

City of King
Amendments to Chapter 32 related to special use permits.

~~Strikethrough~~ = deletion.

Underline = insertion.

Footnotes are informational and not part of the amended ordinance text.

Sec. 32-8. – Definitions.

~~*Special use.* A development that would not be generally appropriate without restriction throughout the zoning district, but which, if controlled as to number, area, and location, in relation to the neighborhood, would promote the health, safety, morals, general welfare, order, comfort, convenience, appearance or prosperity. Such uses may be permitted in this chapter by the city council, board of adjustment or planning board as a special use.¹~~

Special use permit. A permit issued to authorize development or land use in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised, as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.²

¹ With the exception of 32-196, the Ordinances do not refer to “special uses” apart from uses that require “special use permits.” The definition here is vague and could cause confusion. With the definition of “special use permit,” this extra definition is unnecessary. Section 196 will be amended to refer to special use permits.

² This amendment conforms to the definition of “special use permit” in N.C.G.S. § 160D-102(30).

Sec. 32-~~129~~ 50.³ Special use permits and Other Quasi-Judicial Proceedings.⁴

~~A special use permit shall be issued in when in certain zoning uses have unique characteristics and cannot be properly classified in any particular district, without consideration, of the impact of those uses upon neighboring land and of the particular use in the proposed location. This section governs all applications for special use permits. This section applies to Special Use Permits, Variances, and Other Quasi-judicial Proceedings. In this section, references to the board refer to Tthe particular body hearing the quasi-judicial matter, whether governing board, planning board, or board of adjustment. shall follow the following quasi-judicial rules when issuing a special use permit:~~

- (a) *Process required.* Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.
- (b) *Notice of hearing.* Notice of evidentiary hearings conducted pursuant to this chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- (c) *Administrative materials.* The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or

³ Currently, this section is codified within the chapter division for the board of adjustment. However, special use permits, depending on the context, may be heard by the governing board or planning board. As such, it would be appropriate to relocate this section to "Division 1," which covers general matters. PLEASE NOTE that, if relocated, all cross references to 32-129— including in 32-127—should also be amended to cross reference the new code section.

⁴ Title is amended for accuracy.

during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

- (d) *Presentation of evidence.* The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

- (e) *Appearance of official new issues.* The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- (f) *Oaths.* The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
- (g) *Subpoenas.* The board making a quasi-judicial decision under this chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.
- (h) *Appeals in nature of certiorari.* When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).
- (i) *Voting.* The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are

disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(j) Required findings for special use permits.⁵ The board shall issue a special use permit only when the board 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,⁶ 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 located⁷ and in general conformity with the comprehensive plan.

(k) Additional conditions for special use permits. In approving an application for the issuance of a special use permit, the board may, as part of its approval, require the following conditions to reduce impacts associated with the project:⁸

- i. Public right-of-way dedication to meet projected needs for roads shown on King's Transportation Plan, the Winston-Salem Area Transportation Planning Organization Comprehensive Transportation Plan, or for other roads as determined by the City of King or North Carolina Department of Transportation.
- ii. Road and/or sidewalk improvements as recommended by the City of King or North Carolina Department of Transportation.
- iii. Access control, including the location, number, and dimensions of driveways; and combining driveways with and providing connections to

⁵ These derive from a line of North Carolina Court of Appeals decisions finding them to be sufficiently certain—i.e., not discretionary—and have been codified nearly verbatim by most NC local governments.

⁶ Note that N.C.G.S. § 160D-1402(j)(3) provides that testimony of lay witnesses on whether a use affects the value of property is not competent evidence for this purpose.

⁷ An ordinance's inclusion of a use as permitted with a special use permit establishes a rebuttable presumption that the use is compatible with the surrounding area.

⁸ These are nearly the same as the permitted additional conditions set forth in Winston-Salem's ordinance. SUPs cannot be subject to conditions that the city does not have statutory authority to regulate or that courts have held to be unenforceable if imposed as a direct regulation. Any condition imposed must be related to the standards set forth in the applicable development ordinance and supported by adequate evidence in the record.

