



The Orange County Board of Adjustment shall approve or deny Special Use Permit applications as provided for within the Unified Development Ordinance (UDO) with a majority vote. The applicant must provide material, competent and substantial evidence for each standard required by the UDO.

Please check all applicable boxes and complete the required documentation.

SUBJECT PARCEL:

Address: _____

Parcel Identification Number (PIN): _____

I, _____ have standing as described in **Exhibit A** and hereby request the Board of Adjustment to conduct an evidentiary hearing on my permit application, a use described and limited as described in **Exhibit B**.

I anticipate the presentation of evidence to be:

Thirty (30) minutes or less, and understand Exhibits C, D, E and F are optional.

More than thirty (30) minutes and have included the following: a listing of intended evidence (Exhibit C), proposed Findings of Fact (Exhibit D), proposed Conditions (Exhibit E), and proposed Order (Exhibit F).

STATEMENT BY APPELLANT:

I certify that the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

Signature of applicant: _____

Date: _____

Official Use Only:

Date Application Filed: _____ Fee Collected: _____

Accepted by: _____ Permit Case Number: _____

Zoning: _____ Watershed Overlay: _____ Other: _____

Staff Assigned to Review: _____

Date Scheduled for Public Hearing: _____

EXHIBIT A - STATEMENT OF STANDING:

- I am the sole owner of the property subject to this application.

- I have attached notarized letters authorizing this submittal from all entities or individuals with ownership rights to the property.

Owner Information:

Name: _____ Home Phone: _____
Address: _____ Cell Phone: _____
_____ E-mail: _____

Applicant Information: (same as owner)

Name: _____ Home Phone: _____
Address: _____ Cell Phone: _____
_____ E-mail: _____

Agent Information:

Name: _____ Home Phone: _____
Address: _____ Cell Phone: _____
_____ E-mail: _____
Law Firm Name: _____ Bar Number: _____

** Only attorneys may serve as agents within quasi-judicial hearings such as this appeal. Realtors, surveyors and other professionals may not apply or make arguments on behalf of owners. **

EXHIBIT B - NARRATIVE OF PROPOSED LAND USE:

*** Insert and label as "Exhibit B" a narrative description of the proposed land use. Include a detailed description of the proposed use of property including an outline of the proposed operational characteristics of the proposed development. Also include descriptions of structural components such as the basic size, form, and character of the buildings shown on the site plan. ***

EXHIBIT C - INTENDED EVIDENCE:

I intend to introduce the following document and have attached it follows:

Exhibit #1 entitled: “ _____ ”

This is relevant to standards from UDO Sections _____.

It demonstrates that:

_____.

I intend to call the following as a lay witness:

Lay Witness #1, _____. Their intended testimony has been included in an affidavit attached as Exhibit _____. This witness has personal knowledge of and will testify about:

_____.

This testimony is relevant to standards from UDO Sections _____. The testimony will demonstrate that _____

_____.

I intend to call the following as an expert witness:

Expert Witness #1, _____, is being offered as an expert in

_____.

They possess specialized knowledge in this field through the following training and/or experience:

_____.

They reviewed or examined the following data: _____

They used the following method of analysis when reviewing that data: _____

This expert opinion is relevant the standard at UDO Section _____. It demonstrates that

Their intended testimony has been included in an affidavit attached as Exhibit _____.

(attach additional sheets as necessary)

EXHIBIT D – PROPOSED FINDINGS OF FACT:

The Applicant shall be required to provide the proposed findings of fact for the project based on the specific development standards for a proposed land use as detailed in Article 5 of the UDO as well as the general findings as contained in Section 5.3.2 of the UDO:

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Application Components and Required Submittal Information:				
1.	Proper forms	2.2		
2.	Fees paid	2.2.4(D)		
3.	Full description of use <ul style="list-style-type: none"> • Location • Appearance • Operational characteristics 	2.7.3(B)(1)		
4.	Owner Information	2.7.3(B)(2)		
5.	Information needed for Use Standards	2.7.3(B)(3)		
6.	Site Plans (10 copies for Class B; 26 for Class A)	2.7.3(B)(4)		
7.	Preliminary Subdivision Plat (if necessary)	2.7.3(B)(5)		
8.	List of parcels within 1,000 feet	2.7.3(B)(6)		
9.	Elevations of all structures	2.7.3(B)(7)		
10.	Environmental Assessment (or EIS) <ul style="list-style-type: none"> • Topography • Drainage issues • Natural or Cultural resources • Mining • Hazardous Wastes • Wastewater treatment • Water usage 	2.7.3(B)(8)		
11.	Method of Debris Disposal	2.7.3(B)(9)		
12.	Development Schedule	2.7.3(B)(10)		
13.	Extended Vesting Request	2.7.3(B)(11)		

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Notification Requirements:				
14.	Public Notice <ul style="list-style-type: none"> • Date • Time • Place 	2.7.6(a)		
15.	Published in Newspaper <ul style="list-style-type: none"> • Two successive weeks • First notice at least ten days prior but no more than twenty-five days prior 	2.7.6(b)		
16.	Sign Posting on Property (at least 10 days prior)	2.7.6(c)		
17.	Mailed Notice <ul style="list-style-type: none"> • Certified mail • All adjacent property owners (within 1,000 feet) • Not less than fifteen days prior 	2.7.6(d)		
Specific Standards:				
18.	Waste Disposal Method and adequacy of provision for sewage disposal facilities, solid waste and water service.	5.3.2(B)(1)		
19.	Safety Method and adequacy of police, fire and rescue squad protection.	5.3.2(B)(2)		
20.	Vehicle Access Method and adequacy of vehicle access to the site and traffic conditions around the site.	5.3.2(B)(3)		

