

**CONDITIONAL USE**  
**For the Sale of Alcoholic Beverages for On-Premise Consumption**  
*INSTRUCTIONS*

**Prior to submitting your application, it is very important for you to make an appointment to discuss the application and any possible alternatives. This will prevent any unnecessary expenditure of funds to third parties (i.e. title company, postage, etc.) in the event it is determined that there is an alternative. No refunds will be given for third party fees. Please call 595-3475 and ask for the Planner who coordinates the Conditional Use cases. Please bring the zoning verification and referral sheet completed by the Building Inspections Department planners.**

For the Conditional Use request to proceed in a timely manner, application forms must be completed and all checklist items submitted prior to the deadline. Incomplete applications and/or those submitted after deadline will not accept staff. Staff cannot draw the site plan, write the letter of request or give legal advise. Fees cannot be waived and are non-refundable regardless of the BOA's decision. *No guarantee is made for approval a conditional use by the Board of Adjustment.*

**NOTE: The Applicant or Agent MUST be present at the meeting and it is the Applicant or Agent's burden to show consistency with all conditional use criteria listed herein.**

**An application is not considered complete until all the following information is received:**

1. A detailed letter of request (dated, signed & notarized), which must include the reason for the Conditional Use and must address the criteria listed on page 7. The criteria are the basis of the Board of Adjustment's ruling and are taken directly from the Escambia County Land Development Code, Ordinance 96-3 as amended. All criteria must be met in order for a Conditional Use to be granted. Do not merely repeat each criterion as stated but answer with the reason(s) why it is met.
2. Completed application form.
3. Attachments listed on the checklist on page 2 (Originals as indicated). If Color copies, please include 15 copies of each document.
4. Completed certification form on page 4. If an agent is handling the request, the owner must sign the application and affidavit authorizing said agent to act in his/her behalf.
5. Completed Affidavit of Owner and Limited Power of Attorney on page 5, if owner is assigning agent to act in his/her behalf.
6. Certified mailings, see page 6.
7. Application fees - \$1500.00

**NOTE: Whenever an applicant would like any County staff member to appear and testify at a hearing, advance notice is required. Both the Department and the individual staff member must be notified in writing 10 days in advance of the hearing.**

## CONDITIONAL USE APPLICATION

### *CHECKLIST*

1. \_\_\_\_\_ Completed application packet
2. \_\_\_\_\_ Proof of Ownership (Copy of Warranty Deed or Copy of Tax Bill)
3. \_\_\_\_\_ Site Plan, Survey and Legal Description
4. \_\_\_\_\_ 15 copies of color documents.
5. \_\_\_\_\_ Letter of Request; must address Conditional Use criteria (Dated, signed and notarized)
6. \_\_\_\_\_ One CD in PDF format to include items 1 through 7 above. (Including any additional evidence submitted)
7. \_\_\_\_\_ Certified mailings
8. \_\_\_\_\_ Conditional Use Fee - \$1500.00
9. \_\_\_\_\_ Copy of citation from Code Enforcement Department (if applicable)

### **PLEASE TAKE THE TIME TO READ THE FOLLOWING INFORMATION REGARDING HEARING PROCEDURES**

Hearings before the Board of Adjustment are quasi-judicial, which are like evidential hearings in a court of law, but less formal. Nonetheless, all public testimony is taken under Oath and everyone testifying before the BOA is subject to cross-examination. All documents and exhibits the BOA considers are entered into evidence and made part of the record of the hearing. The giving of testimony or opinion testimony is limited to experts and closing arguments are limited to the evidence of record. After hearing testimony and arguments for and against the proposed action and before making its decision, the BOA considers relevant testimony, exhibits entered into evidence and applicable law.

All decisions by the BOA are final and appealable. This means that anyone who seeks judicial review of the Board's decision must file an appeal in a court of competent jurisdiction within 30 days of the decision of the BOA. Section 2.04.02 of the Escambia County Land Development Code states that, "Because decisions of the BOA are final, unless overturned by a court of competent jurisdiction, the county may issue development permits for properties in accordance with the decisions of the BOA. However, if a property owner or applicant requests the issuance of any such permit and such permit is issued, the permittee, and not the county, shall bear any risk that such decision may be set aside, the permit may be revoked, or the development may be otherwise enjoined by the reviewing court."

