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5 SPECIAL USE PERMITS

5-A GENERAL

Special Use Permits may be granted by the Board of Supervisors for any of the uses for which a permit is required by the provisions of this Ordinance.

5-B PROCEDURE

5-B-1 Application:

5-B-1-a Pre-application Conference Requirement.

(11/18/14)

No less than seven (7) days prior to filing an application, a pre-application conference shall be held between the Applicant and the Zoning Administrator. The applicant shall provide the following items for review which shall be retained by the Zoning Administrator as the initial public record for the application:

1. A conceptual or draft site plan showing the subject property, general site layout, and main elements to be proposed as part of the application.
2. A written description of the proposed special use including operations details such as the nature of the special use, hours of operation, number of employees, and measures to mitigate impacts on surrounding properties.

5-B-1-b

(3/20/90)

(11/18/14)

An application for a Special Use Permit may be made by the record owner of the property or a contract purchaser. If the application is made by a contract purchaser, the record owner shall submit the following, in writing, as a part of the application:

1. Approval of the contract purchaser making the application;
2. Confirmation that the applicant is a contract purchaser under an existing written contract; and
3. Agreement to give written notification to the County if the purchase contract is terminated while the application is pending before the County.

5-B-1-c

(11/18/14)

Such application shall be filed with the Zoning Administrator and shall be accompanied by fifteen (15) copies of the following:

1. A site development plan in accordance with Article 6 of this Ordinance.
2. Front, side, and rear elevations and floor plans of proposed buildings.
3. The applicable filing fee.

5-B-1-d

(11/18/14)

The Zoning Administrator may require such other information to be submitted, as the Zoning Administrator deems necessary for a proper and intelligent consideration of the application. The Zoning Administrator may also establish regular filing deadlines to ensure that there is sufficient time to evaluate the application prior to the Planning Commission's initial review.

5-B-1-e

(11/18/14)

The Zoning Administrator shall determine when the application is complete. After receipt of a complete application, the Zoning Administrator shall refer the application to the Planning Commission for initial review at its next regular monthly meeting.

5-B-2 Recommendation by Planning Commission

5-B-2-a Public Hearing Requirements

(6/13/89)

After referral of the application to the Planning Commission by the Zoning

- (9/19/89) Administrator, the Commission shall hold a public hearing on said application after
- (10/17/89) giving public notice as required by Section 15.2-2204, Code of Virginia, 1950, as
- (11/16/93) amended, and in accordance with the requirements of Section 10-E of this ordinance.
- (11/18/14)
- 5-B-2-b Action by Planning Commission
 - (9/19/89) Within one-hundred (100) days of the date of the meeting of the Planning Commission at
 - (11/18/14) which a complete application is referred to the Commission, the Commission shall make
 a recommendation on said application to the Board of Supervisors to approve or disapprove the application. The recommendation of the Planning Commission may include recommendations for conditions to be applied to the Special Use Permit should it be granted by the Board of Supervisors.
- 5-B-2-c Information Required Before Making a Recommendation
 - (6/13/89) Before making a recommendation, the Commission may require the applicant to furnish
 such information as it may deem necessary in order to determine whether the proposed special use permit is detrimental to the public health, safety, or general welfare. Such a determination shall be based on the specific findings listed in 5-B-5. The Commission may make any additional findings it may deem appropriate.
- 5-B-2-d Berryville Area Development Authority
 - (3/17/92) The Berryville Area Development Authority (BADA) shall assume the responsibilities of
 the Planning Commission regarding special use permit review, as detailed above, for properties located within Annexation Area "B" as identified in the Clarke County/Town of Berryville Annexation Agreement, December 1988.

