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**DIVISION 3. - SPECIAL EXCEPTION USES**

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**Sec. 78-361. - Purpose.**

The development and execution of a zoning ordinance is based upon the division of the village into districts, within which the use of land and structures and the bulk and location of structures in relation to the land are substantially uniform. It is recognized, however, that there are certain uses and features which, because of their unique characteristics, cannot be distinctly classified or regulated in a particular district without consideration in each case of the impact of such uses and features upon neighboring uses and the surrounding area, compared with the public need for them at particular locations. Such uses and features are therefore treated as special exceptions. A special exception is not the automatic right of any applicant.

(Code 1977, app. A, § X(J)(1))

**Sec. 78-362. - Applicability.**

All initial requests for special exception uses as listed in this chapter, along with their related accessory uses shall be subject to the requirements of this division. In addition, any modification to the use of a previously granted special exception, except for a modification that changes said use to a permitted use as listed in this chapter, shall be subject to the requirements of this division. Requests to expand, enlarge or revise the site of an existing special exception use shall be classified and processed pursuant to the following three categories;

- (1) Small scale, interior - interior expansion, enlargement or revision of less than ten percent of the originally approved special exception site square footage and having construction costs of less than \$100,00.00, once within any eighteen month period (this category contemplates uses located in existing shopping centers or similar structures, where no change to the overall building footprint is required).
  - a. Applicant shall submit the processing fee in an amount established by resolution of the

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village council and on file in the village clerk's office.

- b. Review and approval is provided by the community development director, following which, the applicant may apply for building permits.
- (2) Small scale, exterior - exterior expansion, enlargement or revision of less than ten percent of the originally approved special exception site square footage and having construction costs of less than \$100,00.00 once within any eighteen month period (this category contemplates a change to the existing structure's footprint, and other site related revisions that flow therefrom).
- a. Applicant shall submit the processing fee in an amount established by resolution of the village council and on file in the village clerk's office.
  - b. Review and approval regarding the continuing special exception use is provided by the community development director, following which, the applicant shall submit an application for site plan modification.

When reviewing small scale expansion, enlargement or revision, the community development director shall make a determination that such expansion, enlargement or revision does not result in a violation of the requirements of sections [78-363](#) or [78-364](#), or a violation of any previously imposed condition of approval.

- (3) Large scale - any expansion, enlargement or revision to the site of an existing special exception use that does not qualify as either small scale interior or small scale exterior. Such expansion, enlargement or revision is subject to the requirements of this division.

(Ord. No. 19-11, § 1, 11-10-2011)

**Sec. 78-363. - Criteria.**

Special exception uses to which this division applies as set forth in [section 78-362](#) shall be permitted only upon authorization of the village council provided that such uses shall be found by the village council to comply with the following requirements:

- (1) The proposed use is a permitted special exception use.
- (2) The use is so designed, located and proposed to be operated so that the public health, safety, welfare and morals will be protected.
- (3) The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
- (4) The use will be compatible with adjoining development and the proposed character of the district where it is to be located.
- (5) Adequate landscaping and screening is provided as required in this chapter.
- (6) Adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.

(Code 1977, app. A, § X(J)(2); Ord. No. 19-11, § 1, 11-10-2011)

**Sec. 78-364. - Findings required for approval.**

Before any special exception to which this division applies as set forth in [section 78-362](#) is granted, the village council shall apply the standards set forth in this division and shall determine that satisfactory provision and arrangement of the following factors have been met by the petitioner, where applicable:

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- (1) Compliance with all elements of the village comprehensive plan.
- (2) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- (3) Off-street parking and loading area, where required, with particular attention to the items in subsection (2) of this section.
- (4) Nuisance factors detrimental to adjacent and nearby properties and the village as a whole. Nuisance factors shall include but not necessarily be limited to noise, odor, smoke, glare, electrical interference and/or mechanical vibrations.
- (5) Utilities, with reference to location, availability and compatibility.
- (6) Screening and buffering, with reference to type, dimensions and character.
- (7) General compatibility with adjacent properties and other property in the district.
- (8) Whether the change suggested is out of scale with the needs of the neighborhood or the village.
- (9) Any special requirements set out in the schedule of site regulations in [section 78-143](#) for the particular use involved.

(Code 1977, app. A, § X(J)(3); Ord. No. 19-11, § 1, 11-10-2011)

**Sec. 78-365. - Imposition of additional conditions and safeguards.**

- (a) In addition to the criteria listed in [section 78-363](#), the required approval findings listed in [section 78-364](#) and specific conditions for the particular special exception use listed within the applicable zoning district regulations, the village council may impose other such conditions and safeguards as it deems appropriate in conformity with this chapter for the protection of the surrounding properties and the neighborhood or general welfare of the public.
- (b) If the special exception use is granted by the village council, the use must conform to all the applicable regulations governing the district where it is located, except as may otherwise be determined for planned developments. Failure to comply with all the applicable regulations governing the district as required by the site plan approval process will void the granted special exception use.

(Code 1977, app. A, § X(J)(4); Ord. No. 19-11, § 1, 11-10-2011)

**Sec. 78-366. - Denial.**

Should the village council deny a special exception, it shall state fully for the record the reasons for doing so. Such reasons shall take into account the factors under [section 78-363](#) and all other conditions and particular regulations relating to the specific special exception requested.

