

Section 13 Special Use Permits (Major, Minor, Traffic Impact)

Overview

1. Application filed with Planning Department.
2. Public hearing scheduled with Board of Adjustment.
3. Board of Adjustment reviews application and either Approves, Denies or Approves the permit with conditions.

13.1 Minor Special Uses

13.1.1 Minor Special Uses Defined

Minor Special Uses are uses requiring the approval of the Board of Adjustment. Those uses categorized as minor special uses within the zoning districts are generally considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses may require individual review by the Board of Adjustment.

13.1.2 Procedure

1. Applications for minor special use approvals shall be filed with the City-County Planning Department along with a fee prescribed by the Governing Body. Pre-filing meetings with administrative staff prior to filing are recommended.
2. Staff will schedule a public hearing with the Board of Adjustment for completed applications.
3. A notice of the time and place of the public hearing shall be published twice in a newspaper of general circulation in the County. The first notice shall be published not less than 10 nor more than 25 days prior to the date of the hearing. In addition, a mailed notice of the time and place of the hearing stating the property location and the nature of the request shall be mailed by first class mail to the property owner and all property owners within 300 feet of the property under consideration. Addresses for notification purposes shall be the most recent address available from the County tax abstracts. Placards may also be placed on the property or at a point visible from the nearest public street.
4. After conducting the hearing, the Board of Adjustment may: (1) deny the request; (2) defer action until additional information is received; (3) approve the request; or (4) approve the request with conditions.

13.1.3 General Findings

Applications for Minor Special Use Permits shall be approved only if the Board of Adjustment finds that the use as proposed, or the use as proposed with conditions, is:

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use, the Supplementary Requirements Section of this ordinance, and the considerations identified below, and
3. Will not adversely affect the health or safety of the public.

13.1.4 Considerations

The applicant shall demonstrate that the considerations listed below have been addressed. If an application is denied, the Board shall specify which of these considerations, if any were not adequately addressed.

1. **Circulation:** Number and location of access points to the property and the proposed structures, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
2. **Parking and Loading:** Location of off-street parking and loading areas.
3. **Effect on Adjacent Property:** Effects of the proposed use, on nearby property, including, but not limited to the effects of noise, glare, odor, and traffic.
4. **Service Entrances and Areas:** Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.
5. **Utilities:** Location and availability of utilities.
6. **Screening and Landscaping:** Installation of screening and fencing where necessary to protect adjacent property.
7. **Signs and Lighting:** Locations of exterior lighting and signs with reference to glare, traffic safety, economic effect and compatibility with other property in the area.
8. **Open Spaces:** Location of required yards and other open spaces and preservation of existing trees and other natural features.

9. **Compatibility:**The level of general compatibility with nearby properties and the appropriateness of the use in relationship to other properties.
10. Any other review factors which the Board of Adjustment considers to be appropriate to the property in question.

The Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this ordinance.

13.1.5 Coordination with Site Plans

When required, site plan applications shall be filed concurrently with minor special use applications. Since most of the information included in site plans would be informative to the Board of Adjustment in decision making, copies of site plans shall be sent to the Board of Adjustment and presented at the public hearing. However, all approvals of special uses shall be conditioned on approval of the site plan. No building permit may be issued until the special use and the site plan are approved.

13.1.6 Coordination with Variances

Applications for variances may be submitted concurrently with requests for minor special uses. Notifications and hearings may be combined. However, decisions shall be rendered separately for any variance and the special use.

13.1.7 Resubmittals

An application for a special use which has been denied may be resubmitted only if there has been a change in circumstances as determined by the Planning Director or the Director's designee.

13.1.8 Amendments

Field alterations or revisions to approved special uses may be approved by the Development Review Board (DRB) if the special use still meets the intent of the standards established with the original approval. The applicant may appeal a decision of the DRB to the Governing Body. Major changes to approved special uses shall require submittal of a new application.

13.1.9 Expiration; Extensions

A use permit shall become null and void in the following cases:

- a. If a site plan is not approved within 24 months of the date of permit approval.
- b. Where an approved site plan or building permit expires.
- c. Where a building permit is not issued within 24 months of the date of approval, in cases where a site plan is not required.

If the Board of Adjustment fails to find conformance with the conditions listed above, or makes findings which are inconsistent with those conditions listed above, then the proposed permit shall be denied.

13.2 Major Special Uses

13.2.1 Major Special Uses Defined

Major Special Uses are uses requiring approval of the Governing Body which has jurisdiction over the property where the proposed use is to be located. The uses categorized as major special uses are generally considered to be appropriate in a particular zoning district but because of their complexity and potential for off-site conflicts, require individual review by the Governing Body.

