

Chapter 17.13
ZONING REVIEW AND AMENDMENT PROCEDURES

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17.13.010 PLANNING CLEARANCES.

- A. Application Requirements. A completed application form for a planning clearance, including a fence permit, shall be submitted to the Community Development Director by filing a copy of the application with the Community Development Department prior to obtaining a planning clearance for a building permit.
1. All planning clearance applications for new construction shall submit a plot plan containing the following minimum requirements:
 - a. All lot lines and dimensions, building lines and dimensions, and setbacks shall be drawn to scale.
 - b. All printing or writing shall be clear and legible.
 - c. Driveway dimensions and location shall be shown.
 - d. The location of utility pedestals shall be shown.
 - e. The minimum Top of Foundation (TOF) elevation shall be shown.
 - f. Drainage arrows and drainage swales, if any, shall be shown.
 2. All other information required on the Planning Clearance Application form.
 3. Payment of all required fees, including wastewater plant investment fee and use tax.

- B. Issuance of Planning Clearance. The Community Development Director shall issue the planning clearance unless he finds after reviewing the application and consulting with the applicant that:
1. The requested permit is not within his jurisdiction according to the provisions of this Title.
 2. The application is incomplete.
 3. If completed as proposed in the application, the development will not comply with one (1) or more requirements of this Land Use Code or other applicable laws and regulations.

17.13.020 SITE PLAN REVIEW OF COMMERCIAL, BUSINESS, INDUSTRIAL AND INSTITUTIONAL DEVELOPMENTS. Commercial, business, industrial and institutional developments of two thousand five hundred square feet (2,500 sq. ft.) or more gross floor area shall be reviewed by the Community Development Director and the City Council at the next regular meeting of the City Council at a public hearing after the submittal of a proposed site plan and planning clearance application. Such review shall be based on criteria found in the General Performance Standards (Section 17.07.070 of this Title). The applicant shall address all of the conditions imposed by this review and shall receive a planning clearance permit conditioned upon completing the project in accordance with the site plan review.

17.13.030 CONDITIONAL USES.

- A. Approval of Conditional Use Permit. A conditional use permit may be granted for a conditional use in a particular zone district as provided in Section (B) below, provided the City Council finds as follows:
1. The proposed use is consistent with the provisions and purposes of Title 17 and with the City's Master Plan;
 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use;
 3. The proposed use will not materially endanger the public health or safety;
 4. The proposed use will be in general conformity with any land use plans, traffic circulation plans or other plans officially adopted by the City;

5. Street improvements adequate to accommodate traffic volumes generated by the proposed use; provision of safe, convenient access to the use; and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the City; and
6. Any additional conditions imposed by the City Council are met.

In granting a conditional use permit, the City Council shall impose such restrictions on the proposed use as it finds necessary to protect the public health, safety and welfare, including but not limited to restrictions equal to or more restrictive than requirements of the zone district regulations regarding area, setback, coverage, and height of proposed structure; off-street parking; safety of ingress and egress; physical separation and distance from other uses or buildings; landscape buffer area; screening fences; and any other provisions it finds necessary. A conditional use permit may be limited as to duration of not less than three (3) years, location, the party entitled to the benefit thereof, and/or other specific limitations.

B. Conditional Use Permit - Additional Requirements.

1. All conditional uses that attract or produce additional vehicular trips may be subject to street improvement fees.
2. All conditional use permits for the development of residential units shall, as a condition of approval, dedicate land for school purposes in accordance with Section 17.30.205 or pay a fee (SLD fee) in lieu of such school land dedication in accordance with Section 17.30.206.

C. Application for Conditional Use Review.

1. Each application for a conditional use permit shall be made on a form provided by the Community Development Director and signed by the applicant which clearly states the nature of the proposed use and reasons in support thereof. The application shall be accompanied by:
 - a. Proof of ownership of the land for which the application is made. If applicant is other than the owner, a notarized consent of the owner is required;
 - b. A site plan drawn to scale depicting the locations and boundaries of existing and proposed lots and structures;
 - c. The proper conditional use permit fee as set by the City;

