

Special Exception

9.13 Special Exception

- A. **Purpose and Intent:** A special exception use is a use for which certain conditions must be met before it can be established at a specific location. The use shall be permitted by the Board of Zoning Appeals if certain conditions are met.
- B. **Project Applicability:** Only uses listed as "special exceptions" in the two-page layouts in *Article 2: Zoning Districts* shall be considered for approval by the Board of Zoning Appeals.
- C. **Prerequisites:** An Application for a Special Exception shall be filed by the owner, the owner's 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.
- D. **Filing Requirements:**
 1. **Application:** An Application for a Special Exception shall be made on forms provided by the Zoning Administrator.
 2. **Supporting Information:** The following items shall accompany a completed Application for a Special Exception.
 - a. A list of names and mailing addresses of all known adjacent property owners. The measurement shall include any adjacent property regardless if a road, river, railroad, or other physical barrier exists. This information may be obtained from the Wayne County Auditor's Office.
 - b. A Site Plan, drawn to scale, that includes the following information.
 - i. North arrow.
 - ii. Graphic scale.
 - iii. Address of the site.
 - iv. Legal description of the site.
 - v. Boundary lines of the site including all dimensions.
 - vi. Names, centerlines, and right-of-way widths of all streets, alleys, and easements.
 - vii. Location and dimensions of all existing and proposed structures, including paved areas and signs
 - viii. Location of all floodway, floodway fringe areas, and wetlands within the boundaries of the site.
 - ix. Distance of all structures from front, rear, and side lot lines.
 - x. Areas reserved for park, recreation, conservation, wetland, common area, lake, trails, or other similar uses.
 - xi. Proposed landscaping buffers or landscaped areas.
 - xii. Any other information necessary to support a thorough review of the project and as requested in writing by the Board of Zoning Appeals or the Zoning Administrator. This may include the supporting information listed in *Section 9.11(D)(2)(i)* for projects within the APO District.
 3. **Deadline:** An Application for a Special Exception shall be filed at least twenty-eight (28) days prior to the public meeting at which it is first to be considered by the Board of Zoning Appeals.
 4. **Fees:** Applicable fees shall be paid at the time the Application for a Special Exception is filed.

Special Exception

E. Formal Procedure:

1. *Assignment:* An Application for a Special Exception, which is determined to be complete and in proper form by the Zoning Administrator, shall be assigned a case number and placed on the first Board of Zoning Appeals agenda that occurs twenty-eight (28) days after the Application for a Special Exception was submitted in its entirety. The Zoning Administrator shall notify the applicant in writing of the meeting date.
2. *Internal Review:* Upon assignment of a number and hearing date, the Zoning Administrator may ask applicable departments to review and comment. The Zoning Administrator may submit a written report to the Board of Zoning Appeals stating any facts concerning the physical characteristics of the area involved, the surrounding land use, public facilities available to service the area, or other pertinent facts. The written report may also contain opinions of the Zoning Administrator concerning the Application for a Special Exception and/or information from other departments that have reviewed the Application for a Special Exception. A copy of such report shall be made available to the applicant and all remonstrators.
3. *Public Notice:* The following public notice standards apply to an Application for a Special Exception. All costs associated with providing public notice shall be borne by the applicant.
 - a. The Zoning Administrator shall notify all interested parties of the public hearing by regular US mail a minimum of ten (10) days before the public hearing.
 - b. The Zoning Administrator shall publish legal notice in a newspaper of general circulation a minimum of ten (10) days before the public hearing.
 - c. The Zoning Administrator shall be responsible for providing proof of published notice to the Plan Commission and including proof in the case file.
4. *Attendance:* The applicant shall be present at the Board of Zoning Appeals meeting to explain the proposed Special Exception and address and discuss comments and concerns posed by the Board of Zoning Appeals. Failure to appear may result in the dismissal of the Application for a Special Exception.
5. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
6. *Review:* At their regularly scheduled public meeting, the Board of Zoning Appeals shall review
 - a. The Application for a Special Exception.
 - b. Supporting information.
 - c. Presentation by the applicant.
 - d. Information presented in writing or verbally by the Zoning Administrator or other applicable department or agency.
 - e. Input from the public during the public hearing.
 - f. Applicable provisions of the Unified Development Ordinance.
 - g. The Board of Zoning Appeals may take into consideration the following items as they relate to the proposed use:
 - i. Topography and other natural site features.
 - ii. Zoning of the site and surrounding properties.
 - iii. Driveway locations, street access and vehicular and pedestrian traffic.
 - iv. Parking amount, location, design.
 - v. Landscaping, screening, buffering.
 - vi. Open space and other site amenities.
 - vii. Noise production and hours of operation.
 - viii. Design, placement, architecture, and material of the structure.
 - ix. Placement, design, intensity, height, and shielding of lights.
 - x. Traffic generation.
 - xi. General site layout as it relates to its surroundings.

Special Exception

7. *Decision*: The Board of Zoning Appeals shall make findings of fact and take final action or continue the Application for a Special Exception to a defined future meeting date.
 - a. *Findings of Fact*: The Board of Zoning Appeals shall make the following findings of fact. Approval of findings may be in the form of a general statement. Disapproval of findings shall specify the reason for non-compliance.
 - i. The proposed special exception is consistent with the purpose of the zoning district and the *City of Richmond Comprehensive Plan*.
 - ii. The proposed special exception will not be injurious to the public health, safety, morals and general welfare of the community.
 - iii. The proposed special exception is in harmony with all adjacent land uses.
 - iv. The proposed special exception will not alter the character of the district; and
 - v. The proposed special exception will not substantially impact property value in an adverse manner.
 - b. *Final Action*:
 - i. If the Board of Zoning Appeals finds all of the findings of fact in the affirmative, it shall approve or approve with conditions and/or commitments the Application for a Special Exception.
 - ii. If the Board of Zoning Appeals does not find all of the findings of fact in the affirmative, it shall deny the Application for a Special Exception.
 - c. *Commitments and Conditions*:
 - i. *Commitments*: The Board of Zoning Appeals may require the owner to make a written commitment. Commitments shall be recorded in the Office of the Wayne County Recorder. A recorded commitment is binding on the owner of the land, any subsequent owner of the land, and any person who acquires interested in the land.
 - ii. *Conditions*: The Board of Zoning Appeals may require certain conditions for approval.
- F. *Duration*: The granting of a special exception authorizes the use to run with the land unless conditions to the contrary are placed on the approval. If construction of structures or occupancy of existing structures has not commenced within two (2) years of the date the Special Exception was granted by the Board of Zoning Appeals, the approval shall be null and void.
- G. *Modification*: If the Zoning Administrator 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 approval of the special exception use shall be required. The operator of the special exception use shall provide the Zoning Administrator with all the necessary information to render this determination.