- adjacent properties, as recommended by Planning staff or other appropriate agencies.
- iv. Reorientation of parking areas or building access to ensure on-site traffic flow and pedestrian safety.
 - v. Dedication or granting of easements for greenways identified on the Recreation Master Plan.
 - vi. Screening and location of dumpsters, loading areas, on-site utilities, or other visually obtrusive features.
 - vii. Stormwater management plans as recommended by Planning staff and appropriate agencies.
 - viii. Location and screening of improvements or activities which may generate substantial noise.
 - ix. Compliance with recommendations of the city or State of North Carolina or other governmental departments reviewing the projects.
 - x. Compliance with all applicable conditions previously approved for the property in question.
 - ~~xi.~~ Water and sewer service, if necessary for the development project, are available in adequate capacity.

(lj) *Decisions.* The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(mk) *Judicial review.* Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

Sec. 32-164. Conditional zoning districts.⁹

- (a) Conditional zoning districts (CZ) run parallel to each of the conventional zoning districts and are subject to the same standards applicable to the parallel district including overlay district regulations, as modified by the approved district-specific plans and conditions. Conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning allows for a degree of certainty in land use decisions not possible in conventional districts. The following provision shall apply when using conditional zoning:
- (1) The petition is proposed or agreed to by all the owner(s) of the subject land. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.
 - (2) The petition shall incorporate any proposed modifications to use, intensity, or development standards applicable in the parallel conventional use district. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-5-1, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.
 - a. *Limitations.* For parcels where multifamily structures are an allowable use, a local government may not impose a harmony requirement for permit approval if the development contains affordable housing units for families or individuals with incomes below 80 percent of the area median income.

⁹ Amending all references to “conditional use” to refer instead to “conditional zoning,” consistent with the apparent intention behind the last revision of this section and in accord with N.C.G.S. 160D-703.

- (3) Proposed development plans shall be prepared by a licensed design professional and shall be prepared in accordance with ordinance, comprehensive or land-use plan, city design policies and state laws.
 - (4) When adopting or rejecting any zoning amendment, the governing board shall also approve a statement describing whether its action is consistent with and an adopted comprehensive or land-use plan and any such agreed upon conditions and that by approval they will or will not be in promoting the public health, safety, and general welfare of its citizens. Any violations of a provisions of a conditional zoning ordinance amendment shall be treated the same as any other violation of this chapter and be subject to any penalties as set forth in section 32-47.
- (b) *Application procedures.* All applicants are required to complete a request for a public hearing form to initiate the rezoning process. Once completed and submitted by the stated deadline, the governing board will review the request and determine the following:
- (1) The completion of the appropriate forms;
 - (2) Determine if the petitioner needs to hold a neighborhood meeting. This meeting will be with representatives of the petitioner and the surrounding property owners at a designated time and place prior to the public hearing and any government review. The petitioner may use a third party to facilitate the meeting or conduct the meeting themselves to gather information and any concerns the surrounding neighbors may have regarding the proposed project and;
 - (3) Schedule the public hearing date and also affix a date for planning board review prior to the public hearing.
- (c) *Review by the governing board.* After receiving the planning board's recommendation, the governing board shall hold the public hearing per the requirements of section 32-72. After the public hearing the board may approve, approve with conditions that are agreed upon, or deny the request. Applicant shall be notified in writing of the governing board's decision. Decisions denied may reapply per section 32-75.

These conditional ~~use-zoning~~ districts are listed below:

CZ R-R rural residential.

CZ R-20 residential - low density.

CZ R-15 residential - medium density.

CZ R-MF-A residential - multifamily - apartments.

CZ R-MF-C residential - multifamily - condominiums.

CZ R-MF-T residential - multifamily - townhouses.

CZ R-MH residential - manufactured home park.

CZ R-MH-1 residential - single-wide manufactured home.

CZ R-MH-2 residential - double-wide manufactured home.

CZ O-I office - institutional.

