

## CHAPTER 9 CONDITIONAL USES

### **Section 9.1    Conditional Uses**

This Ordinance provides for a number of uses to be located by right in each general zoning district subject to the use meeting certain area, height, yard and off-street parking and loading requirements. In addition to these uses, the Ordinance allows some uses to be allowed in these districts on a conditional basis subject to the issuance of a conditional use permit by the Town Council. The purpose of having such uses being "conditional" is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this Chapter.

### **Section 9.2    Procedures**

**9.2.1** A conditional use permit application shall be filed with the Zoning Administrator. The application shall be accompanied by a site plan, drawn to scale and necessary supporting text which shall include the following information:

- A. Name, address and phone number of the property owner (or his agent) and the tax parcel number of the property. (Note: The property owner or his authorized agent are the only two parties who may initiate a request for a conditional use permit.)
- B. A boundary survey and vicinity map, showing the property's total acreage, zoning classification(s), general location in relation to adjoining streets, railroads and/or waterways; date and north arrow.
- C. The owners' names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties.
- D. Proposed use of all land and structures including the number of residential units (if applicable).
- E. Proposed number and location of all structures, their approximate area and their approximate exterior dimensions.
- F. A description of all screening and landscaping required by these regulations and/or proposed by the applicant.
- G. All existing easements, reservations and rights-of-way.
- H. Proposed phasing, if any, and approximate completion time for the project.
- I. Delineation of areas within the regulatory floodplain as shown on the official Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps for Stanly County.
- J. Traffic, parking and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets.
- K. Proposed signs and their approximate size, type, and location.

**9.2.2** In the course of evaluating the proposed use, the Planning Board and/or Town Council may request additional information from the applicant. A request for such additional

information shall stay any further consideration of the application by the Town Council or Planning Board. This information may include (but shall not be limited to) the following:

- A. Stormwater drainage plan.
- B. Existing and proposed topography at five-foot contour intervals or less, if the present terrain is not typical of the area or requires excessive clearing and grading.
- C. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development.
- D. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
  - 1. Existing traffic conditions within the study area boundary.
  - 2. Traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average annual daily traffic levels.
  - 3. The distribution of existing and proposed trips through the street network.
  - 4. Analyses of the capacities of intersections located within the study area boundary.
  - 5. Recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way; and
  - 6. Other pertinent information, including but not limited to accidents, noise, and impacts of air quality and other natural resources.
- E. An environmental impact statement which contains the following information:
  - 1. A cover sheet which provides, in summary form, a description of the proposed project; and,
  - 2. A statement of purpose and need of the project; and,
  - 3. For projects proposed by public entities, a list of alternatives of the proposed project; and,
  - 4. A succinct description of the environment affected by the project; and,
  - 5. A discussion of short and long term consequences of the project on the environmental including any adverse environmental impacts which cannot be avoided; and,
  - 6. A list of means which could be employed to mitigate any negative effects on the environment caused by this project.

**9.2.3** No application shall be deemed complete unless it contains or is accompanied by all items listed in Section 9.2.1 (and as may be required in Section 9.2.2) and a fee, in

accordance with a fee schedule approved by the Town Council for the submittal of conditional use permit applications.

### **Section 9.3 Planning Board Review And Recommendation**

Once complete, the Zoning Administrator shall refer the conditional use application to the Planning Board for review and recommendation to the Town Council. Except as provided in Section 9.2.2, the Planning Board shall review the application at their next scheduled meeting, as long as it is at least ten (10) days in advance of meeting date.

The Planning Board may, in its review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Planning Board may find appropriate. Such conditions may include dedication of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.

The Planning Board shall forward its recommendation with any suggested conditions to the Town Council within forty-five (45) days of their first meeting date. If a recommendation is not made within forty-five (45) days, the application shall be forwarded to the Town Council without a recommendation from the Planning Board.

### **Section 9.4 Public Hearing**

In order for the Town Council to approve a conditional use permit, a public hearing must be held by the Town Council. Notice of said public hearing shall be as follows:

- A. A notice shall be published in a newspaper having general circulation in Badin. The first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- B. At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the public hearing. Such notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held.
- C. A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to all contiguous property owners at least ten (10) days prior to the public hearing.
- D. A notice of the public hearing shall be posted at Town Hall.

### **Section 9.5 Town Council Action**

Once the public hearing has been conducted, the petition shall be placed on the agenda of the next regularly scheduled Town Council meeting.

In approving an application for a conditional use permit, the Town Council may attach fair and reasonable conditions to the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found elsewhere in a similar zoning district.

#### **9.5.1 Burden Of Proof**

The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Sections 9.5.2(B) and (D) of this

Ordinance require. If any person submits evidence allegedly contrary to any of the facts or conditions listed in Sections 9.5.2(A) and (C) of this Ordinance, the burden of proof for overcoming such evidence shall rest with the applicant.

