

- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
 - (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
 - (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required
- (F) Certification Exemptions
- The following structures, if located within Zone AE, are exempt from the elevation/flood proofing certification requirements specified in items (A) and (B) above:
- (1) Recreational vehicles meeting requirements of Section 6.21(B)(5);
 - (2) Temporary structures meeting requirements of Section 6.21(B)(7); and
 - (3) Accessory Structures with any dimension that is 12 feet or greater in height, width, or depth, meeting requirements of Section 6.21(B)(8).

SECTION 2.7: SPECIAL USE PERMITS

2.7.1 Generally

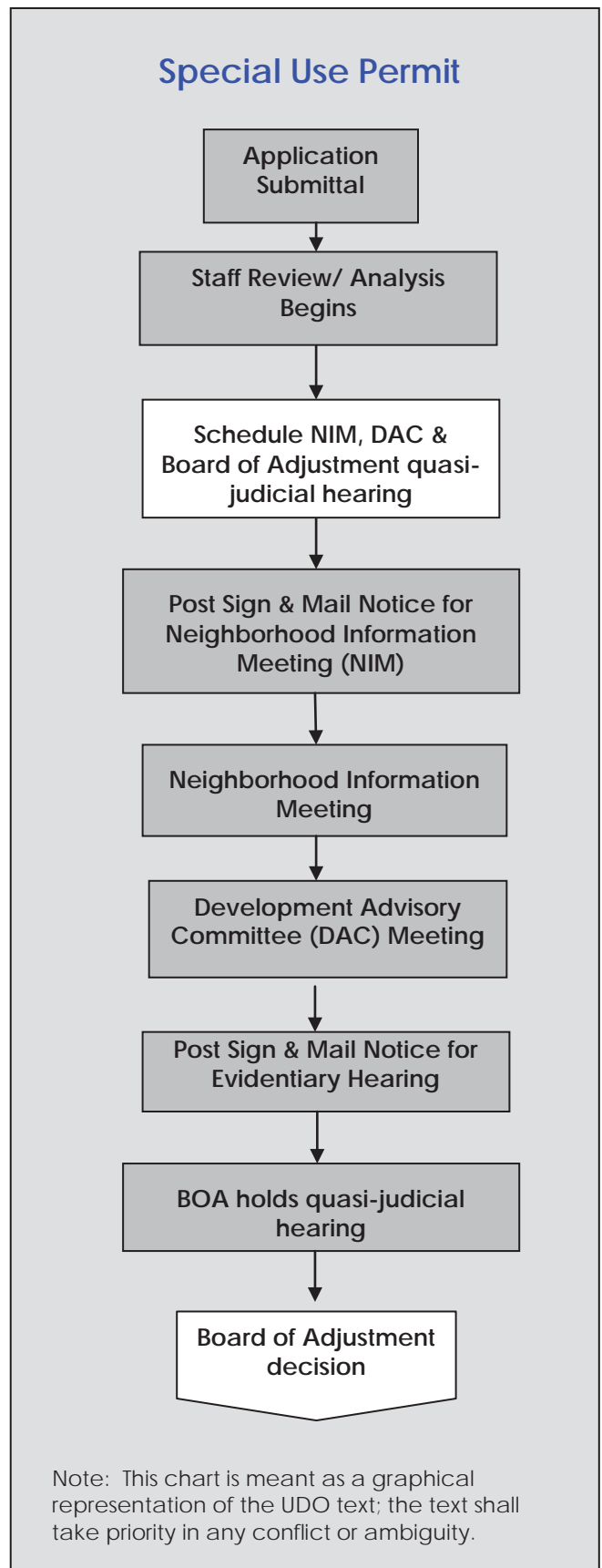
- (A) Any use or development designated by applicable zoning district regulations contained within Article 5 as a special use, or as allowed only pursuant to a special use permit, may be established in that district only after the use or development is authorized by a validly issued and recorded special use permit.
- (B) This section sets forth required review and approval procedures for submittal, review, and approval of applications for a special use permit.
- (C) A special use permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the terms and conditions of the special use permit.
- (D) A special use permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the terms and conditions of approval.
- (E) Issuance of a special use permit does not relieve the holder of the special use permit of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.

2.7.2 Review and Approval Flow Chart

The review and approval process for Special Use Permits is shown in the procedure's flowchart.

2.7.3 Application Requirements

- (A) Applications for a Special Use shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.
- (B) Applications shall include:
 - (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.
 - (2) The name(s) and address(es) of the owner(s) of the property involved.
 - (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use (See Articles 5 and 6).
 - (4) Ten copies of the site plan, prepared by a registered North Carolina land surveyor, landscape architect, architect, or engineer, which shall contain the information listed in Section 2.5.
 - (5) A list of all parcels located within 1,000 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.
 - (6) Elevations of all structures proposed to be used in the development.
 - (7) Ten copies of the Environmental Assessment and/or Environmental Impact Statement, if required by Section 6.16.
 - (8) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.
 - (9) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.



