conditions:
    - A. All non-residential developments or expansions containing up to 5,000 square feet in gross floor area, provided the development is not adjacent to single-family residential uses;
    - B. All off-street surface parking lots;
    - C. Alterations to site conditions, including but not limited to alterations to landscaping areas and the location or relocation of trash collection areas, up to 7,000 square feet;
    - D. Whenever expressly required by any other part of this Zoning Code.

- (b) General and Final Development Plan. The Planning Commission shall have final decision-making authority for all uses and developments that are not under the purview of the Zoning Administrator. A final development plan for any previously approved General Development Plan shall also be reviewed and approved by the Planning Commission. (Ord. 2006-49. Passed 5-21-07.)

**1107.08 PLAN SUBMISSION REQUIREMENTS.**

For the submission requirements for general, final, and minor development plan review, see Chapter 1115, Submission Requirements. (Ord. 2006-49. Passed 5-21-07.)

**1107.09 DEVELOPMENT PLAN REVIEW PROCEDURES.**

Development plans, including general; final; and minor, shall be reviewed and distributed according to the following procedures.

- (a) Review for Completeness. Within twenty (20) days after receiving an application, the Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made and place it on the Planning Commission's agenda or review the application for Minor Development Plan Review, if applicable.
- (b) Distribution of Plans. When the Zoning Administrator determines that the application is complete, the Zoning Administrator shall forward the application to the appropriate City departments and professional consultants for review and comment. Any reports, comments, or expert opinions shall be returned to the Zoning Administrator within 10 days from the date the application is deemed complete.
- (c) Transmission to the Planning Commission. For Final and General Development Reviews, the Zoning Administrator shall distribute the application for development plan review and any reports prepared by the individuals in subsection (b) above to the Planning Commission, at least three (3) days prior to the time of the Commission's review at their next regularly scheduled meeting.
- (d) Action by the Planning Commission or the Zoning Administrator.
- (1) The Planning Commission or the Zoning Administrator, whichever is applicable, shall review the development plan according to the applicable criteria in Section 1107.11 and Section 1107.12.
  - (2) Following its review, the Planning Commission or the Zoning Administrator shall either:
    - A. Approve the development plan as submitted; or
    - B. Approve the plan subject to specific conditions not included in the plan as submitted, such as, but not limited

to, improvements in the setback layout, open space arrangement, on-site control of access to streets, or such features as fences, walls and plantings to further protect and improve the proposed and surrounding developments; or

- C. Deny the development plan. If the Administrator or the Planning Commission finds that a proposed plan does not meet the purposes of these regulations, it shall deny the plan and shall submit its findings in writing to the applicant upon the applicant's request.
- (3) Failure of the Planning Commission or the Zoning Administrator to Act. Failure of the Planning Commission to act within 120 days and failure of the Zoning Administrator to act within thirty (30) days from the date the application was deemed complete, or an extended period as may be agreed upon, the applicant may deem the application denied.
- (4) Re-application. The Zoning Administrator shall accept no re-application for a development plan unless the re-application is based on a revised application that addresses the justification for the denial of the initial application. A re-application shall comply with all the requirements of this Chapter, including payment of the required fee. If an application is denied as a result of Section 1107.09 (d)(3), Failure of the Planning Commission or the Zoning Administrator to Act, the Zoning Administrator shall accept a re-application for development plan review that has not been revised from the previous submittal.
- (e) Issue of Zoning Certificate. If the Final or Minor development plan is approved or approved with conditions, the Zoning Administrator shall issue a Zoning Certificate pursuant to Section 1107.02. However, the Zoning Certificate shall not be issued until:
- (1) At the Zoning Administrator's discretion, there shall be executed by the owner or applicant an agreement to construct required physical improvements located within the public rights-of-way or easements or connected to any public facility; and the applicant shall execute and deliver to the City a security approved by the City Engineer in the amount of the estimated cost of the required physical improvements as determined by the City Engineer. The agreement and the security shall provide for completion of all work within a time specified to be determined by the City Engineer or before occupancy is allowed in any structure, whichever shall occur first.
- (2) The approval of the site design plan or the installation of improvements as required by this Zoning Code shall not obligate the City to accept improvements for maintenance, repair or operation. Acceptance shall be subject to local or state regulations where applicable, concerning the acceptance of each type of improvement.