- d. A list of names and address of owners of record of all property within two hundred fifty feet (250'); and
 - e. Any additional information which the Community Development Director determines is necessary to determine whether the proposed conditional use will comply with Title 17 and the City's Master Plan.
 2. The number of copies specified by the Community Development Department of the completed application, site plan and supporting materials, except proof of ownership, shall be submitted to the Community Development Director at least thirty (30) calendar days prior to the Planning Commission meeting at which it shall be reviewed.
- D. Staff/Agency Review. The Community Development Director shall review the application with appropriate staff or other agencies and shall provide copies of the application and staff or agency comments to Planning Commission members. The Community Development Department shall prepare a report setting forth the Community Development Department's proposed findings concerning the application's compliance with the requirements of this Title and the City's Master Plan, as well as any Department recommendations. If the Department proposes a finding or conclusion that the application fails to comply with conditional use permit requirements, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.
- E. Planning Commission Review.
 1. Before being presented to the City Council, an application for a conditional use permit shall be referred to the Planning Commission for action in accordance with this subsection. The City Council may not hold a public hearing on a conditional use application until the Planning Commission has had an opportunity to consider the application. In addition, at the request of the Planning Commission, the City Council may continue any scheduled public hearing in order to allow the Planning Commission additional time to consider or reconsider the application. The Planning Commission shall hold a public hearing on the application. The applicant or his representative shall be present at the Planning Commission public hearing to represent the proposed conditional use. The Planning Commission shall take one of the following actions:
 - a. Recommend to the City Council that a conditional use permit be approved, subject to any conditions it finds necessary to protect the public health, safety and welfare or to ensure compliance with the City's regulations and Master Plan; or

- b. Recommend denial of the conditional use permit, stating the specific reasons for denial; or
- c. Continue its review, with the requirement that the applicant submit changes or additional information which it finds necessary to determine whether the proposed use complies with the City's regulations and Master Plan. In the event the review is continued, the applicant shall submit the number of copies as determined by the Community Development Department of the required changes or additional information to the Community Development Department at least ten (10) days prior to the Planning Commission meeting at which the application will be reconsidered. The Community Development Director shall review the additional submittal information with appropriate staff or agencies and shall distribute copies of the submittal to Planning Commission members along with comments from the staff or agencies.

F. City Council Review.

- 1. After the Planning Commission has made its recommendation for issuance or denial of a conditional use permit, the Community Development Director shall distribute copies of the application to City Council members, together with relevant excerpts from Planning Commission meeting minutes and copies of staff or agency comments.
- 2. The City Council shall review the application at a regular meeting within thirty (30) days of the Planning Commission recommendation, at which it shall hold a public hearing on the application. The applicant or its representative shall be present to represent the proposal. The City Council shall take one of the following actions:
 - a. Affirm the recommendation of the Planning Commission after finding that the application is, or is not, in compliance with Title 17, the City's regulations, and Master Plan; or
 - b. Reverse or modify the recommendation of the Planning Commission after a finding that the application is, or is not, in compliance with Title 17, the City's regulations and Master Plan; or
 - c. Continue the hearing with the requirement that the applicant submit changes or additional information which it finds necessary to determine whether the application complies with Title 17, the City's regulations and Master Plan.

G. Performance Guarantee.

1. In order to secure the construction and installation of street improvements, access improvements, parking improvements, landscape improvements, and any other improvements required by the City as a condition of the issuance of a conditional use permit, the City may require the applicant to furnish the City, prior to the issuance of the conditional use permit, with the following:
 - a. A disbursement agreement with escrow, a performance bond, or an irrevocable letter of credit to secure the performance and completion of such improvements in the amount equal to one hundred ten percent (110%) of the estimated cost of said facilities, or
 - b. Such other collateral as may be satisfactory to the City Attorney.
2. The estimated cost of such improvements shall be a figure mutually agreed upon by the applicant and the Community Development Director. The purpose of such cost estimate is solely to determine the amount of security and may be revised from time to time to reflect the actual cost. No representation shall be made as to the accuracy of these estimates, and the applicant shall in any event pay the actual cost of such required improvements.
3. All improvements required to be constructed shall be warranted to be free of any defects in materials or workmanship for a period of twelve (12) months following completion and approval by the City. If any such improvements are public improvements, they shall also be dedicated or conveyed to the City of Fruita.
4. Upon the applicant's failure to perform its obligations as required by the conditions for the issuance of the conditional use permit, and in accordance with all plans, drawings, specifications and other documents submitted to the City as approved, within the required time periods, the City may give written notice to the permittee and the escrow agent pursuant to a disbursement agreement, the surety on a performance bond, or the issuer of an irrevocable letter of credit that the City, as agent for the permittee, is proceeding with the task of installing the required improvements in whole or in part. Upon the assumption by the City, the escrow agent, surety or issuer of the irrevocable letter of credit shall be authorized to disburse funds upon request from the City, showing the proposed payee and the amount to be paid. Copies of any such request shall be sent to the permittee's last known address. Permittee shall be given an opportunity to appear before the City Council concerning any such assumption by the City, within thirty (30) days after the giving of such notice by the City.