**9.5.2** The Town Council shall issue a conditional use permit if it has evaluated an application and determined that:

- A. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- B. The use meets all required conditions and specifications, and
- C. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- 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 and will be in general conformity with the adopted Badin Land Use Plan and other plans for physical development of the Badin area as adopted by the Town Council.

## **Section 9.6 Additional Review Criteria**

In addition to evaluating an application for a conditional use permit on the items listed in Section 9.5.2, the Town Council shall consider other review criteria for certain types of development. A finding that said criteria listed herein and those listed in Section 9.5.2 must be made by the Town Council before a conditional use permit is issued by the Town Council.

### **9.6.1 Manufacturing Goods, Class 2**

- A. The use will not overly impact the ability of a public agency to collect and/or treat any wastewater generated by the use or the ability of the public agency to treat and distribute any potable water needed by the use.
- B. The use will not overly impact (impact beyond capacity) the system of streets serving the use or that improvements will be made to such streets in consort with the development of said use, the result of which will be adequate handling of the additional traffic generated.
- C. That not only will the use meet the minimum screening requirements of this Ordinance, but also that such additional screening will be installed, as necessitated by the visual characteristics of the particular use, such that the use will be screened from view of adjoining residential districts, or that the nature of the topography makes the screening from distant view from such residential areas impossible and that other measures such as heavy on-site landscaping will be taken to lessen any near or distant visual impacts.

### **9.6.2 Shopping Centers, Planned Residential or Mixed-Use Developments**

- A. Sufficient on-site parking for floor area or number of residential units including guest or storage spaces.
- B. Internal vehicular and pedestrian circulation shall be satisfactory
- C. Proposed ingress/egress points must meet N.C. Department of Transportation requirements, must provide adequate sight distance, and must provide additional

turn lanes and traffic lights if traffic warrants.

- D. Additional screening and landscaping in excess of Section 5.4 for noise and visual impact reduction for adjacent residences, schools, or business concerns may be required.

**Section 9.7 Effect Of Approval**

If an application for a conditional use permit is approved by the Town Council, the owner of the property shall have the ability to (i) develop the use in accordance with the stipulations contained in the conditional use permit or (ii) develop any other use listed as a "permitted use" for the general zoning district in which it is located.

**Section 9.8 Binding Effect**

Any conditional use permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the Town Council. However, minor changes in the detail of the approved application which:

- A. will not alter the basic relationship of the proposed development to adjacent property, and
- B. will not increase the gross floor area of any non-residential use by the smaller of ten (10) percent or ten thousand (10,000) square feet, and
- C. will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site by greater than five (5) feet may be made with the approval of the Zoning Administrator on a one-time basis only. Further changes to the development may only be made by the Town Council in accordance with Section 9.3 of this Ordinance.

For example, if a conditional use permit is issued for a building having a gross floor area of 100,000 square feet, under this provision the property owner could (subject to approval of the Zoning Administrator) construct a building with a gross floor area of up to 110,000 square feet. If the property owner subsequently had his conditional use permit amended authorizing him to construct a building of up to 150,000 square feet, the Zoning Administrator could allow the construction of a building having a gross area of up to 160,000 square feet.

**Section 9.9 Certificate Of Occupancy**

No certificate of occupancy for a use listed as a conditional use shall be issued for any building or land use on a piece of property which has received a conditional use permit for such particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the Town Council. 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 constructed or used as approved.

**Section 9.10 Twelve-Month Limitation on Re-application**

If a request for conditional use permit is denied by the Town Council, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the Town Council. This waiting period shall not be applicable where the application for a conditional use permit is substantially different from the original application.

The term "substantially different" as herein applied shall mean:

1. The proposed principal use is different than the use contained in the original application;  
or
2. The gross floor area of the proposed development is fifty (50) percent or more smaller than contained in the original application.

**Section 9.11 Change In Conditional Use Permit**

Any request to materially change the conditional use permit once it has been issued must first be reviewed by the Planning Board in accordance with Section 9.3 of this Ordinance. The Town Council may thereafter change or amend any previously approved conditional use permit, only after having held a public hearing. Notice of public hearing shall be in accordance with Section 9.4 of this Ordinance. Amendment by the Town Council of a previously issued conditional use permit shall be subject to the same considerations as provided for in Section 9.3 of this Ordinance.

**Section 9.12 Implementation Of Conditional Use Permit (CUP)**

Unless the Town Council issues a conditional use permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit within a twelve (12) month period from date of issuance of the conditional use permit. In addition, if the project for which a CUP was issued is not complete and a valid building permit is not in place at the end of said twelve month period, the Zoning Administrator shall notify the applicant of either such finding, and within sixty (60) days of said notification, the Planning Board shall make a recommendation concerning the rescission of the conditional use permit to the Town Council. The Town Council, after having conducted a public hearing to consider the rescission, may then rescind the conditional use permit, or extend the life of the conditional use permit for a specified period of time. Due notice of said public hearing shall be given as prescribed in Section 9.4 of this Ordinance.