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Specific Development Standards for Proposed Land Use (Article 5) **				

*** The applicant is responsible for completing this section, identifying all development requirements/standards a proposed land use is required to abide by and provide sufficient detail documenting what evidence has been submitted documenting compliance. An application shall be considered incomplete without the proposed Findings of Fact completed by the applicant. ***

General Standards	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
The use will maintain or promote the public health, safety and general welfare	5.3.2(A)(2)(a)		
The use will maintain or enhance the value of contiguous property (unless the use is a public necessity)	5.3.2(A)(2)(b)		
The use will be in harmony with the area and is in compliance with the Comprehensive Plan.	5.3.2(A)(2)(c)		

Exhibit E - Proposed Conditions:

**** The BOA **must deny** the permit if any standard cannot be met either by a showing of evidence or by a condition placed upon the permit. Staff has included the general conditions as required for all Special Use Permits as detailed within the UDO.*

*Please list any proposed conditions which may be necessary for the Board to find that all standards will be met. ****

1. For public safety as required in 5.3.2(B)(2), final assignment of a street address shall be completed by Orange County Land Records prior to the issuance of any permit authorizing land disturbing activity on the property in accordance with the Orange County Addressing Ordinance.
2. Per Section Section 2.5 of the UDO the applicant shall obtain all necessary development permits from the County prior to the initiation of any land disturbing activity associated with the construction of the proposed use including, but not limited to: Building Permit, Erosion Control Management Permit, Solid Waste Management Permit, and Zoning Compliance Permit.
3. In accordance with the provisions of Section 2.7.12 (C) of the UDO, if any condition of this Special Use Permit shall be held invalid or void, then this Special Use Permit shall be void in its entirety and of no effect.
4. In accordance with the provisions of Section 2.7.12 (D) of the UDO, the Special Use Permit will automatically expire within 12 months from the date of approval if the use has not commenced or construction has not commenced or proceeded unless a timely application for extension of this time limit is approved by the Board of Adjustment.

Exhibit F – Proposed Order:

**FINDINGS OF THE ORANGE COUNTY BOARD OF ADJUSTMENT
PERTAINING TO A REQUEST SUBMITTED BY**

(APPLICANT)

PROPOSING _____ **(PROPOSED LAND USE)**

ON _____ **(ROAD NAME AND PINS OF PROPERTY
INVOLVED WITH APPLICATION)**

As required under Section 5.2 *Table of Permitted Uses* of the Orange County Unified Development Ordinance (UDO), a Class B Special Use Permit is required for the development/operation of a _____ (Proposed Land Use), in accordance with the provisions of Section 2.7 of the UDO.

Such permits shall comply with general and specific standards as set forth in Section(s) 5.3.2 and _____ (Section of Article 5 establishing development standards for proposed land use) of the UDO.

Section 5.3.2 (A) (2) of the UDO requires written findings certifying compliance with the following:

- (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;
- (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and
- (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners;

In addition, the Board shall make findings certifying that the application is compliant with the following specific standards:

- (1) Specific standards for the submission of Special Use Permit applications as outlined within Section(s) 2.2 and 2.7 of the UDO.
- (2) Specific regulations governing the development of a _____ (Proposed land use) as set forth in Section _____ (Section of Article 5 establishing development standards for proposed land use) of the UDO.
- (3) Section 5.3.2 (B) relating to the method and adequacy of the provision of:
 - a. Sewage disposal facilities,
 - b. The adequacy of police, fire, and rescue squad protection, and
 - c. The adequacy of vehicular access to the site and traffic conditions around the site.
- (4) The general findings outlined within Section 5.3.2 (A) (2).

Upon holding of a duly advertised public hearing, and accepting into the record of competent material evidence and sworn testimony concerning the application, the Orange County Board of Adjustment hereby makes the following findings of fact and conclusions of law:

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Application Components and Required Submittal Information:				

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Notification Requirements:				

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Specific Standards:				

#	REQUIREMENT	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
Specific Development Standards for Proposed Land Use (Article 5) **				

General Standards	UDO Section	SUPPORTING EVIDENCE (Finding of Fact)	Condition #
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Based on the competent material evidence and sworn testimony in the record the Board hereby make an affirmative finding on the specific standards of evaluation and general standards as detailed herein, further finding no evidence has been entered into the record demonstrating the applicant has:

- a. Failed to meet their burden of proof that the project complies with the specific development standards for a telecommunication facility, or
- b. Failed to comply with the general standards detailed within Section 5.3.2 (A) (2) of the UDO.

The Board hereby approved the Special Use Permit subject to compliance with the following conditions:

(CONDITIONS HERE)

- (3) Accessory Structures with any dimension that is 12 feet or greater in height, width, or depth, meeting requirements of Section 6.21(B)(8).

