



The purpose of this guide is to provide information for quasi-judicial land development approvals/decisions (e.g. Special Use Permit) and quasi-judicial proceedings (Evidentiary Hearings).

1. *What is a Special Use Permit?*

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

2. *What is considered a ‘Special Use’?*

A SUP is required for those specific land uses identified within the Guilford County Unified Development Ordinance (UDO) Table of Permitted Uses 4-3-1 identified with an ‘S’. Some uses may be permissible in certain zoning 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. *What does quasi-judicial process mean?*

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

During a quasi-judicial hearing, the Planning Board is responsible for rendering a decision and acts much like a panel of judges. The Planning Board hears factual evidence and sworn testimony presented at the 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 Planning Board to find facts and make decisions by applying those facts to the standards in the Unified Development Ordinance. *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.

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

Those with standing may speak or present evidence.

4. **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 Planning Board hearing the case demonstrating they do not comply, the applicant is entitled to have the application approved.

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

All applicants must show compliance with the General Standards for all SUPs, as detailed within **Article 3, Section 3.5(Q). Special Use Permits** of the UDO and demonstrating that the review factors listed in Section 3.5(Q).g. of the UDO have been adequately addressed within the proposed use.

- i. The proposed use is represented by an "S" in the column for the district in which it is located in Article 4 – Zoning Districts (Table of Permitted Uses).
- ii. That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted.
- iii. That the use meets all required conditions and specifications.
- iv. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
- v. That 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 in general conformity with the plan of development of the Jurisdiction and its environs.

6. **How are decisions made?**

For Special Use Permits, a majority vote of the members shall be necessary.

Members of the Planning 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 should not engage in *ex parte* communications, meaning members cannot have private discussions with individuals who support or object to a specific application.

7. **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 the Planning Board who will be rendering a decision on a 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 outside of the hearing (what the courts term *ex parte* communication). Only facts presented to the full Planning Board at the hearing may be considered.

This is an important point to remember when such applications are being reviewed. Members of the Planning Board rendering the decision are prohibited from discussing the matter or receiving comment(s) on a proposal which helps guarantee an impartial hearing.

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

All testimony, including from County staff, offered during the evidentiary 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.

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

The chairman of the Planning Board has the right to limit and restrict inflammatory, irrelevant, repetitive and incompetent testimony and hearsay comments during the evidentiary hearing.

10. *What is an example of competent evidence?*

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.

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.

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

Generally, the Planning Board may attach conditions to the approval of a 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.

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

The Planning 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 Planning Board's conclusions associated with the Planning Board's Findings of Fact 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 & Development Department. A copy of the written decision must be delivered to the applicant, property owner, and others as required by State law. For Guilford County, the SUP then is recorded in the Register of Deeds.

14. *Are decisions on SUP applications subject to further review?*

Yes. Decisions on a SUP application are subject to review by Superior Court. Appeal applications must be filed within thirty (30) days with the court from the date the decision is made available. Please refer to NCGS §160D-14-5 statutes of limitations and Section 3.5(C) of the UDO for additional information.