

## City Council – Action Request Form

**Date:** August 11, 2020

**To:** Mayor, Mayor Pro Tempore, and Members of the City Council

**From:** Damon Dequenne, Assistant City Manager,  
Aaron King, Director of Planning and Development Services

**Council Action Requested:**

Request for Public Hearing on an ordinance amending Sections 3.2.13 and 5.1.5 of the *Unified Development Ordinances* (UDO) to clarify approval procedures for Special Use Permits (UDO-CC2).

**Strategic Focus Area:** Livable Neighborhoods

**Strategic Objective:** Improve the user-friendliness and clarity of the UDO

**Strategic Plan Action Item:** No

**Key Work Item:** No



**Summary of Information:**

City-County Planning Board staff, in consultation with the City Attorney’s Office, is proposing this UDO amendment to clarify that a separate Special Use Permit is not required for uses otherwise requiring such permits which are approved via Special Use rezoning. This amendment does not change current policy or past practice; rather, it simply clarifies actual UDO language to better reflect this policy.

**Committee Action:**

**Committee** \_\_\_\_\_

**Action** \_\_\_\_\_

**For** \_\_\_\_\_

**Against** \_\_\_\_\_

**Remarks:**



**UDO-CC2**  
**A TEXT AMENDMENT PROPOSED BY PLANNING AND DEVELOPMENT**  
**SERVICES STAFF TO CLARIFY APPROVAL PROCEDURES**  
**FOR SPECIAL USE PERMITS**

Be it ordained by the \_\_\_\_\_, North Carolina, that the UDO ClearCode is hereby amended as follows:

**Section 1.** Section 3.2.13, Special Use Permit, is amended as follows:

**3.2.13 SPECIAL USE PERMIT**

**A. SPECIAL USE PERMIT APPROVAL BY BOARD OF ADJUSTMENT**

Uses identified in a particular district column with an A in **Table 5.1.1, Principal Use Table**, shall be permitted in such district upon approval of a special use permit by the Board of Adjustment, **unless exempted per Section 3.2.13D.10 of this ordinance**, with such conditions as referenced in the conditions column, subject to all other applicable requirements as identified in **Section 5.1.4, Other Development Requirements of the Zoning Ordinance**.

**B. SPECIAL USE PERMIT APPROVAL BY ELECTED BODY**

Uses identified in a particular district column with an "E" in **Table 5.1.1, Principal Use Table**, shall be permitted in such district upon approval of a special use permit by the Elected Body, **unless exempted per Section 3.2.13E.8 of this ordinance**, with such conditions as referenced in the conditions column, subject to all other applicable requirements as identified in **Section 5.1.4, Other Development Requirements of the Zoning Ordinance**.

**C. APPLICATION PROCEDURE FOR A SPECIAL USE PERMIT**

**1. APPLICATION AND FEES**

Applications for special use permits shall be submitted at least thirty-one (31) calendar days prior to the next regularly scheduled Planning Board meeting accompanied by a completed application form and other required information, site plans meeting the requirements for site plan submittal in **Section 3.2.11, Site Plan**, and fees in accordance with **Section 3.1.1A, Fees**.

**2. NOTICE**

- a. The Planning Board shall post on the property a notice of public meeting at least ten (10) days prior to the date of the meeting of the Planning Board.
- b. A sign is required on the property at a conspicuous location(s). Location(s) which are not conspicuous or require additional notification to the public, will be required to have directional sign(s) posted.
- c. Each sign(s) or each directional sign(s) will have a charge as determined by the Director of Planning.
- d. The signs are, and shall remain, the property of the governmental agency which provided them, and shall be prepared, posted and reclaimed by it.
- e. The sign serves as constructive notice of the Elected Body public hearing.
- f. The review of the site plan by the Planning Board is not a public hearing.

**3. ADVERTISEMENT**

The Elected Body shall duly advertise a public hearing.