SECTION 2.7: SPECIAL USE PERMITS

2.7.1 Generally

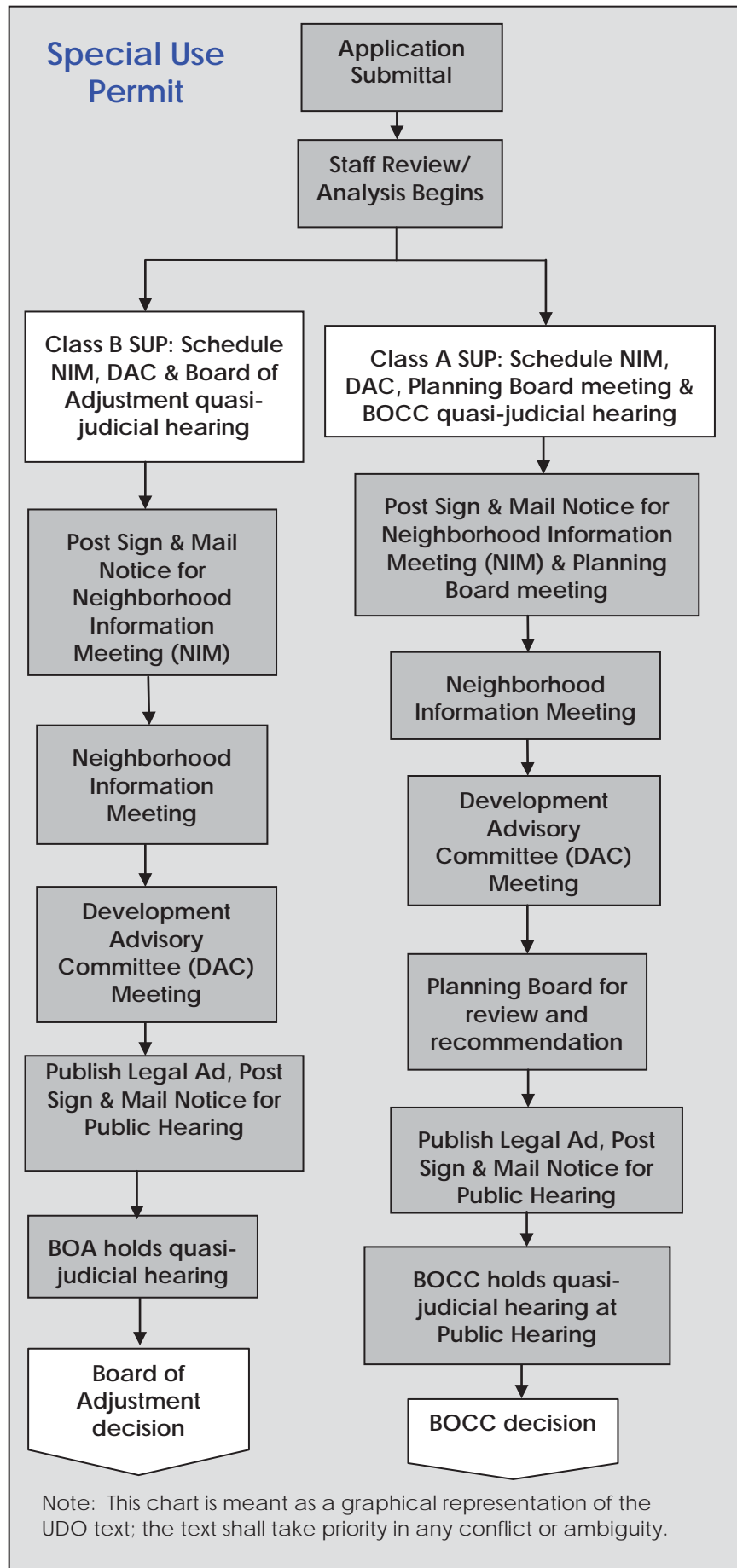
- (A) Any use or development designated by applicable zoning district regulations contained within Article 5 as a special use, or as allowed only pursuant to a special use permit (either Class A or Class B), may be established in that district only after the use or development is authorized by a validly issued and recorded special use permit.
- (B) This section sets forth required review and approval procedures for submittal, review, and approval of applications for special use permit.
- (C) A special use permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the terms and conditions of the special use permit.
- (D) A special use permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the terms and conditions of approval.
- (E) Issuance of a special use permit does not relieve the holder of the special use permit of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.

2.7.2 Review and Approval Flow Chart

The review and approval process for Special Use Permits is shown in the procedure's flowchart.

2.7.3 Application Requirements

- (A) Applications for a Special Use shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.
- (B) Applications shall include:
 - (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.
 - (2) The name(s) and address(es) of the owner(s) of the property involved.
 - (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use (See Articles 5 and 6).
 - (4) For Class A Special Uses 26 copies of the site plan, and for Class B Special Uses 10 copies of the site plan, prepared by a registered North Carolina land surveyor, landscape architect, architect, or engineer, which shall contain the information listed in Section 2.5.
 - (5) If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.



- (6) A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.
- (7) Elevations of all structures proposed to be used in the development.
- (8) For Class A Special Uses 26 copies and for Class B Special Uses 10 copies of the Environmental Assessment and/or Environmental Impact Statement, if required by Section 6.16.
- (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.
- (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.
- (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum).

2.7.4 Staff Review

- (A) The Planning Director shall cause an analysis to be made of the application by qualified representatives of the County and other agencies or officials as appropriate.
 - (1) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
 - (a) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
 - (b) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.
- (B) The Planning Director shall submit the analysis to the Board of County Commissioners and the Planning Board, in the case of Class A Special Uses, or the Board of Adjustment, in the case of Class B Special Uses.
- (C) The appropriate Board reviewing the application shall receive and enter the analysis into evidence during the public hearing. The analysis shall be subject to examination by all interested parties and the Planning Director shall be subject to cross-examination regarding the analysis.

