

ARTICLE 8 - SPECIAL USES

8.1 It is the intention of the Board of County Commissioners to create, and from time to time amend, a list of Special Uses within Article 4 Permitted Use Table which, because of their inherent nature, extent and external effects, require special care in the control of their location and methods of operation. The Board of County Commissioners is aware of its responsibility to protect the public health, safety and general welfare and believe that certain uses which now or in the future may be included on this list are appropriately handled as Special Uses, subject to review in relation to general and specific requirements, rather than as uses permitted by right.

In addition to the listing of such uses, the Board of County Commissioners intends that the general standards, established in Section 8.2.1, and the more specific requirements in 8.2.2, established below, shall be used by the Board of Adjustment, the Planning Board and the Board of County Commissioners, as appropriate, to direct deliberations upon application or the approval of Special Uses. It is the express intent of the Board of County Commissioners to delineate the areas of concern connected with each Special Use and to provide standards by which applications for such Special Use shall be evaluated.

8.2.1 Before any application for a Special Use shall be approved:

- a) The applicant shall have the burden of establishing, by competent material and substantial evidence, the existence of the facts and conditions which this ordinance requires for approval; and
- b) The Board shall make written findings certifying compliance with the specific rules governing such individual Special Use and that the use, which is listed as a Special Use in the district in which it is proposed to be located, complies with all required regulations and standards including the following general conditions:

Amended

1/8/90

- (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;
- (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property);

Amended

8/3/95 (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners;

and including all applicable provisions of Articles 4, 5, 6, 7, 9, 10 and 12 of this Ordinance, unless greater or different regulations are contained in the individual standards for the specific Special Use. The applicant shall have the burden of establishing by competent material and substantial evidence in the form of testimony, exhibits, documents, models, plans and the like that the application meets the requirements for approval of a Special Use.

8.2.2

Amended

8/3/95

Where the Board finds compliance with the general standards, specific rules governing the specific use and that the use complies with all required regulations and standards the application must be approved unless the Board shall also find, in some specific manner, that:

Amended

1/8/90

8/3/95

The use will not maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;

Those opposing approval of the application on the grounds that the use will not promote the public health, safety and general welfare shall have the burden of establishing, by competent material and substantial evidence, the specific manner in which the proposed use does not satisfy the requirements for approval of the application for a Special Use.

8.2.3

Amended

6/3/96

The Special Use Permit shall include a statement that if any condition of a Special Use Permit shall be held invalid or void, then the permit itself shall be void and of no effect.

8.2.4

In addition to the general standards stated in 8.2 the following specific standards shall be addressed by the applicant before the issuance of a Special Use Permit:

- a) Method and adequacy of provision of sewage disposal facilities, solid waste, and water.
- b) Method and adequacy of police, fire and rescue squad protection.
- c) Method and adequacy of vehicular access to the site and traffic conditions around the site.
- d) Other use specific standards are set forth in Section 8.8.

8.2.5 It shall be stated in the Special Use Permit that the Permit shall automatically
 Amended 6/3/96 expire within twelve (12) months of the date of approval if the use has not commenced or construction has not commenced or proceeded unless a timely application for extension of this time limit is approved by the Board of County Commissioners as provided in 8.4.11 of the Orange County Zoning Ordinance.

8.3 **Establishment of Classes of Special Uses; Authority To Approve or Disapprove**

There is hereby established two classes of Special Uses which shall be approved or disapproved as shown:

Class A - Approved or disapproved by Board of Commissioners

Class B - Approved or disapproved by Board of Adjustment

8.4 **Procedure For Submission and Consideration of Applications For Approval of Special Uses**

8.4.1 **Pre-Application Conference**

Amended 8/4/86 Prior to the application being received as prescribed in Article 8.4.2, the applicant must request a pre-application meeting with the Orange County Planning Department. A sketch plan illustrating the location, size and major design elements of the development of the site must be submitted five (5) working days prior to the pre-application meeting. The Planning Department may request that representatives of other public agencies be present at the pre-application meeting. These agencies shall include, but not be limited to, the Orange County Planning Board, the Orange County Recreation Department, the Orange County Health Department, the municipalities of Chapel Hill, Carrboro, Hillsborough and Durham, the North Carolina Department of Transportation, and Orange Water and Sewer Authority.

