

**A BILL FOR AN ORDINANCE AMENDING
CHAPTER 16 OF THE FOXFIELD MUNICIPAL CODE
CONCERNING SECTION 16-5-50 SPECIAL REVIEW USE**

WHEREAS, the Board of Trustees desires to amend certain provisions of Chapter 16 of the Town of Foxfield Municipal Code concerning Section 16-5-50 Special Review Use;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF FOXFIELD, COLORADO:

Section 1. Section 16-2-10(c)(3) of the Town of Foxfield Code is hereby repealed and reenacted as follows:

- (3) Special review uses are uses that may be allowed in the zoning district indicated subject to any applicable regulations. Special review uses may be permitted if it can be demonstrated that the location and the site proposed for the use are appropriate, facilitating the use in a manner which supports the purposes of the zone district and which is compatible with the surrounding area. Additional uses which are not listed, but which are consistent with the purpose and objectives of the zone district and are similar in character and level of impacts as identified in the permitted principal and accessory uses for the zone district, may also be permitted subject to review. Special review uses require the issuance of a permit approved by resolution of the Board of Trustees after public hearing.

Section 2. Section 16-2-40 of the Town of Foxfield Code is hereby repealed and reenacted as follows:

Sec. 16-2-40. Listing of permitted uses.

No use shall be allowed in any zone district unless it is specifically enumerated as an allowed principal use or accessory use in the particular zone district or a special review use has been approved. Designations in lists of uses shall be determined as follows:

- (a) Permitted principal uses are uses by right and are permitted anywhere within the zone districts indicated. All principal and accessory uses require a building permit approval.
- (b) Permitted principal uses, other than a single-family dwelling unit, which only require a plot plan, require a site development plan.
- (c) Uses indicated as accessory uses are permitted only if they meet specific criteria contained in this Chapter and can demonstrate that they are clearly accessory to the principal use. No accessory uses are allowed if not associated with a principal use and are not allowed if the principal use has not been established.
- (d) A special review use may be allowed in the district indicated if it can be demonstrated that the location and the site proposed for the use is appropriate, facilitates the use in a manner which support the purposes of the zone district and is compatible with adjacent properties and uses. Special review uses require the issuance of a permit after a public hearing has been held before the Board of Trustees.

- (e) Uses not listed as permitted accessory uses require determination by the Town Planner. The Town Planner will determine if a use not listed in this Article for the district in which the use is proposed is similar in character and impact to those listed. If it is determined by the Town Planner to be a substantially different use, then it will be considered and deemed to be prohibited in that zone district.

Section 3. Section 16-5-40(b) of the Town of Foxfield Code is hereby repealed and reenacted as follows:

(b) Administrative Review.

- (1) Except for special review uses (which require review and approval by the Board of Trustees), site development plans shall be reviewed by the Town Planner within fourteen (14) working days of the submittal of a plan or building permit accompanied by a plan. At the Town Planner's discretion, the site development plan may be reviewed by the Board of Trustees at a regular meeting for their comments. Decisions of the Town Planner and Board of Trustees are final.

Section 4. Section 16-5-80 of the Town of Foxfield Code is hereby repealed and reenacted as follows:

- (4) The expansion of a use not permitted in the zoning district in which it is located shall be subject to the following conditions. Any expansion of a nonconforming use in a conforming structure requires a special review use permit from the Board of Trustees and shall meet the following criteria:
 - a. All expansion of the nonconforming use in a conforming structure shall be confined to and conducted wholly within the structure or portion thereof which is in existence as of the effective date of this Chapter.
 - b. The total cumulative area of all expansions of the nonconforming use occurring after the effective date of this Chapter shall not increase the gross floor area of the nonconforming use above that in existence prior to the effective date of this Chapter, except for existing residential structures expanded within conforming setbacks not resulting in more units than permitted by the zoning district in which such residential use is located.
 - c. All new site improvements necessitated by an expansion shall comply with the development standards of the zoning district in which the use is located or governing the use whichever is more restrictive.

Section 5. Section 16-5-50 is hereby repealed in its entirety and re-enacted as follows:

Sec. 16-5-50. Special review use.

- (a) Intent. The purpose of a special review use is first, to recognize that some uses may or may not be appropriate in a particular district depending upon the circumstances of the individual case; and, second, to allow review of such cases so that the Town is assured that these uses are compatible with their locations and surrounding land uses and will further the purposes of this Chapter. Uses which require a special review use permit are those which may be allowed in the zoning district in which they are listed if it can be demonstrated that the use, in the proposed location, is compatible with the district characteristics, purposes, dimensional regulations and development standards for the zone district in which the use is proposed and the use is compatible with the zoning purposes of the district, the particular site and the surrounding area. Uses stipulated in this Chapter as requiring a special review use permit shall only be allowed with prior issuance of such permit by the Board of Trustees as described below.
- (b) Procedures and Processing for a Special Review Use Permit.

