



## TOWN OF FALMOUTH

### ORDINANCE NO 49-2017

#### An Ordinance Regarding Contract Zoning

**Be it ordained by the Town Council of the Town of Falmouth, Maine in Town Council assembled, that the Falmouth Code of Ordinances be amended to include the section as follows:**

#### Sec. 19-?? Contract Zoning

- A. Authority** - Pursuant to 30-A M.R.S.A., §4352 and as defined by 30-A M.R.S.A. § 4301(5), contract zoning is hereby authorized for rezoning of property by the Town Council.
- B. Purpose.** On occasion, general zoning district designations and traditional zoning methods can be inadequate to fully deal with the unusual nature or unique location of specific proposals for development. In these special situations, more flexible and adaptable zoning methods are needed to assure public benefit and mitigate potential negative impacts on subject, abutting, and nearby properties.
- C. Geographic Extent of Applicability** -Rezoning under this section shall be permitted in BP, VMU, MUC, GRSD, RA, RB, RC and RD districts.
- D. Relationship to other provisions.**
- 1. Relationship to Ordinance in General** - Any and all standards, requirements and provisions for development in Chapter II-19 of the Code of Ordinances shall remain in force for the base and overlay districts in which the project is located, with the exception of any variations to said districts, whether more permissive or more stringent, granted by the Town Council as part of a contract zoning agreement under this section.
  - 2. Shoreland Zoning** - Any variations to existing Shoreland Districts as a result of a contract zoning agreement shall receive Maine DEP review and approval in accordance with 38 M.R.S.A §438-A(3) as may be required prior to the amendment becoming effective.
- E. Findings general.** The Town Council, prior to or as part of an approval of a contract zoning agreement under this section, shall find that the resulting development to be permitted by the agreement and the agreement:

1. Are consistent with the adopted Comprehensive Plan;
2. Allow uses that are consistent with the existing, permitted and conditional uses within the underlying zoning district;
3. Include only conditions and restrictions that relate to the physical development or operation of the property; and
4. Provide public benefit that would not exist under the current zoning.

**F. Contract Zoning Agreement Required.** – In order to allow for flexibility for the development of the land, to assure public benefit, and to mitigate potential negative impacts on subject, abutting, and nearby properties, a contract zoning agreement is required. Conditions and restrictions may include, by way of example:

1. All variations from standards of Chapter II-19 of the Code of Ordinances
2. Open space, historic or natural resources and natural buffer zones to be protected
3. Limitations on the number and types of uses
4. Design and layout of buildings, site and any site improvements
5. Scale and density of development
6. Days and hours of operation
7. Provisions for reservation or dedication of land for public purposes
8. Provisions for affordable housing
9. Contributions toward the provision of municipal services required by the development, such as, infrastructure improvements and specialized maintenance needs arising from the rezoning
10. Schedules for commencement and completion of construction including any phasing plan.
11. Performance guarantees securing temporary erosion and sediment control measures, all improvements associated with the project and maintenance of improvements
12. Provisions for enforcement and remedies for breach of any conditions or restrictions
13. Procedures for modifications or amendments.

**G. Procedures, Conceptual Review.** The Community Development Committee (CDC) of the Town Council shall review and comment on the conceptual proposal as indicated below. The purpose of concept review is to allow the applicant an opportunity to discuss the project and be advised on compliance with the general findings required by the Town Council for approval. This provides the foundation to build a formal application that meets the basic requirements for approval and allows for informal dialogue and feedback on the conceptual proposal.

1. Application Submittal. The applicant shall submit their conceptual request for a contract zoning agreement on an application form provided by the Community Development Department and shall be accompanied by a fee as approved by the Town Council. The application shall contain the items as indicated in paragraph I.1 below.
2. Concept review. Once the application is considered complete by the Community Development Director or their designee, the CDC shall meet to review the proposal, determine if the general findings under paragraph E. above have been met and may offer recommendations or comments regarding the design or operational elements of the conceptual proposal.

3. Abutter Notice. Immediate abutters to the property on which the conceptual proposal is located shall be notified by first class mail at least seven (7) days prior to the date of the conceptual review. The term abutter shall mean an owner of property located adjacent to the subject property as identified in the town's GIS records at the time of the notice.
4. Failure to meet findings. Should a final determination of the CDC indicate that the applicant has failed to meet the findings under paragraph E. above, the applicant may proceed to formal review under paragraph H. below within 60 days of the final determination.

**H. Procedures, Formal Review.** The following procedure shall be used to submit any request for a contract zoning agreement under this section.

1. Application Submittal. The applicant shall submit their formal request for a contract zoning agreement on an application form provided by the Community Development Department and shall be accompanied by a fee as approved by the Town Council. The application shall contain the items as indicated in paragraph I.2 below. At such time the Community Development Director or their designee determines the application is complete, it shall be forwarded to the Planning Board and the Town Council.
2. Planning Board Review. The Planning Board shall review the proposal and forward any observations, recommendations and comments to the Town Council. This review will also serve as the pre-application sketch review required for subdivisions where applicable.
3. Town Council Review. Following the Planning Board review in paragraph H.2 above, the Town Council shall review the proposal. Following its review, the Town Council may refer the proposal to the Planning Board for a hearing as prescribed in paragraph H.4 below.
4. Planning Board Hearing. Should the Town Council refer the proposal to the Planning Board, the Planning Board, as the municipal reviewing authority, shall hold a hearing which meets the requirements of 30-A MRS Sec. 4352(8).
5. Town Council Hearing. The Town Council shall hold a hearing, which hearing requirements shall be no less stringent than the public hearing requirements of Section 213 of the Town Charter. The Town Council may elect to hold a joint hearing with the Planning Board.
6. Final consideration by Town Council. Prior to adopting a contract zoning agreement, the Town Council shall determine that the proposed contract zoning agreement meets the requirements of each determination in paragraph E. above. The Town Council shall state its reasons for its findings and conclusions for each of those determinations.