- (10) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum or up to seven years for multi-phase developments, as defined in Article 10).

2.7.4 Staff Review

- (A) The Planning Director shall cause an analysis to be made of the application by qualified representatives of the County and other agencies or officials as appropriate.
- (1) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
- (a) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
- (b) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CD zoning district, as detailed within Section 5.2 of this Ordinance.
- (B) The Planning Director shall submit the analysis to the Board of Adjustment.
- (C) The Board of Adjustment shall receive and enter the analysis into evidence during the evidentiary hearing. The analysis shall be subject to examination by all interested parties and the Planning Director shall be subject to cross-examination regarding the analysis.

2.7.5 Neighborhood Information Meeting

- (A) Before an Evidentiary Hearing may be held for a Special Use the applicant is required to schedule a minimum of one neighborhood information meeting. The purpose of the meeting is to obtain surrounding property owner input and comments on the proposed development project and allow staff an opportunity to explain the review process associated with the request.
- (B) The applicant shall obtain property owner mailing address information from the Orange County Planning Department, which shall utilize Orange County Land Records data, and shall mail notices of the meeting date and time via first class mail to each property owner within one thousand feet of the property for which a Special Use has been requested.
- (C) The applicant shall mail notice of the Neighborhood Information Meeting a minimum of 14 days prior to the date of the meeting.
- (D) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.
- (E) The meeting shall be held a minimum of 45 days prior to the date of the Evidentiary Hearing.
- (F) Neighborhood information meetings for telecommunication facilities shall be held in accordance with the provisions of Section 5.10.8 (B) (2).

2.7.6 Notice Requirements for Special Use Permits

- (A) The Planning Director shall give notice of the date, time and place of the Evidentiary Hearing to be held to receive evidence in the form of testimony and exhibits pertaining to the application for a Special Use.

- (1) Written notice shall be sent by first class mail to all adjacent property owners at least ten days but not more than 25 days before the hearing date. Adjacent property owners are those whose property lies within one thousand feet of the affected property and whose names and addresses are currently listed in the Orange County tax records. The outside of the envelope or postcard shall be marked "Notice of Evidentiary Hearing."
- (2) The Planning Director shall post on the affected property a notice of the Evidentiary Hearing at least ten days but not more than 25 days prior to the date of said hearing.

2.7.7 Nature of Proceedings

- (A) The review of Special Use Permit applications shall be conducted during an Evidentiary Hearing.
- (B) The review of a Special Use Permit application is a quasi-judicial process, where the Board of Adjustment acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at an evidentiary hearing, and then makes findings of fact supported by competent, substantial, and material evidence.
- (C) The applicant, Orange County staff, and any person who would have standing to appeal the decision under NCGS 160D-1402 shall have the right to participate as a party at the Evidentiary Hearing.
- (D) The chair or presiding officer of the hearing shall swear all parties intending to present evidence or testimony during the Evidentiary Hearing.
- (E) The chair or presiding officer may take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include:
 - (1) Barring the presentation of obvious hearsay evidence,
 - (2) Barring the presentation of non-expert opinion,
 - (3) Interrupting digressions into immaterial testimony,
 - (4) Interrupting repetitive testimony,
 - (5) Reasonably limiting the time allotted each witness or cross-examination,
 - (6) Providing for the selection of spokespersons to represent groups of persons with common interests,
 - (7) Interrupting personal attacks, and/or
 - (8) Ordering an end to disorderly conduct.
- (F) 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:
 - (1) 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.
- (G) 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.

2.7.8 Review and Decision

The following shall apply to all Special Use Permit applications:

- (A) The Board of Adjustment shall review the application during a regularly scheduled Evidentiary Hearing.
- (B) The Board of Adjustment shall conduct the Evidentiary Hearing in accordance within the provisions detailed in this Section as well as those contained within Section 2.12.
- (C) After closing the Evidentiary Hearing, the Board of Adjustment shall take action upon the application. This action shall include making appropriate findings of fact pursuant to Section 2.7.10, stating whether the board concludes each of the applicable standards have been met and one of the following:
 - (1) Approval;
 - (2) Approval but with specified conditions as provided in Section 2.7.11; or
 - (3) Denial.

2.7.9 Standards of Evaluation

The following specific standards shall be used in deciding on an application:

- (A) The project meets all applicable design standards and other requirements of this Ordinance.
- (B) The development can reasonably be completed within the vesting period requested, if any.
- (C) Where vesting in excess of two years is requested, the project is located in an area where current issues under study do not involve potential amendments to the Comprehensive Plan and/or this Ordinance.

