

ZONING ORDINANCE AMENDMENT REQUEST
A-425 – Clean Version of Text

Section 70: General Information, Applications, Process, Public Notice, Public Hearings, Review and Decision, and Conclusions Required for Approval

70-1: General

- (1) Special Use Permits add flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses may be allowed in the several districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special Use Permit procedures, property uses which would otherwise be undesirable in certain districts may be developed to minimize any negative external effects they might have on surrounding properties.
- (2) Any use or development designated by applicable zoning district regulations as a special use, or as allowed only pursuant to a special use permit, may be established in that district only after the use or development is authorized by a validly issued special use permit.

70-2: Applications

- (1) Applications for a Special Use Permit shall be submitted to the Planning and Inspections Director or their designee by the owner or owners, or their duly authorized agent, of the property subject to the Special Use Permit petition at least 35 business days prior to an adopted Planning Board meeting date. A schedule of adopted Planning Board meeting dates and the subsequent 35-business-day application deadline shall be available at the Department of Planning and Inspections.
- (2) Applications for a Special Use Permit shall include the following to be considered a complete application:
 - (A) Completed and signed application form for a Special Use Permit
 - (B) Traffic Impact Worksheet
 - (C) Traffic Impact Analysis (only applicable for development proposals that exceed 100 peak hour trip generation)
 - (D) Site Plan, including the elements listed in Section 60.1
 - (E) Narrative of proposal depicting the nature and scope of the proposed development
 - (F) At the discretion of the petitioner, supplemental information, plans, and/or documents that the petitioner intends to use to demonstrate at the public hearing that the conclusions required for approval in Section 70-7 are met
 - (G) Authority for Appointment of Agent Form (only applicable if the petition for Special Use Permit is submitted by an agent for the property owner(s))

- 42 (H) Application fee based on the adopted fee schedule
43 (I) Community information meeting report for community information
44 meeting per Section 111-2.1 (only for uses classified as Intensive
45 Manufacturing)
46 (3) Specific requirements of application requirements may be waived by the
47 respective reviewer, planning director, or planning board, where it is determined
48 that the required information is not applicable to the subject request.
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50 70-3: **Process**
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- 52 (1) The Planning and Inspections Director or their designee shall review application
53 packages and respond to the petitioner as soon as possible but at most within 5
54 business days following the application submission to notify the petitioner in
55 writing including regular mail or e-mail of any omissions to the requirements
56 under Section 70-2(2) that render the application incomplete. This review for
57 completeness is to ensure that each of the applicable documents have been
58 submitted as part of the application, and not to verify or substantiate the
59 information provided within the application package.
60 (2) Applications with no omissions to the requirements under Section 70-2(2) shall
61 be deemed complete and be calendared for a public hearing at the earliest
62 upcoming Planning Board meeting that allows time for the required legal notices.
63 The Planning and Inspections Director or their designee shall respond to the
64 petitioner as soon as possible but at most within 5 business days following the
65 application submission in writing including regular mail or e-mail to notify them
66 that the application was deemed complete and confirm the date of the Planning
67 Board meeting at which the public hearing will be held.
68 (3) Within 10 business days following an application deadline, complete applications
69 for special use permit petitions shall be posted on the Planning and Inspections
70 Department web page (www.planningdevelopment.nhcgov.com) in addition to
71 the date, time, and location of the Planning Board meeting at which the public
72 hearing will be calendared. Notification of the posting of the special use permit
73 application(s) and meeting information shall also be sent to the Sunshine List.
74 Any additional information received from the petitioner after the application
75 deadline shall also be posted on the web page.
76 (4) In preparation for the public hearing at the Planning Board for a petition for a
77 special use permit, the Planning and Inspections Director or their designee shall
78 analyze the information and materials provided in the application package to
79 provide a summary of the request and preliminary findings of fact in the form of
80 a report to be included in the agenda package for the Planning Board meeting.
81 The intent of the report is to inform the Planning Board of whether the
82 Conclusions Required for Approval in Section 71-4 have been met or to identify,
83 from staff's perspective, issues or areas that the Planning Board may need more
84 information on in order to provide a recommendation to the Board of County
85 Commissioners whether each of the required conclusions in Section 70-7 have
86 been met. The staff analysis report shall be published by the Clerk to the Planning
87 Board as part of the agenda package for the Planning Board meeting.