**I. Submission Requirements.** The following plans and documentation shall be submitted in compliance with the submittal requirements as established by the Community Development Department, in adequate number and format to facilitate the review of the proposal.

1. Concept review. The following items shall be submitted as part of a concept review application.
  - a. Address of property and Map-Lot
  - b. Evidence of right, title, or interest in the property

- c. Names and contact information of the record owner and the applicant
  - d. Written description of the proposal including use, scale and general physical development scheme.
  - e. Map showing property to be rezoned with current zoning, as well as current zoning and uses within 500 feet of the property.
  - f. Sketch plan showing conceptual site improvements.
  - g. Comprehensive Plan compliance statement with explanation
  - h. Statement of public benefit that would not result under current zoning
  - i. Compliance with existing and permitted uses of the district(s)
  - j. List of variations from existing zoning requested
  - k. Need for utility extensions
2. Formal review. The following items shall be submitted as part of a formal application. Any application for a project that requires a pre-application sketch review under Chapter II-7 of the Code of Ordinances shall also meet the submittal requirements of Appendix 7-2 of that Chapter.
- a. Names and contact information of the record owner and the applicant
  - b. Names and contact information of all consultants working on the project
  - c. Evidence of right, title, or interest in the property
  - d. Parcel map showing parcel in relationship to abutting parcels and street network.
  - e. Existing conditions plan of the development site or parcel at a scale necessary to adequately represent the site and improvements but no more than one hundred (100) feet to the inch
    - 1) Name of the property owner, north arrow, date, and scale;
    - 2) Map-block-lot and street address
    - 3) Metes and bounds of the parcel
    - 4) Relationship of the site to the surrounding area (including distance to closest street intersection)
    - 5) Topography of the site at an appropriate contour interval depending on the nature of the use and character of the site
    - 6) Location and size of existing utilities and stormwater improvements
    - 7) Existing buildings, structures, or other improvements
    - 8) Existing restrictions, rights of way and easements
    - 9) The location and delineation of water features whether natural or manmade, including ponds, streams, rivers, wetlands, vernal pools and their upland habitats, ditches, drains, and natural drainage swales, as well as the 100-year floodplain
    - 10) Watershed boundaries
    - 11) Indication if the parcel or portions thereof are located within the urbanized area as defined by federal census bureau. [NOTE: in the urbanized area, may be subject to increased stormwater permitting requirements]
    - 12) A viewshed analysis showing the location and extent of views into the property from public roads
    - 13) Locations of all historically significant sites or structures on the tract, including but not limited to cellar holes, stone walls, earthworks, and graves.
    - 14) Locations of trails that have been in public use (pedestrian, equestrian, bicycle, etc.)
    - 15) Total acreage of the tract
    - 16) Net Residential Area calculated for residential development

- f. Proposed Conceptual Development Plan - A plan at the same scale as the existing conditions plan, highlighting the opportunities and constraints of the site and including the following:
  - 1) Prime portions of the site that are suitable for development or use
  - 2) Portions of the site that are suitable for on-site sewage disposal if public sewerage is not available
  - 3) Areas of the site that have development limitations (steep slope, flat, soil constraints, wetlands, flood plains, drainage, etc.)
  - 4) Suitable access points and routes for roads and utilities
  - 5) Areas where there may be off-site conflicts or concerns (i.e., noise, lighting, traffic, etc.)
  - 6) Structures within 100 feet of all subject property boundaries and the use of those structures.
  - 7) Proposed location and type of development, including buildings, signage, driveways, parking, and buffering
  - 8) Conceptual building elevations for commercial structures showing height, placement on lot, orientation to the street, and public entrances.
  - 9) Sidewalks, public parking, bus stops, and bicycle accommodation within 100 feet of the development site.
- g. Proposals that will trigger a MDOT Traffic Movement Permit must submit a traffic impact study.
- h. Draft contract zoning agreement including all applicable items listed in Paragraph F. above and at a minimum the following:
  - 1) Statement of proposed use of the property
  - 2) List of specific zoning changes requested
  - 3) List of conditions and restrictions proposed
  - 4) Site analysis describing major features of the property
  - 5) Statement of consistency with the Comprehensive Plan
  - 6) Statement of consistency with the district(s) uses
  - 7) Statement of public benefit that would not result under current zoning

**J. Consulting and review fees** – The Council may require any and all consulting and review fees to be paid by the applicant and may require funds to be placed in escrow at the time of the Town Council review.

**Attest:** \_\_\_\_\_

**Ellen Planer**  
**Town Clerk**  
**September 26, 2016**