**4. NOTIFICATION TO PROPERTY OWNERS AND ADJACENT PROPERTY OWNERS FOR AN**

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

## **ELECTED BODY SPECIAL USE PERMIT**

Letters shall be sent via first class mail to the subject property owner(s) and all property owners within five hundred (500) feet of any portion of the subject property for which the Special Use Permit is requested.

### **D. SPECIAL USE PERMIT APPROVAL BY BOARD OF ADJUSTMENT PROCEDURE**

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#### **1. APPLICATIONS**

Applications for special use permits to be considered in any month by the Board of Adjustment shall be made by the property owner or the owner's authorized agent to the Director of Inspections not less than twenty (20) days prior to the established meeting date of that month. Each petition shall be accompanied by:

- a. A fee as authorized in **Section 3.1.1A, Fees**.
- b. Fifteen (15) copies of a scaled site plan (plot plan) of the property which may be prepared by either professional or non-professional persons showing the location of any existing and proposed structure(s) and any relevant notations on the site plan concerning the request. Staff shall determine if a site plan is required with an appeal or interpretation application. (F)
- c. *Fifteen (15) copies of a scaled site plan (plot plan) of the property showing the location of any existing and proposed structure(s) and any relevant notations on the site plan concerning the request. Staff shall determine if a site plan is required with an appeal or interpretation application. (W)*
- d. Any other written materials the applicant would like to submit to the Board for consideration of the application.

#### **2. POSTED NOTICE OF HEARING**

- a. The applicant shall post on the property a notice of public hearing at least ten (10) days prior to the date of the hearing before the Board of Adjustment.
- b. Such notice shall be of sufficient size to contain, and shall contain, heavy black lettering not less than three (3) inches high on a white background and shall be posted in a conspicuous place on the premises. Where such posting is not clearly visible from the nearest public right-of-way, a second directional sign which is clearly visible from the nearest public right-of-way shall be posted.
- c. A sign shall be provided by the Director of Inspections consistent with these requirements. Such sign structure shall be removed by the applicant within thirty (30) days after said public hearing.

#### **3. MAILED NOTICE OF HEARING**

- a. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the public hearing; to the owner of the property that is subject to the public hearing, if different from the applicant; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other person entitled to receive notice as otherwise provided in this Ordinance.
- b. The county tax listing shall be utilized to determine the owners entitled to receive mailed notice.
- c. The notice must be deposited in the mail at least ten (10), but not more than twenty-five (25) days, prior to the date of the hearing.

#### **4. PLANNING BOARD REPORT**

- a. Applications for special use permits may be approved by the Board of Adjustment after such board receives a report from the Planning Board and holds a duly advertised public hearing in each case, except that the Planning Board shall not be required to review and report on applications for:

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- i. Riding stables per **Table 5.1.1, Principal Use Table;**
  - ii. Kennels, outdoor per **Table 5.1.1, Principal Use Table;**
  - iii. Shooting ranges, outdoor per **Table 5.1.1, Principal Use Table;**
  - iv. Manufactured homes class A, class B and class C per **Table 5.1.1, Principal Use Table;**
  - v. Expansion or conversion of a nonconforming use per **Section 9.2.3B, Special Use Permit,** and **Section 9.2.4A, Special Use Permit Required;**
  - vi. Accessory uses as follows:
    - 1. Dwelling, accessory (detached) per **Section 5.3.4C, Dwelling, Accessory (Detached);**
    - 2. Separation, processing, storage or wholesale sale of materials in LCIDs per **Section 5.2.44M, Accessory Uses (F),** and **Section 5.2.44N, Accessory Uses (W);**
    - 3. Home occupations in Rural Areas (GMAs 4 and 5) per **Section 5.3.4D.2.b.ii, Special Use Permits;**
  - vii. Accessory structures as follows:
    - 1. Exceeding size limits for accessory structures per **Section 5.3.1F, Size Limits for Accessory Structure;**
  - viii. Parking reductions for churches per **Section 5.2.22D, Parking,** and **Section 5.2.23C, Parking;**
  - ix. Veterinary services per **Table 5.1.1, Principal Use Table;**
  - x. *Keeping of horses, mules, donkeys, goats, sheep, or cattle* per **Section 5.3.3F, Keeping of Horses, Mules, Donkeys, Goats, Sheep, or Cattle (W);**
  - xi. Child daycares, large home;
  - xii. Transmission towers per **Table 5.1.1, Principal Use Table;**
  - xiii. Campgrounds; and
  - xiv. Special events centers.
- b. The Planning Board shall submit its report in writing to the Director of Inspections not more than sixty (60) days after receipt of the application in accordance with established review procedures.
  - c. In reviewing the request, the Planning Board shall review the application to assure compliance with all provisions of this Ordinance.
  - d. The Planning Board report shall make a finding that the application as submitted either complies with the Ordinance, complies with recommended conditions, or does not comply with the Ordinance.
  - e. If the Planning Board recommends conditions, the Planning Board shall have the authority to recommend conditions as identified in **Section 10.1.2B.1.a, Approval and Conditions,** to reduce impacts associated with the project.

