

## ARTICLE 6

### CONDITIONAL USES

#### **Section 6.1 Intent**

This Ordinance provides for certain uses to be located by right in certain districts where the uses are compatible with the purpose of the district and with other uses to be located in certain districts only by complying with additional development standards to insure that same compatibility. However, certain uses which are basically in keeping with the intent and purpose of the district may have substantial impact on the surrounding area and shall only be allowed after a review of any specific proposal. In order to insure that these uses would be compatible with surrounding development and be in keeping with the purpose of the district in which they are proposed to be placed, they are not allowed to be established as a matter of right. They may be established only after review and approval of a conditional use permit as set forth in this Article 6.

#### **Section 6.2 Conditional Uses**

Certain uses listed in this Ordinance require the issuance of a Conditional Use Permit (CUP) by the Town Council prior to the issuance of a zoning permit by the Zoning Administrator. In certain cases, a change in the zoning district of the property in question will also be necessary. The following information details the procedures which shall be followed under these circumstances.

#### **Section 6.3 Procedures**

Conditional Use Permits shall be considered by the Town Council by either of the following methods:

##### **6.3.1 No Zoning Change Required.**

When a Conditional Use Permit is being requested for an intended use in a zoning district for which a rezoning is not required, the following procedure shall be followed:

- a) A completed written application for a Conditional Use Permit shall be filed with the Zoning Administrator. The application, at a minimum, shall include the following items:
  - 1) Name, address, and telephone number of the applicant and property owner, if different from the applicant, deed book and page number of the property description.
  - 2) A scaled boundary survey drawn to an appropriate scale prepared by and certified to be correct by a surveyor or engineer registered with the State of North Carolina, showing the total acreage, present

zoning classifications, date and north arrow. This survey shall include the information required in subsections 6.4 through 6.8 of this Section.

- 3) The current owners' names, addresses, and tax parcel numbers (as shown on the current year Union County Tax Records), and the uses and current zoning classifications of all adjacent properties.
- 4) All existing easements, reservations, rights-of-way and all yard requirements for the zoning district.
- 5) A site plan showing all existing and/or proposed buildings, storage areas, parking and access areas, proposed size, layout and setbacks of land and proposed structures, planned illumination, and proposed number, type and location of signs. For residential uses this shall include the number of units and an outline of the area where the structures will be located. For nonresidential uses, this shall include the approximate square footage of all structures and an outline of the area where the structures will be located.
- 6) Traffic, parking and circulation plans showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.
- 7) Landscape plan at the same scale as the site plan showing existing and proposed trees, ground cover and landscape material, proposed screening, including walls, fences or planted areas as well as treatment of any existing natural features. Documentation shall also be provided to stipulate that no quarantined vegetation or soil if any will be removed.
- 8) Plans and elevations for all proposed structures.
- 9) A map at the same scale as the site plan showing the following:
  - a) Delineation of areas within the floodplain as shown on the official flood hazard boundary maps.
  - b) Accurate mapping of all soil classifications found on the site and general depths thereof. The applicant shall use the same classifications used by the US Department of Agriculture.
  - c) Existing and proposed topography at five (5) feet contour intervals.
  - d) Plans for providing potable water and for the treatment of wastewater.
- 10) Proposed phasing, if any, and approximate completion time of the project.
- 11) A storm water runoff plan as described in Section 4.20.

