

Special Exception Use

8.11 Special Exception Use

A. Authority And Purpose:

1. The Board of Zoning Appeals, shall approve or deny all special exceptions from the terms of the zoning ordinance, but only in the particular situations specified in the Zoning Ordinance. The Board may impose reasonable conditions as a part of it approval.
2. Purpose. A special exception use is a use for which certain conditions must be met before it can be established at a given location. The use shall be permitted by the Board of Zoning Appeals if, the board determines, the enumerated conditions are met.

B. Procedures: Application for a special exception use by the Board on Zoning Appeals shall follow the following procedures.

1. *Eligible Petitioners.* A petition for a special exception use may be filed by the owner, his agent, or any person having a legal or equitable interest in the subject property, but the written authorization of any owner who is not an applicant shall be required.
2. *Filing of Forms.* A petition for approval of a special exception shall be made on forms provided by the Board of Zoning Appeals. The petition shall be filed with applicable drawings and the filing fee.
3. *Filing Deadline.* The petition for a special exception use shall be filed at least 28 days before the date of the meeting.
4. *Public Notice.* The following public notice standards apply for a petition for a special exception use.
 - a. The applicant shall notify all interested parties of the public hearing by certified mail, return receipt requested. Certified mailings shall have a postmark a minimum of 21 days before the date of the public hearing.
 - b. The petitioner shall publish a legal notice of the hearing in the Butler Bulletin a minimum of ten days before the public hearing. The petitioner is responsible for making the newspapers publishing deadline.
 - c. The petitioner shall present proof of notice of adjacent property owners and proof of publication in the Butler Bulletin to the City of Butler a minimum of three business days before the public hearing.

C. Public Hearing: A public hearing shall be held in accordance with the Board of Zoning Appeals' Rules of Procedure.

D. Review:

1. A special exception use shall be approved only upon the determination that:
 - a. When required, a development plan has been submitted, reviewed and approved by the Butler City Plan Commission;
 - b. The proposed special exception development is consistent with the purpose of the zoning district and the City's Comprehensive Plan.
 - c. The proposed special exception development will not be injurious to the public health, safety, morals and general welfare of the community.
 - d. The proposed special exception development is in harmony with all adjacent land uses.
 - e. The proposed special exception development will not alter the character of the district; and
 - f. The proposed special exception development will not substantially impact property value in an adverse manner.
2. When considering a Special Exception the Board of Zoning Appeals may take into consideration the following items as they relate to the proposed use:
 - a. topography and other natural site features;
 - b. zoning of the site and surrounding properties;
 - c. driveway locations, street access and vehicular and pedestrian traffic;
 - d. parking amount, location, design;
 - e. landscaping, screening, buffering;
 - f. open space and other site amenities;
 - g. noise production and hours of operation;
 - h. design, placement, architecture, and building material of the structure;

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- i. placement, design, intensity, height, and shielding of lights;
 - j. traffic generation; and,
 - k. general site layout as it relates to its surroundings.
- E. Decision:
1. The granting of a special exception use allows the use to run with the land unless conditions are placed on the approval as stated in subsection E(3) below.
 2. *Commitments*: The Board may impose reasonable conditions upon its approval as it deems necessary. The Board may permit or require the owner of the parcel of property to make a written commitment concerning the use or development of the parcel as specified under Indiana Code 36-7-4-921 and have such commitment recorded in the Office of the DeKalb County Recorder.
 3. *Conditions of Approval*: The Board may limit special exceptions to a specific individual or entity and/or a specific time period.
- F. Duration: The granting of a special exception use authorizes the use and establishes the terms of use. Special exception uses are also subject to development plan requirements, all necessary permits and approvals and other applicable requirements.
1. *Expiration*: Any special exception use granted by the Board of Zoning Appeals shall expire:
 - a. In the case of new construction or modifications to an existing structure:
 - i. Two years after the date granted by the Board, unless a building permit has been obtained and construction of the structure or structures has commenced; or,
 - ii. At the date of termination established by the Board of Zoning Appeals as a condition or commitment if different from above.
 - b. In the case of occupancy of land which does not involve new construction:
 - i. Two years after the date granted by the board, unless an occupancy permit has been obtained and the use has commenced; or
 - ii. At the date of termination established by the Board of Zoning Appeals as a condition or commitment if different from above.
 - iii. The board may provide by rule for the granting of extensions of special exception uses.
 2. *Amendments*. If the Community Development Office determines a proposed modification or intensification represents an alteration in the essential character of the original special exception use as approved by the Board of Zoning Appeals, a new special exception use will be required. The operator of the special exception use shall provide the Community Development Office with all the necessary information to render this determination.