- (f) Inspections. City agencies responsible for the supervision and enforcement of this Zoning Code shall periodically inspect the site during the period of construction to ascertain compliance with this Planning and Zoning Code. (Ord. 2006-49. Passed 5-21-07.)

**1107.10 PUBLIC NOTICE FOR DEVELOPMENT PLANS.**

- (a) Property Notice. For General; Final; and Minor Development Plan Reviews which have been referred to the Planning Commission, at least seven (7) days prior to the Commission's public meeting on the pending application, the applicant shall erect on the subject property a sign indicating the change proposed, and the date, time, and place of the public meeting. Failure to do so shall result in the cancellation or continuation of the scheduled public meeting.
- (1) The Zoning Administrator shall determine the number of signs required, however, there shall be at least one sign posted along each public right of way abutting the property. At least one sign shall be posted every 300 feet along any single right-of-way. All signs must be clearly visible from the adjacent right-of-way and shall be no larger than 3 feet by 4 feet in size. For properties that lack any public right-of-way, all required signs shall be posted along at least two property lines, as determined by the Zoning Administrator.
  - (2) The applicant shall have the responsibility to determine and provide adequate structural elements necessary to erect the sign on the property.
  - (3) All public meeting signs posted shall be removed from the property by the applicant within 2 days after the Commission's public hearing.
  - (4) The temporary absence of any posted sign, due to vandalism or climatic conditions, shall not violate the intent of this section.
- (b) Posted Notice. Public notice of general; final and minor development plans to be reviewed and acted upon by the Planning Commission shall be posted on the bulletin board in the main lobby of the Municipal Building. The public notice will be the Planning Commission's agenda on which the development plans to be considered will appear. (Ord. 2006-49. Passed 5-21-07.)

**1107.11 CRITERIA FOR REVIEW OF GENERAL DEVELOPMENT PLANS BY PLANNING COMMISSION.**

The Planning Commission shall review a development plan to determine if such application complies with the review criteria set forth below. The Planning Commission shall take into consideration the comments and recommendation of staff and consultants. In order to approve a general development plan, the Planning Commission shall determine that:

- (a) The plan is consistent with the Comprehensive Plan.

- (b) The appropriate use and value of property within and adjacent to the area will be safeguarded.
- (c) The development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property.
- (d) The development will have adequate open spaces.
- (e) The development will preserve and be sensitive to the natural characteristics of the site in a manner that complies with the applicable regulations set forth in this Planning and Zoning Code.  
(Ord. 2006-49. Passed 5-21-07; Ord. 2012-24. Passed 8-20-12.)

#### **1107.12 CRITERIA FOR REVIEWING MINOR AND FINAL DEVELOPMENT PLANS.**

In reviewing minor or final development plans, the Planning Commission or the Zoning Administrator shall review the development plan to determine if such application complies with the review criteria set forth below. The Planning Commission and the Zoning Administrator shall take into consideration the comments and recommendation of staff and consultants when reviewing the application. In order to approve a development plan, the Planning Commission or the Zoning Administrator shall consider such factors as:

