



SPECIAL USE PERMITS IN POLK COUNTY

Under the Polk County Zoning Ordinance, certain types of land uses are described as “Special Uses”. Special Uses are considered after the landowner applies for a Special Use Permit from the Board of Adjustment. This handout is designed to help guide landowners through the permitting process. This document is an overview; the specific requirements are contained in the Polk County Zoning Ordinance and Rules of Procedure for Quasi-Judicial Proceedings.

How do I know if I need a Special Use Permit?

Check with the **Polk County Planning & Zoning Department** to determine the zoning district in which your property lies. Polk County Zoning Ordinance, The Permitted Use Table, will indicate uses permitted and if the proposed project requires a Special Use Permit.

How is a Special Use Permit Granted?

The Polk County Zoning Ordinance requires four conditions be met before a Special Use Permit is granted:

- 1) the proposed use complies with the standards for such use, if any, contained in this Zoning Ordinance;
- 2) the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood
- 3) the proposed use will not be detrimental or injurious to property, property uses or property values, or to public improvements, in the neighborhood of such proposed use; and
- 4) the proposed use is designed and will be operated in such a manner as to be in harmony with the neighborhood in which it is to be located.

Who decides whether to approve it?

The five-member Polk County Board of Adjustment is responsible for interpreting and applying the conditions set forward in the Polk County Zoning Ordinance. They will conduct an evidentiary hearing to hear evidence and ultimately decide whether or not to grant the Special Use Permit.

How do I begin the process?

- 1) talk to a Planning & Zoning staff member; they will assist you with the process;
- 2) a completed Special Use Application must be filled out 30 days prior to the Special Use Evidentiary Hearing; the application should include any information that will help prove the use satisfies the four requirements;
- 3) pay a \$100 filing fee;
- 4) provide seven copies of a site plan which meets the requirements of the Zoning Administrator.

What happens next?

An application must be received by the Zoning Administrator at least 30 days prior to the next scheduled Board of Adjustment meeting - usually the first Tuesday of each month - in order to be placed on the agenda. Once the Zoning Administrator is in receipt of a complete application and seven copies of a site plan, an evidentiary hearing is scheduled. The Board of Adjustment Secretary will mail written notice to the landowner and all adjacent property owners, as well as posting a sign with notice of the evidentiary hearing at the proposed Special Use Permit site. This notice will state the time and place of the evidentiary hearing. No communication with Board of Adjustment members is allowed prior to the evidentiary hearing.

The Evidentiary Hearing

The purpose of the evidentiary hearing is to allow everyone with an interest in the Special Use Permit application to present *competent, material, and substantial evidence*. The Board is searching for *facts*, not opinions. The burden of proof lies with the applicant to provide evidence to support their case.

Anyone wishing to speak at the evidentiary hearing must identify themselves and be sworn in at the beginning of the evidentiary hearing. Anyone expecting their views to be considered must be present at the evidentiary hearing, or represented by an attorney. Letters and petitions will not be accepted.

The Board Chair will preside over the evidentiary hearing. He or she alone makes rulings on all *procedural* matters, including evidentiary objections.

The Zoning Administrator typically presents preliminary evidence in the case, providing the Board with evidence concerning the Special Use application. The applicant then presents evidence, followed by anyone else who has been sworn in and wishes to present evidence on behalf of the applicant. Anyone presenting evidence may be cross-examined and questioned by Board members. Following the Board questioning, anyone in opposition to the proposed Special Use who has been duly sworn in may present evidence.

After all evidence has been heard, the Board will hear closing arguments from all sides. Closing arguments provide an opportunity for the applicant to summarize how the evidence supports their position.

The Board typically reconvenes in one to two weeks. They will discuss their findings and reach a conclusion. Anyone may be present for this open deliberation, but no input from the audience is generally allowed.

After the evidentiary hearing and consideration of the record, the Board will take action on the application, either 1) denying it, 2) approving it, or 3) approving it subject to conditions. A majority vote of the Board members is required to approve the Special Use Permit.

A written decision is submitted a few days later and mailed to the applicant and others requesting the written decision. At that point, the Board's decision is final. The Special Use Permit will be filed with the

Register of Deeds by the Clerk to the Board of Adjustment within one month of the date of approval.

All Special Use Permits run with the property or structure for which the permit is being sought and not with the owner of the property or structure.

What if my application is not approved?

Applicants and other interested parties have 30 days following the final written decision to file an appeal with Superior Court.

How long does the Special Use Application Process Take?

The process takes approximately two to three months.

Do other ordinances apply to this reference sheet?

This handout is an overview, and the general information can be applied to other ordinances.

North Carolina General Statute 160D-102:

Evidentiary hearing. - A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.