- 12) Copy of any and all indication of public opposition, if any, to the approval of the requested CUP by the Town Council.
  - a) All applications shall be signed by the applicant and shall be submitted with any application fee required by the Town. All reasonable expenses incurred by the Town for the processing of a CUP application shall be paid prior to the issuance of a final notification of action taken, and the associated issuance of a CUP, if any.
  - b) The Zoning Administrator shall present any properly completed application to the members of the Planning Board at least fifteen (15) days prior to their next regularly scheduled meeting. The Planning Board by majority vote may shorten or waive the time provided in this Article for receipt of a completed conditional use application.
  - c) The Planning Board shall have a maximum of thirty (30) days from the date on which it last met or until its next regularly scheduled meeting, whichever is longer, to review the application and to submit its recommendation to the Town Council. If a recommendation is not made during said time period, the application shall be forwarded to the Town Council by the Zoning Administrator without a recommendation from the Planning Board.
  - d) When dealing with the Conditional Use Permit process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Zoning Administrator, the Planning Board and/or the Town Council may request additional information, as they may individually deem necessary.
  - e) Once the application is forwarded to the Town Council from the Planning Board (or the Zoning Administrator as prescribed in subsection 6.3.1. (d), a public hearing shall be required. Due notice of such hearing shall be as prescribed in subsections 12.1.7 (a), (b), (c), and (d) of this Ordinance.

### **6.3.2 Zoning Change Required.**

- a) When a conditional use permit is being requested for a use in a zoning district for which rezoning is required, the following procedures shall be followed:
  - 1) Requirements listed in Section 6.3.1 shall be met.
  - 2) The applicant shall also complete a rezoning application which together with the conditional use permit application required by subsection 6.3.1 (a) shall be submitted at the same time to the

Zoning Administrator as set forth in Section 12.1.2.

- b) Once the Conditional Use Permit application and rezoning application have been properly completed, they shall both be reviewed together by the Planning Board and the Town Council in compliance with Section 6.3.1 for conditional uses and Sections 12.1.4 - 12.1.10 for zoning changes. All recommendations made by the Planning Board concerning any associated rezoning shall be in accordance with Article 12.
- c) The withdrawal of a Conditional Use Permit application by the applicant after it has been accepted by the Zoning Administrator shall immediately terminate review of any associated rezoning application by either the Planning Board or the Town Council. Any fee paid by an applicant shall be forfeited to the Town of Mineral Springs unless the application for a conditional use permit is withdrawn prior to submission of the application to the Planning Board.
- d) Notwithstanding said withdrawal, any expenses incurred by the Town up to the date of an application withdrawal shall be paid by the applicant, consistent with the intent of subsection 6.3.1(b).
- e) The granting of any rezoning is subject to the protest provisions of Section 12.1.8.

#### **Section 6.4 Town Council Decision**

If the Town Council should find, after conducting a public hearing, that the proposed Conditional Use Permit and, where requested, rezoning should be granted, the Town Council may impose such additional reasonable and appropriate special conditions upon such Conditional Use Permit, as it may deem necessary. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found in the same zoning district. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development and other matters that the Town Council may find appropriate or the petitioner may propose. The conditions may include sign controls but may not include architectural review or control. The screening provisions of this Ordinance shall be minimum screening requirements as a condition for awarding a CUP, however, the Town Council may impose additional reasonable screening requirements as a condition for awarding a CUP as the Council considers necessary to protect the health, safety and welfare in accordance with the purpose and intent of this Ordinance. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The Town Council shall give due regard to the intent and purpose of this section of the Ordinance and that the public health, safety and welfare will be secured and substantial justice done.

**6.4.1 Burden of Proof**

The applicant has the burden of producing competent material and substantial evidence, tending to establish the existence of the facts and conditions which the appropriate section of this Ordinance requires for the issuance of a Conditional Use Permit, and rezoning, where requested and/or applicable.

**6.4.2 Voting**

When deciding Conditional Use Permits, the Town Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Council to issue such permits. For the purposes of this Section, vacant positions on the Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Council" for calculation of the requisite majority.

**6.4.3 Findings to be Made by Town Council**

The Town Council shall issue a CUP only after having conclusively confirmed each of the following findings:

- a) The use will not materially endanger the public health or safety if located where proposed and developed according to the submitted plan.
- b) The use meets all required conditions and specifications.
- c) The use will not substantially injure the value of adjoining or abutting property, or the use is a public necessity.
- 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 this Ordinance and the Town of Mineral Springs Land Development Plan.
- e) Additional review criteria, as stated in the Ordinance, shall also be considered and addressed where required.
- f) Any deviation from the terms of this Ordinance will result in a project that is at least equal to or better than what would be accomplished under the strict application of this Ordinance.
- g) Any deviation from the terms of this Ordinance will not adversely affect the right of other abutting or nearby property owners in any material manner.