- (a) The plan is consistent with any plan for the orderly development of the City and, when applicable, conforms in all respects to the approved or provisionally approved general development plan and the regulations of this Planning and Zoning Code.
- (b) The appropriate use and value of property within and adjacent to the area will be safeguarded.
- (c) The development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property.
- (d) Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property.
- (e) The development will have adequate public service, parking and open spaces.
- (f) The development will preserve and be sensitive to the natural characteristics of the site in a manner that complies with the applicable regulations set forth in this Planning and Zoning Code.
- (g) The development will provide adequate lighting for safe and convenient use of the streets, walkways, driveways, and parking areas.
- (h) Upon review and recommendation of the City Engineer, points of ingress/egress to the development shall be controlled and designed in such manner as to minimize conflicts with adjacent properties and developments.
- (i) Adequate provision is made for emergency vehicle access and circulation;
- (j) The proposed signs:
  - (1) Are of an appropriate size, scale, and design in relationship with the principal building, site, and surroundings;

- (2) Adequately identify the use; and
  - (3) Are located to maintain safe and orderly pedestrian and vehicular circulation.
- (k) The landscape plan will adequately:
- (1) Enhance the principal building and site;
  - (2) Maintain existing trees to the extent possible;
  - (3) Buffer adjacent incompatible uses;
  - (4) Break up large expanses of pavement with natural material; and
  - (5) Provide appropriate plant materials considering the ultimate mature size and shape of plants relative to the buildings and site, and the climate of the area, including typical weather conditions.
- (l) Adequate provision is made for storm drainage within and through the site so as to maintain, as far as practicable, usual and normal swales, water courses and drainage areas, and shall comply with the applicable regulations in this Planning and Zoning Code, the City of Wooster Erosion & Stormwater Runoff Control Manual for Development and Improvement 1979, as amended, the City's Engineering Construction Standards, February 2004 as amended, and any other design criteria established by the City or any other governmental entity which may have jurisdiction over such matters.
- (m) Site lighting is designed to minimize direct light, glare, and excessive glow, which unreasonably interferes with the use and enjoyment of adjacent property. If it is determined that, once the project is completed, the lighting does have unreasonable adverse impact on adjacent property, the Zoning Administrator may order reasonable alterations to the site lighting (such as reduced illumination, shielding, landscaping, etc.) to mitigate such unreasonable impacts;
- (n) If the project is to be carried out in progressive stages, each stage shall be so planned that the foregoing criteria are complied with at the completion of each stage.
- (o) Ensure protection of the City's ground water resources in the Killbuck Valley when developments or uses locate near the City's Well Fields or could have a potential negative impact on the City's ground water resources due to the type of operation.
- (p) The Plan must comply with all laws and ordinances of the City of Wooster, this Planning and Zoning Code, and other adopted City policies. (Ord. 2006-49. Passed 5-21-07.)

### **1107.13 REQUEST FOR ADDITIONAL INFORMATION.**

In their review of an application, the Planning Commission or the Zoning Administrator may request that the applicant supply additional information that the Commission deems necessary to adequately review and evaluate the proposed development. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.14 SIMULTANEOUS PLAT APPROVAL.**

If the proposed development includes the subdivision of land, the development shall be subject to the requirements of the plat approval process in accordance with subdivision regulations in this Planning and Zoning Code including Chapter 1109, Subdivision Procedures, Chapter 1113, Scheduling and Assurances for Completion and Maintenance of Improvements, and those applicable Chapters in Title Five, Supplemental Development Regulations. Final development plan approval and subdivision plat approval may proceed simultaneously at the discretion of the Planning Commission. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.15 EQUIVALENCY PROVISION.**

In reviewing the application, the Planning Commission may find that a final development plan either adheres or is equivalent to the requirements of this Planning and Zoning Code.