2.7.10 Required Findings

- (A) A resolution or motion to approve the application must include the findings of fact and conclusions of law that support the decision. Any proposed conditions of approval must also be included in the resolution or motion to approve the application.
- (B) A resolution or motion to deny the application must state findings of fact and conclusions of law that support the decision.
- (C) If a resolution or motion to approve the application fails, the application is deemed denied. Those members voting against the resolution or motion must state which of the conclusions of law they could not reach as well as findings of fact on which their inability to reach the conclusions is based.

2.7.11 Conditions of Approval

- (A) The Board of Adjustment 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.
- (B) 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.
- (C) 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.
- (D) It shall be stated in the Special Use Permit that the Permit shall automatically expire 12 months from 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 Adjustment as provided in Section 2.7.13.

2.7.12 Notification of Board Action

- (A) The Planning Director shall send a notice of the Board's action on the application within a reasonable time by personal delivery, electronic mail and/or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective.
- (B) The Planning Director, in the case of approval or approval with conditions, shall issue the necessary permit in accord with the Board's action.
- (C) The Planning Director, but not a designee, shall certify that the Special Use Permit with any imposed conditions is as approved by the Board of Adjustment with a report provided to the County Manager.
- (D) Once the Special Use Permit has been certified, the applicant shall record the permit with the Orange County Register of Deeds in a format prepared by the Planning Director. Failure to do so within 90 days from certification shall invalidate the Special Use Permit.

2.7.13 Time Limits and Extensions

- (A) If a request is received before the Special Use permit expires, the Board of Adjustment, for good cause shown, may extend the expiration deadline six months.
- (B) The application for an extension request shall be submitted a minimum of three months prior to the expiration of the Special Use Permit.
- (C) No changes shall be made to the terms and/or conditions of approval.
- (D) Only one approval of a 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 applicant.
- (E) The applicant may request that the Special Use Permit be vested as a Site Specific Vesting Plan in accordance with the requirements of Section 2.5.5.
 - (1) The required legislative hearing by the Board of County Commissioners to establish vested rights shall be held after approval of the Special Use Permit by the Board of Adjustment.

2.7.14 Modifications to Approved Plans

- (A) After a Special Use Permit has been issued, no deviations from the terms of the approved permit shall be made until written approval of proposed changes or deviations has been obtained.
- (B) The Planning Director shall approve minor modifications in the approved permit if requested by the applicant except where the Special Use Permit includes a condition explicitly prohibiting such a modification. Minor modifications are as follows:
 - (1) A change (increase or decrease) of no more than 5% in the amount of open space, recreation facilities, or landscape screening.
 - (2) A change of 100-feet or less in the location of open space, recreation facilities, or landscape screening.
 - (3) A change (increase or decrease) of no more than of 5% in the number of parking spaces approved.
 - (4) A change in pedestrian and/or vehicular access or circulation that moves such facilities less than 25-feet.
 - (5) For telecommunication facilities, a minor modification shall also include the following:
 - (a) An increase in the existing vertical height of the structure by less than:

- (i) 10% of the height of the tower, or
 - (ii) The height of 1 additional antenna with separation from the nearest existing antenna not to exceed 20 feet
 - (b) The addition of an appurtenance to the body of the telecommunication facility that protrudes horizontally from the edge of the wireless support structure the lesser of:
 - (i) 20 feet, or
 - (ii) Less than the width of the wireless support structure at the level of the appurtenance.
 - (c) Increasing the square footage of the existing equipment compound by less than 2,500 square feet
- (C) For minor modifications, the applicant shall file an amended site plan, or written statement, outlining in detail the minor modification(s) proposed. The Planning Director shall state the findings in writing to the applicant and file the amended site plan or written statement with the approved site plan.
- (D) A modification that is not listed as a minor modification in (B) above is considered a major modification and shall require approval of the Board of Adjustment.
- (E) For major modifications, the applicant shall adhere to the following procedures:
- (1) The applicant shall provide an amended site plan and written narrative outlining the specific changes requested.
 - (2) The Planning Director shall submit the request to the Board of Adjustment.
 - (3) The Board shall set an Evidentiary Hearing to receive testimony concerning the modification request. Any Evidentiary Hearing called pursuant to a modification of an approved special use permit shall be held in conformity with the relevant public notification requirements contained in this Article.
 - (4) The Board may approve, approve with conditions, or deny the application for a modification.
 - (5) The Planning Director shall file the Board's action in the Planning Department as an amendment request to the original application and shall notify the applicant in writing of the Board's action.

SECTION 2.8: ZONING ATLAS AND UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS

2.8.1 Review and Approval Flow Chart

The review and approval process for a Zoning Atlas and Unified Development Ordinance Amendment is shown in the procedure's flowchart.

2.8.2 Amendment Initiation

- (A) An amendment to this Ordinance or the Zoning Atlas may be initiated by:
- (1) The Board of County Commissioners on its own motion;
 - (2) The Planning Board;
 - (3) Application, by any person or agency authorized by Ordinance, downzonings applied for by a third party require the written consent of the property owner; or
 - (4) The Planning Director.