## 5. REQUIRED FINDINGS

- a. The Board of Adjustment shall issue a special use permit only when the Board of Adjustment makes an affirmative finding as follows:
  - i. That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;
  - ii. That the use meets all required conditions and specifications;

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- iii. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
  - iv. That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with Legacy.
- b. Except with regard to the conversion of nonconforming uses in **Section 9.2, Nonconforming Uses**, no provision of this Ordinance shall be interpreted as conferring upon the Board of Adjustment the authority to approve an application for a special use permit for any use unless authorized in **Table 5.1.1, Principal Use Table**. In approving an application for the issuance of a special use permit, the Board of Adjustment may impose additional reasonable and appropriate conditions and safeguards to protect the public health and safety, and the value of neighboring properties, and the health and safety of neighboring residents.
  - c. If the Board of Adjustment denies the application for the issuance of a special use permit, it shall enter the reasons for denial in the minutes of the meeting at which the action was taken.
- 6. BOA PROCEDURE FOR VOTING ON SPECIAL USE PERMITS**
- a. A majority vote of the members shall be required to issue a special use permit.
  - b. For the purposes of this subsection, 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 if there are no qualified alternatives to take the place of such members.
- 7. PERMIT EXPIRATION**
- a. A special use permit shall become void if the terms of such permit, in the judgment of the Director of Inspections, are not exercised within a period of two (2) years from the date of approval.
  - b. Special use permits are also subject to the provisions in **Section 2.7, Vested Rights**.
- 8. EXTENSION OF PERMIT**
- A letter requesting an extension of time and indicating the reason for such request, submitted prior to the termination date and duly approved by the Board of Adjustment, shall extend the validity of such permit for a period of six (6) months. No other extension of time shall be granted.
- 9. REVIEW OF REQUEST FOR EXTENSION**
- In considering such extension, the Board of Adjustment may make such changes in the conditions under which the permit was granted as may be indicated by any new information relating to the property or to the use proposed thereon, provided the extension or changes still comply with the affirmative finding set forth above.
- 10. SPECIAL USE DISTRICT ZONING**
- No separate special use permit is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.

**E. SPECIAL USE PERMITS AUTHORIZED BY THE ELECTED BODY**

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**1. ELECTED BODY REVIEW**

The Elected Body shall review all requests for permits as designated in **Table 5.1.1, Principal Use Table**, and, in doing so, shall follow quasi-judicial procedures.

**2. PUBLIC HEARING**

Applications for special use permits requiring approval by the Elected Body may be approved after the Elected Body receives a report on conformance of the site plan with UDO requirements from the Planning Board and holds a duly advertised public hearing in each case.

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### 3. PERMIT ISSUANCE

No zoning or building permit shall be issued until a special use permit for the requested use has been approved by the Elected Body.

