



What is a Conditional Use Permit?

This document is provided by the Custer County Environmental Health and Zoning Department to help citizens understand the land use process. If you have further questions, please contact Zoning Administrator at (406) 366-1424 and they will be happy to assist you.

The zoning ordinance identifies certain land uses which do not precisely fit into existing zones, but may be allowed upon approval of a conditional use permit (CUP). A conditional use permit allows the County to consider uses which may be essential or desirable, but which are not allowed as a matter of right within a zoning district, through a public hearing process.

A conditional use permit can provide flexibility within a zoning ordinance. Another traditional purpose of the conditional use permit is to enable a County to control certain uses which could have detrimental effects on the community. Permitting a particular use, subject to certain conditions of approval, may help to make that use more compatible with the neighborhood.

The zoning regulations specifies those uses for which a conditional use permit may be requested, which zones they may be requested in, and the public hearing procedure. These might include community facilities (such as churches, hospitals or schools), public buildings or grounds (such as fire stations or parks), temporary or hard to classify uses, or land uses with potentially significant environmental or other negative impacts (such as hazardous chemicals, excessive noise, extended hours of operation, or certain types of development in a floodplain).

A CUP is not a zone change, but rather a project specific change in the uses allowed on a specific property.

Conditional use permits do not involve the establishment of new codes, regulations, or policies. Instead, a conditional use permit applies the provisions of the zoning ordinance and its standards to the specific circumstances which characterize a proposed land use (Section 3 Application of District Regulations). If a CUP is approved, it will usually require that certain "conditions of approval" be adhered to by the applicant. Alternatively, it may deny uses which do not meet local standards or cannot be made.

compatible with the surrounding neighborhood pending certain conditions of approval.

Criteria for approval of a conditional use

In order to grant any conditional use, the

Zoning Administrator must find, based upon evidence, both factual and supportive, provided by the applicant, that:

- The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this ordinance.
- The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
- Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other ordinance standards, or other reasonable conditions of approval.
- In areas designated as requiring preservation of historic, scenic or cultural resources and attributes, proposed structures will be of a design complimentary to the surrounding area.

How do I prove a case for a conditional use?

If you want to propose a use that is only allowed through a conditional use permit, you must prove that your proposal is a suitable use for the site you have selected, will not generate excessive traffic on the local transportation system, and will not cause undue negative impacts on nearby properties. If there are any potential negative impacts that might be borne by other nearby properties, either real or imagined, you should be prepared to offer a mitigation strategy. If the property is within a historic, scenic or cultural area, you should be prepared to propose development that is generally complimentary to the surrounding area.

If you are requesting a conditional use, make sure that the project is modest, blends in and is in character with the existing neighborhood. You bear the burden of proof to show that these conditions exist, and that approval of a conditional use is justified.

How do I object to a conditional use?

If you oppose (approval of) a CUP request, do some homework first and then attend the public hearing(s) to voice your concerns, clearly stating why and bringing in supporting data. Your testimony must show that the proposal does not meet the approval criteria. If there is strong neighborhood opposition, neighbors may band together to present their common views.

You may challenge a conditional use on a number of reasonable grounds, such as:

- Site is not adequate to support the proposed use.
- Site is poorly related to the local transportation system, and/or the proposal will generate traffic beyond what might be expected for an allowed use in that location.
- The potential negative impacts of the proposal are simply too great, and no mitigation efforts could make the development compatible with the neighborhood.
- The proposal does not preserve the historic, scenic or cultural aspects of the area.

Any argument in opposition should relate its points specifically to the approval criteria. The mere fact that you don't like the proposal does not provide the Board of Adjustment with enough information to say the proposal does not meet the approval criteria. Base any statements you make on facts, not emotion.

Sometimes, Zoning Administrator will advise applicants to meet directly with neighborhood groups prior to the public hearing. Administrator encourages concerned citizens to work with applicants constructively (and vice versa), rather than assuming an adversarial stance right from the start.

Please remember that it is Administrators job to process these applications. He will review the pre-applications for completeness and schedule a public hearing before the Board of Adjustment, if you submit written testimony (for or against a proposal) more than 15 days before the public hearing, it will be included with the staff report to the board members. You may also attend the hearing and voice your support or opposition. If you plan on speaking at the hearing, it is a good idea to bring written materials to submit for the record also.

A CUP is a discretionary act, considered at a public hearing before the Board of Adjustment.

The owners of property near the site are sent advance notice of the date, time, and place of the hearing. Anyone wishing to get more information on the request may contact the Zoning Administrator before the hearing, or attend the hearing.

At the hearing, the applicant will present the application and other pertinent information. The applicant bears the burden of proof to show that the proposal meets the approval criteria.

Members of the public may testify in support of or in opposition to the application. The applicant is entitled to a final rebuttal of all testimony. The commission will then deliberate the application among themselves, and will issue a decision for approval or denial within 15 calendar days of the public hearing along with findings of fact supporting their decision.

Any person or party wishing to appeal the decision of the commission must have either submitted written testimony at or before the hearing, or provided oral testimony at the hearing.

The deadline to submit a pre-application for any matter that must go before the Board of Adjustment is typically 45 days before the hearing date. The Board of Adjustment meets, but only when there is an agenda item. A hearing before the Board of Adjustment must be noticed to neighboring property owners, a minimum of 15 days before the hearing; notice must also appear in the local paper. Staff must have time to evaluate an application to make sure it is complete. Staff must then prepare and mail the notice to property owners. Unfortunately, due to the notice requirements for a public hearing, the timeline is not flexible.

After the hearing, there is an appeal period before the decision becomes final. (Section 11.4 of Zoning Regulations)

Assume a minimum of two months for an application to go from submittal to approval, but some applications may take significantly longer.

Appeal of a Board of Adjustment decision goes to the County Commissioners, who hears the application. The applicant must again justify approval of the application to the Commissioners, and the appellant must specifically address how the applicant has not met the approval criteria.

An application denied by the Board of Adjustment may also be appealed to Commissioners by the applicant