5-B-3 Action by Board of Supervisors

- (1/21/97)
- 5-B-3-a Public Hearing Requirements
 - (9/18/89) Public Hearing: Within one hundred days of receiving the recommendation of
 - (10/17/89) the Planning Commission, at their next regular meeting, and before action on the
 - (11/16/93) application for a Special Use Permit, the Board of Supervisors shall hold a public
 hearing on said application, after giving public notice as required by Section 15.2-2204, Code of Virginia, 1950, as amended, and in accordance with the requirements of Section 10-E of this ordinance.
- 5-B-3-b Burden of Proof
 - (6/13/89) The burden of proof shall be on the applicant to show reasonableness of the
 proposed special use permit, the lack of adverse effect, and compliance with the elements of public health, safety, and general welfare as set forth in Section 5-B-5.
- 5-B-3-c Compliance
 - Upon the granting of a Special Use Permit, one copy of the site development plan
 submitted with the application shall be certified by the Zoning Administrator and returned to the applicant, together with a statement in writing of the conditions, if any, imposed by the Board in granting the permit. The applicant shall use the property for the proposed use only in such manner as provided in the site development plan and only in accordance with the conditions, if any, provided by the Board.

5-B-4 Procedures before Planning Commission and Board of Supervisors

(11/18/14)

5-B-4-a Deadlines for Applicant Submission of Materials Prior to Public Hearing

Following the filing of a complete application, the Applicant shall provide any new or revised materials demonstrating compliance with required technical elements no less than 14 days prior to the first Public Hearing and no less than 10 days prior to any continued Public Hearing. Required technical elements include any regulations governing site development such as building and lot dimensions, use standards, and site development plan elements. Any new or revised materials provided after the deadlines referenced above shall not be considered by the Planning Commission or Board of Supervisors at the scheduled meeting.

5-B-4-b Deferral of Application

An applicant may request that consideration of a special use permit application at a Public Hearing be deferred by submitting a written request for deferral to the Zoning Administrator.

1. If the deferral request is provided to the Zoning Administrator prior to finalizing the Public Hearing advertisement for consideration by the Planning Commission or Board of Supervisors, the Zoning Administrator shall determine whether to grant the deferral request. A request for deferral shall be approved only for good cause. If such request is approved by the Zoning Administrator, consideration of the application shall be deferred to the next regularly scheduled meeting of the Planning Commission or Board of Supervisors.

2. If the deferral request is provided after finalizing the Public Hearing advertisement, the request for deferral shall be placed on the Public Hearing agenda on the date the application is to be considered. The Planning Commission or Board of Supervisors, as applicable may approve the request for deferral for good cause. The applicant shall be responsible for a re-advertising fee which shall be paid in full prior to the application being placed on an upcoming meeting agenda of the Planning Commission or Board of Supervisors.

5-B-5 Criteria for Action on Special Use Permit

(1/21/97)

Before taking action, the Board may require the applicant to furnish such information as it may deem necessary in order to determine whether the proposed special use permit is detrimental to the public health, safety, or general welfare. Such a determination shall be based on the following specific findings. The Board may make any additional findings it may deem appropriate. The use requiring the special use permit:

5-B-5-a Will be consistent with the Comprehensive Plan of the County.

5-B-5-b Will be consistent with the Purposes and Intent of this Ordinance.

5-B-5-c Will not have an undue adverse impact on the short-term and long-term fiscal resources of the County for education, water, sewage, fire, police, rescue, solid waste disposal or other services, and will be consistent with the capital improvement goals and objectives of the Comprehensive Plan, to the end that growth of the community will be consonant with the efficient and economic use of public funds.

5-B-5-d Will not cause an undue adverse effect on neighboring property values without furthering the goals of the Comprehensive Plan to the benefit of the County.

