

Section 21-09.03 Board of Zoning Appeals.

(a) Establishment and Jurisdiction.

The Board of Zoning Appeals for the City of South Bend, Indiana, is hereby re-established in accordance with Indiana Code 36-7-4-900 et seq. The Board of Zoning Appeals for the City of South Bend, Indiana, shall have exclusive authority over all matters set forth under Indiana Code 36-7-4-900 et seq., within the corporate limits of the City of South Bend, Indiana.

(b) Membership, Qualifications and Terms.

The membership of the *Board of Zoning Appeals*, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-900 et seq.

(c) Duties and Powers.

The *Board of Zoning Appeals* shall have the duty and power to:

- (1) Hear and determine appeals from and review any order, requirement, decision, or determination made by *Staff*, hearing officer or administrative official under this Ordinance.
- (2) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Area Plan Commission* in relation to the enforcement of this Ordinance.
- (3) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Area Plan Commission* in relation to the enforcement of those provisions of this Ordinance requiring the procurement of an *improvement location permit* or a *certificate of occupancy*.
- (4) Hear, and make a favorable recommendation, unfavorable recommendation or no recommendation to the Common Council on all *special exception uses* in accordance with the provisions of Section 21-09.03 (g) – Special Exceptions, below.
- (5) Hear and determine all variances from *development standards* of this ordinance.

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(d) Conditions.

The *Board of Zoning Appeals*, in connection with its making of a favorable recommendation, unfavorable recommendation or no recommendation to the Common Council regarding the approval of a *special exception use*, may recommend that the Common Council impose certain reasonable conditions as a part of the Common Council's approval of any *special exception use*.

Such conditions may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the Findings of Fact determinations.

(e) Amendments.

The *Board of Zoning Appeals*, in connection with making a determination on a *variance of development standards*, may accept amendments to a petition which, in the sole discretion of the *Board of Zoning Appeals*, are necessary for the *Board of Zoning Appeals* to make the determination and findings of fact required by Section 21-09.03 (h) – Variance of Development Standards, below.

(f) Commitments.

The *Board of Zoning Appeals* may recommend or the Common Council may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel in the case of a petition for a *special exception use*.

The *Board of Zoning Appeals* may permit or require the owner of a parcel of property to make a written commitment concerning the development of that parcel in the case of a petition for a *variance of development standards*.

Such commitments may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the Findings of Fact determinations.

All such commitments shall be in recordable form and shall be recorded in the office of the St. Joseph County Recorder and shall take effect upon the granting of the *special exception use* or *variance*. A recorded commitment shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.

The commitments shall be in substantially the form set forth in Exhibit "C" of this Ordinance.

A recorded commitment may be modified or terminated only by a decision of the *Board of Zoning Appeals* made at a public hearing after notice.

The modification or termination of commitments shall be in substantially the form set forth in Exhibit "D" of this Ordinance.

By recommending, permitting or requiring commitments, the *Board of Zoning Appeals* does not obligate itself to make a favorable recommendation nor does the Common Council obligate itself to approve or deny any request.

This Section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

(g) Rules

The *Board of Zoning Appeals* shall adopt rules concerning: the filing of appeals; applications for *special exception uses* and *variances*; the giving of notice; the determination of interested parties to receive notice; the conduct of hearings; the creation, form, recording, modification, enforcement and termination of commitments; and, the designation of which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

Rules adopted by the *Board of Zoning Appeals* shall be printed and made available to all applicants and other interested persons.

(h) Variance of Development Standards

A *variance* from any of the *development standards* of this Ordinance may only be approved upon the *Board of Zoning Appeals* making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that:

- (1) the approval will not be injurious to the public health, safety, morals and general welfare of the community;
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- (3) the strict application of the terms of this Ordinance would result in practical difficulties in the use of the property.

(i) **Special Exceptions**

(1) Statement of Purpose.

