

**CHAPTER 27.64**

Field Code Changed

**USE PERMITS**

**Sections:**

**27.64.010 Procedures and Requirements.**

(a) Application: Applications for a use permit under this chapter for development in the O-3, R-T, B-2, B-5, H-4 and I-3 zoning districts and optional applications for a use permit in the B-3, and H-2 zoning districts shall be filed by the owner in writing with the Planning Department on a form provided by the City. Upon filing the application, the City Council shall refer the application to the Planning Commission for its consideration and final action as provided in subsection (g) below.

**Comment [CJE1]:** Use Permit will be utilized in the B-3 and H-2 zoning districts at the developer's option as a tool for requesting waivers to the zoning ordinance that could not otherwise be granted. This will provide flexibility when necessary and is appropriate to facilitate good redevelopment, with community input.

(b) Preliminary plan: The Planning Director may require a preliminary plan that may include the following information:

- (1) Boundary survey and gross acreage;
- (2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot elevations on 100-foot grid shall be required to fully indicate the topography on flat land;
- (3) Street right of way;
- (4) Utility easements;
- (5) Adjacent land use and zoning classifications;
- (6) Location of structures on property to be removed;
- (7) Vicinity map;
- (8) Date prepared, scale and north point;
- (9) Schematic and location of existing buildings;
- (10) Parking areas and capacity;
- (11) Open space for residential uses (except in the R-T District);
- (12) Use of buildings, such as retail, service, restaurant, office, residential and other uses;
- (13) Height of buildings;
- (14) Location of existing trees and proposed landscape plan;
- (15) Proposed vehicular and pedestrian circulation system including egress and ingress;
- (16) Building and parking setback lines;
- (17) Grading plan;
- (18) On-site and off-site water and sanitary sewer improvements;
- (19) On-site and off-site drainage and storm sewer improvements;
- (20) Location of proposed free-standing signs;
- (21) Cross-section for paving of parking lots and sidewalks;
- (22) In the B-2 and B-5 districts, proposed name of the shopping center;
- (23) Name, address, and telephone number of developer; certified record owner or owners and addresses; and legal description of the proposed use permit area, including the number of acres.

(24) Show that Commercial Design Standards (Chapter 3.77) can be met.

(c) Environmental performance standards: Any applicant for a use permit under the provisions of this section shall comply with environmental performance standards relating to noise, emission, dust, odor, glare, and heat as shall be from time to time established by various municipal departments and approved by resolution of the City Council.

(d) Environmental impact statement and market analysis: If any application for a change of zone to the B-5 Planned Regional Business District or for a use permit in the B-5 district under the provisions of this section substantially deviates from the Comprehensive Plan in terms of location or size, as determined by the Planning Director, the applicant shall submit an environmental impact statement and a market analysis in accordance with Chapters 3.05 and 3.10 of the City of Lincoln Design Standards for Zoning Regulations which shall serve as a guide to the Planning Commission for evaluation of such application in terms of need, desirability, supportability, and its implications for the overall growth of the community.

(e) Planning Commission review: The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare.

(f) Planning Commission action: After holding at least one public hearing, the Planning Commission shall proceed to give final consideration to the application. The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of any such use permits. ~~Such conditions may include an increase in the minimum parking and yard requirements and decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private roadways may be permitted.~~ Unless expressly modified by the terms of the use permit, all regulations of the applicable R-T, O-3, ~~B-3, B-2, B-5, H-2, H-4~~ or I-3 District shall apply. The Planning Commission may require that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for which may include the requirement that applicant grant additional right of way in accordance with the Comprehensive Plan. The Planning Commission may also require the execution of a written agreement with the city relating to the installation of public improvements by the applicant, together with the execution of performance bonds or provision of other appropriate surety relating thereto. ~~The installation of all public improvements shall be accomplished in compliance with existing city standards as provided by ordinance or by departmental publications approved by resolution of the City Council.~~

Comment [CJE2]: This language is redundant since it is stated in (h) below.

Comment [CJE3]: The B-3 and H-2 are being added so that they can utilize the option of the Use Permit. H-4 is being added because existing H-4 zoned areas now governed by Planned Service Commercial Special Permits and future H-4 areas will instead be governed by use permits.