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(5) In preparation for the public hearing at the Board of County Commissioners for a petition for a special use permit, the Planning and Inspections Director or their designee shall prepare a report summarizing the Special Use Permit request, the information and materials provided in the application package and presented at the Planning Board public hearing(s), the Planning Board’s recommendations, and preliminary findings of fact. The intent of the report is to inform the Board of County Commissioners of whether the Conclusions Required for Approval in Section 71-4 have been met or to identify, from staff’s perspective, issues or areas that the Board of County Commissioners may need more information on in order to reach a required conclusion. The staff analysis report shall be published by the Clerk to the Board of County Commissioners as part of the agenda package for the County Commissioners meeting.

70-4: **Public Notice**

(1) Public notice for a petition for a special use permit shall be disseminated per Section 112.1 of the Zoning Ordinance.

70-5: **Public Hearings**

(1) A public hearing at the Planning Board for the special use permit application shall be calendared per Section 70-3(3).

(2) The public hearing for the special use permit application at the Planning Board shall held in a quasi-judicial format. At the hearing, the Planning Board hears factual evidence presented at an evidentiary hearing, then makes recommendations for findings of fact supported by competent, substantial, and material evidence. Based on those recommended findings, the Planning Board may render a recommendation to the County Commissioners on whether each of the required conclusions specified in Section 70-7 can be reached.

(3) The Planning Board may continue the hearing to a later meeting to accommodate the presentation of additional testimony or evidence. If the time and place of the continued hearing is announced in open session during the hearing, no further notice need be given for the continued hearing.

(4) A public hearing at the Board of County Commissioners shall be calendared following the public hearing at which the Planning Board makes a recommendation.

(5) The public hearing for the special use permit application at the Board of County Commissioners shall held in a quasi-judicial format. At the hearing, the Board hears factual evidence presented at an evidentiary hearing, then makes findings of fact supported by competent, substantial, and material evidence. Based on

131 those findings, the Board of County Commissioners decides whether or not it can
132 reach each of the required conclusions specified in Section 70-7 below.

- 133 (6) The Board of County Commissioners may continue the hearing to a later meeting
134 to accommodate the presentation of additional testimony or evidence. If the time
135 and place of the continued hearing is announced in open session during the
136 hearing, no further notice need be given for the continued hearing.

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139 **70-6 Review and Decision:**

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141 (1) The applicant bears the burden of presenting sufficient evidence in support of the
142 application to allow the Board of County Commissioners, after weighing such
143 evidence against that presented in opposition to the application, to make findings
144 of fact that reasonably support each of the required conclusions outlined in
145 Section 70-7 as well as any applicable specific standards for the proposed use as
146 required by Section 72. If that burden is met, the Board of County Commissioners
147 must approve the application. If that burden is not met, the Board of County
148 Commissioners must deny the application, provided that if the Board of County
149 Commissioners determines that specific minor changes or additions to, or
150 restrictions on, the proposed development are necessary and sufficient to
151 overcome impediments to its reaching the required conclusions, it may approve
152 the application subject to reasonable conditions requiring such changes or
153 additions or imposing such restrictions. Such conditions may include time limits
154 for completion of development or for the start or end of certain uses or activities.
- 155 (2) A motion to approve the application must state the required conclusions and
156 include findings of fact on which the conclusions are based, plus any proposed
157 conditions of approval. The favorable vote of at least 3 members of the Board of
158 County Commissioners is necessary to pass such a motion. A motion to deny the
159 application must state which of the required conclusions cannot be reached and
160 include findings of fact on which the inability to reach the conclusions is based.
161 The favorable vote of a majority of Board of County Commissioners members
162 present is necessary to pass such a motion. If a motion to approve the application
163 fails, the application is deemed denied, and those members voting against the
164 motion must state which of the required conclusions they could not reach as well
165 as findings of fact on which their inability to reach the conclusions is based.
- 166 (3) Every decision by the Board of Commissioners issuing or denying a special use
167 permit shall be subject to review by the Superior Court by proceedings in the
168 nature of certiorari. Any petition for review by the Superior Court shall be filed
169 with the Clerk of Superior Court within 30 days after the decision of the Board is
170 filed in the Office of the Clerk to the Board, or after a written copy thereof is
171 delivered to every aggrieved party who has filed a written request for such copy
172 with the Clerk or Chairman of the Board at the time of the hearing of the case,
173 whichever is later.