- 5-B-5-e Will not cause an undue adverse effect on the preservation of agricultural or forestal land.
- 5-B-5-f Will not cause unreasonable traffic congestion or unsafe conditions on existing or proposed public roads and has adequate road access.
- 5-B-5-g Will not cause destruction of or encroachment upon historic or archeological sites, particularly properties under historic easement.
- 5-B-5-h Will not cause an undue adverse effect on rare and irreplaceable natural areas, areas of outstanding natural beauty, state-designated scenic byways or scenic rivers or properties under open space easement.
- 5-B-5-i Will not cause an undue adverse effect on wildlife and plant habitats.
- 5-B-5-j Will have sufficient water available for its foreseeable needs.
- 5-B-5-k Will not cause unreasonable depletion of or other undue adverse effect on the water source(s) serving existing development(s) in adjacent areas.
- 5-B-5-l Will not cause undue surface or subsurface water pollution.
- 5-B-5-m Will not cause an undue adverse effect on existing or proposed septic systems in adjacent areas.
- 5-B-5-n Will not cause unreasonable soil erosion.
- 5-B-5-o Will have adequate facilities to provide safety from flooding, both with respect to proposed structures and to downhill/downstream properties.
- 5-B-5-p Will not cause undue air pollution.
- 5-B-5-q Will not cause undue noise, light or glare, dust, odor, fumes, or vibration.
- 5-B-5-r If in the AOC or FOC zoning districts, will not result in scale or intensity of land use significantly greater than that allowed under the permitted uses for these districts.
- 5-B-5-s Will not cause a detrimental visual impact.

5-B-6 Special Use Deemed Approved

(2/17/09) A property shall be deemed to have been approved for a special use if, at the time of the adoption of the ordinance provision permitting that use in the zoning district as a special use, the use was either a permitted use in the district or a legal nonconforming use.

(2/17/09) The owner of a property, deemed to have been approved for a special use as a result of an amendment to the Zoning Ordinance, shall submit a site plan to the Zoning Administrator documenting the nature and extent of such use within six months of the adoption of the ordinance permitting the use as a special use.

Failure to do so shall constitute a violation of the Zoning Ordinance. Such a Site Plan shall address the Specifications and Contents of a Site Plan as listed in the Zoning Ordinance Sections 6-F and 6-G. The Zoning Administrator may waive any of these specifications or content items where such waiver is not inconsistent with the intent of Section 6, and the applicant establishes that an undue hardship would result from requiring a specific item or that providing the item is unreasonable.

5-C REVOCATION

(11/16/04) The Board of Supervisors may, by resolution, initiate the revocation of any active Special Use Permit. The consideration of the revocation shall proceed following the procedure set forth for approving a new Special Use Permit. Following a recommendation by the Planning Commission, the Board may revoke an active Special Use Permit for the following reasons:

1. Failure to establish or discontinuance of the approved Special Use: If the approved Special Use has not been established within two years of its approval or if it has been discontinued for one year, the Special Use Permit may be revoked. A Special Use Permit approved before 2004 November 16 shall be eligible for revocation if it has not been established by 2006 November 16 or if it has been discontinued for one year as of 2005 November 16.
- (3/18/14) 2. Repeated or continuing violations of the conditions placed on the Permit. Failure to comply with any one or more of the conditions of a Special Use Permit may result in the issuance of a Notice of Violation (NOV) by the Zoning Administrator. The Zoning Administrator may present a Special Use Permit to the Board of Supervisors for revocation if the NOV is not resolved as directed. Upon the issuance of a third NOV for violations of any one or more of the permit conditions, and failure of the permit holder to appeal to the Board of Zoning Appeals, the Zoning Administrator shall present the Special Use Permit to the Board of Supervisors for revocation.
3. Fraudulent, false, or misleading information supplied by the applicant in applying for the Special Use Permit.
- (3/18/14) 4. Violations of other provisions of the Zoning Ordinance not addressed by the Special Use Permit conditions, the Code of Clarke County, or State and Federal law related to the activities of the Special Use.

5-D REQUIRED AMENDMENT

5-D-1 A property which has been granted a special use permit for a use, or a property which is
(2/17/09) deemed to have been granted a special use permit for a use pursuant to section 5-B-5, shall be required to apply for an amended special use permit in the event the use is enlarged or expanded.

5-D-2 The procedures for applying for an amended special use permit shall be the same procedures
(2/17/09) as for special use permit applications as set forth in Section 5-B.