- (a) The Planning Commission may consider elements of a final development plan to be equivalent to a requirement if:
  - (1) The proposed final development plan substantially complies with all specific requirements and with the purposes, intent and basic objectives of the zoning district;
  - (2) Through imaginative and skillful design in the arrangement of buildings, open space, streets, access drives and other features, as disclosed by the application, the proposal results in a development of equivalent or higher quality than that which could be achieved through strict application of such standards and requirements; and
  - (3) The development, as proposed, shall have no adverse impact upon the surrounding properties or upon the health, safety or general welfare of the community.
- (b) It shall be the responsibility of the applicant to demonstrate to the Planning Commission that the provisions of this Section have been satisfied. When evaluating the application with respect to this Section, the Planning Commission shall make any finding of equivalency in writing which explains how and why the proposal has satisfied the above criteria. When making such finding, the Commission may approve the proposed application as if the application were in strict compliance with the standards and requirements in this Planning and Zoning Code.
- (c) Approval under this Section is not a variance. Instead, this sub-section allows applicants to satisfy zoning requirements in ways not anticipated by the City.

(Ord. 2006-49. Passed 5-21-07.)

#### **1107.16 SIGNIFICANCE OF AN APPROVED PLAN; PLAN REVISIONS.**

- (a) An approved Minor or Final development plan shall become for the proposed development a binding commitment of the specific elements approved for development. The approved Minor or Final development plan may be transferred to another person, corporation, or group of individuals or corporations prior to the issuance of a building permit. Such

a transfer shall occur only upon approval of the Zoning Administrator. A request for such a transfer or change of ownership shall be presented to the Zoning Administrator and granted only if the new ownership entity satisfies the administrative, financial, legal and all other performance guarantees approved with the original development plan.

- (b) All construction and development under any building permit shall be in accordance with the approved Minor and Final development plan. Any departure from such plan shall be cause for revocation of the Zoning Certificate and/or Building Permit, and the property owner or other responsible parties are subject to penalties as prescribed by this Planning and Zoning Code.
- (c) Any changes in an approved Minor or Final development plan shall be resubmitted for approval in accordance with this Section.  
(Ord. 2006-49. Passed 5-21-07.)

#### **1107.17 EXPIRATION OF DEVELOPMENT PLAN APPROVAL.**

An approved development plan shall remain valid for a period of twelve (12) months following the date of its approval, unless the Planning Commission authorizes a longer period at the time of approval.

- (a) General Development Plan. If, at the end of that time, a final development plan has not been submitted to the Zoning Administrator, then approval of the general development plan shall expire and shall be of no effect unless resubmitted and reapproved in accordance with this Chapter.
- (b) Minor and Final Development Plan. If, at the end of that time, construction of the development has not begun, then approval of such minor and final development plan shall expire and shall be of no effect unless resubmitted and re-approved in accordance with the procedures set forth in this Chapter. Construction is deemed to have begun when all necessary excavation and piers or footings of one or more principal buildings included in the plan have been completed. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.18 REVISIONS TO ASSOCIATION DOCUMENTS APPROVED BY THE CITY ATTORNEY.**

Whenever a homeowner's association, community association, condominium association or similar legal entity amends those portions of their bylaws or code of regulations that pertain to maintenance obligations or access to common areas within a planned unit residential development, such amendment shall be submitted to the City Attorney for review and approval. Failure to obtain approval of such amendment shall be deemed a violation of this Planning and Zoning Code. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.19 APPEALS OF ZONING ADMINISTRATOR DECISION.**

Appeals of the Zoning Administrator's decision on a Minor Development Plan Review application may be taken to the Planning Commission by filing a notice of appeal in the Zoning Administrator's office. Appeals shall be filed within ten (10) days of the Zoning Administrator's decision. Public notice of the appeals shall be provided in

accordance with Section 1111.04. Decisions by the Planning Commission granting or denying approval of Minor Development Plan applications shall be final subject only to judicial review in attendance with law.

(Ord. 2006-49. Passed 5-21-07.)

#### **1107.20 APPEALS OF PLANNING COMMISSION DECISIONS.**

Decisions by the Planning Commission granting or denying approval of General or Final development plans shall be final. Appeals shall be subject to judicial review in accordance with the law.

(Ord. 2006-49. Passed 5-21-07; Ord. 2012-24. Passed 8-20-12.)