### 4. SUBMISSION OF A VERIFIED MOTION BY PROPONENTS AND OPPONENTS OF THE SPECIAL USE PERMIT (W)

- a. *At least seven (7) days before the Elected Body's consideration of a request for a special use permit, the proponents and the opponents may submit to the secretary's office a written verified motion setting forth the basis for supporting or objecting to the issuance of the requested special use permit, which basis must be germane to the four findings that the Elected Body must make in the affirmative before issuing a special use permit pursuant to **Section 3.2.13E.6, Required Findings**.*
- b. *The verified motion will be included in the Elected Body's agenda package for the item. The person(s) submitting the motion must be present and available to answer questions at the public hearing scheduled for the consideration of the request for a special use permit. If the person(s) filing the verified motion does not appear at the scheduled hearing, the Elected Body may refrain from considering said verified motion, but in no case shall the Elected Body base its findings solely on the verified motion.*
- c. *Any motion submitted after the seven (7) day time period will be returned to the person filing the same for presentation at the public hearing, if such is desired.*

### 5. ELECTED BODY DECISION

- a. The Elected Body shall consider the matter and the review of the site plan by the Planning Board and may:
  - i. **APPROVE**  
Approve the application and direct issuance of the special use permit therefor;
  - ii. **APPROVE WITH CONDITIONS**  
Approve the application with the conditions as recommended by the Planning Board or additional conditions as specified in **Section 10.1.2B.1.a, Approval and Conditions**, to assure that the site will be developed in a manner conducive to the public health, safety and welfare, and direct issuance of the special use permit; or
  - iii. **DENY**  
Deny the application.
- b. No vote greater than a majority vote shall be required for the Elected Body to issue a special use permit. For the purposes of this section, vacant positions on the Elected Body and members who are absent or excused from voting on a special use permit shall not be considered members of the Elected Body for calculation of the requisite majority.

### 6. REQUIRED FINDINGS

- a. The Elected Body shall issue a special use permit only when the Elected Body makes an affirmative finding as follows:
  - i. That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;
  - ii. That the use meets all required conditions and specifications;
  - iii. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

- iv. That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with Legacy.
  - b. No provision of this Ordinance shall be interpreted as conferring upon the Elected Body the authority to approve an application for a special use permit for any use unless authorized in **Table 5.1.1, Principal Use Table**.
  - c. In approving an application for the issuance of a special use permit, the Elected Body may impose additional conditions as identified in **Section 10.1.2B.1.a, Approval and Conditions**. If the Elected Body denies the application for the issuance of a special use permit, it shall enter the reasons for denial in the minutes of the meeting at which the action was taken.
- 7. EXTENSION OF PERMIT**  
In considering any request for extension of the permit, the Elected Body may, in the public interest, make such changes in the conditions under which the permit was granted as may be indicated by any new information relating to the property or to the use proposed.
- 8. SPECIAL USE DISTRICT ZONING**  
No separate special use permit is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.

**Section 2.** Section 5.1.5, Table of Principal Uses, is amended as follows:

## 5.1.5 TABLE OF PRINCIPAL USES

### A. INTERPRETATION

**1. ZONING PERMIT FROM DIRECTOR OF INSPECTIONS**

Uses identified in a particular district column with a Z require only issuance of a zoning permit by the Director of Inspections and shall be allowed in such district with such conditions as referenced in the Conditions column, subject to all other applicable requirements of this Ordinance.

**2. SITE PLAN APPROVAL BY PLANNING BOARD**

Uses identified in a particular district column with a P shall be permitted in such district upon approval by the Planning Board of a site plan meeting such conditions as referenced in the Conditions column, subject to all other applicable requirements as identified in **Section 5.1.4, Other Development Requirements of the Zoning Ordinance**.

**3. SPECIAL USE PERMIT APPROVAL BY BOARD OF ADJUSTMENT**

Uses identified in a particular district column with an A shall be permitted in such district upon approval of a Special Use Permit by the Board of Adjustment, **unless exempted per Section 3.2.13D.10 of this ordinance**, with such conditions as referenced in the Conditions column, subject to all other applicable requirements as identified in **Section 5.1.4, Other Development Requirements of the Zoning Ordinance**.