Certain land uses, while they may be generally appropriate in certain *districts* and under certain circumstances, may have characteristics and locational impacts which, if inappropriately located, may have a detrimental effect upon other land uses within the *district* and the City of South Bend. It is therefore recognized that such land uses should be regulated in order to preserve property values, as well as promote the public health, safety, comfort, community moral standards, convenience and general welfare of the City of South Bend.

(2) Uses Permitted by Special Exception.

Only those *uses* identified in each individual *district* as *uses* permitted by *special exception* shall be permitted by *special exception* in each *district*.

(3) Grant of a Special Exception.

The *Board of Zoning Appeals* is hereby authorized to hear and make a favorable recommendation, unfavorable recommendation or no recommendation to the Common Council on a petition for a *special exception use*.

The Common Council shall, within sixty (60) days of a recommendation by the *Board of Zoning Appeals*, vote on the petition for a *special exception use*.

All petitions for a *special exception use* shall comply with the following requirements:

(A) Petition for Special Exception.

A petition for *special exception* shall be initially filed with the *Board of Zoning Appeals* in accordance with the requirements for the filing of a *variance*, except as such requirements may be modified in this Section. Such petition shall include proposed detailed Findings of Fact pursuant to Section 21-09.3, (i) (3) (D) - Findings of Fact for a Special Exception, below, in support of the determinations required to be made.

(B) Waiver of Development Standards.

A petition for *special exception* may contain a request to waive *development standards* of the *district* determined to be inappropriate for the individual *special exception use*. The waiver may only be approved if such waiver is specifically requested in said petition and specifically

approved at the public hearing. Any *development standards* which are waived in this manner shall require additional findings as specified in Section 21-09.03 (h) – Variance of Development Standards, above, for the grant of a variance of *development standards*.

(C) Basis of Review of a *Special Exception Use*.

In reviewing a *special exception* petition with regard to compliance with the required Findings of Fact, the *Board of Zoning Appeals* and Common Council shall give consideration to the particular needs and circumstances of each *special exception* application and shall examine 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 and *street access*;
- iv. On-site and off-site accommodations for vehicular and pedestrian circulation patterns;
- v. Amount, location and design of parking areas and loading areas;
- vi. *Building* character, including height, intensity, materials and architecture;
- vii. Landscaping, screening and buffering of adjacent properties;
- viii. Compatibility of the proposed *use*, site design and architecture with the *district* in which the *use* is proposed to be located;
- ix. Extent to which the proposed *use*, site design and architecture comply with the regulations and *development standards* that would be applicable if the site were zoned to a Commercial / Mixed Use *District* or Industrial *District* of this Ordinance which would permit the proposed *use* as a *primary use*;
- x. *Open space* and other site amenities; and,
- xi. Availability and adequacy of *streets*, sanitary facilities, potable water, storm water management system and other utilities.

The *Board of Zoning Appeals* and the Common Council shall find that the above items are dealt with appropriately by the petition for *special*

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exception use such that Section 21-09.03 (h) (3) (D) – Findings of Fact, below, and Section 21-09.03 (h) (3) (E) – Requirements for the Grant of a Special Exception, below, are complied with.

(D) Findings of Fact for a Special Exception.

A *special exception* may only be granted upon making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that:

- i. The proposed *use* will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
- ii. The proposed *use* will not injure or adversely affect the *use* of the adjacent area or property values therein;
- iii. The proposed *use* will be consistent with the character of the *district* in which it is located and the land uses authorized therein; and,
- iv. The proposed use is compatible with the recommendations of the City of South Bend *Comprehensive Plan*.

(E) Requirements for the Grant of a Special Exception.

The grant of a *special exception* shall comply with the following requirements:

- i. The proposed *use* shall conform to all *development standards* of the applicable zoning *district* (unless a waiver of such *development standards* is requested as part of the Special Exception petition and approved as set forth above).
- ii. The proposed use shall conform to all conditions or commitments attached to the grant of the *special exception*.

(j) Other Powers

The *Board of Zoning Appeals* shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on such powers.