



Legislation Text

File #: 22-2933, Version: 1

TO: Mayor and Members of City Council

THRU: Telly C. Whitfield, Ph.D. - Assistant City Manager
Dr. Gerald Newton, AICP - Development Services Director

FROM: Jennifer C. Baptiste, CZO - Planning & Zoning Division Manager

DATE: September 26, 2022

RE:
TA22-04: Proposed Text Amendments to amend Sections 30-2.A, 30.2.B, and 30.2.C of the Unified Development Ordinance regarding the Special Use Permit process, requested by the City of Fayetteville.

COUNCIL DISTRICT(S):
All

Relationship To Strategic Plan:

Strategic Operating Plan FY 2021

Goals 2026

Goal 2: Responsible City Government Supporting a Diverse and Viable Economy

- Objective 2.3 - Sustain a favorable development climate to encourage business growth

Goal 3: City Investment in Today and Tomorrow

- Objective 3.2 - Manage the City's future growth and strategic land use

Goal 6: Collaborative Citizen & Business Engagement

- Objective 6.2 - Ensure trust and confidence in City government through transparency and high quality customer service

Executive Summary:

Recommended changes to the process of Special Use Permit (SUP) general standards and clarifying language is presented for the City Council to consider and implement in the City of Fayetteville's Code of Ordinances, Chapter 30 Unified Development Ordinance (UDO). Future changes of how

SUPs are used will be presented in a separate, future CCAM.

Background:

The City of Fayetteville has used Special Use Permits since at least 1964 when the city's Zoning Ordinance began folding in some uses that were allowed in a zoning district if they "fit in with the character of the area in which such use is to be located and that such use is not detrimental to the surrounding neighborhood (Ordinance No.1964-10)

Over the years, the standards and North Carolina Statutes continued to allow uses when they met certain standards. North Carolina case law has also created refinements to the way Special Use Permits are handled. In 2020, the state adopted a consolidated land use statute, 160D with different effective dates for changes to be made locally, all of which Fayetteville did. A significant point was to move the SUP process into the newly named "Evidentiary Hearing" that was not significantly different than the Quasi-Judicial Hearings that the City Council held for cases.

A few primary points of the new Evidentiary Hearing were presented by the professional staff that included prima facia entitlement to approve uses where competent, substantial, material evidence is presented by the applicant for a use identified as a "special use" under the city ordinance. Another part of the process change involved the City Council meeting being the only time that the evidence is presented and no recommendations be made from an advisory board or the city staff. These process revisions on April 2021, along with a generic Fayetteville City Council Special Use Permit Evidentiary Hearing outline continue to be used.

In the UDO, the proposed changes include the following sections:

- Section 30-2.A.5 Zoning Commission
 - A. Powers and Duties
- Section 30-2.B.14.a. Evidentiary Hearing Procedures (Quasi-Judicial Decisions) Burden of Proof
- Section 30-2.C.7 Special Use Permit
 - d. Procedure
 - 3. Review of Staff and Technical Committee
 - 4. Public Hearing, Review, and Action by City Council
 - 6. Permit Issuance
- Section 30-2.C.7 Special Use Permit
 - e. Special Use Permit Standards
- Section Special Use Permit
 - f. Effect of Approval

Issues/Analysis:

Text amendments

The changes presented for Chapter 30 are attached. There are four general groupings of the changes:

1. noting that those wanting the SUP denied have a burden of providing the evidence knowing that the use is already allowed and the standards are the issue;
2. add language to the SUP ordinance to more clearly identify actions to be taken by the City

- Council which include conditions of the approval;
3. clarify revocation as an option if the Special Use Permit property fails to maintain compliance with federal and state requirements; and
 4. ordinance changes to align with the Kenan general standards. A minor change is also made within the powers and duties of the Zoning Commission to point out that they are not a part of the process. This item was already placed throughout the ordinance but missed in the powers and duties section.

30-2.A.5. Zoning Commission

The Zoning Commission is hereby established in accordance with the North Carolina General Statutes, including Chapter 160D, Article 3. Ord. No. S2015-018, adopted 12/14/2015, merged the Board of Adjustment with the Zoning Commission.

a. Powers and Duties

The Zoning Commission shall have the following powers and duties:

1. *Recommendation Authority*

Review and make recommendations to the City Council on the following:

- a. Map Amendments (Rezoning);
- b. Conditional Rezoning; and
- c. ~~Special Use Permits.~~

30-2.B.14. Evidentiary Hearing Procedures (Quasi-Judicial Decisions)

All public hearings on development applications designated in Table 30-2.B.11, Required Public Hearings as evidentiary hearings (E), shall comply with the procedures set forth in this subsection as authorized and required by North Carolina Gen. Stat. § 160D-406. Boards shall follow evidentiary hearing procedures when determining any quasi-judicial decision.

- a. **Burden of Proof**

The burden of demonstrating that an application complies with applicable review and approval standards of this Ordinance is on the applicant, which shall be demonstrated by competent, material, and substantial evidence. ~~The burden is not on the City or other parties to show that the standards have not been met by the applicant. is not on the City or other parties to show that the standards have not been met by the applicant.~~ **of demonstrating that an application should be denied for failing to comply with applicable review and approval standards of this Ordinance is on the parties urging denial of the application, which shall be demonstrated by competent, material, and substantial evidence.**

30-2.C.7. Special Use Permit

- d. Procedure

1. *Basic Procedures*

Except as modified by Sections 30-2.C.7.d.2-8 7 below, procedures and requirements for the submission, completeness determination, review, recommendation, hearing, and decision on applications are as established in Section 30-2.B, Common Review Procedures.