13.2.2 Procedure

1. Applications for major special use approvals shall be filed with the City-County Planning Department along with the prescribed fee. Pre-filing meetings with administrative staff prior to filing are recommended.
2. Staff will schedule a public hearing with the Governing Body for completed applications.
3. A notice of the time and place of the public hearing shall be published twice in a newspaper of general circulation in the County. The first notice shall be published not less than 10 nor more than 25 days prior to the date of the hearing. In addition, a mailed notice of the time and place of the hearing stating the property location and the nature of the request shall be mailed by first class mail to the property owner and all property owners within 300 feet of the property under consideration. Addresses for notification purposes shall be the most recent address available from the County tax abstracts. Placards may also be placed on the property or at a point visible from the nearest public street.
4. After conducting the hearing, the Governing Body may: (1) deny the request; (2) defer action until additional information is received; (3) approve the request; or (4) approve the request with conditions

13.2.3 General Findings

Applications for Major Special Use Permits shall be approved only if the Governing Body finds that the use as proposed, or the use as proposed with conditions, is:

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use, the Supplementary Requirements Section of this ordinance, and the considerations identified below;
3. Will not adversely affect the health or safety of the public.

If the Governing Body fails to find conformance with the conditions listed above, then the proposed permit shall be denied.

13.2.4 Considerations

The applicant shall demonstrate that the considerations listed below have been addressed. If an application is denied, the Governing Body shall specify which of these considerations if any, were not addressed.

1. **Circulation:** Number and location of access points to the property and the proposed structures, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
2. **Parking and Loading:** Location of off-street parking and loading areas.
3. **Effect on Adjacent Property:** Effects of the proposed use on nearby property, including but not limited to the effects of noise, glare, odor, and traffic.
4. **Service Entrances and Areas:** Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.
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6. **Screening and Landscaping:** Installation of screening and fencing where necessary to protect adjacent property.
7. **Signs and Lighting:** Locations of exterior lighting and signs with reference to glare, traffic safety, economic effect and compatibility with other property in the area.
8. **Open Spaces:** Location of required yards and other open spaces and preservation of existing trees and other natural features.
9. **Compatibility:** The level of general compatibility with nearby properties and the appropriateness of the use in relationship to other properties.
10. Any other review factors which the Governing Body considers to be appropriate to the property in question.

The Governing Body may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this ordinance.

13.2.5 Coordination with Site Plans

In cases where a site plan is required, site plan applications shall be filed concurrently with major special use applications and the information shall be provided to the Governing Body during its deliberations. However, all approvals of special use permits shall be conditioned on approval of the site plan. No building permits may be

issued until the site plan and special use permit are approved. Site plan approval may be conditioned on the approval of variances.

13.2.6 Coordination with Variances

Applications for variances may be filed with the Board of Adjustment under standard procedures, at any time prior to the issuance of a building permit. If the Board of Adjustment grants a variance prior to approval of the special use, the Governing Body shall be advised of the variance approval. Any approved variance shall be determined to be null and void if the major special use is not approved by the Governing Body.

13.2.7 Resubmittals

An application for a special use which has been denied may be resubmitted only if there has been a substantial change in circumstances as determined by the Planning Director or the Director's designee.

13.2.8 Amendments

Minor field alterations or minor revisions to approved special uses may be approved by the Development Review Board (DRB) if the special use still meets the intent of the standards established with the original approval. The applicant may appeal a decision of the DRB to the Governing Body. Major changes to approved special uses shall require submittal of a new application

13.2.9 Expiration; Extensions

A use permit shall become null and void in the following cases:

- a. If a site plan is not approved within 24 months of the date of permit approval.
- b. Where an approved site plan or building permit expires.
- c. Where a building permit is not issued within 24 months of the date of approval, in cases where a site plan is not required.

13.3 Traffic Impact Analysis and Special Use Permits

13.3.1 Application

These procedures are established to insure that traffic flows are maintained or improved as new development occurs. Provisions are made for the issuance of special use permits, in certain circumstances, as a means of studying traffic patterns, providing for roadway improvements, or restricting development in which proposed improvements are not sufficient to address traffic impact.

Unless exempted below, a traffic impact analysis shall be required for development projects or site plans where 150 or more vehicle trips are expected to be generated at the peak hour.

If a traffic impact analysis is approved at the time of development plan rezoning, another analysis is not required with site plan approval if the site plan is consistent with the development plan.

The term development project when used in this Section, applies to any single development or group of developments which, when complete, will function together as a single development in terms of the cumulative impact on surrounding areas and physical infrastructure, and which have shared features such as ownership, site access, infrastructure, or other design elements. The traffic impact analysis requirements shall apply whether the development project is completed in a single phase or multiple phases.

13.3.2 Exemptions

1. Traffic impact analysis shall not be required of single family residential development, duplex development, and triplex development. Development in the Central Business District (CBD) zone or in the Downtown Transition Area Overlay zone is also exempt.
2. The provisions of this section shall not apply to phases of new developments which:
 - a. Contain public water and/or sanitary sewer systems which were built and accepted by the City of Durham prior to May 21, 1990; or
 - b. Contain private water and sewer systems constructed to State and City of Durham standards prior to May 21, 1990.
3. The provisions of this Section shall not apply to new developments approved by Durham County prior to the implementation of this ordinance (January 1, 1994) which hold valid Unified Development Plans, site plans, special use permits, or building permit approvals.
4. In the event that additional infrastructure improvements that substantially alter traffic capacity or generation are required in order to support adequately any phases of the intended development, such phases shall not be exempt from the requirements of this Section.

