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## Sec. 94-36. - Special use review.

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- a. *Intent.* This section sets forth procedures and applications for planning board and city commission review and approval, approval of such conditions, or disapproval of them. The procedures and standards of this section are instituted to provide an opportunity to utilize property for an activity that warrant consideration on a case-by-case basis to enable mitigation of potential detrimental effects on uses permitted as of right in the district. A special use may be permitted under circumstances particular to the proposed location and subject to conditions which provide protection to nearby but not necessarily adjoining land uses. The procedures and standards of this section are adopted to provide guidelines for the special use review authority to follow in arriving at any special land use decision.
- b. *Special use review and approval provisions.* Special uses permitted in the zoning district are established by this chapter and are identified in [ARTICLE IX](#) of this chapter.
- c. *Establishment of Class A and Class B special uses and special use review authorities.*
  1. *Class A special use review by city commission.* Class A special land uses are identified in the Permitted Use Table set out in section [94-272](#). The review authority for Class A special use shall be the city commission. Prior to action by the city commission, the planning board shall review and make a recommendation for each special use application.
  2. *Class B special use review by zoning board of appeals and the planning board.* Class B special uses are identified in the Permitted Use Table set out in section [94-272](#), section [94-210](#) Table VII-9 and section [94-215](#) Table VII-9. The review authority for Class B special uses shall be the zoning board of appeals except for projects located in mixed-use districts which shall be reviewed by the planning board.
  3. *Preliminary determination of special uses.* Prior to issuance of a permit or a certificate of occupancy as provided in this chapter, the planning and zoning administrator, or his designee, shall make a preliminary determination that the proposed use is a special use in the district where it is to be established and is subject to review and approval pursuant to the provisions of this section. The planning and zoning administrator's determination shall not ensure that the use is entitled to consideration as a special use in the district. The planning and zoning administrator shall notify the applicant of special use determination in writing.
  4. *Application by owner of interest in subject property.* An application for the approval of special use shall be submitted to the planning and zoning administrator. The applicant shall indicate the nature or type of property ownership. Applications shall be accompanied by the necessary fees and documents.
  5. *Application forms and documentation.* The application shall be made on forms approved by the planning and zoning administrator and shall be accompanied by the same documentation required for site plan review. Following an initial review of the application, the planning and zoning administrator may require the submission of additional information deemed necessary to complete the review.
  6. *Simultaneous zoning district change application permitted.* The application for approval of a special use may be accompanied by an application for a zoning district change, where such a change is necessary to the consideration of the special use.
  7. *Simultaneous site plan review permitted.* The application for approval of a special use shall be processed simultaneously with the site plan review of the proposal. The findings of the site plan review authority shall be advisory to the special use review authority. As proposals for special use are modified, the special use review authority may request that the site plan review authority review site plans.
  8. *Determination of eligibility of a special use.* The planning and zoning administrator, at the written request of an applicant, shall determine whether or not a proposed use is an eligible special use in a zoning district and subject to review as provided in this chapter. This determination shall be preliminary; final determination of eligibility is the responsibility of the appropriate special use review authority. The zoning board of appeals shall hear appeals of the decision regarding determination of eligibility.
  9. *Determination of application sufficiency.* If a proposed special use is determined to be eligible for further consideration, the planning and zoning administrator shall review the application to determine whether sufficient information is provided as required. The planning and zoning administrator shall provide to the applicant written notification of the sufficiency determination. If an application is determined to contain the

sufficient information, the planning and zoning administrator shall initiate the review process and schedule a public hearing for consideration by the appropriate special use review authority.