#### **1107.21 APPROVAL OF DEVELOPMENT PLAN REQUIRING VARIANCES.**

If the development proposal requires approval of both a development plan and a variance, the applicant shall proceed through the development plan process first.

(Ord. 2006-49. Passed 5-21-07.)

#### **1107.22 PRE-APPLICATION MEETING ENCOURAGED FOR CONDITIONAL USES.**

The applicant is encouraged to meet with the Zoning Administrator or his/her designee prior to submitting an application for a conditional use. The purpose of this meeting is to discuss early and informally with the applicant the purpose and effect of these zoning regulations and the criteria and standards contained within. However, no action shall be taken at such a meeting and no discussions, opinion, suggestions, or recommendations shall be relied upon by the applicant to indicate subsequent approval or disapproval of the application. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.23 SUBMISSION OF APPLICATION FOR CONDITIONAL USE.**

The owner or agent thereof, of property for which such conditional use is proposed shall file with the Zoning Administrator an application for a conditional use accompanied by payment of the required fee. The application for a conditional use shall disclose all uses proposed for the development, their location, extent, and characteristics and shall include the items required in Section 1115.12, Conditional Use Submission Requirements. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.24 CONDITIONAL USE APPLICATION PROCEDURES.**

- (a) Review for Completeness. Within twenty (20) days after receiving an application for a conditional use, the Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made and place it on the Planning Commission's agenda.

- (b) Distribution of Plans. When the Zoning Administrator determines that the application is complete, the Zoning Administrator shall forward the application to appropriate City departments and professional consultants for review and comment. Any reports, comments, or expert opinions shall be returned to the Zoning Administrator within ten (10) days from the date the application is deemed complete.
- (c) Transmission to the Planning Commission. The Zoning Administrator shall distribute the application for a conditional use and any reports prepared by the individuals in subsection (b) above to the Planning Commission, at least three (3) days prior to the time of the Commission's review at their next regularly scheduled meeting. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.25 REVIEW OF CONDITIONAL USE APPLICATION.**

The Planning Commission shall review the proposed conditional use, as presented on the submitted plans and specifications, to determine whether or not the proposed use is appropriate and in keeping with the purpose and intent of this Planning and Zoning Code.

- (a) The Planning Commission shall review the development plan for the proposed conditional use according to the development plan review criteria set forth in Section 1107.12, Criteria for Reviewing Minor and Final Development Plans, as applicable;
- (b) The Planning Commission shall review the application to determine if the establishment and operation of the proposed use complies with the general criteria established for all conditional uses and the specific requirements established for that particular use, as set forth in Chapter 1147, Conditional Use Regulations, of this Planning and Zoning Code; and
- (c) The Planning Commission may require the applicant to submit such additional information as deemed necessary including the carrying out of special studies and the provisions of expert advice. (Ord. 2006-49. Passed 5-21-07.)

#### **1107.26 PUBLIC HEARING AND NOTICE BY PLANNING COMMISSION FOR CONDITIONAL USES.**

The Planning Commission shall hold a public hearing on the proposed conditional use. Notice of such public hearing shall be given by first class mail to the applicant and to the property owners within 200 feet of the property on which the use is proposed. Failure of delivery of such notice shall not invalidate action taken on such application. Further notice shall be given in one or more newspapers of general circulation in the city. All notices shall be made at least 10 days before the date of said public hearing. All notices shall set forth the time and place of the public hearing and the nature of the proposed conditional use. The Commission may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. (Ord. 2006-49. Passed 5-21-07.)

### **1107.27 BURDEN OF PRESENTING EVIDENCE.**

The burden of presenting evidence to the Planning Commission that is sufficient to lead the Commission to conclude that the application should be denied shall be upon the party or parties urging this position, unless the information presented by the applicant in the submitted application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

(Ord. 2006-49. Passed 5-21-07.)

