

Article 24

Special Exception Review Requirements and Procedures

Section 24.01 Special Exception Approval

A use listed in a zoning district as a special exception may only be established or expanded with the approval of the Board of Zoning Appeals (BZA) following the procedures and requirements of this article.

Section 24.02 Application

The applicant shall submit a special exception use application, the required filing fee, and required supporting information. Supporting information shall include, but not be limited to, the following:

- (a) **Site Plan.** A site plan, signed and dated, and clearly showing all features relevant to the special exception use request.
- (b) **Written Commitments.** Documentation of any written commitments being made as a part of the application.

Section 24.03 Notification

For all public hearings, notice shall be provided to the public consistent with the requirements of Indiana State Code. The petitioner shall provide public notice setting forth the time and place, given at least 10 days before the date of the hearing in a newspaper of general circulation. Notification shall also be provided by certified letter at least 10 days before the date of the hearing to all abutting properties in all directions from the subject property and properties across the street. At the public hearing, the petitioner shall provide proof that he has conformed to the above by proof of publication and return-receipt mail or personal sign-off on delivery of notices. The cost of such notices shall be borne by the person applying for the special exception.

Section 24.04 Public Hearing

The BZA will, in a public hearing scheduled consistent with the adopted Calendar of Filing and Meeting Dates, review the special exception use application and required supporting information.

- (a) **Procedures.** The presentation of reports and testimony and all other aspects of the public hearing shall be consistent with the Rules of Procedure of the Board.
- (b) **Possible Action.** The BZA may approve, approve with conditions, deny, or continue the application.
 - (1) **Approval.** The application may be approved if findings of fact are made consistent with the requirements of section 24.05.
 - (2) **Approval with Conditions.** The application may be approved with conditions if the BZA determines that the required findings of fact may be made only if certain written commitments are applied to the application.

- (3) **Denial.** The application shall be denied if findings of fact consistent with the requirements of 24.05 are not made.
- (4) **Continued.** The application may be continued by the BZA based on a request by the enforcement official, applicant, remonstrator, or interested party; an indecisive vote; or a determination by the BZA that additional information is required prior to action being taken on the request.

Section 24.05 Decision Criteria

The BZA may grant a special exception use approval for any use listed as "special exception" in the applicable zoning district of this ordinance if, after a public hearing, it makes findings of fact in writing that each of the following is true:

- (a) **General Welfare.** The proposal will not be injurious to the public health, safety, and general welfare of the community.
- (b) **Surrounding Property.** The special exception use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish or impair property values within the neighborhood. The establishment of the special exception use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (c) **Hazard.** The special exception shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property.
- (d) **Public Facilities and Services.** The use will be served adequately by essential public facilities and services such as: highways, streets, police and fire protection, drainage structures, water and sewage facilities, refuse disposal and schools. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (e) **Development Requirements.** The development of the property will be consistent with the intent of the development requirements established by this ordinance for similar uses. The development will be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity, based upon the County Comprehensive Land Development Plan.
- (f) **Ordinance Intent.** Granting the special exception use will not be contrary to the general purposes served by this ordinance, and will not permanently injure other property or uses in the same zoning district and vicinity.
- (g) **County Land Development Plan.** The proposed use will be consistent with the character of the zoning district in which it is located and the recommendations of the County Land Development Plan.
- (h) **Use Regulations.** Where there are use-specific regulations contained in Article 14, the special exception use shall comply with all of the regulations applicable to the use.

Section 24.06 Conditions & Commitments

The BZA may impose such reasonable conditions upon its approval as it deems necessary to find that the criteria for approval in section 24.05 will be served. The BZA may also accept written commitments concerning the use or development of the property as specified under IC 36-7-4-921. Any conditions and/or commitments shall be recorded in the La Porte County Recorder's Office by the applicant within 90 days of approval.

- (a) **Recording Required.** A copy of the recorded document shall be provided to the enforcement official for inclusion in the petition file prior to the issuance of any improvement location permits.
- (b) **Compliance Required.** No improvement location permit shall be issued for any permit application which does not comply with the recorded conditions and/or commitments.
- (c) **Expiration of Approval.** If a person to whom an improvement location permit has been issued for a special exception use fails to begin construction within 12 months after the permit is issued, or fails to comply with the approved plan, the BZA, may on its own initiative, or shall, upon written request of any interested person, require the permittee to show cause why the permit should not be revoked. However, an order to show cause may not be issued for failure to begin construction on time if in the meantime construction has begun.
 - (1) In a proceeding to show cause under this subsection (c), the BZA shall hold a public hearing, of which written notice shall be published according to law and sent by certified mail to the holder of the permit. This notice must be published and mailed at least 10 days before the date set for the hearing.
 - (2) At the hearing, evidence may be presented by any person present. If on the evidence the BZA finds that the holder of the permit has failed, as described in this subsection (c), it shall revoke the permit. However, if it considers the failure correctable within six (6) months, it may defer revocation and continue the hearing until a specified day within that period.

Section 24.07 Limitations

Special exception use approvals shall be invalid if:

- (a) Changes are made to the site that violate the ordinance or the conditions of approval, or
- (b) The special exception use approval is terminated.

Section 24.08 Special Exception Use Expansion

A use authorized as a special exception use may not be expanded, extended, enlarged or moved to a new location unless reauthorized by the BZA under the procedures set forth in this Article for granting a special exception use approval.

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