10. *Class A special use decisions.* The city commission shall review each application for Class A special use and the findings and recommendations of the planning board, and within 60 days after the close of the public hearing shall do one of the following:
  - a. Grant the application in full;
  - b. Deny the application in full;
  - c. Grant the application in part;
  - d. Grant a modification of the application in such form as the city commission deems proper and consistent with the applicable standards for special use approval and the comprehensive plan;
  - e. Return the application to the planning and zoning administrator with specific instruction as to additional information, evidence, or testimony desired in order to make a decision consistent with standards for special use approval and the comprehensive plan;
  - f. Authorize withdrawal of the application without prejudice, allowing the application to be resubmitted prior to the 12-month time limitation;
  - g. Continue the consideration of the application to a special date;
  - h. Establish such conditions as the city commission deems necessary to ensure conformance with the special use requirements.
- d. *Changes in withdrawal and resubmission of applications.* Applications for special use approval may be changed, withdrawn, or resubmitted.
- e. *Special use standards.*
  1. *Interpretation of special use standards.* Uses set forth in this chapter as special uses shall be deemed to be adverse to the public interest except in specific instances when the review authority finds that all ordinance standards for approval of such uses have been or will be met. In those instances when the review authority finds that all ordinance standards for approval of a particular special use at a specific location have been met, then the review authority shall approve the use.
  2. *Application and review.* Applications to establish Class A or Class B special uses shall be processed and reviewed pursuant to subsection 94-36(c).
  3. *General special use standards relating to harmony with the zoning ordinance and protection of the public interest.* Except for community residences (family and transitional) and for a recovery community whose standard of review is subject to the standards in Section 94-273(a)(3) and (4), prior to approval of each special use, the review authority will find each of the following based on competent and substantial evidence.
    - a. *Future uses.* The use exactly as proposed at the location where proposed will be in harmony with the uses which, under zoning ordinance and land use plan, are most likely to occur in the immediate area where located.
    - b. *Surrounding uses.* The use exactly as proposed at the location where proposed will be in harmony with existing uses in the immediate area where located.
    - c. *Public benefit.* The use exactly as proposed at the location where proposed will not result in substantially less public benefit nor greater harm than would result from use of the site for some use permitted by right or by some other special use permitted on the site.
  4. *Specific standards for all special uses.* Prior to approving each special use, the review authority will find on competent substantial evidence that the proposed special use shall be consistent with all of the following requirements:
    - a. *Traffic.*
      1. The proposed use will not generate traffic that will reduce the level of service on any road to a lower level than would result from a use permitted by right;
      2. The proposed use will not require extension or enlargement or any other alteration of the street system in a manner resulting in higher net public cost or earlier expenditure of public cost than would result from a use permitted by right;
      3. The property or structure for the proposed use will be located, designed, and constructed so that the access and egress standards of section 94-273 are satisfied for uses subject to those standards.

- b. *Utility systems.* The proposed use will be so located in relation to water lines, sanitary sewers, storm sewers, surface drainage systems, and other utility systems that neither extension nor enlargement nor any other alteration of such systems in a manner resulting in higher net public cost than would result from a use permitted by right will be required.
  - c. *Public safety.* The proposed use will not place a demand on municipal police or fire protection services beyond the capacity of those services, a demand which does not exceed that likely to result from a use permitted by right.
- 5. *Standards for special uses in residential districts.* Prior to approving any nonresidential special use in any residential area and prior to approving any more intensive residential special use in a less intensive residential area, the review authority will find based on competent substantial evidence that the proposed special use shall be consistent with all the following requirements:
  - a. *Location.* The location of the special use will not be hazardous to or inconvenient to the predominantly residential character of the area in which it is to be located or to the long-range development of the district for the residential purposes intended.
  - b. *Size and intensity.* The size of the special use and the nature and intensity of the operations involved will not be hazardous or inconvenient to the residential character of the area in which it is to be located. The long-range development and maintenance of the district for residential purposes shall not be affected adversely.
  - c. *Contiguous residential uses.* The location of the special use (exception) will not result in the isolation of a small existing or planned residential area from other residential developments by its being completely or largely surrounded by arterial streets or nonresidential land uses.
  - d. *Residential character.* Building for special use in a residential district shall be designed and constructed in a manner similar to other neighborhood residential structures. Design factors shall include building mass, height, materials, window arrangement, yards, and similar considerations.
- 6. *Conditions and safeguards for special use approval.* Special uses may be approved subject to additional reasonable conditions or limitations upon the establishment, location, construction, maintenance, or operation as may be necessary to protect the public interest.
  - a. *Compliance.* Conditions and requirements stated as part of the approval of a special use shall be a continuing obligation of holders of approval. The planning and zoning administrator shall make periodic inspections of special uses to determine continuing compliance with all required conditions.
  - b. *Termination of special uses.* Special use approval may be withheld upon a determination by the planning and zoning administrator of the following:
    - 1. Failure to comply with conditions or requirements of the special use approval.
    - 2. Failure to correct violations of conditions or requirements of special use approval within 30 days following issuance of a citation or notice of violation.
  - c. *Conditions for approval.* All plans, specifications, and statements submitted with the applicant for a special use approval shall become, with any changes ordered by the special use review authority, a part of the conditions of any approval.
  - d. *Site plan review.* All applications for special use approval will include a site plan prepared pursuant to section 94-35.
- f. *Developments of significant impact.*
  - 1. *Applicable zoning district.* Developments of significant impact (DSI) as regulated in this section shall be a Class A special use and shall be permitted in the following zoning districts: all commercial zoning districts, all industrial zoning districts, all residential zoning districts, and all other zoning districts, excluding the following: ROS and W.
    - a. All of the following shall be considered development of significant impact:
      - 1. Commercial, office, or industrial developments of 50,000 or more gross square feet of enclosed building area, including renovations of existing structures when a change to a more intensive use is anticipated.
      - 2. Residential development of 100 or more dwelling units, including renovations of existing structures when a change to a more intensive use is anticipated.
      - 3. Approved planned development districts not possessing a complete site plan, including the footprint of all proposed principal structures.

