

**BRAINERD, MN**  
**Chapter 515 ZONING**

**515-5-2 Conditional Use Permits.**

A. **Purpose and Intent.** The purpose of the Conditional Use Permit is to provide the City of Brainerd with the discretion and flexibility to achieve the goals and objectives of the comprehensive plan and to determine, what, if any, uses other than those specifically permitted may be suitable within the City's Zoning Districts.

1. Conditional Uses are listed on the Appendix A: Table of Uses. Only Conditional Uses identified on the Table shall be considered and only applications that support the goals and objectives of the Comprehensive Plan; protect and enhance the City's character, serve, in a general way the needs of the citizens; and do not negatively affect the general welfare, public health and safety of the community.
2. In determining 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 to and from the premises, or effects on any adjoining roads and all other factors the City shall deem appropriate for consideration.
3. If a use is deemed suitable, reasonable conditions may be applied to issuance of a Conditional Use Permit, and periodic review of said permit may be required.

B. **Procedure.**

1. Request for Conditional Use Permits, as provided within this Section shall be filed with the City on an official application form. Applications shall be accompanied by a fee as required by this Ordinance and shall be accompanied by an electronic copy of detailed written and graphic materials. Hard copies may be requested by the Zoning Administrator.
2. Proof of Ownership or Authorization. The applicant shall supply proof of ownership or equitable ownership interest, a legal description and as applicable supply documented authorization from the owner(s) of the property in question to proceed with the requested Conditional Use Permit.
3. The Planning Commission shall hold a public hearing on the proposal. Notice of the public hearing shall be published in the official newspaper designated by the City at least ten (10) days prior to the hearing. Notice of the hearing shall also be mailed to owners of property located within a three hundred and fifty (350) foot radius of the outside of the land to which the conditional use will be applicable. The notice shall include a description of the land and the proposed conditional use. Failure of a property owner to receive such a notification shall not invalidate the proceedings.
4. A copy of the application for the proposed Conditional Use Permit within a Flood Zone shall be mailed to the Commissioner of Natural Resources and where applicable the Mississippi Headwaters Board so that the Commissioner and Board will receive at least ten (10) days' notice of the hearing. Violations to send such notice are punishable under Section [515-5-11].
5. The Zoning Administrator may request the appropriate staff persons to prepare technical reports where applicable and provide general assistance in preparing a recommendation on the request.
6. Criteria for Granting Conditional Use Permits. In granting a Conditional Use Permit, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals and general welfare of occupants or surrounding lands. Among other things, the City Council shall make the following findings where applicable.
  - a. The proposed use conforms to the Zoning District and is a permitted Conditional Use identified on the Appendix A: Table of Uses.
  - b. The proposed use meets the regulations and standards established in this Ordinance
  - c. The proposed use shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons.
  - d. The proposed use shall be sited, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

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- e. The proposed use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.
  - f. The proposed use shall organize vehicular access and parking to minimize traffic congestion in a residential neighborhood.
  - g. The proposed use shall preserve the objectives of this Ordinance and shall be consistent with the Comprehensive Plan.
7. Conditions. In reviewing applications for conditional use permits, the City may attach whatever reasonable conditions are deemed necessary to mitigate anticipated adverse impacts associated with the proposed use, to protect the value of property within the Zoning District, and to achieve the goals of the City's Comprehensive Plan. In determining such conditions, special consideration shall be given to protecting nearby properties from objectionable views, noise, traffic, and other characteristics associated with such uses. Such conditions may include, but are not limited to, the following:
- a. Increasing the required lot size or yard setback dimension.
  - b. Limiting the height, size, or location of buildings.
  - c. Regulating ingress and egress to the property and the proposed structures thereon with particular references to vehicle and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other catastrophe.
  - d. Regulating the street width.
  - e. Increasing the number of required off-street parking spaces.
  - f. Limiting the number, size, location, or lighting of signs.
  - g. Requiring a berm, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.
  - h. Requiring dedication of some open or green space.
  - i. Regulating the appearance of the facilities or site so that they are harmonious with the neighborhood and City.
  - j. The following may be added as conditions to properties in a Flood Zone:
    - i. Modification of waste treatment and water supply facilities.
    - ii. Limitations on period of use, occupancy, and operation.
    - iii. Imposition of operational controls, sureties, and deed restrictions.
    - iv. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
    - v. Flood-proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.
  - k. A copy of all decisions granting conditional uses within the Flood Zone shall be forwarded by mail to the Commissioner of Natural Resources and where applicable the Mississippi Headwaters Board within ten (10) days of such action. Violation to send such notice is punishable under Section [515-5-11].

