



Community Development Department  
271 Falmouth Road  
Falmouth, ME 04105  
☎ 207.699.5303  
🌐 [www.falmouthme.org](http://www.falmouthme.org)

## Memorandum

**Date:** June 16, 2016  
**To:** Town Council  
**From:** Amanda L. Stearns, Community Development Director  
**Cc:** Nathan A. Poore, Town Manager  
**Re:** Contract Zoning

---

The Council expressed an interest at the May 23 Council meeting to support an expansion of Foreside Estates, a multi-family development located off Clearwater Drive. The project is nonconforming under current zoning in a number of ways. In order to accommodate an expansion the Zoning and Site Plan Review Ordinance needs to be amended. Staff have reviewed zoning methods both currently used in our ordinance as well as others permitted under state statute and have concluded that the adoption of contract zoning would most likely serve the community and the developer in the most effective way. Conditional and contract zoning are both permitted under state statute and contract zoning has been used frequently in many municipalities to accommodate projects that are determined to be a benefit to the Town but do not expressly meet all of the zoning district requirements. Adoption of contract zoning will also provide a new mechanism to address special projects in the future.

Contract zoning, as established by state statute, gives municipalities the authority to approve districts/projects provided they meet a prescribed set of findings. Unlike the special zoning districts recently adopted, it uses the provisions of the base zoning district and then, with the use of a contract, defines the variations to the base district that are necessary to accommodate the development as well as iterates special requirements or conditions for the project. They are not intended to fundamentally change zoning in a particular area but to allow some variation from the current requirements. The fundamental findings required are: a. the project must be found to be in compliance with the adopted Comprehensive Plan; b. the rezoned area must be consistent with the existing and permitted uses within the original zoning district; and c. the contract may only include conditions and restrictions that relate to the physical development or operation of the property.

Under this zoning method, the Town has the authority to negotiate with the developer to achieve a project that is of mutual benefit. These negotiations are articulated in a contract agreement and may include attachments such as conceptual plans or design details. Typical items included in a contract as found in other ordinances are:

1. No changes to Shoreland Zoning without approval by the DEP (required by statute)
2. Public benefit – should articulate what benefits there are to the municipality, and that any cost to the municipality is reasonable.
3. Articulate all variations from standards for the zoning district in which the parcel is located.
4. List any and all conditions or restrictions on the project.
5. Creation of open space or buffer zones where warranted.

6. Dedication of property or improvements for public purposes, if any.
7. Performance guarantee requirements.
8. Amendments and enforcement procedures.

Recent projects that may have been better served by contract zoning than the method we used are the Avesta affordable housing project, Casco Bay Arena, and the Garden Center.

If the Council wishes to pursue this zoning method, the Zoning and Site Plan Review Ordinance will need to be amended to permit contract zoning. The ordinance currently permits conditional rezoning which is so restrictive it has never been used as a method of rezoning. Perhaps it should be replaced with contract zoning. If this is the direction, then staff are prepared to develop a draft amendment for Council review.

Some of the elements of the amendment that will need to be determined are:

1. Is there a geographical limit to where contract zoning is allowed? Should it be limited to growth districts only? Should it be limited to just residential districts in the growth area? Should the Water View Overlay District be removed? Should it be only within a certain distance from the boundaries of the Commercial Growth Area?
2. What will the procedures be? Should it follow the same procedure as zoning amendments do now? Some municipalities require contract districts to be preliminarily reviewed by the Planning Board or other land use related committee such as LPAC or CDC. The statutory requirements follow the same requirements as standard zoning amendments.
3. What information should be submitted for the Council to make an informed decision about the project? Requirements by other municipalities include:
  - a. Concept plan showing zoning districts, existing development, conceptual layout of the project, any significant natural, cultural or historic resources, abutting uses and districts.
  - b. Statement describing how the project would be compliant with the Comprehensive Plan, would be consistent with existing and permitted uses in the district and would be of public benefit.
  - c. List of variations from the current ordinances requested.
  - d. Non refundable application fee
  - e. Right/Title/Interest

The current informal procedure for zoning amendments generated by the public is generally:

1. Applicant contacts either staff (Administration or Community Development), a Councilor, requests a meeting with the Community Development Committee or requests a meeting with the full Council.
2. Council either dismisses the amendment or agrees to consider it. [NOTE: At any time a Councilor may submit an introduction for an amendment provided they meet the time frame required in the Charter.]
3. If the amendment is to be considered, then the Council either directs it to staff to work on the amendment or refers to committee.
4. Formal adoption process: Introduction, hearings and ordinance.

I trust that this information is useful for the discussion and if you have any questions prior to the meeting, please feel free to contact me.