13.3.3 Traffic Impact Analysis Requirements

The traffic impact analysis shall be prepared by a registered professional engineer with experience in traffic engineering. The Director of Transportation shall set forth specific guidelines for preparation of such traffic impact analysis; however, at a minimum, it shall include an estimate of the traffic generated as a result of the proposed development, an analysis of the existing street system serving the proposed development, an assessment of improvements needed to the existing street system in order to support the traffic from the proposed development. Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers.

13.3.4 Traffic Thresholds Which Require A Special Permit

13.3.4 Traffic Thresholds Which Require A Special Permit

Certain developments submitting a Traffic Impact Analysis (TIA) may be required to obtain a special use permit from the Governing Body.

1. Unless exempted from a special use permit in 2. below, a special use permit shall be required of development projects and site plans, for which a TIA is required and which are projected to generate:
 - a. 600 or more vehicle trips at the peak hour, or
 - b. 300 or more vehicle trips at the peak hour and which will be served by any street operating at a level of service lower than the jurisdiction's adopted level of service.

2. Exemptions from Special Use Permits: A special use permit shall not be required of development in the RSCH and RAD and UC zones of developments encompassed by and existing or proposed Development Plan Zone [D], even when projected traffic is expected to exceed levels specified above. However, plans for such development shall demonstrate in the TIA that measures shall be taken to mitigate traffic impact. The approving body may require that measures be incorporated into the project design or off site to insure implementation of the traffic impact recommendations. Such measures may include, but are not limited to: lane channelization, turn lanes, public transit, car pool programs, and modifications to hours of operation.

13.3.5 Procedure for Review of Traffic Impact Analysis [TIA] when a Special Use Permit is Required

1. **Submission and review of proposals that require a Special Use Permit:** When a Special Use Permit is required, the applicant shall submit a traffic impact analysis to the Planning Department and the Transportation Department who shall recommend findings to the Governing Body.
2. Special Use Permit Hearing

The procedures for the Special Use Permit hearing for traffic impact shall be the same as those specified for Major Special Use Permits including the notification requirements found elsewhere in this ordinance. The Governing Body may: deny the special use permit, approve the special use permit, or approve the special use permit with conditions. In order to approve a special use permit, the Governing Body shall make all of the following findings:

- a. The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include: substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or the need to widen local residential streets which would detract significantly from the character or basic function of a nearby street.
- b. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
- c. The traffic generated by the development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impact shall include: undue concentrations of air pollutants, or excessive noise or vibrations.
- d. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed within the development project. Proposed mitigation measures shall be submitted in writing and shall become conditions of the special use permit. The adopted level of service for the roadway may be considered in the determination of the roadway's ability to accommodate traffic, but it may not be the sole determining factor in the findings of the Governing Body.

13.3.6 Additional Procedures for Granting a Special Use Permit with Conditions

The Governing Body may attach conditions to the special use permit to ensure that adequate traffic mitigation measures are associated with new development. Conditions shall specify the traffic improvement measure, the party responsible for the improvement, the cost of the improvement, the funding measures, and the proposed completion date of the improvement.

Maximum trip generation at peak hour shall be specified as a condition of multi-phased developments and may be specified with other developments. In all cases where a maximum vehicle count is specified as a condition of the special use permit, the vehicle count shall not be exceeded unless an amended special use permit is issued by the Governing Body.

13.3.7 Period of Validity for Special Use Permits for Traffic Impact

If a single special use permit is issued for a multi-phased development, the special use permit shall remain valid for eight years. After that period, a new special use permit shall be required for all phases of the development that do not have valid site plans or building permits.

13.3.8 Coordination with Variances and Minor Special Use Permits

Applications for variances and minor special use permits may be submitted concurrently with a request for a special use permit for Traffic Impact. Copies of site plans and traffic impact analysis may be included with materials reviewed by the Board of Adjustment. If the Board of Adjustment grants a variance or Minor Use Permit prior to approval of a special use permit for Traffic Impact, the Governing Body shall be advised of the approval. However, any approvals by the Board of Adjustment become null and void if a special use permit for Traffic Impact and a Site Plan are not approved for the development.

13.3.9 Coordination With Major Special Use Permits

Applications for Major Special Use permits may be submitted concurrently with a site plan and a request for special use permits for Traffic Impact. However, decisions shall be rendered with a separate motion.

13.3.10 Coordination With Rezoning Applications

An application for a special use permit for Traffic Impact may be reviewed concurrently with a rezoning application and applications for major and minor special uses. However, decisions shall be rendered with a separate motion.