5. The permittee shall in writing designate and irrevocably appoint the Mayor of the City as its attorney in fact and agent for the purpose of completing all of the improvements required by the conditional use permit in event of a default by the permittee.
 6. If any legal proceedings are commenced by the permittee concerning the City's assumption of the task of installing the required improvements, and if the permittee does not prevail in said legal proceedings, the surety or issuer of the letter of credit as well as the City shall be entitled to recover the reasonable attorney's fees and costs incurred therein from the permittee.
- H. Revocation of Conditional Use Permit. Any conditional use permit granted under this Chapter may be revoked, following a public hearing, upon the determination that the owner of the property subject to the conditional use permit, or the holder of the conditional use permit if different from the owner, has violated one (1) or more of the conditions or requirements contained in the conditional use permit, including the conditions set forth pursuant to Section 17.11.030. In the event the Community Development Director has reasonable cause to believe that one (1) or more of the conditions or requirements of the conditional use permit has been violated, the Community Development Director shall serve the record owner of the property subject to the conditional use permits and the holder of such permit if other than the owner, in person or by certified mail, return receipt requested, or by posting to the U.S. Mail on a witnessed and signed log, a notice to show cause why the conditional use permit should not be revoked and any vested property rights related and hereto forfeited. Such notice shall state the date, time and place for a public hearing at which the City Council or designated hearing officer will consider whether the conditional use permit should be revoked. The notice shall also set for a concise statement of the grounds for revocation. The notice shall be served at least fifteen (15) days prior to the date of the hearing. The public hearing shall be conducted by the city Council, pursuant to Chapter 2.60 Rules Governing Administrative Hearings of the Fruita Municipal Code. Following such hearing, the City Council shall issue written decision either revoking the conditional use permit or finding insufficient evidence exists to revoke the permit.

17.13.040 ARCHITECTURAL AND DESIGN REVIEW FOR DESIGN ZONE DISTRICTS.

- A. Design Review Required. Any development, addition, redevelopment, construction of any structure, or the remodeling or addition to any structure within the Downtown Commercial/Residential Design (DCRD) Zone District, the Tourist Commercial Design (TCD) Zone District and the Large Lot Commercial Design (LLCD) Zone District shall be subject to design review and approval prior to the issuance of a planning clearance or a planning clearance for a building permit.

- B. Planning Commission Established as the Design Review Board; Appeals. The Planning Commission shall serve as the Design Review Board and shall hold a public hearing on design review applications. Decisions made by the Planning Commission are final unless appealed to the City Council. Appeals shall be made on forms provided by the Community Development Director and may be filed if a design review application has been denied by the Planning Commission, or if the applicant alleges the Planning Commission's decision was in error under the standards established in Chapter 17.09, or if such decision presents an undue hardship on the applicant.
- C. Application Requirements. An applicant for development or construction within the Downtown Commercial/Residential Design (DCRD) Zone District, the Tourist Commercial Design (TCD) Zone District or the Large Lot Commercial Design (LLCD) Zone District shall submit an application promulgated by the Community Development Director together with detailed plans, elevations, and artist's renderings in color on sheets of paper no less than 8.5" x 11" in the quantity determined by the Community Development Director for review by staff and the Planning Commission.

17.13.050 ZONING VARIANCES.

- A. Conditions for a Zoning Variance.
1. A variance from the strict application of any zone district requirement or related supplementary regulations in this Title may be granted by the Board of Adjustment following the procedures and conditions herein, except that no use shall be allowed in any zone district in which it is not listed as an allowed or conditional use.
 2. The Board of Adjustment may grant a variance provided it finds as follows:
 - a. That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of this Title 17 and the Master Plan, including the specific regulation in question;
 - b. By reason of exceptional narrowness, shallowness, depth, or shape of a specific piece of property at the time of enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property, the strict application of the subject regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of, such property;
 - c. A variance from such strict application is reasonable and necessary so as to relieve such difficulties or hardships, and the variance will not injure the land value or use of, or prevent the access of light and air to, the adjacent

properties or to the area in general or will not be detrimental to the health, safety and welfare of the public;

