

Sec. 3.9

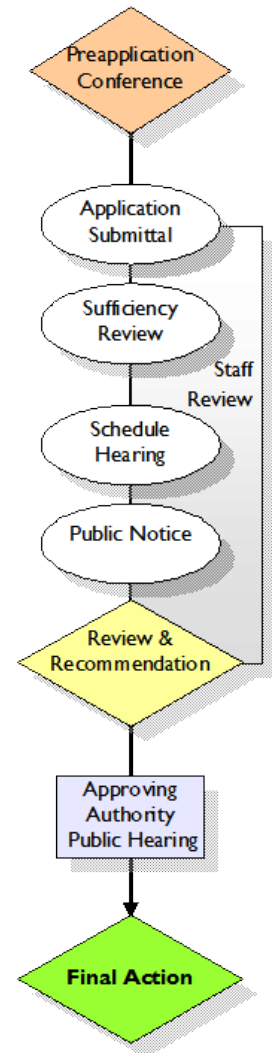
Special Use Permit

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3.9.1 Applicability

- A. Special uses within the zoning districts are considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with surrounding uses require individual review.
- B. A minor special use permit shall be required for all minor special uses as set forth in the use table in Sec. 5.1, Use Table, and as may be specified elsewhere in this Ordinance. Minor special use permits require approval by the Board of Adjustment, except pursuant to paragraph 3.9.1E, below.
- C. A major special use permit shall be required for all major special uses as set forth in the use table in Sec. 5.1, Use Table; for spray irrigation in a conservation subdivision pursuant to paragraph 6.2.4, Conservation Subdivision; and as specified elsewhere in this Ordinance. Major special use permits require approval by the appropriate governing body.
- D. A transportation special use permit shall be required for development projects with corresponding site plans and preliminary plats pursuant to paragraph 3.9.10, Transportation Special Use Permit. Transportation special use permits require approval by the appropriate governing body.
- E. Projects that require not only a major and/or transportation special use permit, but also a minor special use permit, may have the use permits consolidated into a single hearing before the appropriate governing body so long as all required findings for each special use permit are made. Separate orders for each special use permit shall be issued.



3.9.2 Pre-Application Conference

All applicants applying for a special use permit shall schedule a pre-application conference in accordance with paragraph 3.2.2, Pre-Application Conference.

3.9.3 Application Requirements

All applications for special use permits shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.9.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as set forth in paragraph [3.2.5](#), Notice and Public Hearings.

3.9.5 Action by the Planning Director

The Planning Director or designee shall prepare a report that reviews the special use permit in light of any requirements of this Ordinance. A copy shall be provided to the Board of Adjustment or the governing body, as appropriate, and the applicant.

3.9.6 Approval of a Minor Special Use Permit

- A.** Prior to scheduling the public hearing on the minor special use permit, the corresponding site plan or architectural review application, as applicable, shall be ready for action by the approving authority.
- B.** The applicant seeking the special use permit shall have the burden of presenting evidence sufficient to allow the approving authority to reach the conclusions set forth below, as well as the burden of persuasion on those issues.
- C.** After conducting the public hearing and hearing the recommendations of the Planning Director or designee, the Board of Adjustment shall:
 - 1.** Approve the request;
 - 2.** Approve the request with conditions.
 - 3.** Deny the request; or
 - 4.** Continue the hearing.
- D.** Conditions may be incorporated as part of the approval of the special use permit to assure that adequate mitigation measures are associated with the use or design pursuant to NCGS §[160D-705\(c\)](#), as applicable. The conditions shall become a part of the minor special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.7 Approval of a Major or Transportation Special Use Permit

- A.** Prior to scheduling the public hearing on the major or transportation special use permit, the corresponding site plan shall be ready for action by the approving authority.

- B.** After conducting the public hearing and hearing the recommendations of the Planning Director, Transportation Director, or their designee as appropriate, the governing body shall:
1. Approve the request;
 2. Approve the request with conditions.
 3. Deny the request; or
 4. Continue the hearing.
- C.** 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 major special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.8 Criteria for Approval of Major or Minor Special Use Permits

A. General Findings

Unless otherwise specified in this Ordinance, applications for major or minor special use permits shall be approved only if the approving authority 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;
3. Will not adversely affect the health or safety of the public; and
4. Will adequately address the review factors identified below.

B. Review Factors

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

1. Circulation

Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit 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. Service Entrances and Areas

Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

4. Lighting

Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

5. Signs

Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area.