2.7.5 Neighborhood Information Meeting

- (A) Before a Public Hearing may be held for a Special Use the applicant is required to schedule a minimum of one neighborhood information meeting. The purpose of the meeting is to obtain surrounding property owner input and comments on the proposed development project and allow staff an opportunity to explain the review process associated with the request.
- (B) The applicant shall obtain property owner mailing address information from the Orange County Planning Department, which shall utilize Orange County Land Records data, and shall mail notices of the meeting date and time via first class mail to each property owner within one thousand feet of the property for which a Special Use has been requested.
- (C) The applicant shall mail notice of the Neighborhood Information Meeting a minimum of 14 days prior to the date of the meeting.
- (D) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.

- (E) The meeting shall be held a minimum of:
 - (1) 14 days prior to the date of the Planning Board meeting where the application is scheduled for review (Class A Special Use Permit applications).
 - (2) 45 days prior to the date of the Public Hearing (Class B Special Use Permit applications).
- (F) Neighborhood information meetings for telecommunication facilities shall be held in accordance with the provisions of Section 5.10.8 (B) (2).

2.7.6 Notice Requirements for Class A Special Use Permits

- (A) The Planning Director shall give notice of the date, time and place of the Planning Board meeting at which the Planning Board is scheduled to review a Special Use Permit application.
 - (1) Written notice shall be sent by first class mail to all adjacent property owners not less than ten days before the Planning Board meeting date. Adjacent property owners are those whose property lies within one thousand feet of the affected property and whose names and addresses are currently listed in the Orange County tax records. The outside of the envelope or postcard shall be marked "Notice of Planning Board Meeting."
 - (2) The Planning Director shall post on the affected property a notice of the Planning Board meeting at least ten days prior to the date of said meeting.
 - (3) Notices may be combined with notice of the Neighborhood Information Meeting required in Section 2.7.5.
- (B) The Planning Director shall give notice of the date, time and place of the public hearing to be held to receive evidence in the form of testimony and exhibits pertaining to the application for a Special Use.
 - (1) Written notice shall be sent by first class mail to all adjacent property owners at least ten days but not more than 25 days before the hearing date. Adjacent property owners are those whose property lies within one thousand feet of the affected property and whose names and addresses are currently listed in the Orange County tax records. The outside of the envelope or postcard shall be marked "Notice of Public Hearing."
 - (2) The Planning Director shall post on the affected property a notice of the public hearing at least ten days but not more than 25 days prior to the date of said hearing.
 - (3) Notice of the public hearing shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days nor more than 25 days prior to the date of the hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

2.7.7 Notice Requirements for Class B Special Use Permits

Notice Requirements for Class B Special Use Permits shall follow the procedures in Section 2.12.6.

2.7.8 Nature of Proceedings

- (A) The review of Special Use Permit applications shall be conducted during a public hearing by the decision-making board.
- (B) The review of a Special Use Permit application is a quasi-judicial process, where the Board responsible for rendering a decision acts much like a panel of judges. The Board

hears factual evidence and sworn testimony presented at an evidentiary hearing, and then makes findings of fact supported by competent, substantial, and material evidence.

- (C) The chair or presiding officer of the hearing shall swear all parties intending to present evidence or testimony during the hearing.
- (D) The chair or presiding officer may take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include:
 - (1) Barring the presentation of obvious hearsay evidence,
 - (2) Barring the presentation of non-expert opinion,
 - (3) Interrupting digressions into immaterial testimony,
 - (4) Interrupting repetitive testimony,
 - (5) Reasonably limiting the time allotted each witness or cross-examination,
 - (6) Providing for the selection of spokespersons to represent groups of persons with common interests,
 - (7) Interrupting personal attacks, and/or
 - (8) Ordering an end to disorderly conduct.
- (E) Where the Board finds compliance with the general standards, specific rules governing the specific use, and that the use complies with all required regulations and standards, the application must be approved unless the Board shall also find, in some specific manner, that:
 - (1) the use will not maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
- (F) Those opposing approval of the application on the grounds that the use will not promote the public health, safety and general welfare shall have the burden of establishing, by competent material and substantial evidence, the specific manner in which the proposed use does not satisfy the requirements for approval of the application for a Special Use.

2.7.9 Review and Decision

- (A) For Class A Special Use Permits, the following shall apply:
 - (1) All applications shall be referred to the Planning Board for review and recommendation after the Neighborhood Information Meeting but prior to the public hearing.
 - (2) The Planning Board shall make a recommendation and proposed findings of fact on the application, including the findings required in Section 5.3.2 of this Ordinance. The Planning Board's action on an application shall be one of the following:
 - (a) Recommend approval based on proposed findings of fact,
 - (b) Recommend denial based on proposed findings of fact,
 - (c) Recommend approval based on proposed findings of fact but with specified conditions.
 - (3) Should the Planning Board fail to make a recommendation prior to the public hearing, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.
 - (4) The Board of County Commissioners shall review the application during a Public Hearing.