**CONDITIONAL USE  
FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-  
PREMISE CONSUMPTION**

Application Number \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ - \_\_\_\_\_ Fax: (    ) \_\_\_\_\_ - \_\_\_\_\_

**LOCATION OF PROPERTY**

Street Address:

\_\_\_\_\_

Subdivision Name:

\_\_\_\_\_

Property Reference Number: (Can be obtained at the Property Appraiser's Office at 434-2735)

Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ Parcel \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_

**DESCRIPTION OF REQUEST; CITE APPLICABLE L.D.C. SECTION (S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FOR OFFICE USE ONLY:**

Application Number CU-\_\_\_\_\_ Taken by \_\_\_\_\_

Zoning \_\_\_\_\_ Future Land Use \_\_\_\_\_

Board of Adjustment Meeting Date \_\_\_\_\_

Fees Paid \_\_\_\_\_ Receipt # \_\_\_\_\_ Date \_\_\_\_\_

**CERIFICATION AND AUTHORIZATION**

**By my signature, I hereby certify that:**

- 1) I am duly qualified as owner or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to enter upon the property referenced herein at any reasonable time for purposes of site inspection; and

I authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff.

\_\_\_\_\_  
Owner's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent's signature

\_\_\_\_\_  
Date

Name of Agent \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ - \_\_\_\_\_ Fax #: ( ) \_\_\_\_\_ - \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, year of \_\_\_\_\_, by \_\_\_\_\_, who ( ) did ( ) did not take an oath. He/she is ( ) personally known to me, ( ) produced Florida/Other Driver's License, and/or ( ) produced current \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Name of Notary Public Printed Date

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Commission No. (Notary Seal must be affixed)

**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY**

As owner of the property located at \_\_\_\_\_, Pensacola, Florida, Property Reference Number \_\_\_\_\_, I hereby designate \_\_\_\_\_, for the sole purpose of completing this application and making a presentation to the Board of Adjustment to request a Conditional Use.

This Limited Power of Attorney is granted on the \_\_\_\_\_ day of \_\_\_\_\_, the year of \_\_\_\_\_, and is effective until the Board of Adjustment has rendered a decision on this request and any appeal period has expired. The owner reserves the right to rescind this Limited Power of Attorney at any time with a written notarized notice to the Development Services Bureau.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, year of \_\_\_\_\_ by \_\_\_\_\_ who ( ) did ( ) did not take an oath. He/she is ( ) personally known to me, ( ) produced Florida/Other Driver's License, and/or ( ) produced current \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Name of Notary Public Printed      Date

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Commission No. (Notary Seal must be affixed)

# CONDITIONAL USE REQUIREMENTS

## *CERTIFIED MAILINGS*

I FURTHER CERTIFY THAT I AM FULLY AWARE THAT IT IS MY RESPONSIBILITY AS THE APPLICANT AND/OR AGENT TO PROVIDE TO THE DEVELOPMENT SERVICES BUREAU AT MY EXPENSE:

- A. A Certified list of the current property owners within a 500-foot radius of the property that is the subject of the request. **(from a company licensed to do such work, at the applicant's/agent's expense).**
- B. **ADDRESSED AND STAMPED (not metered)** envelopes, with certified mail cards, return receipt requested, and payment receipts, showing the names and addresses of those on the above referenced list. An envelope for the applicant and/or agent should be included. **To be secured at the applicant's/agent's expense.** The return address to be used is:

Development Services Bureau  
1190 W. Leonard Street  
Pensacola, Florida 32501

I AM AWARE THAT PUBLIC HEARING NOTICES FOR THE REQUEST SHALL BE PROVIDED, FOR MAIL-OUT PURPOSES, BY THE DEVELOPMENT SERVICES BUREAU.

\_\_\_\_\_  
Owner's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent's signature

\_\_\_\_\_  
Date

## **CONDITIONAL USE CRITERIA - Sale of Alcoholic Beverages for On-premise Consumption**

The Board of Adjustment (BOA) may approve a conditional use for the sale of alcohol within 1,000 feet radial spacing of a place of worship if it finds that all of the following required applicable conditions exist. Also, for purposes of this section only, a child care or day care facility shall not be treated as an educational facility and the BOA may approve a conditional use the sale of alcoholic beverages for on-premise consumption within 1,000 feet radial spacing of the child care or day care facility if the BOA finds all the following conditions apply:

1. The applicant will suffer undue hardship by the literal application of the Code.
2. The authorization of the conditional use will not impair the adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, the danger of fire, imperil the public safety, unreasonably diminish or impair established property values within the surrounding area or in any other respect impair the health, safety, comfort, or general welfare of the inhabitants of Escambia County.
3. The conditional use will not, in any manner, alter other provisions of this Code or the Comprehensive Plan, except this Code and the plan may be amended in the manner prescribed by law.
4. The subject property is oriented to have the minimum impact on the surrounding properties.
5. Adequate ingress and egress to the subject property and proposed or existing structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, on-site parking and loading, and access in case of fire or catastrophe is addressed. The buffer may be a landscaped natural barrier, a natural barrier or a landscaped or natural barrier supplemented with fencing or other man-made barriers, so long as the function of the buffer and the intent of Policy 7.A.3.7 of the Comprehensive Plan are fulfilled.
6. Any adverse impact such as noise, glare, smoke, odor, or other harmful effects of the proposed establishment on the adjoining properties and properties generally in the district is adequately addressed.
7. The proposed establishment's general compatibility with adjacent properties and other property in the immediate area is adequately addressed.
8. The proposed use is consistent with all other relevant provisions of this Code.
9. The establishment meets the requirements to qualify as a responsible vendor as outlined in F.S. § 561.705, as amended
10. For establishments seeking a conditional use to sell alcohol for off-premises consumption, the establishment meets the requirements for a 3PS (beer, wine, and liquor) license as described in F.S. § 565.02(1)(a), as amended.
11. For establishments seeking a conditional use to sell alcohol for on-premises consumption, the establishment meets the requirements for a state issued alcohol license for on-premises consumption.
12. Before any conditional use is approved or approved with conditions, the BOA shall make written findings, based on competent and substantial evidence, certifying compliance with specific rules governing such individual conditional uses, and stating that satisfactory provisions and/or arrangements have been made concerning the applicable criteria above.

**ALL OF THE ABOVE REFERENCED CRITERIA MUST BE ADDRESSED IN THE APPLICANT'S LETTER OF REQUEST.**

*GUIDELINES REGARDING TESTIMONY  
BEFORE THE ESCAMBIA COUNTY BOARD OF ADJUSTMENT*

The Escambia County Board of County Commissioners adopted Resolution No. R96-34 (3-28-96), creating rules of procedure in accordance with Florida Law following the Florida Supreme Court's decision in *Brevard County v. Snyder*, 627 So.2d 649 (Fla. 1993). A copy of Resolution #R96-34 can be obtained from the Clerk to the Board of County Commissioners. The following procedural rules govern testimony in a quasi-judicial proceeding:

5.4 Laymen and Expert Witnesses: The following rules of evidence shall serve as a Board's guideline when determining how much weight should be afforded the testimony received in a Quasi-Judicial proceeding:

- (a) General: The Board shall not consider the testimony of a witness unless:
  - (1) The witness has personal knowledge of the facts to which the witness will testify, and
  - (2) In the case of testimony consisting of opinions or inferences, the testimony is qualified under paragraph 5.4(b) or (c).
- (b) Layman Witnesses: Testimony of a witness other than an Expert witness is qualified under paragraph (b) only if:
  - (1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he perceived to the Board without testifying on the form of opinions or inferences; and
  - (2) The opinions and inferences do not require a special knowledge, skill, experience or training.
- (c) Expert Witnesses: Testimony of an Expert witness is qualified under this paragraph (c) only if the Board determines:
  - (1) Whether the subject matter is proper for Expert testimony because scientific, technical, or other specialized skill will help the Board understand the evidence being presented, or help to establish a fact in issue; and
  - (2) Whether the witness is adequately qualified to express an opinion on the matter.
- (d) Qualifying a Witness as an Expert: For purposes of paragraph (c) of this section, a witness is qualified as an Expert Witness only if the Board determines so in accordance with the following procedure:
  - (1) An Interested Party has the burden of requesting, and this request shall be made prior to proffering the testimony, the Board to make a determination the witness is an Expert;
  - (2) By majority vote, the Board will determine whether the witness satisfies the criteria in section 5.4(c), supra;
  - (3) If the Board determines the witness is qualified to testify as an Expert, the witness will testify and be cross-examined for the record and the Board may give weight and consideration to the Expert's opinion; or
  - (4) If the Board determines that the witness does not qualify to testify as an Expert, or if an Interested Party fails to request the Board to determine the qualifications of the Expert in accordance with this paragraph, the witness may still testify and be cross-examines for the record, however, the Board shall not give any weight or consideration to the opinion of the witness.

5.5 Qualifications of County Staff: County Staff members testifying before a Board in a Quasi-Judicial proceeding must:

- (a) State for the record their qualifications, or
- (b) Place on record a resume listing their qualifications.