6. Utilities

Location and availability of utilities.

7. Open Spaces

Location of required yards and other open spaces and preservation of existing trees and other natural features.

8. Environmental Protection

Preservation of tree cover, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space and other natural features, and protection of water quality.

9. Screening, Buffering and Landscaping

Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.

10. Effect on Nearby Properties

Effects of the proposed use on nearby properties, including, but not limited to, the effects of noise, odor, lighting, and traffic.

11. Compatibility

The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties.

12. Consistency with Policy

Consistency with the *Comprehensive Plan* and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article [4](#), Zoning Districts.

13. Other Factors

Any other review factors which the approving authority considers to be appropriate to the property in question.

C. Additional Review Factors for Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

The applicant for a minor special use permit under this section shall demonstrate that the additional review factors listed below have been adequately addressed. If the application is denied, the Board of Adjustment shall specify which of these review factors, if any, were not adequately addressed.

1. Susceptibility of the proposed facility, structure, or other development and its contents to flood damage and the effect of such damage on the individual property owner and others as a result of flood damage;
2. Importance of the services provided by the proposed facility, structure, or other development to the community;
3. Necessity to the facility, structure, or other development of a waterfront location, where applicable;
4. Compatibility of the proposed use with existing and anticipated development;
5. Safety of access to the property in times of flood for ordinary and emergency vehicles;
6. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
7. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The proposed fill or development provides for a better balance between overall efficiency of the site design and improved conservation elsewhere on the site than would be possible without intrusion into the floodway fringe, non-encroachment area fringe, Future Conditions Flood Hazard Areas, or Areas of Shallow Flooding (Zone AO);
10. The proposed fill or development represents the minimum amount of floodway fringe, non-encroachment area fringe, Future Conditions Flood Hazard Areas, or Areas of Shallow Flooding (Zone AO) intrusion to achieve this better balance; and

11. Any other relevant factors, technical evaluations, or standards specified in other sections of this Ordinance.

3.9.9 Transportation Special Use Permit

A. Requirements

A transportation special use permit shall be required for development projects that are expected to generate:

1. 600 or more vehicle trips at peak hour; or
2. 300 or more vehicle trips at peak hour, if any road serving the project is operating at a level of service lower than the jurisdiction's adopted level of service.

B. Exemptions

The following projects shall be exempt from the requirement of a transportation special use permit, even if they meet or exceed the thresholds specified above.

1. Projects that do not require a TIA per Sec. [3.3](#), Traffic Impact Analysis (TIA).
2. Projects within the UC, UC-2, or SRP zoning districts.
3. Projects outside of the City jurisdiction.
4. Projects which have submitted a TIA in connection with a zoning map change with a development plan, and which are developing consistent with the approved development plan, if the TIA is valid pursuant to paragraph [3.3.6](#), Period of Validity.
5. Schools as defined in NCGS [§160A-307.1](#).

C. Criteria for Approval

Applications for a transportation special use permit shall be approved only if the governing body makes the following findings:

1. 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:
 - a. 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
 - b. The need to widen local residential streets, which would detract significantly from the character or basic function of the nearby streets.

2. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
3. The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.
4. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the governing body.

3.9.10 Coordination with Variances

Applications for variances may be submitted concurrently with requests for special use permits. However, decisions shall be rendered separately for any variance and the special use permit(s).

3.9.11 Coordination with Zoning Map Change Applications

An application for a special use permit may be reviewed concurrently with a zoning map change application. However, decisions shall be rendered with separate motions.

3.9.12 Resubmittals

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

3.9.13 Expiration

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

- A. If a site plan or architectural review, as applicable, is not approved within 12 months of the date of permit approval.
- B. If an approved site plan, architectural review application, or building permit expires.
- C. If a building permit is not issued within two years of the date of approval, in cases where a corresponding site plan or architectural review is not required.

- D. If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs. The addition of language to the special use permit regarding such voiding shall not be required.
- E. Validity may be extended if vesting is determined per Sec. [3.20](#), Vested Rights.

3.9.14 Appeal

Appeal from final action can be taken by filing a petition for *certiorari* with the Durham County Superior Court.

3.9.15 Recordation

The approved order for the special use permit, once the time period for appeal has expired or once it has been upheld on appeal, shall be recorded at the applicable Register of Deeds.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: June 1, 2023

City of Durham: June 1, 2023

Disclaimer: The [Durham City-County Planning Department](#) office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

[City Website: durhamnc.gov](http://durhamnc.gov)

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