- (5) All evidence shall be submitted during the public hearing. If additional evidence is requested by the Board of County Commissioners during a hearing which must be submitted at a later date, the hearing shall be continued to a date/time certain in order to receive the additional evidence.
 - (6) After closing the public hearing, the Board of County Commissioners shall do one of the following:
 - (a) Defer action to a later Board of County Commissioners meeting date, or
 - (b) Act upon the application.
 - (7) Board of County Commissioner action on the application shall include making appropriate findings of fact pursuant to Section 2.7.11, stating whether the board concludes each of the applicable standards have been met and one of the following:
 - (a) Approval;
 - (b) Approval but with specified conditions as provided in Section 2.7.12; or
 - (c) Denial.
- (B) For Class B Special Use Permits, the following shall apply:
- (1) The Board of Adjustment shall review the application during a regularly scheduled public hearing.
 - (2) The Board of Adjustment shall conduct the hearing in accordance within the provisions detailed in this Section as well as those contained within Section 2.12.
 - (3) After closing the public hearing, the Board of Adjustment shall take action upon the application. This action shall include making appropriate findings of fact pursuant to Section 2.7.11, stating whether the board concludes each of the applicable standards have been met and one of the following:
 - (a) Approval;
 - (b) Approval but with specified conditions as provided in Section 2.7.12; or
 - (c) Denial.

2.7.10 Standards of Evaluation

The following specific standards shall be used in deciding on an application:

- (A) The project meets all applicable design standards and other requirements of this Ordinance.
- (B) The development can reasonably be completed within the vesting period requested, if any.
- (C) Where vesting in excess of two years is requested, the project is located in an area where current issues under study do not involve potential amendments to the Comprehensive Plan and/or this Ordinance.

2.7.11 Required Findings

- (A) A resolution or motion to approve the application must include the findings of fact and conclusions of law that support the decision. Any proposed conditions of approval must also be included in the resolution or motion to approve the application.
- (B) A resolution or motion to deny the application must state findings of fact and conclusions of law that support the decision.
- (C) If a resolution or motion to approve the application fails, the application is deemed denied. Those members voting against the resolution or motion must state which of the

conclusions of law they could not reach as well as findings of fact on which their inability to reach the conclusions is based.

2.7.12 Conditions of Approval

- (A) The Board of County Commissioners or the Board of Adjustment, as appropriate, may impose such reasonable conditions upon approval of a Special Use as will afford protection of the public health, safety and general welfare, ensure that substantial justice is done, and equitable treatment provided.
- (B) Conditions shall run with the land and use, and shall be binding on the original applicant(s) as well as all successors, assigns and heirs.
- (C) The Special Use Permit shall include a statement that if any condition of a Special Use Permit shall be held invalid or void, then the permit itself shall be void and of no effect.
- (D) It shall be stated in the Special Use Permit that the Permit shall automatically expire within 12 months of the date of approval if the use has not commenced or construction has not commenced or proceeded unless a timely application for extension of this time limit is approved by the Board of County Commissioners as provided in Section 2.7.13.

2.7.13 Notification of Board Action

- (A) The Planning Director shall send a notice of the relevant Board's action on the application by certified mail to the applicant. A copy of the decision shall be filed in the Planning Department within five business days of the relevant Board's action.
- (B) The Planning Director, in the case of approval or approval with conditions, shall issue the necessary permit in accord with the Board's action.
- (C) The Planning Director, but not a designee, shall certify that the Special Use Permit with any imposed conditions is as approved by the Board of County Commissioners or Board of Adjustment, as appropriate, with a report provided to the County Manager.
- (D) Once the Special Use Permit has been certified, the applicant shall record the permit with the Orange County Register of Deeds in a format prepared by the Planning Director. Failure to do so within 90 days from certification shall invalidate the Special Use Permit.

2.7.14 Time Limits and Extensions

- (A) If a request is received before the Special Use permit expires, the Board of County Commissioners, for good cause shown, may extend the expiration deadline six months upon the favorable recommendation of the Planning Board.
- (B) The application for an extension request shall be submitted a minimum of six months prior to the expiration of the Special Use Permit.
- (C) No changes shall be made to the terms and/or conditions of approval.
- (D) Only one approval of a time extension is permitted, and it shall be based on evidence presented by the applicant showing that permits have been pursued in a timely manner, and that delays have resulted from factors beyond the control of the applicant.
- (E) For developments which require approval of a Special Use Permit, the applicant may request that the Special Use Permit be vested as a Site Plan for a period of not less than two nor more than five years. For vesting purposes, Site Plans and Preliminary Plats may also be approved as a Special Use Permit at the request of the applicant. See Section 2.5 for information regarding site plans.

2.7.15 Changes to Approved Plans

- (A) The Planning Director is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the approving Board, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Board having jurisdiction.
- (B) The following criteria shall constitute a modification:
- (1) Any change in a condition imposed during the approval of a special use permit.
 - (2) Any change in use or enlargement of approved use.
 - (3) Any increase in intensity of use. An increase in intensity of use shall be considered to be an increase in usable floor area and/or an increase in the number of dwelling or lodging units.
 - (4) Structural alterations which significantly affects the basic size, form, style, ornamentation, and/or character of the building as shown on the approved site plan or described in the applicant's narrative.
 - (5) Substantial change in the amount and/or location of open space, recreation facilities or landscape screening.
 - (6) Any increase in the size or number of approved signs.
 - (7) Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved.
 - (8) Substantial changes in pedestrian and/or vehicular access or circulation.
 - (9) Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval.
 - (10) Any change in the location or extent of street and utility improvements or rights-of-way, including water, sewer and storm drainage facilities, which would provide a different level of service.
 - (11) For telecommunication facilities, a modification shall also include the following:
 - (a) An increase in the existing vertical height of the structure by more than:
 - (i) 10% in the height of the tower, or
 - (ii) The height of 1 additional antenna with separation from the nearest existing antenna not to exceed 20 feet
 - (b) A substantial change to the physical dimensions of the wireless support structure which alters facts or conditions relied upon by the County when granting the original permit. It shall be the County's burden to demonstrate that such a scenario constitutes a substantial change to the physical dimensions of the wireless support structure.
 - (c) The addition of an appurtenance to the body of the telecommunication facility that protrudes horizontally from the edge of the wireless support structure the greater of:
 - (i) More than 20 feet or
 - (ii) More than the width of the wireless support structure at the level of the appurtenance.

Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.
 - (d) Increasing the square footage of the existing equipment compound by more than 2,500 square feet

- (C) The Planning Director shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for approval of the Special Use. The determination shall be based upon the request of the applicant, the review of the record of the approval of the original request and the Planning Director's findings under the criteria of subsection (B) above.
- (D) The Planning Director shall, if it is determined that the proposed action is a minor change, state the findings in writing to the applicant. The applicant shall file an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning Director shall file the amended site plan or written statement with the approved site plan.
- (E) If it is determined that the proposed action is a modification, the Planning Director shall require the applicant to submit a request for modification of the approved special use permit. The following procedures shall be adhered to in the case of a modification:
- (1) The applicant shall provide an amended site plan and written narrative outlining the specific changes requested.
 - (2) The Planning Director shall submit the request to the Board that approved the original application.
 - (3) The Board shall set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a modification of an approved special use permit shall be held in conformity with the relevant public notification requirements contained in this Article.
 - (4) The Board may approve, approve with conditions, or deny the application for a modification.
 - (5) The Planning Director shall file the Board's action in the Planning Department as an amendment request to the original application and shall notify the applicant of the Board's action.

SECTION 2.8: ZONING ATLAS AND UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS

2.8.1 Review and Approval Flow Chart

The review and approval process for a Zoning Atlas and Unified Development Ordinance Amendment is shown in the procedure's flowchart.

2.8.2 Amendment Initiation

- (A) An amendment to this Ordinance or the Zoning Atlas may be initiated by:
- (1) The Board of County Commissioners on its own motion;
 - (2) The Planning Board;
 - (3) Application, by any person or agency, or
 - (4) The Planning Director.
- (B) If a request for consideration of an amendment proposal is submitted directly to the Board of County Commissioners, said Board may decline to consider the request or may refer the amendment proposal to the Planning Director for preparation of an amendment application.
- (C) Once initiated, all amendments shall be referred to the Planning Board.

2.8.3 Contents of Application

Applications shall contain the following:

- (A) For amendments to the Zoning Atlas:



SPECIAL USE PERMIT FACT SHEET

The purpose of this fact sheet is to provide a breakdown of Orange County's Special Use Permit submittal and review process.

The information contained herein provides an explanation on the nature of the permit proceedings, the presentation of evidence, burden of proof, what constitutes testimony and who can present evidence, and your rights with respect to challenging a decision to either approve or reject a SUP application.

1. *What is a Special Use Permit?*

A Special Use Permit (SUP) is a permit allowing for the establishment of certain uses, in certain districts, that are considered worthy of additional scrutiny in their proposed location. Such uses typically require special review for design, location, and impact on surrounding properties.

Orange County has 2 different categories of SUP, specifically:

- i. **Class A** reviewed and acted upon by the Board of County Commissioners (BOCC), with a recommendation from the Planning Board, and
- ii. **Class B** reviewed and acted upon by the Orange County Board of Adjustment.

2. *What is considered a 'Special Use'?*

A SUP is required for those specific land uses identified within the Orange County Unified Development Ordinance (UDO) Table of Permitted Uses contained within Section 5.2.

These uses are identified in the UDO's Table of Permitted Uses with an 'A' for Class A SUP and a 'B' for a Class B SUP. Some uses may be permissible in certain districts without restriction (referred to as "uses by right"), but require the SUP in districts where their impact calls for special consideration. Applicants are entitled to be granted a SUP if they can show that specific standards would be met.