**4. SPECIAL USE PERMIT APPROVAL BY ELECTED BODY**

Uses identified in a particular district column with an E shall be permitted in such district upon approval of a Special Use Permit by the Elected Body, **unless exempted per Section 3.2.13E.8 of this ordinance**, with such conditions as referenced in the Conditions column, subject to all other applicable requirements as identified in **Section 5.1.4, Other Development Requirements of the Zoning Ordinance**.

**5. CONDITIONS COLUMN**

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.



The number in the Conditions column references the subsection of **Section 5.2, Use-Specific Standards**, i.e., condition **5.2.72** refers to Section **5.2.72, Residential Building, Single Family (W)**.

**6. SPECIAL USE DISTRICT ZONING APPROVAL BY ELECTED BODY**

Uses identified in a particular district column with an S shall be permitted in zoning districts designated with a –S suffix after the zoning designations, with such conditions as referenced in the Conditions column, subject to all other applicable requirements as identified in **Section 5.1.4, Other Development Requirements of the Zoning Ordinance**.

**Section 3.** This ordinance shall be effective upon adoption.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

**CITY-COUNTY PLANNING BOARD  
STAFF REPORT**

**DOCKET:** UDO-CC2  
**STAFF:** Chris Murphy

**REQUEST**

This text amendment is proposed by City-County Planning Board staff to amend Sections 3.2.13 and 5.1.5 of the UDO pertaining to Zoning Board of Adjustment and Elected Body Special Use Permits. Specifically, the amendment clarifies that no separate Special Use Permit is required for uses showing an A (ZBOA) or E (Elected Body) in the Principal Use Table when the use was approved as part of a Special Use rezoning.

**BACKGROUND**

City-County Planning Board staff, through discussions with the City Attorney’s office, sought clarification for existing practices with regard to uses listed in the Principal Use Table as requiring a Zoning Board of Adjustment (A) and/or Elected Body (E) Special Use Permit on property that has received Special Use zoning. Per North Carolina General Statutes, Special Use Permits are approved through quasi-judicial proceedings. There are certain uses in the UDO that are only allowed through the issuance of a quasi-judicial Special Use Permit (e.g., manufactured homes in RS zoning, LCIDs in RS zoning, etc.). Winston-Salem and Forsyth County have special enabling legislation allowing Special Use zoning and associated Special Use Permits to be approved as legislative actions. Additionally, there is an existing provision in the UDO specifying that any use requiring a Special Use Permit – but approved through the Special Use zoning process – is exempt from also seeking the quasi-judicial Special Use Permit.

**ANALYSIS**

The proposed revisions provide clarity to the existing exemption outlined in Sections 3.2.13D.10 and 3.2.13E.8, both of which state, “*No separate special use permit is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.*” By clarifying the language in Sections 3.2.13 and 5.1.5, the UDO will signal to those reviewing the Principal Use Table and the Special Use Permit Procedure section that there is a codified exemption for quasi-judicial Special Use Permits when a use has been approved through Special Use zoning. These amendments do not change current policy and do not alter past practices; rather, they make it clear that there is an exemption for the action elsewhere in the UDO.

**RECOMMENDATION: Approval**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-CC2  
MAY 28, 2020**

Chris Murphy gave the staff report and explained that this ordinance provides additional clarification of the UDO.

**PUBLIC HEARING**

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Clarence Lambe recommended that the Planning Board find that the request is consistent with the comprehensive plan.

SECOND: Jack Steelman

VOTE:

FOR: George Bryan, Melynda Dunigan, Jason Grubbs, Tommy Hicks, Clarence Lambe, Chris Leak, Johnny Sigers, Brenda Smith, Jack Steelman

AGAINST: None

EXCUSED: None

MOTION: Clarence Lambe recommended approval of the text amendment.

SECOND: Jason Grubbs

VOTE:

FOR: George Bryan, Melynda Dunigan, Jason Grubbs, Tommy Hicks, Clarence Lambe, Chris Leak, Johnny Sigers, Brenda Smith, Jack Steelman

AGAINST: None

EXCUSED: None

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Aaron King  
Director of Planning and Development Services