3. *Review by **Staff and Technical Review Committee***

Before completion of the staff report, the Special Use Permit application shall be reviewed by **the staff and the Technical Review Committee**, who may suggest revisions consistent with the provisions of Section 30-2.C.7.e, Special Use Permit Standards.

4. *Public Hearing, Review, and Action by City Council*

Following the **staff review of the application by the staff and the Technical Review Committee**, the City Council shall conduct an evidentiary hearing on the application in accordance with Section 30-2.B.12., Public Notification, and Section 30-2.B.14., Public Evidentiary Hearing Procedures (Quasi-Judicial Decisions), and Section 30-2.B.15., Action by Decision-Making Board (Decisions). The City Council, by a majority vote of a quorum present, shall take one of the following actions based on the standards in Section 30-2.C.7.e., Special Use Permit Standards:

- a. Approval of the application as submitted;
- b. Approval of the application subject to conditions **agreed to by the applicant**;
- c. Denial of the application; or
- d. Remand of the application back to the staff for additional information.

6. *Permit Issuance*

If the application is approved, the City Manager shall prepare a Special Use Permit identifying the site and approved plans and documents and listing any conditions of approval, and shall issue the permit to the applicant **in accordance with the City Council's decision**.

7. *Expiration*

a. *General*

1. The City Council may prescribe a time limit within which a Building Permit for the development authorized by a Special Use Permit shall be obtained. Failure to obtain a Building Permit within the specified time limit shall void the Special Use Permit.
2. Unless specified otherwise by the City Council, a Special Use Permit shall automatically expire if a Building Permit for the development authorized by the Special Use Permit is not obtained within one year after the date of issuance of the Special Use Permit, or if the development authorized by the Special Use Permit is discontinued and not resumed for a period of one year.

b. *Extension*

Upon written request submitted at least 30 days before expiration of the time period provided in accordance with Section 30-2.C.7.~~d-8~~.a above, and upon a showing of good cause, the City Manager may grant one extension not to exceed six months. Failure to submit a written request for an extension within the time limits established by this section shall result in the expiration of the Special Use Permit.

e. Special Use Permit Standards

A Special Use Permit shall be approved only upon a finding that **the applicant demonstrates that** all of the following standards are met:

1. The special use complies with all applicable standards, **conditions, and specifications in this Ordinance, including** in Section 30-4.C, Use-Specific Standards;
2. The special use **will be in harmony with the area in which it is located** ~~is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands~~;
3. The special use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved ~~avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration~~;
4. The special use is in general conformity with the City's adopted land use plans and policies ~~configured to~~

~~minimize adverse effects, including visual impacts of the proposed use on adjacent lands;~~

- ~~5. The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources~~ The special use will not substantially injure the value of the abutting land, or the special use is a public necessity; and
- ~~6. The special use maintains safe ingress and egress onto the site and safe road conditions around the site.~~ The special use complies with all other relevant City, State, and Federal laws and regulations.

f. Effect of Approval

A Special Use Permit shall authorize only the particular special use and associated development that is approved. A Special Use Permit, including any approved plans and conditions, shall run with the land and shall not be affected by a change in ownership, unless specifically conditioned as part of the approval. ~~Special uses shall meet all applicable federal and state requirements for location and operation. Failure to maintain compliance with federal and state requirements may result in the revocation of the Special Use Permit by the City Manager.~~

Amendments

After a Special Use Permit has been issued, no changes or deviations from the terms of the application or the approval shall be made without written approval of the proposed changes or deviations. Except for minor modifications, as provided in Section 30-2.C.16., Administrative Adjustment, any change or deviation shall be subject to the same review procedure and approval standards as required for the initial approval. Changes in the permitted uses or density of the overall development are not minor modifications.

Budget Impact:

N/A

Options:

In accordance with City Code, the City Council shall hold a legislative hearing on the text amendment. After the close of the hearing, City Council shall consider the amendment, relevant support materials, the Staff report, and any comments given by the public. City Council, by a majority vote of a quorum present, shall take one of the following actions:

- 1) City Council adoption of proposed text amendments as written;
- 2) City Council denial of the proposed text amendments;
- 3) City Council revise and adopt of the proposed text amendments; or
- 4) City Council remand the proposed text amendments back to Staff for further consideration.

In making its recommendation, the Planning Commission shall adopt a written Statement of Consistency that describes whether the decision is consistent with all City-adopted plans that are applicable. The Planning Commission shall provide a written recommendation to the City Council that addresses plan consistency and other matters deemed appropriate, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.

Recommended Action:

Professional Planning Staff and Planning Commission recommends Option 1: Recommend to City Council adoption of proposed text amendments.

Attachments:

1. Ordinance amending Section 30-2.A.
2. Ordinance amending Section 30-2.B.14
3. Ordinance amending Section 30.2.C.7