- (1) Who may apply. Both the owner of the property on which the proposed use will be conducted and the operator of the use for which a special review use permit is required or their authorized representatives, shall be party to the application for a special review use permit.
- (2) Process. The application shall be submitted in a letter and shall contain the following minimum information:
 - a. Name, address and telephone number of the property owner and applicant.
 - b. Legal description of the property and street address.
 - c. Lot size, existing zoning and tax schedule number.
 - d. Description of the proposed special review use.
 - e. A plot plan of the property as described in Section 16-5-30 above if the property is a single-family dwelling unit or a site development plan as described in Section 16-5-40 above for all other uses.
 - f. The names and addresses of all adjoining property owners of record.
 - g. Justification as to why the requested special review use should be approved.
- (3) The application shall be signed by the property owner or his duly authorized agent and shall be accompanied by a nonrefundable application fee as determined by resolution of the Board of Trustees to cover costs related to the application.
- (4) An application shall not be considered complete until all required information is submitted.
- (5) Board of Trustees Review.
 - (1) Public hearing and notice. Upon receipt of the completed application, the Town Clerk shall schedule a public hearing on the proposed special use review.
 - (2) Notice of hearing. The petitioner shall cause written notice of the date, time and place of the hearing, in the form prepared by the Town Clerk, to be given to all interested parties in the following manner:
 - a. Publication. Notice shall be published by the Town once in a newspaper of general circulation no later than fifteen (15) days prior to the date of the hearing.
 - b. Mailed notice to adjoining property owners. Notice shall be mailed by the petitioner by first-class mail, postage prepaid, to each adjoining property owner of the property proposed for a special use review, disregarding intervening public streets and alleys, not less than fifteen (15) days before the scheduled date of the hearing.
 - c. Posting. Notice shall be posted on the property proposed for a special use review no later than fifteen (15) days before the hearing. The sign shall be prepared by the Town and posted by the petitioner on a street frontage so that it is weather-protected and legible from a distance of thirty (30) feet.
 - d. Proof of notice. Not later than 12:00 p.m. on the Friday immediately preceding the date scheduled for the public hearing, the petitioner shall file with the Town Clerk affidavits demonstrating timely publication, mailing to adjacent property owners and posting of notice in accordance with the foregoing requirements.
- (c) Transferable. Special review use permits allow a particular use for which it is granted to operate on the specific property listed in the permit in accordance with approved plans. A special review use permit may be transferred to any other person to operate the same use per the same terms of the

permit, with approval by the Town Planner, but may not be transferred to any other property or building.

- (d) Duration. A special review use permit shall remain in full force and effect as long as the use for which the permit is granted continues or for the term specified on the permit.
- (e) Special Review Use Criteria, Conditions and Modifications.
 - (1) No approval of a special review use shall be granted unless the special review use conforms to the minimum development requirements and regulations of the applicable zone district. In reviewing the special review use, the Board of Trustees shall consider the following review criteria, where applicable:
 - a. Is the use consistent with the intent and purpose of this Chapter?
 - b. Is the use consistent with the intent of the zone district in which the applicant intends to locate such use?
 - c. Is the use compatible with other uses in the area? Will the impacts generated by the use be abated through the utilization of mitigation measures, such as increased setbacks, screening or buffering?
 - d. Is the use consistent with the Town's Comprehensive Plan and other approved plans?
 - e. Will the use create any adverse environmental influences on the surrounding area? For example: will the use generate excessive dust, odors, fumes, noise, glare or vibration?
 - f. Will the use generate traffic hazards or congestion in the area? Will existing transportation systems be overburdened by the use? Are ingress and egress points appropriately and safely located?
 - g. Have adequate water, sewer, drainage and other utility facilities been provided?
 - h. Is the physical appearance of the site, including building orientation, scale, architectural treatment, and landscaping, sensitive to other uses in the area?
 - i. Is the use reasonably related to the overall needs of the community?
 - (2) In approving an application for special review use, the Board of Trustees may impose conditions or modifications which it deems reasonably necessary to secure the intent and purpose of this Chapter.
- (f) Abandonment of Right. Approval of a special review use in accordance with this Section shall expire in one (1) year from date of approval unless a plot plan or site development plan has been approved or if the rights and privileges granted thereby have not been exercised or utilized or if construction work is involved, the work has actually not commenced on the premises. If, thereafter, any discontinuance of the exercise of any rights or privileges occurs for a continuous period of one (1) year, the special review use shall be considered abandoned.
- (g) Revocation of Special Review Use Approval.
 - (1) All conditions or modifications imposed by the Board of Trustees shall be maintained in perpetuity with the special review use. If at any time the conditions or modifications are not complied with by the applicant or are found to have been altered in scope, application or design, the use shall be in violation of special review use approval.
 - (2) If and when any use is determined to be in violation of special review use approval, the Town Planner shall notify the applicant in writing of said violation and of a thirty-day period in which to rectify the violation. The notice shall state a time and place after the thirty-day period at which a revocation hearing will be held if the violation is not timely rectified.

- (3) Within thirty (30) days after notification of violation of special review use approval, the applicant shall rectify the violation. Upon completion of any required changes, the applicant shall notify the Town Planner in writing that said changes have been made.
- (4) Failure of the applicant to rectify said violations within thirty (30) days shall be cause for cancellation and revocation of the special review use approved by the Board of Trustees. A revocation hearing shall be conducted by the Board of Trustees prior to any revocation. The revocation of the special review use approval shall require the applicant to vacate the premises of or stop the use authorized by the special review use approval. After revocation, the applicant may reapply for approval of a special review use pursuant to the procedures outlined in this Section.

Section 5. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police powers of the Town of Foxfield, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 7. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 8. This ordinance shall become effective thirty (30) days after final publication.

Adopted as Ordinance No. 02 Series of 2017, by the Board of Trustees of Foxfield, Colorado, and signed and approved by its Mayor or presiding officers this 16th day of February A.D. 2017.

Lisa Jones, Mayor

ATTEST:

Miranda Gallivan, Town Clerk

Town Seal

Corey Y. Hoffmann, Town Attorney
(Approved as to Form)