- d. That the circumstances found to constitute a hardship are not due to the result or general conditions throughout the zone district, was not induced by any action of the applicant, and cannot be practically corrected; and
 - e. That the variance granted is the minimum necessary to alleviate the exceptional difficulty or hardship.
3. In granting a zoning variance, the Board of Adjustment shall modify application of the regulation in such a manner that the intent and purposes of this Title and the Master Plan are preserved, public safety and welfare secured, and substantial justice is done.
 4. Pursuant to Section 31-23-307, C.R.S., the Board of Adjustment may vary or modify the application of zoning regulations for the purpose of considering access to sunlight or solar energy devices.
 5. In the event a variance permits an increase in the number of residential dwelling units over and above the number of approved residential units as of the effective date of this Title, the owner of the property subject to such variance shall dedicate land for school purposes in accordance with Section 17.15.090, or pay a SLD Fee in lieu of such school dedication in accordance with Section 17.15.100, based upon the increased number of residential dwelling units permitted under the terms of such variance.

B. Procedure for Review of an Application for a Variance.

1. Application

- a. Each application for a zoning variance shall be made on a form promulgated by the Community Development Director, and signed by the applicant which clearly states the reasons for the request and how it complies with the conditions for a zoning variance set forth in subsection (A) above. The application shall be accompanied by:
 - i. Proof of ownership of the land for which the application is made. If applicant is other than the owner, a notarized consent of the owner is required;
 - ii. A site plan drawn to scale depicting the locations and boundaries of the existing and proposed lots and structures;

- iii. The proper zoning variance fee as set by the City; and
 - iv. A list of names and addresses of owners of record adjacent to the property.
 - b. A minimum of fifteen (15) copies of the application, site plan and supporting material shall be submitted to the Community Development Department at least fifteen (15) calendar days prior to the Board of Adjustment's meeting at which the variance request is to be reviewed.
2. **Staff/Agency Review.** The Community Development Director shall review the application with appropriate staff or other agencies and shall provide copies of the application and Department or agency comments to the Board of Adjustment.
3. **Board of Adjustment Review.** The Board of Adjustment shall review an application for a zoning variance at a meeting at which it shall hold a public hearing on the application. Public notice shall be given pursuant to Section 17.01.130. The applicant or his representative shall be present to represent the proposal. The Board of Adjustment shall take one of the following actions:
 - a. Grant the zoning variance, subject to the requirements of subsection (A) above, with or without conditions; or
 - b. Deny the zoning variance, stating the specific reasons for denial; or
 - c. Continue the hearing, with the requirement that the applicant submit changes or additional information which it finds necessary to determine whether the application complies with the requirements of this Section.
- C. **Final Decision.** Any decision of the Board of Adjustment shall be final, from which an appeal may be taken to a court of competent jurisdiction, as provided in accordance with Section 31-23-307, C.R.S.
- D. **Reconsideration of Denial of Variance.** Whenever the Board of Adjustment denies an application for a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board for one (1) year unless the applicant clearly demonstrates that circumstances affecting the subject property have substantially changed, or new information is available that could not with reasonable diligence have been presented at the previous hearing. Any request for a rehearing on such latter ground shall be filed with the Community Development Director within thirty (30) days following the date of the decision of the Board of Adjustment.

17.13.060 AMENDMENT TO ZONE DISTRICT MAP.

- A. Conditions for Amending Zone District Map. The City Council may amend the number, shape, or boundaries of any zone district, removing any property from one zone district and adding it to another zone district, only after recommendation of the Planning Commission. The Official Zoning Map may be amended when the following findings are made:
1. That the proposed amendment is compatible with surrounding land uses, and is consistent with the City's goals, policies and Master Plan; and
 2. That the land to be re-zoned was previously zoned in error or the existing zoning is inconsistent with the City's goals, policies and Master Plan; or
 3. That the area for which the amendment is requested has changed substantially such that the proposed zoning better meets the needs of the community; or
 4. That the amendment is incidental to a comprehensive revision of the City's Official Zoning Map which recognizes a change in conditions and is consistent with the City's goals, policies and Master Plan; or
 5. That the zoning amendment is incidental to the annexation of the subject property and the proposed zoning is consistent with the City's goals, policies, and Master Plan.
- B. Procedures for Amending Zone District Map. An amendment to the Official Zoning Map may be initiated by application of any citizen or group of citizens, firm or corporation residing or owning property within the City, or by the Planning Commission, or by the City Council.
1. Application An application for an amendment to the Official Zoning Map shall be made on such forms as the Community Development Director prescribes and shall be filed with the Community Development Department. An application for an amendment to the zone district map may be reviewed concurrently with an application for a conditional use permit or a subdivision, at the option of the applicant. An application for an amendment to the Official Zoning Map shall contain all of the following information:
 - a. Description of land area to be re-zoned, and requested new classification together with a drawing, drawn to the scale of the Official Zoning Map in existence at the time the application is made, showing boundaries of the area requested to be re-zoned, along with an indication of the existing zoning on all adjacent sides of the area;