### **6.4.3 Appeal of Town Council Decision on CUP**

Every CUP decision of the Town Council shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the appropriate Clerk of Superior Court within thirty (30) days after the decision of the Town Council is filed in the Office of the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk at the time of the hearing of the case, whichever is later. The decision of the Town Council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

### **Section 6.5 Binding Effect**

Any Conditional Use Permit so authorized shall be likewise binding to the property included in such permit unless subsequently changed or amended by the Town Council. A copy of the letter notifying the applicant of the Council approval of a Conditional Use Permit shall be forwarded to the Union County Register of Deeds for recordation.

However, minor changes in the detail of the approved plan which will (I) not alter the basic relationship of the proposed development to adjacent property, or (II) will not alter the uses permitted or increase the density of development, or (III) will not decrease the off-street parking ratio or (IV) reduce the yards provided at the boundary of the site may be made upon submittal to and the subsequent approval of the Zoning Administrator. The Zoning Administrator shall take action on such requests within fifteen (15) days, unless additional information is requested. A written decision shall be provided to applicant, and, if positive, a copy shall be forwarded to the Union County Register of Deeds. Any applicant may appeal a negative decision of the Zoning Administrator to the Board of Adjustment which shall determine if an amendment to the Conditional Use Permit is required in order to allow the proposed minor change to be made to the approved plan.

### **Section 6.6 Certificate of Compliance**

No certificate of compliance shall be issued for any building or land use on a piece of property which has received a Conditional Use Permit unless the building or structure is constructed, or used, or the land is developed or used in conformity with the Conditional Use Permit as approved by the Town Council. In the event that only a segment of a proposed development has been approved, the certificate of compliance shall be issued only for that portion of the development as approved.

### **Section 6.7 One Year Limitation**

**6.7.1** If a Conditional Use Permit request is denied by the Town Council, a

similar application for a Conditional Use Permit 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 most recent determination by the Town Council.

- 6.7.2** This waiting period shall not be applicable or otherwise be involved in the filing of a new application for rezoning of all or any part of the property previously considered by the Town Council where the new application requests rezoning to a different zoning district and/or where the application for a Conditional Use Permit is substantially different from the original application.

### **Section 6.8 Change in Conditional Use Permit**

Any request to materially change a CUP shall be reviewed by the Planning Board as required by Section 6.3.1 or in compliance with the applicable portion of the minor change approval procedure set forth in Section 6.5. 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 the provisions of Section 12.1.7. Amendment by Town Council of a Conditional Use Permit shall be subject to the same considerations as provided for in Section 6.4.2.

### **Section 6.9 Implementation of Conditional Use Permit**

- 6.9.1** Subject to Section 6.9.2 below, implementation of an activity authorized by a CUP shall begin within twelve (12) months after the date of approval, unless otherwise specified by Town Council. Failure to implement conditional use within the time period specified shall require a reapplication for the permit. Implementation at a minimum, means that the applicant must demonstrate to Council that substantial progress has been made toward realization of the project, or conditions beyond his control has prevented the start of implementation.

- 6.9.2** Any Conditional Use Permit issued on or after the Effective Date of this Ordinance shall also be governed by “An Ordinance Implementing the Statutory Vested Right Provisions of G.S, 160A-385.1.”

### **Section 6.10 Additional Review Criteria**

The review criteria specified for each of the following uses shall be addressed by the Town Council as an integral part of any applicable CUP review activity:

#### **6.10.1 Day Care Centers and Fraternal Lodges**

- a) Relationship to and impacts upon adjoining and nearby properties and the adequacy of proposed measures to minimize any adverse impacts.

- b) The existing residential character is reasonably safeguarded.
- c) That the proposed use will not create or seriously heighten the congestion on local streets and thoroughfares.

