

**WARRANT ARTICLE:** To see if the Town will vote in favor of approving modifications of the Land Use Ordinance Town of Benton Maine, last revised March 2019, with the required modifications labeled “Part 4” designed to 1) to address public concerns offer public notice for permit applications, 2) incorporate the goals and objectives of the Town of Benton 2018 Comprehensive Plan adopted by the people on March 10, 2018, and 3) to address missing or outdated content in the document.

Part 4 modifications include:

- 1) Modification to Section V: Conditional Use Permits

Language additions are reflected with underline text, e.g. TEXT ADDITION

Language removal are reflected with strike-thru text, e.g. ~~TEXT REMOVAL~~

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### Section V: Conditional Use Permits

#### A. Requirement

1. A Conditional Use is defined as a development activity which, if conducted without restriction, would have the capacity to adversely affect neighboring property and the public at large, and which therefore must be allowed only with review and approval of the planning board, which will ensure that all performance standards and other requirements of this ordinance are met. More specifically, a conditional use is one, which is listed within the district requirements in Section VII of this Ordinance.
2. No person shall commence any development activity, or construct structures pertinent to a development activity, which is listed in Section VII, *Establishment of Districts* as a Conditional Use without first obtaining a Conditional Use Permit from the Benton Planning Board.
3. In the event of a question as to whether a particular activity constitutes a Conditional Use, the Code Enforcement Officer is authorized to make a formal determination.

#### B. Authorization

The Planning Board shall approve with modifications or conditions, or disapprove an application for a Conditional Use Permit.

#### C. Existing Conditional Use or Structure

1. A Conditional Use, which existed prior to the effective date of this Ordinance, may not be changed to another Conditional Use nor substantially expanded or altered except in conformity with all requirements of this Ordinance pertaining to the use. Substantial expansion is considered to be a floor space increase of at least twenty-five (25) percent or the utilization of materials or processes not previously associated with the existing use.
2. No significant changes shall be made in any approved Conditional Use without approval of the change by the Planning Board.

#### D. ~~H.~~ Standards for Conditional Use

1. The ~~A~~applicant shall demonstrate that the proposed use meets all applicable criteria listed below. The ~~Planning~~ Board shall approve the application unless it makes written findings that one or more of these criteria have not been met:
  - a. Application for Conditional Use Permit is incomplete or insufficient.
  - b. Benton Comprehensive Plan: The development is consistent with the Benton Comprehensive Plan, and in compliance with state and federal law, as well as all ordinances, rules, and regulations of the Town, including the performance standards of this ordinance. The use is consistent with the Benton Comprehensive Plan.
  - c. Health and Welfare: The development will not create unsafe or unhealthful conditions

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within the neighborhood in which it is located, and shall not create or exacerbate effects upon neighboring properties.

- d. **Historic & Archeological Resources.** The development will to the greatest extent feasible, preserve historic, prehistoric, or archeological resources.
- e. **Water & Air Resources Quality.** The development will not result in undue reduction of air or water quality or supply and there is adequate water supply and quality to meet the demands of the proposed use.
- f. **Storm Water Drainage System.** A storm water drainage system capable of handling 25-year storm without adverse impact on adjacent properties has been designed.
- g. **Buffer Strips & Landscaping.** Buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, dust, odor and the like.
- h. **Flood Hazard.** The site design is in conformance with all municipal flood hazard protection regulations.
- i. **Soil Erosion & Sedimentation.** Adequate control of soil erosion and sedimentation has been shown.
- j. **Wastewater & Solid Waste.** Adequate provision for the disposal of all wastewater and solid waste has been made.
- k. **Natural Resources.** The use will not have an adverse impact on spawning ground, fish, aquatic life, bird or other wildlife habitat.
- l. **Transportation (Traffic and Road Safety).** Traffic access to the site meets the standards contained in this ordinance; and traffic congestion has been addressed in accordance with performance standards in this ordinance.
- m. **Public Facilities & Services.** The development will not cause an undue strain on public facilities or services, including public roads, water supply, sewage disposal, solid waste systems, police, educational, or other services.
- n. **Hazardous Materials.** Adequate provision for the transportation, storage and disposal of any hazardous materials has been made.
- o. **Other.** All performance standards in this ordinance, applicable to the proposed use will be met.

