

ARTICLE 11

SPECIAL USES PERMITS AND ZONES

Section 11.1 Special Use Permit

Certain uses listed in this Ordinance require the issuance of a Special Use Permit by the Board of Adjustment prior to the issuance of a zoning permit by the Administrator. The following information details the procedures that shall be followed for securing a Special Use Permit.

Section 11.2 Procedure

The Town Board shall consider-special use permits by either of the following methods:

11.2.1 No Zoning Change Required. When a Special Use Permit is being requested, the following procedures shall be followed:

- (A) A completed application for a Special Use Permit shall be filed with the Administrator. An application shall include a schematic plan drawn to scale and supporting text that will become a part of the Ordinance amendment. The application shall, as a minimum, include the following items:
1. A boundary survey showing the total acreage, present zoning classification(s), date and north arrow.
 2. The owners name, addresses, and the tax parcel numbers of all adjoining properties.
 3. All existing easements, rights-of-way and all required yards for the zoning district requested.
 4. Proposed layout of land and proposed structures. For residential uses this should include the numbers of units and an outline of the area where the structures will be located. For nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located.
 5. Traffic, parking and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.
 6. Proposed screening, including walls, fences or planting areas as well as treatment of any existing natural features.
 7. Delineation of any floodplain areas as shown on the official Flood Hazard Boundary Maps.
 8. Proposed number and location of signs.
- (B) The application shall be completed and presented to the Administrator at least 45 days-prior to the public hearing at which the application is to be reviewed.
- (C) When dealing with the Special Use Permit process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area.

Therefore, the Board of Adjustment may request needed additional information as they deem necessary.

- (D) The Board of Adjustment shall conduct a public hearing. Due notice of such public hearing shall be published in a manner similar to that as prescribed in Section 14.4 in this Ordinance. The Chair reserves the right to adjourn the meeting to another place and time to be announced at the public hearing.
- (E) After the completion of said public hearing, the Board of Adjustment shall take such lawful action as it may deem advisable. All Special Use Permits shall be issued in accordance with Section 11.3 - 11.5.

11.2.2 Zoning Change Required. In addition to all requirements listed in Section 11.1.1, the following requirements shall be met:

- (A) The applicant shall also complete a rezoning application which together with the Special Use Permit application, shall be submitted to the Administrator.
- (B) Once the Special Use Permit application and rezoning change application have been properly completed, the zoning change shall be reviewed first by the Planning Board and then by the Town Board. The Board of Adjustment then shall consider the Special Use change application shall follow all procedures and provisions set forth in Article 14 of this ordinance. **[G.S.160D-703(b)]**

Section 11.3 Town Board Decision

If the Board of Adjustment should find, after conducting a public hearing, that the proposed Special Use Permit and, where requested, the Board of Adjustment may impose such additional reasonable and appropriate special conditions upon such Special Use Permit as it may deem necessary in order that the purpose and intent of this section are served, public welfare secured and substantial justice done. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found elsewhere in this Ordinance. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development and other matters that the Town Board may find appropriate or the petitioners may propose. These conditions may include sign controls but may not include architectural review or controls. The petitioner will have a reasonable opportunity to consider and respond to any such additional requirements prior to approval or denial by the Board of Adjustment.

The Board of Adjustment may only issue a Special Use Permit after having evaluated an application and having determined that:

- (A) The use will not materially endanger the public health or safety if located where proposed and developed according to plan.
- (B) The use meets all required conditions and specifications.
- (C) The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.
- (D) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located.

A member of the Board of Adjustment or any other body exercising the functions of a Board of Adjustment

shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. [G.S. 160D-109 (d)]

When deciding special use permits, the Board of Adjustment shall follow quasi judicial procedures in the manner of a Board of Adjustment. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. [G.S. 160D-109(d)]

Section 11.4 Variances

The authorization of a Special Use Permit by the Board of Adjustment for a proposed development shall preclude any requirement for obtaining a variance from the Board of Adjustment.

Section 11.5 Perpetuity of Special Use Permit

Any Special Use Permit so authorized shall be perpetually binding to the property included in such Permit unless subsequently changed or amended by the Board of Adjustment. However, minor changes in the detail of the approved plan which will not alter the basic relationship of the proposed development to adjacent property, will not alter the uses permitted or increase the density or intensity of development, will not decrease the off-street parking ratio or reduce the yards provided at the boundary of the site may be made with the approval of the Administrator. Any applicant may appeal the decision of the Administrator to the Board of Adjustment for a decision as to whether an amendment to the Special Use Permit shall be required.

Minor modifications to a special use permit may be administratively approved by the zoning administrator if issues arise after the special use permit has been approved by the Board of Adjustment that keeps the applicant from carrying out the strict interpretation of the ruling.

Major changes to the approved plan shall necessitate the issuance of a new Special use permit as herein outlined.

No certificate of occupancy shall be issued for any building or land use on a piece of property which has received a Special Use Permit unless the building or structure is constructed or used, or the land is developed or used, in conformity with the final plans approved by the Board of Adjustment. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development as approved.

The Board of Adjustment may amend any Special Use Permit, only after having held a public hearing. In addition, the request to substantially change the Special Use Permit shall be subject to the same considerations as provided for in this section for the original issuance of a Special Use Permit.