#### **6.10.2 Country Clubs and Schools**

- a) That the proposed use will be compatible with the general characteristics of the area with respect to the (I) location of structures, (II) the location, design, and screening of parking and service areas, and (III) the location, size and character of signs and streetscape.
- b) That the proposed use will not create or seriously heighten the congestion on area thoroughfares.

#### **6.10.3 Shopping Centers**

- a) Access to public streets and the adequacy of those streets to carry anticipated traffic.
- b) On-site circulation for both pedestrian and on-site and off-site vehicular traffic circulation patterns.
- c) Adequacy of existing community facilities such as water, sewer, and police and fire services.
- d) Relationship to and impacts upon adjoining properties and the adequacy of proposed measures to minimize any adverse impacts.
- e) The Town of Mineral Springs encourages smaller scale shopping centers, no greater than 75,000 square feet.

#### **6.10.4 Office Trailers**

- a) That the proposed uses will be compatible with the general characteristic of the area with respect to the structure's location.
- b) Relationship to and impacts upon adjoining and nearby properties and the adequacy of proposed measures to minimize any adverse impacts.
- c) That the use may be allowed for a maximum period of six (6) months. Extensions of this period may be granted only after a public hearing is held in accordance with Section 12.1.
- d) No office trailer shall be used for residential purposes.

#### **6.10.5 Golf Courses, Churches**

- a) Relationships to and impacts upon adjoining and nearby properties and the adequacy of proposed measures to minimize any adverse impacts.
- b) That the proposed use will be compatible with the general characteristics of the area with respect to the location of structures and the location, design and

screening of off-street parking areas.

#### **6.10.6 Automobile Service Stations, Convenience Stores**

- a) On corner properties the driveways shall be located no closer than thirty (30) feet from the point of intersection of two street property lines.
- b) Driveways shall be located no closer than thirty (30) feet from adjacent properties in residential districts or from properties used for residential or institutional purposes, and driveways shall be thirty (30) feet wide and shall be designated by curb, planted areas, and landscaping which shall not exceed two (2) feet in height within any sight distance triangle.
- c) No gasoline pump and/or canopy shall be located any closer than forty (40) feet from an existing street right-of-way.
- d) Outdoor lighting shall be permitted in compliance with Section 4.10 of this Ordinance.
- e) Freestanding canopies may be placed over properly located pumps or pump island provided:
  - 1) They do not overhang the right of way of any street; and
  - 2) They are not used as a sign structure or as the sign base.

#### **6.10.7 Essential Services - Classes II and III**

- a) Where a building or structure is involved and it is proposed to be located in a residentially zoned district, it shall be screened or buffered from adjacent residential land.
- b) All outside storage areas are fenced and screened from adjacent residentially developed areas.
- c) The site is of adequate size for the sewage disposal system proposed and for the proposed use.
- d) Noise levels, as measured at the property boundary, are compatible with the existing area noise background levels.
- e) Access to public streets and the adequacy of those streets to carry anticipated traffic.
- f) Adequacy of existing community facilities such as water, sewer, and police and fire services.
- g) That the proposed use will not create or seriously heighten the congestion on area thoroughfares.

#### **6.10.8 Public Parks and Recreational Facilities**

- a) Relationships to and impacts upon adjoining and nearby properties and the adequacy of proposed measures to minimize any adverse impacts.

- b) That the proposed use will be compatible with the general characteristics of the area with respect to the location of structures and the location, design and screening of off-street parking areas.

#### **6.10.9 Manufacturing Facilities; Wholesale Sales and Distribution Facilities**

- a) Relationships to and impacts upon adjoining and nearby properties and the adequacy of proposed measures to minimize any adverse impact, which may include but not limited to buffers and overall site landscaping.
- b) That the proposed uses will be compatible with the general characteristics of the area with respect to the location of structures and the location, design and screening of off-street service, loading and parking areas.