8.4.2 **Application Submitted to Zoning Officer**

Application for approval of Special Uses shall be filed with the Zoning Officer, who shall, before accepting any application, ensure that it contains all required information, as specified elsewhere in this Article.

Applications which are not complete, or otherwise do not comply with the provisions of this Article, shall not be accepted by the Zoning Officer, but shall be returned forthwith to the applicant, with a notation by the Zoning Officer of the deficiencies in the application.

8.4.3 **Zoning Officer Prepares Analysis and Recommendation**

Amended
8/4/86
3/14/00

The Zoning Officer shall cause an analysis to be made of the application by qualified representatives of the County and such other agencies or officials as appear appropriate in the Comprehensive Plan, zoning, subdivision, soil erosion and sedimentation, and health regulations, and, based upon that analysis, prepare a recommendation for consideration by, in the case of Class A Special Uses, the Planning Board and Board of County Commissioners and, in the case of Class B Special Uses, the Board of Adjustment.

8.4.4 **Recommendation Submitted To Planning Board or Board of Adjustment**

Amended
8/4/86
3/14/00

The Zoning Officer shall submit the analysis and recommendation to the Planning Board, in the case of Class A Special Uses, or the Board of Adjustment, in the case of Class B Special Uses.

8.4.5 **Public Hearing Required; Notice Specified**

Amended
1/3/84

Prior to consideration of the application for approval of a Special Use, a public hearing thereon shall be held by either the Board of County Commissioners or the Board of Adjustment, as appropriate for the classification of the Special Use involved.

The Zoning Officer shall give public notice of the date, time and place of the public hearing to be held to receive comments, testimony and exhibits pertaining to the application for approval of a Special Use.

Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten (10) days nor more than

twenty-five (25) days prior to the date of the hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

The Zoning Office shall post on the applicant's affected property a notice of the public hearing at least ten days prior to the date of said hearing.

Written notice shall be sent by certified mail to all adjacent property owners not less than fifteen days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

8.4.6

Amended
8/4/86
3/14/00

Planning Board Action On Class A Special Uses

The Planning Board shall prepare and submit for the Board of County Commissioners a recommendation concerning the disposition of the application. The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled Planning Board meetings. If the Planning Board fails to make a recommendation as directed by the Board of County Commissioners or within three regularly scheduled Planning Board meetings, whichever is applicable, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.

8.4.7

Amended
6/3/96

Action On The Application

After completion of the public hearing, the Board of County Commissioners or the Board of Adjustment, as appropriate, shall take action upon the application. This action shall be one of the following:

- a) Approval;
- b) Approval with conditions attached;
- c) Denial.

8.4.8

Imposed Conditions

The Board of County Commissioners or the Board of Adjustment, as appropriate, may impose such reasonable conditions upon approval of a Special Use as will afford protection of the public health, safety and

general welfare, ensure that substantial justice is done and equitable treatment provided.

Such conditions shall run with the land and use, and shall be binding on the original applicant(s) as well as all successors, assigns and heirs.

8.4.9

Amended
10/4/82

Withdrawal of Application

An applicant may withdraw their application at any time by written notice to the County Manager. However, any withdrawal of an application after the printing of the first notice as required in 8.4.4 shall have the same effect as a denial of the petition.

8.4.10

Amended
10/4/82

Effect of Denial on Subsequent Petitions

When the Board of County Commissioners or Board of Adjustment, as appropriate, shall have denied an application, the Board of County Commissioners or Board of Adjustment shall not receive another application for the same or similar petition affecting the same property or a portion thereof until the expiration of a one year period, extending from the date of denial.

8.4.11

Amended
10/7/91

Time Limits on Special Uses

Construction of Special Uses must start and proceed within twelve (12) months of the approval of the Special Use Permit. If no construction has started within the stated time frame, the Special Use Permit becomes null and of no effect.

