

Division 3 Special Uses

Sec. 44-635. Intent.

- (a) The intent of the board of commissioners is to create, and from time to time amend, a list of special uses within the table of permitted and permissible uses which, because of their inherent nature, extent and external effects, require special care in the control of their location and methods of operation.
- (b) In addition to the listing of such uses, the board of commissioners intends that the general standards, established in Sec. 44-328, and the more specific requirements established in this Article shall be used by the board of adjustment when considering applications for the approval of special uses.

Sec. 44-636. Contents of application.

The application for approval of a special use must meet the requirements of Sec. 44-328 of this Chapter.

Sec. 44-637. Standards for individual special uses.

All special uses must meet the landscaping buffers, screening, signage and parking regulations in Article V or the specific standards for the individual special use, if noted. Access to and from the special use site must comply with NCDOT standards for a driveway connection permit. The following sections contain standards applicable to each individual special use.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-328. Special use permits.

- (a) *Applicability.* This section applies to any use that is designated as a special use in Table 44-403-1.
- (b) *Application.* The application for a special use permit, along with a detailed site plan, must be submitted to the planning director and must include the information required by the procedures manual.
- (c) *Completeness review.* See Sec. 44 - 303.
- (d) *Public hearing required.* A public hearing shall be required which follows the quasi-judicial process in Sec. 44-304.
- (e) *Decision.*
 - (1) The planning director shall submit within 45 days a report to the board of adjustment.

(2) After hearing the planning director's report and completion of the public hearing, the board of adjustment shall approve, approve with conditions, or disapprove the application. In every case, the board of adjustment shall include a summary of the evidence supporting the action taken on the application.

(f) *Approval criteria.*

(1) Before any application for a special use is approved, the board of adjustment shall make written findings certifying compliance with the specific standards governing each individual special use and that the general standards contained in this section are met. The board shall make appropriate findings, supported by evidence in its record, on each general and specific standard.

(2) General standards.

a. The following general standards must be met for approval of special uses pursuant to this Chapter:

1. The use will not materially endanger the public health, safety, and general welfare, if located where proposed and developed and operated according to the application.
2. The use, which is listed as a special use in the district in which it is proposed to be located, complies with all required regulations and standards of this Chapter, unless greater or different regulations are contained in the individual standards for that special use.
3. The use will not substantially injure the value of adjoining or abutting property; and
4. The use is consistent with any adopted area plans that encompass the property subject to the application.

b. The board of adjustment shall make these general findings based upon substantial evidence contained in its proceedings. The board may refer to staff's report to aid in its deliberations. The applicant has the responsibility of presenting evidence in the form of testimony, exhibits, documents, models, plans, and the like to support the application for approval of a special use.

(3) Imposed conditions.

a. The board of adjustment may impose such reasonable conditions, upon approval of a special use granted pursuant to this Chapter, as will afford protection of the public safety and welfare and substantial justice done.

- b. Such conditions shall run with the land and shall be binding on the original applicant as well as all successors, assigns, and heirs.
- (g) *Expiration.* Special use permits are valid for 5 years from the date the board of adjustment approved the use and shall automatically expire at that time unless the property is being used in conformance with all requirements of the permit.
- (h) If the application is withdrawn by the applicant prior to the advertising of the board of adjustment's public hearing or the request is denied, the planning director shall not accept another application for the same, or substantially the same amendment affecting the same property until the expiration of a 12-month period, from the date of denial or withdrawal, as relevant.
- (i) *Amendments and minor changes.* Before making a determination as to whether a proposed action is an amendment or a minor change, the planning director shall review the record of the proceedings on the original application for the approval of the special use.
 - (1) An amendment requires approval by the board of adjustment and shall be handled as a new application. A change in use shall constitute a new application.
 - (2) The planning director may approve minor changes in approved special uses, as long as they are in harmony with the action of the board of adjustment. The planning director shall use the following criteria in determining whether a proposed change is an amendment to the approved special use permit:
 - a. Any increase in intensity of use which means an increase in:
 - 1. Usable floor area;
 - 2. Number of dwelling or lodging units; or
 - 3. Outside land area devoted to sales, displays, or demonstrations.
 - b. Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the board of adjustment.
 - c. Structural alterations significantly affecting the basic size, form, style, and the like of the building, as shown on the approved detailed site plan.
 - d. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screens.

- e. Substantial changes in pedestrian or vehicular access or circulation.
- (3) If the planning director determines that the proposed action is an amendment based on the criteria in Subsection (2) above, he shall require the applicant to file a request for an amendment to the special use permit, which shall be submitted to the board of adjustment. The board of adjustment shall hold a public hearing and approve or disapprove the amendment.
- (j) The planning director shall send notice of the disposition of the application to the applicant by personal service or by registered mail or certified mail return receipt requested. A copy of the decision must be maintained in the office of the planning director.
- (k) *Scope of approval.*
 - (1) After the approval of a special use detailed site plan, a zoning authorization permit may be issued. A zoning authorization permit shall not be issued if the development activities do not conform to the approved detailed site plan.
 - (2) The site plan is binding on the applicant and any successors in title, unless it expires or is amended as provided in this Section.