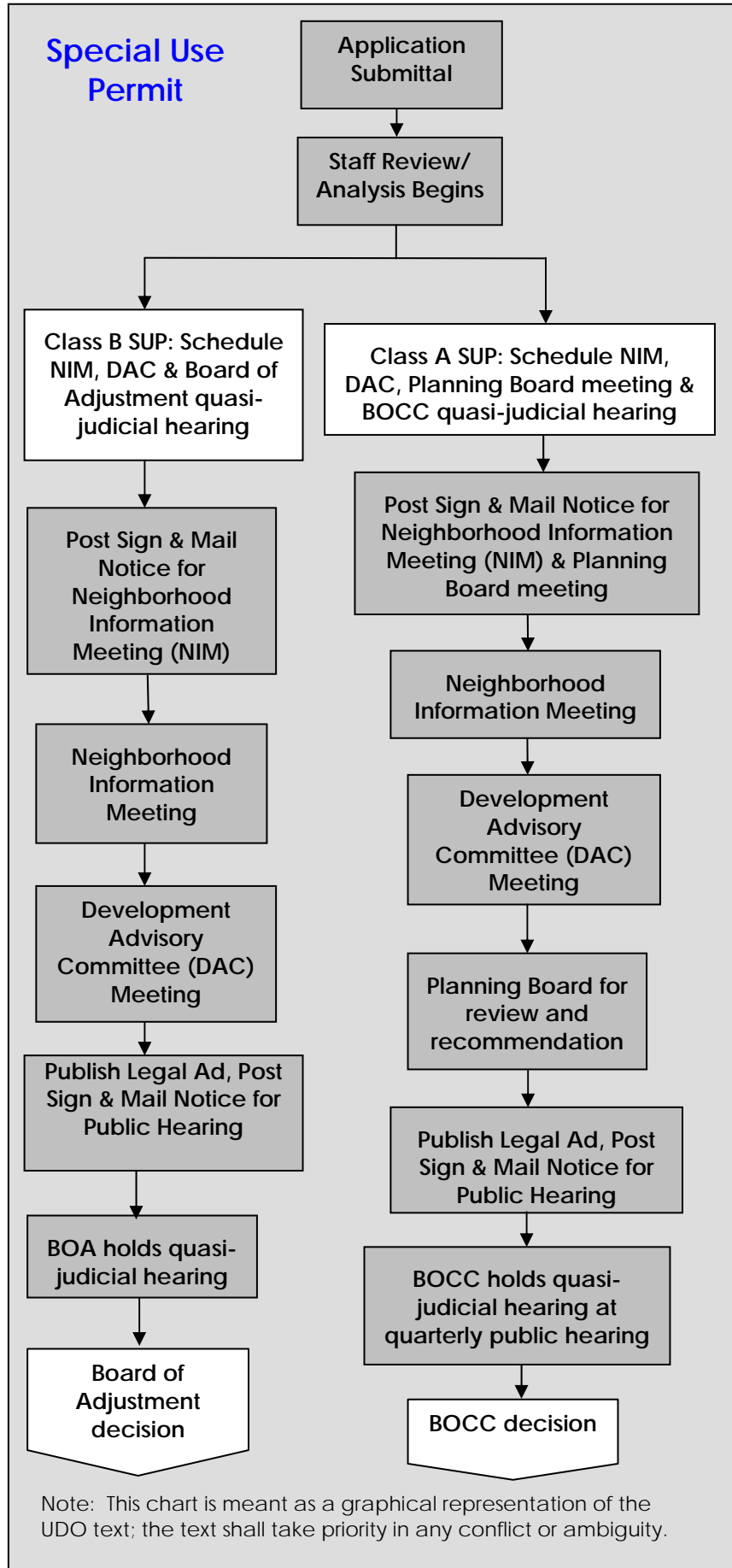
3. *When are such applications reviewed?*

Review of a SUP application occurs during a previously scheduled and advertised public hearings held by either the BOCC or the Board of Adjustment.

The review of an application is carried out in a quasi-judicial process.

The typical cadence associated with the review of a SUP is broken down in Section 2.7 of the UDO and can be summarized using the following flow chart:

Special Use Permit



Note: This chart is meant as a graphical representation of the UDO text; the text shall take priority in any conflict or ambiguity.

4. *What does quasi-judicial process mean?*

Quasi-judicial decisions arise in a variety of local government settings.

During a quasi-judicial hearing, the Board (i.e. BOCC or Board of Adjustment) responsible for rendering a decision acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at the public hearing and then makes a determination on whether the permit can be issued based on the competent, substantial, and material evidence presented.

Put differently a quasi-judicial decision is one that requires the board hearing the matter to find facts and make decisions by applying those facts to the standards in the Unified Development Ordinance.

5. *Who may speak or present evidence at the public hearing?*

Both individual applicants and those individuals supporting, or opposed to, the application are encouraged to attend. Individuals may represent themselves or be represented by an attorney and they may have expert witnesses testify for them.

The cost for attorneys or expert witnesses is borne by the individual seeking counsel or expert testimony, not the County. The County will not pay for, or reimburse, expenses incurred by an individual in their quest to support or oppose a SUP application.

While not required by State or County regulations, all parties with an interest in a SUP application are strongly advised to have an attorney represent them.

Engineers, architects, real estate agents, planners and other non-attorneys may only appear as expert witnesses; they may not represent an applicant or those opposed to an application.

Only those with standing may speak or present evidence.

6. *What are the responsibilities of the applicant?*

The applicant bears the ultimate responsibility for producing and submitting competent, substantial, and material evidence for the body reviewing the application to conclude the proposal complies with applicable County regulations.

If they fail to submit evidence demonstrating compliance, the request is denied.

If, however, the applicant proves they comply, and there is insufficient evidence submitted to the board hearing the case demonstrating they do not comply, the applicant is entitled to have the application approved.

7. *What standards must be met by the applicant?*

All applicants must show compliance with the General Standards for all SUPs, as detailed within Section 5.3.2 of the UDO, and any specific development standards associated within the proposed use.

The General Standards, as contained in Section 5.3.2, read as follows:

(a) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;

(b) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and

(c) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the

physical development of the County as embodied in these regulations or in the Comprehensive Plan or portion thereof, adopted by the Board of County Commissioners

8. ***How are decisions made?***

Members of the board rendering the decision must make their decision solely on the competent, material and substantial evidence presented at the hearing, both for and against an application.

