

Basic Questions and Answers for the Proposed Zoning Text Amendment and the Zoning Process Overview

What type of amendment to the County Zoning Ordinance is being proposed to the County Planning Commission?

A text amendment was presented to the County Planning Commission at the March 6, 2013 public hearing. The proposed text amendment to the county zoning code is intended provide commercially zoned businesses and similar establishments with an opportunity to apply for the appropriate zoning that would allow outdoor live musical entertainment.

The proposed amendment to the Comprehensive Zoning Code is intended to add new language to the zoning code and provide a use category that is not currently defined in the comprehensive code. The term *Off Premises or Outdoor Live Entertainment* is proposed as a **Conditional Use** in the C-2 zone and would be available as a **Special Use Permit** in the C-N and C-1 zone. The addition of this term is intended to clarify existing language within the ordinance and offer administrative relief opportunities for certain types of outdoor music and activities.

Following presentation of the proposed text amendment by County staff, and testimony by the President of the Alliance of Sandia Heights Neighborhoods (ASHN) and the President of the Sandia Heights Homeowners Association (SHHA), and questions from the Commissioners, the County Planning Commission (CPC) deferred a decision until the April 3, 2013 Hearing, The CPC requested the County staff revisit and revise the proposed language to address the questions raised by all the parties.

Why is the county proposing this text amendment?

The effort is to create an opportunity for these businesses to have the option to apply for a **Special Use Permit** that would allow outdoor concerts or similar events. The application process will require a public process that allows a range of public comment and technical review.

The addition of this term the zoning code will allow for a consistent and transparent process for businesses to apply for consideration of a live entertainment or other types of amplified sound as a land use outside of their place of business but on the same parcel. The proposed amendment will allow consideration of this use to be located outside of the building foot print but within the property of a particular place of business.

How does the application process work?

Businesses that apply for this use will be required to submit a detailed application including a site plan depicting parking areas, landscaping, as well as the location and scope of the proposed activities. The applicant would also be required to describe the proposed use in detail. After submittal to the Zoning, Building and Planning Department the proposal will be publically advertised and neighborhood associations within the area notified in writing.

After a detailed staff review, the proposal will be presented to the County Planning Commission for consideration. This process will allow the community to participate and testify during the County Planning Commission hearings. The concerns of all parties involved aired in a public forum and the County Planning Commission will then make a decision based on the facts and testimony provided to them.

What exactly is a Special Use Permit?

Special Use Permits (SUP's) are certain uses and activities that are allowed to occur within a zone that does not typically allow them. After a recommendation by the County Planning Commission, SUP's are authorized by the Board of County Commissioners. SUP's create individual privileges for specific properties. These sites are governed by the conditions established with approval and the site development plan.

These permits are not considered a change in the zoning designation of the site or the creation of a "spot zone", but rather, a special set of rules and regulations for the property. Basically, the underlying zoning stays the same, but any activities that occur on the site are required to be in compliance with the SUP conditions and the approved site development plan.

Are there different kinds Special Use Permits?

There are two types of SUP's:

1. Listed Use - these types of permits are for uses listed ONLY in Section 18.B. (numbers 1 thru 31) of the Zoning Ordinance.

Based on the criteria outlined in the Zoning Ordinance, applicants must prove at least one of the following for their request to be approved:

1. There was an error when the existing zone map pattern was created; or
 2. There are changed neighborhood or community conditions that justify the land use change; or
 3. The Special Use Permit would create uses that are more advantageous to the community. The term "more advantageous" means the proposal should be consistent with the Comprehensive Plan or other applicable County Master Plans, even though criterion #1 or #2 may not be applicable to the request.
2. Specific Use – these types of permits are listed throughout the ordinance, but are limited in scope by the underlying zoning designation.

For these types of requests, applicants must prove that the request meets the criteria listed in Resolution 116-86 (see above), as well as:

1. Unique conditions exist that justify the request; and
2. There is substantial support from neighborhood residents (or owners of property) within 200 feet of the site for the proposed use.

It is the burden of the applicant to show that the **Special Use Permit** proposal meets the criteria of Resolution 116-86 and the applicant provide substantial neighborhood support for the request.

What kind of Special Use Permit would the proposed text amendment fall under?

If a property is currently zoned C-N or C-1, the applicant would be applying for a Special Use Permit for a Specific Use. If the property is currently C-2, the applicant would apply for a **Conditional Use Permit**.

What is a Conditional Use Permit?