#### **6.10.10 Adult Use Establishments, Adult Video Stores, and Adult Lingerie Modeling Studios**

The purpose of this section is to provide areas in which adult entertainment or sexually oriented business may be established. Because of their very nature, these adult uses/establishments, adult video stores, and adult lingerie modeling studios, are recognized as having serious objectionable operational effects upon adjacent neighborhoods and residential or institutional uses. It has been demonstrated that the establishment of adult businesses often creates problems for law enforcement agencies, by the nature of these businesses and the difficulty often experienced in trying to determine if the operations are of a legal nature. Conditional regulation of these establishments is necessary to insure that these adverse affects will not contribute to defacto downgrading or blighting of surrounding neighborhoods and uses. It is the intent of this section to restrict the concentration of these uses and to separate these uses from residential and institutional uses or areas.

All adult uses/establishments, adult video stores, and adult lingerie modeling studios must obtain a conditional use permit and meet the following supplementary regulations. In addition, a site plan and vicinity map along with any other information as required by this Ordinance, must be submitted to the Zoning Administrator to verify compliance. Adult hotel/motels are not permitted in any zoning district.

- 1) Advertisements and Sound – no printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the walls of any adult use/establishment, adult video store, or adult lingerie-modeling studio. Nor shall any live or recorded voices, music, or sound be heard from outside the walls of the adult/use establishment, adult video store, or adult lingerie-modeling studio.
- 2) Overconcentration – no more than one (1) adult use/establishment, adult video store, or adult lingerie-modeling studio shall be located in any two thousand (2000) foot radius. This is determined by straight line and not street distance to any portion of the adult use/establishment, adult video store, or adult lingerie modeling studio

structure or parking area.

- 3) Proximity to Other Uses – no adult use/establishment, adult video store, or adult lingerie modeling studio shall be located within a one thousand (1000) foot radius of any church, synagogue, temple, or other place of worship, school, day care, public park or playground, including all parking areas and grounds, nor within a five hundred (500) foot radius of any dwelling. This is determined by straight line and not street distance to any portions of the adult use/establishment, adult video store, or adult lingerie modeling studio structure or parking area.
- 4) No adult use/establishment, adult video store, or adult lingerie-modeling studio may have sleeping quarters or private rooms.
- 5) There shall not be more than one adult use/establishment, adult video store, or adult lingerie-modeling studio on the same property or in the same building, structure, or portion thereof.
- 6) The maximum total floor area of any allowed adult use/establishment, adult video store, or adult lingerie-modeling studio shall not exceed three thousand (3000) square feet.
- 7) The hours of operation of any adult use/establishment, adult video store, or adult lingerie modeling studio shall be limited to 10:00 AM to 10:00 PM, Monday through Saturday.

### **Section 6.11 Conditional Use/Town of Mineral Springs as CUP Applicant**

In the event the Town of Mineral Springs Town Council petitions for a Conditional Use Permit under this Article, then and in that event the Town Council shall have no role in determining whether or not said Conditional Use Permit should be granted, or the terms and conditions of said Conditional Use Permit.

In the event the Town of Mineral Springs petitions for a Conditional Use Permit, it shall be required to follow all of the procedural requirements established in this Article. However, said Conditional Use Permit shall not be submitted to the Planning Board for preliminary approval as set out in Sections 6.3.1(c), (d) or (e) of this Article. Instead, the petition shall be reviewed by the Town of Mineral Springs Zoning Administrator as set out in Sections 6.3.1 (a), (b) who shall thereafter present any properly completed application to the members of the Town of Mineral Springs Board of Adjustment, which body politic shall decide whether or not to grant said Conditional Use Permit, and if granted, shall establish the terms and conditions thereof.

In the event the Town of Mineral Springs petitions for a Conditional Use Permit, the Town of Mineral Springs Board of Adjustment shall assume the role of the Town Council of the Town of Mineral Springs as set out in Section 6.4 et. seq. and shall conduct a public hearing as set out in Section 6.4, and shall otherwise be governed by the provisions of this Article in its deliberations and decision.