- b. The statement of justification for the amendment to the Official Zoning Map, including at least one (1) of the following:
 - i. Changing area conditions;
 - ii. Error in original zoning;
 - iii. Conformance to the Master Plan for the area;
 - iv. Peculiar suitability of the site to a certain use; or
 - v. Annexation of unincorporated property.
 - c. Descriptions and sketches, if available, of buildings or uses proposed if the amendment is granted, together with the description of land and building uses within two hundred fifty feet (250') of the boundary of the proposed area of change, in all directions;
 - d. Time schedule for any contemplated new construction or uses (if any);
 - e. Justification for any new business or industrial zoning; and
 - f. Effect the proposed amendment will have on adjacent land uses.
2. **Staff/Agency Review** The Community Development Director shall review the application with appropriate staff and other agencies and shall provide copies of the application and staff/agency comments to the Planning Commission.
 3. **Planning Commission Review** All applications for changes to the Official Zoning Map including zoning of recently annexed property shall be heard by the Planning Commission at a public hearing. The Planning Commission shall hold a public hearing on the requested change or addition to the Official Zoning Map prior to making a recommendation to the City Council. At the public hearing, or within seven (7) days thereafter, unless the matter is continued for consideration at a subsequent meeting, the Planning Commission shall return a recommendation either for or against the proposed change or addition to the Official Zoning Map to the City Council.
 4. **City Council Review** Upon receipt of the recommendation of the Planning Commission, the City Council shall have ninety (90) days within which to render its decision concerning the proposed amendment. A public hearing shall be held before the City Council. The adoption of any amendment to the Official Zoning Map shall

require a favorable vote of a majority of the City Council. The favorable vote of two-thirds (2/3) of the City Council shall be required to approve an amendment or change to the Official Zoning Map that has not been recommended by the Planning Commission. If the zoning amendment is approved by the City Council, it shall enact an ordinance to such effect and the amendment to the Official Zoning Map shall become effective thirty (30) days after publication of said ordinance.

5. **Protests** In case of a protest against an amendment to the Official Zoning Map which is submitted to the City Clerk at least twenty-four (24) hours prior to the City Council's vote on a proposed amendment to the zone district map, and which is signed by the owners of twenty percent (20%) or more of either the area included in the proposed rezoning or of the land extending a radius of two hundred fifty feet (250') from the land included in the proposed rezoning, then such rezoning shall not become effective except upon a favorable vote of three-fourths (3/4) of the entire membership of the City Council, whether present or not.
6. **Modification of Official Zoning Map** The Community Development Director shall update the Official Zoning Map as soon as practicable after an amendment is adopted by the City Council. Upon entering any such amendment on the Map, the Community Development Director shall change the date of the Map to indicate its latest revision. No unauthorized person shall modify the Official Zoning Map. The Community Development Director or City Clerk shall keep copies of superceded prints of the Official Zoning Map for historical reference.

17.13.070 AMENDMENT TO ZONE DISTRICT REGULATIONS.

- A. **Conditions for Amending Regulations.** City Council may, after the recommendation of the Planning Commission, amend any regulation of any zone district, which amendment may be initiated by any citizen or group of citizens, firm or corporation residing or owning property within the City, or by the Planning Commission, or by the City Council. Amendment to the zone district regulations may be made upon a finding that the amendment is consistent with the City's goals, policies and Master Plan.
- B. **Procedures for Amending Regulations.** The review of an application for an amendment to zone district regulations shall be accomplished in the same manner as set forth in Section 17.13.060 for amending the Official Zoning Map. However, contents of the application shall be determined by the Community Development Director.