A Conditional Use Permit is a use of that is allowed in a particular zone but because of the nature of the use, a public hearing in front of a zoning officer is required. In Bernalillo County that Officer is called the **Zoning Administrator**. Conditional use permits are usually justified after a public hearing and a finding that they fit with the goals of the community's master plan and are essential to the public interest. An example of a conditional use may be a nursery school operating in a residential-use only zone or a nursery school on a lot in an area that is zoned for residential use. All decisions of the Zoning Administrator can be conditioned and be appealed to the **County Planning Commission**.

Conditional Use Permit requests must address these criteria:

- The site for the proposed use is adequate in size and shape to accommodate the proposed use, including all yards, open spaces, walls and fences, parking areas, loading and unloading areas, landscaping and other features required by the ordinance.
- The site for the proposed use can be developed in such a manner that excessive traffic congestion and hazards will not be created.
- The proposed use will have no adverse effect on the neighborhood or seriously conflict with the character of the area.

What is the County Planning Commission?

The County Planning Commission (CPC) is a seven member authority created to review development proposals in unincorporated Bernalillo County. Members are appointed by the Board of County Commissioners for three year terms. The CPC hears matters related to proposed zone changes and special use permits, and makes a recommendation based on the presented information to the Board of County Commissioners.

How does the County Planning Commission Operate?

The County Planning Commission/Board meetings are typically held the first Wednesday of every month in the Vincent E. Griego Chambers (basement of the City/County government building) located at One Civic Plaza NW. Please be on time for the hearing. Applicants who are not present when their case is called may have their request deferred or possibly denied.

The public hearing process allows all participants to express their concerns and opinions regarding matters before the Commission/Board. All parties interested in speaking at the hearing are asked to “sign in” on the corresponding attendance sheet. Please be sure to clearly print your name and address, as this information is used to notify you of additional hearings or decisions concerning the relevant request.

Hearings proceed in the following order:

- Presentation of the project and recommendation by county staff;
- Presentation by the project applicant or the designated agent;
- Invitation for project proponents and/or opponents to make a statement;
- Response by the project applicant or agent; and,
- Board/Commission deliberation and action.

How does the County Planning Commission make decisions?

A determination of zoning proposal will be made by the Commission/Board at the hearing. A written copy of the decision will also be mailed to all interested parties. For approved or denied requests, an appeal date will be listed within the notice of decision. Appealed decisions are heard by the Board of County Commissioners (BCC).

For zone change and special use permits, the applications are first heard before the Planning Commission at public hearing. The Commission votes on each application, and that vote is forwarded to the BCC as a recommendation. Approved requests which are not appealed are placed on the BCC’s consent agenda, and are typically heard without public testimony. On the other hand, approved or denied matters that are appealed are placed on the BCC’s public hearing agenda. While the Planning Commission makes a recommendation for action to the BCC, the BCC is the zoning authority who makes the final decision for or against approval of the application.

For appealed matters resulting in decisions of the Zoning Administrator or the County Development Review Authority, the Planning Commission serves as the Board of Adjustment. Determinations of the Board of Adjustment can also be appealed to the BCC, who again, has the authority to make a final decision on the matter.

The Commission/Board may also choose to defer or continue a request in order to obtain additional information, permit staff members to review submitted materials, or allow an applicant to meet with neighbors or surrounding property owners to revise a request.

The CPC’s deferral from the March 6, 2013 hearing to the April 3, 2013 hearing for the proposed text amendment serves as an example of the CPC taking testimony from county staff, surrounding community and neighborhood associations and directing staff to reevaluate and refine the proposed zoning language.

How do individuals, property owners, neighborhood associations or community groups make a statement at the hearing?

- All speakers are asked to “sign in” prior to being heard for a specific request. Typically, the applicant/appellant is allotted 15 minutes to make their case, and each member of the public that has signed in to speak is allowed 2 minutes.
- Begin by stating your name and address for the record, while speaking directly into the microphone.
- Address all testimony to the chairperson. During the hearing, dialogue shall not take place between applicants and opposition. All questions or concerns should be brought to the attention of the Commission/Board and they, in turn, may question the other party, if necessary.
- Please refrain from giving repetitive testimony. The chairperson welcomes comments such as “I agree with the previous speaker” or “I am also very concerned about the overall impact of the proposal” rather than lengthy testimony on an issue that has already been established.
- If you are a member of a group that wishes to voice similar opinions concerning a proposal, it is often more beneficial to elect a spokesperson to testify on behalf of everyone rather than allowing several people to share identical views. Usually, the chairperson will allot additional time for a representative speaking on behalf of several people.
- Hearings begin at 9:00 a.m. and often last throughout the day. The Commission/Board will take necessary breaks and will recess for lunch, as needed. On the day of the hearing, you may contact