If a request is received before the permit expires, the Board of County Commissioners, for good cause shown, may extend the expiration deadline six (6) months upon the favorable recommendation of the Planning Board. No changes shall be made to the conditions of approval. Only one such approval of the time extension is permitted, and it shall be based on evidence presented by the applicant showing that permits have been pursued in a timely manner, and that delays have resulted from factors beyond the control of the developer.

For developments which require approval of a Special Use Permit, the applicant may request that the Special Use Permit be vested as a Site Specific Development Plan for a period of not less than two (2) nor more than five (5) years. For vesting purposes, Site Plans and Preliminary Plats may also be approved as a Special Use Permit at the request of the applicant. Additional application information is required, as specified in Article 8.8.27.

8.5

Amended
3/14/00

Action Subsequent to the Board Action

The Zoning Officer shall cause notice of the disposition of the application to be sent by certified mail to the applicant and a copy of the decision to be filed in the office of the Zoning Officer.

The Zoning Officer, in the case of approval or approval with conditions, shall issue the necessary permit in accord with the Board's action.

The Orange County Manager shall certify that the Special Use Permit with any imposed conditions is as approved by the Board of County Commissioners or Board of Adjustment, as appropriate.

8.6

Amended
7/6/82

Contents of Application for Approval of a Special Use

The application for approval of a Special Use shall be submitted on forms provided by the Zoning Officer. Such forms shall be prepared so that when completed a full and accurate description of the proposed use, including its location, appearance, and operational characteristics shall be disclosed. Additionally, the forms shall, when completed by the applicant, disclose the name(s) and address(es) of the owner(s) of the property involved, and all relevant information needed to show compliance with the general and specific standards governing the Special Use which is the subject of the application. (See Section 8.2)

8.7

Minor Changes To Be Approved By Zoning Officer; Modifications Require Action By Approving Board

The Zoning Officer is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the approving Board, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Board having jurisdiction.

***8.7.1**

*Amended
7/5/83

Criteria To Be Used In Determination

- a) Any change in a condition imposed during the approval of a special use permit shall constitute a modification.
- b) Any change in use or enlargement of existing use shall constitute a modification.
- c) Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in the number of dwelling or lodging units.

- d) Structural alterations which significantly affects the basic size, form, style, ornamentation, and/or character of the building as shown on the approved site plan or described in the applicants narrative shall be considered a modification.
- e) Substantial change in the amount and/or location of open space, recreation facilities or landscape screening shall constitute a modification.
- f) Any increase in the size or number of approved signs shall constitute a modification.
- g) Any change in parking areas resulting in an increase or reduction of five percent or more in the number of spaces approved shall constitute a modification.
- h) Substantial changes in pedestrian and/or vehicular access or circulation shall constitute a modification.
- i) Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval shall constitute a modification.
- j) Any change in the location or extent of street and utility improvements or rights-of-way, including water, sewer and storm drainage facilities, which would provide a different level of service shall constitute a modification.

***8.7.2 Review of Record Required**

*Amended 7/5/83 The Zoning Officer shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for approval of the Special Use. The determination shall be based upon the request of the applicant, the review of the record of the approval of the original request and the Zoning Officer's findings under the criteria of Section 8.7.1.

***8.7.3 Action Required on Proposed Minor Changes or Modifications**

*Amended 7/5/83 The Zoning Officer shall, if it is determined that the proposed action is a minor change, state the findings in writing to the applicant. The applicant shall file with the Zoning Officer an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Zoning Officer shall file the amended site plan or written statement with the approved site plan.

If it is determined that the proposed action is a modification, the Zoning Officer shall require the applicant to submit a request for modification of the approved special use permit. The applicant shall provide an amended site plan and written narrative outlining the specific changes requested. The Zoning Officer shall submit the request to the Board which approved the original application. The Board shall set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a modification of an approved special use permit shall be held in conformity with the requirements of Section 8.4.4. The Board may approve, approve with conditions or disapproved the application for a modification. The Zoning Officer shall file the Board's action in his office as an amendment request to the original application.