### **E. Pre-Application Meeting**

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1. Every applicant for a conditional use permit is expected to meet informally with the Code Enforcement Officer prior to submitting a formal application. The purpose of the meeting will be to familiarize the Town with the proposed project so that it may be reviewed quickly and efficiently. The pre-application meeting is an opportunity for the applicant to ask questions about submission requirements, review processes, and development standards. The CEO may also act upon any request for waiver of submission requirements for Planning Board consideration.
2. Upon receipt of a permit application the Code Enforcement Officer shall decide whether the information in the application is provided as required. If the CEO finds the application is insufficient or incomplete, (s)he shall within ten (10) working days, notify the applicant in writing, indicating what necessary information is required to complete the application. The CEO shall take no further action on an incomplete application.
3. Upon determination that an application is complete, the Code Enforcement Officer shall work with the Town Office staff to distribute the application materials for consideration by the Planning Board. The Code Enforcement Officer will ensure that there will be the package of application materials for each member of the Planning Board, including:
  - a. completed application verified and signed by the Code Enforcement Officer, and
  - b. any recommendations for waiver of requirements for submission of any information which is not needed for consideration of the permit.
4. Planning Board may determine the need to hold one or more public informational meetings prior to the public hearing to address or hear public concerns for application which have in the Planning Board's opinion significant need for public review and comment.
5. A public hearing is required for all Conditional Use Permit applications, public hearing requirements are outlined in Section III, Administration, Enforcement and Fees, Subsection H. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.

### **F. ~~D.~~ Application Requirements**

1. An ~~person~~ Applicant who requires a Conditional Use Permit shall file an application for the permit with the ~~Planning Board~~ Code Enforcement Officer on forms provided for the purpose, together with a non-refundable application fee as specified in the Appendix. In addition to the application fee, the applicant shall be responsible for the following costs, to be paid prior to issuance of the Permit:
  - a. All costs associated with a public hearing, ~~should the Board decide that one is warranted,~~ and
  - b. Reasonable costs incurred by the town in employing mutually agreed-upon professional expertise to review and verify details of the application.
2. ~~All applications for Conditional Use Permits shall contain the following information:~~ Every Applicant for a permit shall submit a written application, or where provided by the Town, an electronic application. To be considered for formal review, the application MUST contain all of the required information, including exhibits, plans and any information required to demonstrate the Applicant shall meet the performance standards of this Ordinance.-

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Each Permit Application designates what is required information by placing an asterisk “\*” located directly preceding the application field name. In the example show directly below, the Applicant First Name and Applicant Last Name both have an asterisk “\*” which designates the information is required, whereas Applicant Middle Name is NOT required in this example.

a. \*Applicant First Name

b. Applicant Middle Name

c. \*Applicant Last Name

~~e. A plan showing development of the parcel, including the location of all structures and improvements, and any changes in finished grade. The plan shall be drawn to a scale of not smaller than one inch equals fifty (50) feet.~~

~~d. The name and address of the applicant (or authorized agent) plus the name of the proposed development, and a proof of the applicant’s legal interest in the property, the assessor’s map and lot number.~~

~~e. Interior plans showing total floor area and amount of area devoted to individual uses for each building, structure, or addition.~~

~~f. Perimeter survey of the parcel made and certified by a registered land surveyor licensed in Maine, relating to reference points, showing true north point, graphic scale, corners of parcel, date of survey, and total acreage.~~

~~g.c. Any other information necessary for the applicant to demonstrate how he/she intends to meet the performance standards of this Ordinance.~~

~~3. The Planning Board may, in writing, waive the requirements for submission of any information, which it determines, is not needed for consideration of the permit.~~

### **G. E. Planning Board Review Procedure**

1. The Planning Board may, in writing, waive the requirements for submission of any information, which it determines, is not needed for consideration of the permit. The Planning Board may not waive Standards for Conditional Use.
2. When an applicant would need a variance from an Ordinance requirement before the Planning Board could approve the Permit, the Board of Appeals shall approve the variance prior to final action by the Planning Board. The Planning Board shall table final action on the application pending the Board of Appeal’s decision and shall notify the Board of Appeals of that action.
3. The Planning Board shall determine whether the application is complete, ~~enough to begin consideration for approval.~~ Upon making a determination of completeness, and after the public hearing has been held, the Planning Board shall have thirty-five (35) days to either take ~~final~~ action (approve, deny, or approve with conditions) or request additional information or hold a public hearing.

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4. The Planning Board may, at its discretion, retain expert independent technical assistance to evaluate or supplement the evidence presented by the applicant and in the public hearing. The cost of such expertise shall be borne by the applicant in accordance with the terms of the escrow account set up at the time of application.
5. In approving the application, the Planning Board may attach any conditions which it feels are necessary to meet the criteria of this ordinance and/or recommend a performance guarantee (Section V, H Performance Guarantee). Conditions may include, but not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; drainage, landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions or restrictive covenants; location of parking and signs; type of construction.

All conditions shall become a part of the permit, and any violation or failure to adhere to the conditions shall be considered a violation of this ordinance. Any financial performance guarantee imposed as a condition of approval shall be in place before the Code Enforcement Officer may issue the permit.