### **1107.28 ACTION BY PLANNING COMMISSION ON CONDITIONAL USES.**

- (a) The Planning Commission shall take one of the following actions:
  - (1) If the proposed conditional use is determined by the Planning Commission to be appropriate and in conformance with the review criteria outlined in Sections 1107.12, 1147.02, and 1147.03, the Planning Commission shall approve the conditional use. As part of the approval, the Planning Commission may prescribe reasonable requirements on the proposed use to ensure that the development conforms to the intent and purposes of Sections 1147.01, 1147.02, and 1147.03. The Planning Commission may approve the application for a conditional use without approving the submitted development plan.
  - (2) The Planning Commission shall deny the application if the Planning Commission concludes that, if completed as proposed, the development will not be in compliance with the requirements of this Planning and Zoning Code. Such action shall be stated in writing and include specific findings, based upon the evidence submitted, justifying such a conclusion.
- (b) Failure of the Planning Commission to Act. If the Planning Commission fails to act within 60 days from the date the application was deemed complete, or an extended period as may be agreed upon, then the applicant may deem the development denied. (Ord. 2006-49. Passed 5-21-07.)

### **1107.29 TERMS AND DURATION OF CONDITIONAL USE APPROVAL.**

- (a) Conditional use approval shall authorize a particular conditional use on a specific parcel. Approval of a conditional use, pursuant to this Chapter, shall be valid only for the use and the operation of such use as specified when granted by the Planning Commission. The breach of any condition, safeguard, or requirement shall constitute a violation of this Planning and Zoning Code. Approval shall automatically be void if, for any reason, the conditional use shall cease for more than one year.
- (b) The conditional use approval shall expire one year from the date of enactment, unless:
  - (1) The final development plan is approved for uses that require a final development plan;
  - (2) Substantial progress in the establishment of the use is accomplished; or

- (3) As otherwise specifically approved by the Planning Commission.
- (c) Conditional Use Changes. Except as noted throughout the Code, all exterior alterations and additions to existing non-residential conditional uses shall be reviewed and approved by the Planning Commission. Alterations and additions to existing residential conditional uses may be approved by the Zoning Administrator. Also, at the Zoning Administrator's discretion, any interior alteration to an existing non-residential conditional use that requires additional parking spaces to be provided may be reviewed and approved by the Planning Commission. (Ord. 2006-49. Passed 5-21-07.)

### **1107.30 RE-APPLICATION FOR A CONDITIONAL USE APPROVAL.**

The Zoning Administrator shall accept no re-application for a conditional use unless the re-application is based on a revised application that addresses the justification for the denial of the initial application. A re-application shall comply with all the requirements of this Chapter, including payment of the required fee. If an application is denied as a result of Section 1107.28 (b), failure of the Planning Commission to Act, the Zoning Administrator shall accept a re-application for a conditional use that has not been revised from the previous submittal. (Ord. 2006-49. Passed 5-21-07.)

### **1107.31 SIMILAR USES.**

Within each zoning district established by the Planning and Zoning Code and amendments thereto, uses of land or structures, which are compatible with each other, are permitted in the district. To the extent that new types of uses are created and are not addressed by this Planning and Zoning Code, this section provides the procedure by which the Zoning Administrator may make a determination that a new use is similar to a use permitted in a district.

- (a) Determination. A proposed use may be permitted as a similar use when the Zoning Administrator determines that such proposed use is in compliance with the following provisions:
- (1) The proposed use is not prohibited in any other district;
  - (2) The proposed use is not listed as a permitted building or use in any other district;
  - (3) The proposed use conforms to and is consistent with the purpose statement of the proposed district more appropriately than in any other district;
  - (4) The proposed use is of the same general character as the permitted uses in the district to which it is proposed or is similar to a specific use permitted in that district.
- (b) Assignment to Districts. If the Zoning Administrator approves the proposed similar use, then the similar use shall be added to those districts that allow the principal or conditional use that is most similar, as identified in his/her determination. (Ord. 2006-49. Passed 5-21-07.)