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8. Amendments. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the Conditional Use Permit issued shall require an amended Conditional Use Permit and all procedures shall apply as if a new permit were being issued. The Zoning Administrator shall maintain a record of all Conditional Use Permits issued including information on the use, location, and conditions imposed by the City Council, time limits, review dates, and such other information as may be appropriate.
  - a. An amended Conditional Use Permit application shall be administered in a manner similar to that required for a new Conditional Use Permit, amended Conditional Use Permits shall include requests for changes in conditions, and as otherwise described in this Ordinance.
  - b. 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 six (6) months from the date of its denial, unless a decision to reconsider such matter is made by not less than a majority vote of the full City Council.
9. Review and Enforcement. If a periodic review is included as a condition by which a Conditional Use Permit is granted, the Conditional Use Permit may be reviewed at a public hearing with notice of said hearing published at least ten (10) days prior to the review. It shall be the responsibility of the Zoning Administrator to schedule such public hearings and the owner of the land having a Conditional Use Permit shall not be required to pay a fee for said review. A waiver from a public hearing for annual review of a Conditional Use Permit may be granted at the discretion of the City Council.
  - a. In the event that the applicant violates any of the conditions set forth in this permit, the City Council shall have the authority to revoke the Conditional Use Permit outlined as follows:
  - b. The City shall conduct a public hearing to consider the revocation of a Conditional Use Permit. Notifications shall be distributed and published according to Subsection [B.3]. The public hearing shall be conducted by the Planning Commission, which shall make a recommendation to the City Council.
  - c. In considering revocation, the Planning Commission and the City Council shall consider compliance with the approved conditions of the Conditional Use Permit.
  - d. Following a vote by the City Council to revoke the Conditional Use Permit, the City shall file a certified copy thereof including a legal description of the property with the County Recorder and/or Registrar of Title.
  - e. Conditional Use Permits issued shall be recorded in the office of the County Recorder as per Minnesota Statutes.

**C. Application.**

1. An applicant applying for a Conditional Use Permit for an accessory use to a single-family detached or single-family attached property shall fill out and submit to the Zoning Administrator a Conditional Use Permit application form and required filing fee. This form shall contain, but not be limited to, the following data unless waived by the Zoning Administrator:
  - a. Detailed legal description of the property.
  - b. Site Plan showing location of all buildings and structures with dimensions and setbacks.
  - c. Planting plan showing pathway system, width and material, screening fences with detail, lighting system, recreational feature, if any.
  - d. Landscape plan showing location, species, and size of all plant material.
  - e. Drainage plan indicating catch basins and underground improvement.
  - f. Utility systems for sanitary sewer, water, gas, telephone, and electric which shall all be underground for new construction.

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- g. Sites adjacent to MnDOT right-of-way shall identify the right-of-way location, dimension from the centerline of the highway to the MnDOT right-of-way line, along with existing and proposed ingress and egress.
  - h. Sites adjacent to MnDOT right-of-way shall be submitted to MnDOT for review and comment.
  - i. Off-street parking, driveways, and access plan.
  - j. Off-street loading plan, if any, is necessary.
  - k. Plan for adjustment to existing rights-of-way, easements, utilities, and new dedications.
  - l. Architectural plans showing elevations, entrances, heights, floor plans and material to be used on the exterior.
  - m. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
2. The applicant applying for a Conditional Use Permit, whether for a principal or accessory use, within a commercial or industrial Zoning District and for any multi-family properties shall fill out and submit to the Zoning Administrator a Conditional Use Permit application form and required filing fee.
3. Submission Materials. The submission for a Conditional Use Permit shall include the following:
- a. Narrative describing the proposed use. The narrative should include the following, as applicable to the application:
    - i. Proposed Use
    - ii. Description of business or activity to be conducted.
    - iii. Number of employees.
    - iv. Hours of operation.
  - b. Site Plan as described in Section [515-5-5].
    - i. The Zoning Administrator shall have the authority to except any of the submission materials identified in Section [515-5-5] Information Required. The Zoning Administrator shall evaluate the proposed use and proposed improvements to determine what materials are necessary to process the proposed application.

**D. Cancellation of Conditional Use Permits.**

1. 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 the Conditional Use Permit, or fails to fulfill all required conditions 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:
- a. The extension is requested in writing and filed with the City at least thirty (30) days prior to the expiration of the executed Conditional Use Permit.
  - b. 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.
  - c. A maximum of one (1) administrative extension by the Zoning Administrator shall be granted.

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- d. The extension shall not exceed ninety (90) days from the initial Conditional Use Permit expiration date.
  - e. There shall be no charge for the filing of a petition for an administrative extension.
2. If an extension is requested exceeding 90 days, the request must be reviewed and approved by the City Council. Such extension may be granted if:
- a. The conditions described in subsection [1.a.-c.] above are satisfied.
  - b. The extension shall not exceed one (1) year from the initial Conditional Use Permit expiration date.
  - c. The filing of a petition for extension is subject to fee requirements established by City Council resolution.

**E. Performance Security.**

- 1. 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 City Council, with a performance security as approved by the City Attorney prior to the issuing of a Building Permit 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.
- 2. The security shall be in the amount recommended by the Zoning Administrator based on 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.
- 3. 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 Building Official.
- 4. 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.
- 5. 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.