6. The Planning Board shall prepare findings of fact and shall act to approve or deny the Conditional Use Permit application. The criteria found in Section V, D. Standards for Conditional Use, shall be used to consider whether to approve the application. The Planning Board shall provide information to the Code Enforcement Officer and Municipal Officers of its final decision and shall prepare a finding of facts and conclusions.
7. No substantial change shall be made in any approved conditional use without approval of the change by the Planning Board. Any change which would result in an increase in either building area or developed area of more than ten (10) percent shall be reviewed as a new permit application.
- ~~1. The Board may decide to hold a public hearing. If a public hearing is held, the following procedure shall apply:~~
  - ~~a. The Board shall notify the Code Enforcement Officer and Municipal Officers, and shall publish notice of the time, place, and subject matter or hearing at least ten (10) days in advance in a newspaper of general circulation in the area.~~
  - ~~b. The Board shall notify by regular first class mail, the applicant and the owners of all property within 200 feet of the property involved at least ten (10) days in advance of the hearing, the nature of the application, and the time and place of the public hearing.~~
    - ~~i. The owners of property shall be considered those against whom taxes are assessed.~~
    - ~~ii. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.~~
  - ~~c. The Code Enforcement Officer will attend hearings as required and may present to the Planning Board all plans, photographs, or other material he/she deems appropriate for an understanding of the application.~~

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~~d. The applicant's case shall be heard first. To maintain orderly procedure, all persons shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.~~

~~e.a. Within thirty five (35) days of the close of the hearing, the board shall take final action of the application.~~

### H. J. Performance Guarantees

1. At the time of approval of the application for Conditional Use, the Planning Board may require the applicant to tender either a certified check payable to the Town, an irrevocable letter of credit from a lending institution, or a performance bond payable to the Town issued by a surety company in an amount adequate to cover the total costs of all required improvements and municipal inspection thereof, taking into account the time-span of the bond and the effects of inflation upon costs. The conditions and amount of the certified check or performance bond shall be recommended by the Planning Board with approval of the Select Board and collected by the Town Office and then managed by the Town Treasurer. ~~not less than twenty (20) percent nor more than one hundred (100) percent of the costs of all improvements required by the town. The cost estimate shall take into account the time span of the development and the effects of inflation. The conditions and amount of the guarantee shall be determined by the Board.~~
2. Prior to the release of any part of or the entire performance guarantee, the Planning Board shall determine to its satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.
  - a. The Planning Board shall request of the Code Enforcement Officer and whatever agencies and departments may be involved, a report on the status of the improvements. If the Code Enforcement Officer is unable or unqualified to inspect the required improvements, the town shall retain the services of an appropriately qualified individual or firm to inspect and report on the facility in question. The costs of such inspection shall be borne by the developer.
  - b. If the Code Enforcement Officer or inspector finds, upon inspection of the improvements performed before release of the guarantee, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the applicant, he shall so report to the Select Board and Planning Board. The Select Board shall then notify the applicant, and, if necessary, the bonding company or lending institution, and take all necessary steps to preserve the town's rights under the guarantee.
  - c. Any interest accumulated on an escrow account shall be returned with any money owed by the town to the developer after it has been determined that the proposed improvements meet all design and construction requirements.
3. Performance guarantees, when required, shall be tendered for all improvements required under this ordinance, including but not limited to, sidewalks, drainage facilities, parking areas, lighting street lights, signs, roadway and curbing within the public right-of-way, landscaping ~~and~~ buffer areas and water and sewer facilities.

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### I. ~~F.~~ Expiration

A Conditional Use Permit secured under the provisions of this ordinance by vote of the Planning Board shall expire if the work or change involved is not commenced within two (2) years of the date on which the Conditional Use is authorized.

### J. ~~G.~~ Appeal

~~An appeal may be taken within thirty (30) days after a decision is rendered to the Board of Appeals as an administrative Appeal. Any party to the Planning Board proceedings is authorized to file an appeal.~~  
An appeal from the decision of the Planning Board may be made to the Board of Appeals, and must be filed within thirty (30) days of the date of issuance of the decision.

### K. ~~Application of Standards~~

- ~~1. If, in its findings, the Planning Board determines that the application may not meet the above standards and that additional actions by the applicant will be sufficient to meet them, it may require such actions, as conditions of approval. The conditions may set requirements in addition to those set forth in this ordinance only when the board finds it necessary to further the purposes of this ordinance.~~
- ~~2. Conditions may include, but not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; drainage, landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions or restive covenants; location of parking and signs; type of construction.~~
- ~~3.1. Violation of any of these conditions shall be a violation of this ordinance.~~