175 70-7: **Conclusions Required for Approval** – The Board of County Commissioners may not
176 approve an application for a special use permit unless it reaches each of the following conclusions
177 based on findings of fact supported by competent, substantial, and material evidence presented
178 at the hearing. The considerations listed below each required conclusion are intended to suggest
179 some of the primary concerns pertinent to reaching the conclusions, but are not intended to be
180 all-inclusive.
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- 182 (1) The use will not materially endanger the public health or safety if located where
183 proposed and approved. Considerations:
- 184 (A) Traffic conditions in the vicinity, including the effect of additional traffic
185 on streets and street intersections, and sight lines at street intersections
186 with curb cuts;
 - 187 (B) Provision of services and utilities, including sewer, water, electrical,
188 garbage collections, fire protection;
 - 189 (C) Soil erosion and sedimentation; and
 - 190 (D) Protection of public, community, or private water supplies, including
191 possible adverse effects on surface waters or groundwater; and
 - 192 (E) Anticipated air discharges, including possible adverse effects on air
193 quality
- 194 (2) The use meets all required conditions and specifications of the Zoning Ordinance;
- 195 (3) The use will not substantially injure the value of adjoining or abutting property,
196 or that the use is a public necessity. Considerations:
- 197 (A) The relationship of the proposed use and the character of development
198 to surrounding uses and development, including possible conflicts
199 between them and how these conflicts will be resolved; and
 - 200 (B) Whether the proposed development is so necessary to the public health,
201 safety, and general welfare of the community or County as a whole as to
202 justify it regardless of its impact on the value of adjoining property.
- 203 (4) The location and character of the use if developed according to the plan as
204 submitted and approved will be in harmony with the area in which it is to be
205 located and in general conformity with the plan of development for New Hanover
206 County.
- 207 (A) The relationship of the proposed use and the character of development
208 to surrounding uses and development, including possible conflicts
209 between them and how these conflicts will be resolved; and
 - 210 (B) Consistency with the Plan’s goals, objectives for the various planning
211 areas, its definitions of the various land use classifications and activity
212 centers, and its locational standards.

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Section 71: Validity, Extensions, and Changes for Approved Special Use Permits; Resubmittals of Denied Applications

71-1 *Validity and Extensions of Approved Special Use Permits:*

- (1) A special use permit, issued by the Board of County Commissioners, shall become null and void if construction or occupancy of the proposed use as specified on the special use permit is not commenced within twenty-four (24) months of the date of issuance. If an extension is desired, a request must be submitted in writing to the New Hanover County Planning and Inspections Department prior to the expiration. Extensions may be granted in accordance with Section 112-6 of the Ordinance.
- (2) In the event of failure to comply with the plans approved by the Board of County Commissioners or with any other conditions imposed upon the special use permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction or certificates of occupancy under this special use permit shall be issued, and all completed structures shall be regarded as non-conforming uses subject to the provisions of Article IV of this Ordinance provided, however, that the Board of County Commissioners shall not be prevented from thereafter rezoning said property for its most appropriate use.

71-2 *Changes to Approved Special Use Permits:*

- (1) The original applicant(s), their successors or their assignee may make minor changes in the location and/or size of structures provided the necessity for these changes is clearly demonstrated. Minor changes shall be reviewed by the Planning and Inspections Department and upon favorable recommendation by the Planning and Inspections Director may be approved by the Zoning Administrator. Such approval shall not be granted should the proposed revisions cause or contribute to:
 - (A) A change in the character of the development.
 - (B) A change of design for, or an increase in the hazards to pedestrian and vehicle traffic circulation, or
 - (C) A modification in the originally approved setbacks from roads and/or property lines exceeding ten percent.

71-3 *Resubmittals:*

- (1) An application for a special use which has been previously denied may be resubmitted only if there has been a change in circumstances as determined by the Planning and Inspections Director or the director's designee. Evidence presented in support of the new application shall initially be limited to what is necessary to enable the Planning and Inspections Director to determine whether

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there has been a substantial change in the facts, evidence, or conditions of the case and shall include:

- (A) Circumstances affecting the property that is the subject of the application which have substantially changed since the denial; or
- (B) New information available since the denial that could not with reasonable diligence have been presented at a previous hearing.

If the Planning and Inspections Director deems the evidence substantially changed, the proposal may be resubmitted as a new application. Appeal of the Planning and Inspections Director’s decision may be made to the Board of County Commissioners.

8.31.16 Draft