Members cannot consider information obtained through independent research or undisclosed *ex parte* communications, meaning members cannot have private discussions with individuals who support or object to a specific application.

9. ***What exactly is ex-parte communication and why is it not allowed?***

Persons affected by a decision have the legal right to hear all of the information presented to members of a board who will be rendering a decision on an SUP application, specifically they have a right to know all of the “facts” being considered.

Therefore members of the decision-making body are not allowed to discuss the case or gather evidence outside of the hearing (what the courts term *ex parte* communication). Only facts presented to the full board at the hearing may be considered.

This is an important point to remember when such applications are being reviewed. Members of the board rendering the decision are prohibited from discussing the matter or receiving comment on a proposal.

These members are not trying to be rude or unsympathetic to your concerns. They are prohibited from engaging in the conversation in the first place as they are required to guarantee an impartial hearing where the ‘facts’ are weighed as they are presented as to whether or not an application should be granted.

10. ***You previously indicated decisions are based on evidence. Does this mean those presenting evidence at a SUP hearing have to be under oath?***

In a word, yes. All testimony, including from County staff, offered during the public hearing where a SUP is reviewed must be under oath.

All persons wishing to speak will be given a reasonable time in which to be heard, however groups are encouraged to select a spokesperson to speak for the group in order to avoid repetitive testimony.

11. ***Can people just speak to offer their opinion on the application?***

Inflammatory, irrelevant, repetitive and incompetent testimony and hearsay is not permitted and the chairman of the board hearing the matter has the right to limit and restrict such comments during the public hearing.

For more information please refer to Section 2.7.7 (D) of the UDO.

12. ***What constitutes ‘competent, substantial, and material evidence’ allowing for the approval or a denial of a SUP?***

Breaking down what constitutes evidence can best be summarized as follows:

- i. **Competent evidence:** legally admissible under the rules of evidence unless admitted without objection, or appears to be sufficiently trustworthy and is admitted under such circumstances that it is reasonable for the decision-making body to rely upon it. Evidence that can be subjected to cross-examination, inspection, explanation and rebuttal (i.e. expert testimony).

For example a realtor who has professional experience and accreditation can offer an opinion if a specific project will or will not impact the value of adjacent property. An individual with no background in the field cannot offer a ‘competent’ opinion on the

subject. In this case it would not be considered as ‘competent’ evidence and would be inadmissible.

- ii. Substantial evidence: evidence that which a ‘reasonable mind’ would regard as sufficiently supporting a specific result.

Would this persuade the average person to make a certain conclusion? Does it do more than speculate?

- iii. Material evidence: evidence that is relevant to the issue being considered.

For example if a board is reviewing an application for a kennel (i.e. a place where dogs/cats are housed and cared for a period of time) an individual who is opposed may submit documentation denoting noise complaints from other kennels throughout Orange County. This could be construed as ‘material evidence’.

Documentation denoting animals have died in kennels throughout the county and, as a result, this specific application should be denied is not relevant to the case at hand as it has no specific relationship to what is being proposed. This would be deemed immaterial evidence and would not be admissible.

As a general rule, anyone with knowledgeable information (i.e. relevant) to the case may provide factual information, but only experts may provide opinion testimony.

Even expert testimony must be competent (i.e. the expert has qualifications relevant to the issue) and material before the decision-making board can rely on it.

Hearsay evidence is testimony that the witness does not know of his or her own personal knowledge, including that which someone else told the witness and the use or introduction of signed petitions and letters.

The board may only hear testimony that focuses on the applicable standards and criteria established in the UDO. Unless they are a qualified expert, witnesses are not competent to testify about the impact of a proposed land use on the value of nearby property, the danger to public safety resulting from increases in traffic or other matters that require special training or expertise like the level of noise that will be generated.

13. *Can conditions be imposed on a SUP?*

Generally, the board hearing the application may attach conditions to the approval of an SUP as it relates to compliance with applicable standards. For example, a condition may require the applicant to increase the size of a required setback or land use buffer in order to ensure the project complies with that specific standard as detailed within the UDO. The Board cannot impose conditions addressing an issue not related to an existing standard such as establishing hours of operation, color of buildings, etc.

Conditions cannot require the applicant to take action with regard to a piece of property that is not a part of the application being considered, and conditions cannot require the alteration of a special use permit previously issued to a third party.

14. *Is there a record of the proceedings?*

Complete records must be kept of the hearings. Detailed minutes must be kept noting the identity of witnesses and giving a complete summary of their testimony. Any exhibits presented are retained by the board and become a part of the file on that case. An audio recording of the hearing is also made.

15. *How are parties notified of the decision?*

The board rendering a decision on the application is required to make a formal decision on the application (i.e. approve or deny) in writing and shall be based on the determination of facts and their application to the specific standards for the particular use and the general standards contained in the

UDO. This includes providing specific details on the board's conclusions on each applicable standard for a given SUP. Even if the application is denied, there is an obligation to make a detailed finding identifying the evidence utilized to deny the application.

The written decision must be signed and becomes effective upon filing with the Planning Department. A copy of the written decision must be delivered to the applicant, property owner, and others as required by State law.

16. Are decisions on SUP applications subject to further review?

Yes. Decisions of the BOCC or Board of Adjustment on a SUP application are subject to by the Superior Court. Appeal applications must be filed within 30 days with the court from the date the decision is made available. Please refer to NCGS 160A-393 and Section 2.12.5 (A) of the UDO for additional information.