

# Tab 4

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### **Section 15-54. Special use permits.**

- (a) An application for a special use permit shall be submitted to the board of adjustment by filing a copy of the application with the zoning administrator in the Department of Development Services.
- (b) The board of adjustment shall conduct a public hearing on this application. The hearing shall be conducted according to the provisions of article VI and this section.
- (c) The burden of presenting a complete application to the board of adjustment shall be upon the applicant. However, unless the board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.
- (d) Subject to subsection (e), the board of adjustment shall issue the special use permit upon finding that:
  - (1) The requested permit is within its jurisdiction according to the table of permissible uses;
  - (2) The application is complete;
  - (3) If completed as proposed in the application, the development will comply with all of the requirements of this ordinance;
  - (4) The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted;
  - (5) The use will not substantially reduce the value of adjoining or abutting property, or that the use is a public necessity; and
  - (6) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the city.
- (e) The burden of presenting evidence under each part of subsection (d) rests upon the applicant. The board shall consider each part of subsection (d) separately, and for each part shall:
  - (1) Determine whether the applicant has submitted competent, material, and substantial evidence showing that the requirements of that part have been met;
  - (2) Determine whether competent, material, and substantial evidence has been submitted at the hearing showing that the requirements of that part have not been met;
  - (3) Make a finding as to whether or not the requirements of the part have been met. In making this finding, the board shall find that the requirements have been met if the applicant produces evidence in support of his position and there is no competent, material, and substantial evidence showing that the requirements have not been met. If the board finds that the requirements have not been met, the board shall state specifically upon which facts it has relied in making that decision.

( Ord. No. 16-054, § 2, 10-11-16 )

### **Section 15-55. Recommendations on special use permits.**

- (a) When presented to the board of adjustment at the hearing, the application for a special use permit shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 15-49 (Application to be complete) and the other requirements of this ordinance, as well as any staff recommendations for additional requirements to be imposed by the board of adjustment.

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- (b) If the staff proposes a finding or conclusion that the application fails to comply with section 15-49 or any other requirement of this ordinance, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

**Section 15-58. Additional requirements on special use permits.**

- (a) Subject to subsection (b), in granting a special use permit, the board of adjustment may attach to the permit such reasonable requirements in addition to those specified in this ordinance as will ensure that the development in its proposed location:
  - (1) Will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
  - (2) Will not substantially reduce the value of adjoining or abutting property;
  - (3) Will be in harmony with the area in which it is located; and
  - (4) Will be in general conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the board of aldermen.
- (b) The board of adjustment may attach additional conditions if the development in question presents circumstances that justify the variation from the specified requirements.
- (c) Without limiting the foregoing, the board of adjustment may attach to a permit a condition limiting the permit to a specified duration.
- (d) All additional conditions or requirements shall be entered on the permit.
- (e) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this ordinance.
- (f) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in this article.

( Ord. No. 16-047, § 23, 9-13-16 )

Ord. No. 16-047, § 23, adopted September 13, 2016 repealed and replaced § 15-58 in its entirety. Former § 15-58 pertained to "Additional requirements on special use and conditional use permits," and was derived from Original Code.

**§ 160D-107. Moratoria.**

(a) Authority. – As provided in this section, local governments may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

(b) Hearing Required. – Except in cases of imminent and substantial threat to public health or safety, before adopting a development regulation imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-601.

(c) Exempt Projects. – Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section does not apply to any project for which a valid building permit issued pursuant to G.S. 160D-1108 is outstanding, to any project for which a special use permit application has been accepted as complete, to development set forth in a site-specific vesting plan approved pursuant to G.S. 160D-108.1, to development for which substantial expenditures have already been made in good-faith reliance on a prior valid development approval, or to preliminary or final subdivision plats that have been accepted for review by the local government prior to the call for a hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the local government prior to the call for a hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Notwithstanding the foregoing, if a complete application for a development approval has been submitted prior to the effective date of a moratorium, G.S. 160D-108(b) applies when permit processing resumes.

(d) Required Statements. – Any development regulation establishing a development moratorium must include, at the time of adoption, each of the following:

- (1) A statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the local government and why those alternative courses of action were not deemed adequate.
- (2) A statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) A date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A statement of the actions, and the schedule for those actions, proposed to be taken by the local government during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

(e) Limit on Renewal or Extension. – No moratorium may be subsequently renewed or extended for any additional period unless the local government has taken all reasonable and feasible steps proposed to be taken in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of subsection (d) of this section, including what new facts or conditions warrant the extension.

(f) Expedited Judicial Review. – Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the General Court of Justice for an order enjoining the enforcement of the moratorium. Actions brought pursuant to this section shall be scheduled for expedited hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In such actions, the local government has the burden of showing compliance with the procedural requirements of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 4, 51(a), (b), (d).)