Comment [CJE4]: Unnecessary language

\_\_\_\_\_ In the event the Planning Commission fails to act upon the application within ninety days from the date of the Council's referral of the application to the Planning Commission, the applicant may file a written request with the Planning Director requesting the Planning Commission to take final action on the application. If the Planning Commission fails to take such final action within thirty days following the Planning Director's receipt of the written request, the Planning Director shall schedule the application on the City Council's agenda for public hearing and final action.

(g) Appeal of Planning Commission action:

- (1) Any aggrieved person or any person or group officially designated to participate in the administration of this title may appeal any action of the

Planning Commission to the City Council by filing notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission.

- (2) Upon receipt of the appeal by the City Council, the council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Chapter 27.81.
- (3) In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after public hearing, in conformity with the provisions of this title make such decision as ought to be made.

(h) Adjustment of minimum and maximum subdivision ~~requirements~~ and zoning ~~requirements, such as but not limited to: sign, parking, height and lot regulations requirements and height restrictions~~. Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission, adjust the minimum subdivision ~~requirements and zoning requirements, as: minimum parking, height and lot requirements, and sign regulations for location, height and area of a sign~~ set forth in Title 26 and this chapter, provided the public welfare and interest of the City and surrounding area are protected and the general interest and spirit of the regulations are preserved, and provided further that in the R-T district, the maximum height of a building shall not exceed the height of the tallest residence on the same and facing block fronts. The Planning Commission shall hold a public hearing upon the requested adjustment at the same time that it hears the application for the use permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council shall take final action upon the use permit and the adjustment.

(j) Amendment: The Planning Director is authorized to approve amendments to the use permit provided that:

- (1) A request for amendment is filed with the Planning Director and, if appropriate, accompanied by a plot plan showing all pertinent information;
- (2) Minor increases in the number of dwelling units or total floor area originally authorized by the Planning Commission or City Council may be approved if such increases will not cause a significant adverse impact on the public infrastructure, existing development within the use permit and adjoining properties. Minor increases shall not exceed more than fifteen percent (15%) cumulative additional dwelling units or total floor area;
- (3) Amendments shall preserve the intent and spirit of the approved development plan;
- (4) Amendments shall not violate any regulation set forth in this title;
- (5) No change is made to the applicable setback, yard, or height requirements for lots along the perimeter of the use permit;
- (6) Minor internal changes to the applicable setback, yard, or height requirements may be made within the use permit if they conform to the intent of the approved use permit and do not adversely impact existing development within the use permit;

Comment [CJES]: Provide clarification on what standards the City Council can adjust. The change in language is more consistent with similar language used for Community Unit Plans and Planned Unit Developments, and not as potentially limiting.

(7) Any amendment not in conformance with this paragraph shall be submitted to the Planning Commission in the same manner as a formal application for use permit.

(k) Building permits, Final Plats, certificates of occupancy, and certificates of compliance: Upon the approval of a use permit as provided for under this section, building permits, Final Plats and certificates of occupancy may be issued. Certificates of compliance shall not be issued until there has been compliance with all conditions of a use permit and subsequent amendments within each phase of development of a use permit.

Comment [CJE6]: Use Permits function in lieu of preliminary plats and should be approved before final plats can be approved.

(l) Preexisting uses: An existing use of a type permitted in ~~this chapter~~ the district which was lawfully established in ~~this the~~ district on the effective date of this title shall be deemed to have received a use permit as herein required and shall be provided with such permit by the Director of Building and Safety upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in conformance with this section shall be required.

Comment [CJE7]: This is a clean up of the sentence structure.

(m) If an application for a use permit located within a flood plain is granted approval by the city, it shall not be necessary for the applicant to make an application for a special permit to be approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It shall be presumed that the applicant has received all such approvals as may be required by the foregoing resolutions by virtue of the city granting approval to the use permit.

(n) Expiration of Application. All applications for a use permit which have been placed on pending by an applicant shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate. (Ord. 19733 §32; June 25, 2012).