CZ B-1 business - old business district.

CZ B-2 general business.

CZ PD-RC planned development - retail center.

CZ L-I light industrial.

CZ H-I heavy industrial.

Sec. 32-196. - Key to district uses.

The following key shall be utilized in this article to indicate permitted, conditional, special exception and prohibited uses:

x—represents permitted uses

s—~~use requires a special use permit from approved by either~~ the planning board (PB), board of adjustment (BOA), or governing board (GB), as specified.

p—prohibited uses in all zoning districts

The city has an inclusive ordinance as far as uses listed in section 198-207, in that if the use is not a listed use in the tables but is very similar to a like use listed then it would be an allowed use. Uses similar to but have unique qualities may need to be addressed as a text amendment subject to the governing board's approval.

Sec. 32-206. Residential.

*The following text of the table is amended as follows:*¹⁰

Dwelling units, multifamily (two or more buildings on a single lot), provided they comply with section 32-245, section 32-246, and section 32-247. This would apply to tracks that are currently zoned R-MF, R-MF-A, R-MF-C, and R-MF-T. Tracts that are rezoned by conditional zoning will not need to get a special use permit. The conditional ~~use rezoning~~ zoning permit approval will act as approval of the project.

¹⁰ This amendment makes this text internally consistent, referring to conditional zoning.

Sec. 32-245. Residential multifamily apartments (R-MF-A).

Only subsection (j) is amended as follows:

- (j) Streets. Streets shall either be public or private. However, all streets shall be paved and built to the minimum construction standards of the state department of transportation, division of highways, or the city street standards, whichever is more stringent. When streets are private, a covenant shall be agreed upon between the city and the developer/owner of the project for the maintenance of streets and parking areas within the project. A copy of this proposed covenant shall be submitted to the city for review during the conditional zoning or special use permit review phase and shall be submitted to the City Planner at least 10 days before the Planning Board meeting for conditional zoning or the quasi-judicial hearing for special use permit~~conditional use review phase.~~¹¹

¹¹ Again, amending the abrogated reference to “conditional use.”

Sec. 32-246. Residential multifamily condominiums (R-MF-C).

Only subsection (j) is amended as follows:

- (j) Streets. Streets shall either be public or private. However, all streets shall be paved and built to the minimum construction standards of the state department of transportation, division of highways, or the city street standards, whichever is more stringent. When streets are private, a covenant shall be agreed upon between the city and the developer/owner of the project for the maintenance of streets and parking areas within the project. A copy of this proposed covenant shall be submitted to the city for review during the conditional zoning or special use permit review phase and shall be submitted to the City Planner at least 10 days before the Planning Board meeting for conditional zoning or the quasi-judicial hearing for special use permit~~conditional use review phase.~~

Sec. 32-247. Residential multifamily townhouses (R-MF-T).

Only subsection (j) is amended as follows:

- (j) Streets. Streets shall either be public or private. However, all streets shall be paved and built to the minimum construction standards of the state department of transportation, division of highways, or the city street standards, whichever is more stringent. When streets are private, a covenant shall be agreed upon between the city and the developer/owner of the project for the maintenance of streets and parking areas within the project. A copy of this proposed covenant shall be submitted to the city for review during the conditional zoning or special use permit review phase and shall be submitted to the City Planner at least 10 days before the Planning Board meeting for conditional zoning or the quasi-judicial hearing for special use permit~~conditional use review phase.~~

Sec. 32-259. - Buffering and screening requirements.

Only subsection (e)(1) is amended as follows:

- (e) *Responsibility of requirements.* All of the required buffer/screening shall be the responsibility of the developer and/or owner of the land. Buffers/screening shall be installed per the following guidelines:
- (1) Buffers/screening shall be installed per the governing body's requirements as approved during the conditional zoning or special use permit approval process or in their entirety prior to a certificate of occupancy being issued.

Table 32-259.1 – Level of Buffering by Zoning District*

Only the asterisked footnote is amended as follows:

* Also includes all conditional ~~use-zoning~~ districts.