- b. The following shall be exempt from the provisions of this section: all approved planned development districts possessing an approved, completed site plan, including the foot print of all proposed principal structures, all applications for planned development district approval, all approved developments of regional impact, and all applications for development of regional impact approval.
- 2. *Additional application requirements.* Applications to establish development of significant impact shall provide the following information:
  - a. A detailed site plan prepared pursuant to section 94-35.
  - b. A detailed traffic impact analysis prepared pursuant to section 94-312.
  - c. A statement of the proposed use of land within the development site, including the location and function of all areas proposed to be dedicated for community or public use.
  - d. A survey and written legal description of the proposed development site.
  - e. A statement, which may be in tabular form and included within the required site plan, containing the following information:
    - 1. The total acreage of the project site.
    - 2. The total gross square footage of floor area contained within all buildings and structures to be located on the development site.
    - 3. The total square footage of gross floor area devoted to residential use, commercial use, and industrial use, respectively.
    - 4. The number and type of dwelling units, if any, and the overall project density in dwelling units per gross acre of development site.
    - 5. The total acreage of the project site devoted to coverage by buildings and structures, open space, on-site parking, and landscaping.
  - f. A detailed stormwater drainage plan.
  - g. A statement concerning the manner in which connections will be made to utility services, especially potable water and sanitary sewers.
- 3. *Amendments to approved developments of significant impact.*
  - a. Major amendments to approved developments of significant impact shall only be determined by the city commission following the procedure set out in section 94-32. Major amendments shall include the following requests:
    - 1. An increase in the total square footage of any building by more than ten percent; the number of structures, the number of residential dwelling units, or the densities as specified by the adopted site plan;
    - 2. Any boundary change of the development of significant impact;
    - 3. Any change in the conditions of approval;
    - 4. Relocation of more than ten percent of the total square footage indicated as being covered by structures; or
    - 5. Any increase in traffic in excess of either: (i) 3 percent of the average daily traffic (ADT), or (ii) 100 ADT trips, over the traffic impacts for the project as established in the original master plan approved by the city commission.
  - b. Minor amendments to an approved development of significant impact shall be approved by the planning and zoning administrator. Such minor amendments shall include all amendment requests which do not meet any of the thresholds listed in subsection (f)(3)a. of this section.

(Code 1979, § 33-16; Ord. No. 3767-04, § 2, 6-21-2004; Ord. No. 3958-06, § 2, 6-5-2006; Ord. No. 4957-21, § 3, 11-15-2021; Ord. No. 5008-22, § 4, 07-25-2022; Ord. No. 5015-22, § 3, 08-22-2022)