(Code 1977, app. A, § X(J)(5))

Formerly, [§ 78-365](#)

**Sec. 78-367. - Reapplication after denial.**

- (a) Whenever the village council has denied an application for a special exception, the village shall not thereafter consider any further application for special exception on any part of or all of the same

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property for a period of 12 months from the date of such action.

- (b) The time limits of subsection (a) of this section may be waived by three affirmative votes of the village council when such action is deemed necessary to prevent injustice or to facilitate the proper development of the village.

(Code 1977, app. A, § X(J)(6))

Formerly, [§ 78-366](#)

**Sec. 78-368. - Time limit for commencement of use.**

- (a) A special exception shall commence within 12 months from the date of grant of the special exception unless extended by action of the village council; otherwise it is automatically rendered null and void.
- (b) Commencement of a special exception occurs upon the issuance of a building permit, preliminary plat or site plan, or upon the initiation of significant action to satisfy requirements for improvements contained in a development order or other regulatory documents relating to the special exception.
- (c) Only one extension shall be permitted by the village council and the extension shall not exceed six months. A written request for such extension of time must be received by the village prior to the expiration of the grant of approval.
- (d) Special exceptions granted to any governmental unit shall be exempt from the provisions of this section unless a time limitation is made a specific condition of the special exception.

(Code 1977, app. A, § X(J)(7); Ord. No. 7-08, § 4, 4-10-2008)

Formerly, [§ 78-367](#)

**Sec. 78-369. - Optional pre-application review process.**

Prior to submitting a special exception application and committing the resources required to proceed through the special exception application process as required by [section 78-370](#), an applicant may choose to participate in the following pre-application process in order to gauge interest in his proposed project.

- (1) *Pre-application meeting.* A pre-application submittal meeting shall be held with the applicant and his design team and the community development director and development staff. The applicant's proposed use shall be reviewed and discussed in order to identify any issues with the proposed use, the applicable use regulations and/or other applicable requirements.
- (2) *Conceptual presentation.* Based on the outcome of the pre-application meeting, the applicant may request to present his special exception use concept to the village council in order to receive further input. This conceptual presentation is not a quasi-judicial proceeding, and no action shall be taken by the village council beyond discussion with the applicant. Neither the outcome of this conceptual presentation, nor any comments made during this conceptual presentation by any village council member or village staff is a guarantee or assurance in any way of the final action that may be taken by the village council pursuant to a formal application for special exception use as provided in [section 78-370](#)
- (3) Prior to being placed on a village council agenda for a conceptual presentation, the applicant shall submit the following:
- a. Processing fee in an amount as established by resolution of the village council and on file

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in the village clerk's office.

- b. Twelve copies of sketches and diagrams sufficient to convey the conceptual use to the village council. This may include site plans, floor plans and/or surveys.
- c. Twelve copies of a brief explanation that the proposed special exception use is compatible with the surrounding uses and the neighborhood in general.

(Ord. No. 19-11, § 1, 11-10-2011)

**Sec. 78-370. - Application; notice of hearing.**

- (a) A written petition for special exception shall be submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested, with particular reference to the criteria under [section 78-363](#), the written findings under [section 78-364](#), and other specific conditions, if applicable, which the village council shall address. The petition shall include all material necessary to meet the requirements of the development concept plan listed in subsection (b) of this section and any additional information that will demonstrate that the grant of special exception will be in harmony with general intent and purpose of this chapter.
- (b) A petitioner seeking special exception approval shall submit a development concept plan on one or more sheets of paper measuring not more than 24 by 36 inches and drawn to a scale not smaller than 100 feet to the inch. The following shall be provided on the development concept plan:
  - (1) Scale, date, north arrow, vicinity sketch, title of the project and total gross acreage.
  - (2) The boundaries and dimensions of the property and its relationship to the surrounding road system, including the width of the existing travelway (pavement).
  - (3) The location and dimension of existing manmade features such as existing roads and structures, with indication as to which are to be removed, renovated or altered.
  - (4) Identification of surrounding land use, zoning and existing buildings within 100 feet of the petitioned site, as well as the zoning of the petitioned site.
  - (5) A layout of the proposed lots and/or building sites including the following site data:
    - a. Finished floor elevation.
    - b. Common open area.
    - c. Generalized landscaping and buffer areas.
    - d. Internal circulation patterns including off-street parking and loading facilities.
    - e. Total project density.
    - f. The shape, size, location and height of all structures.
  - (6) The proposed phasing of construction for the project if applicable.
  - (7) For commercial uses, office uses and uses other than residential, the estimated square footage of the structure, the number of employees, the estimated seating, and the estimated number of users of the facility, such as members, students and patients.
  - (8) Proposed hours of operation for commercial uses.
  - (9) Twelve aerial maps at a minimum scale of one-inch equals 300 feet, showing the site in question with paved boundaries superimposed.
  - (10) A legal description of the land proposed for development.

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- (11) Current survey of the subject property.
- (c) The application shall be reviewed by the land development staff within 30 days of the submission deadline. Upon land development staff review and analysis of all submitted materials, the building official shall forward a recommendation to the village council.
- (d) A public hearing shall be held by the village council. The property owner may appear personally or by agent or attorney.
- (e) Notice of public hearing shall be advertised a minimum of ten days in advance of the public hearing in a newspaper of general circulation in the area. The owner of the property for which special exception is sought or his agent or attorney designated by him on the submitted petition shall be notified by mail of the date and time of the hearing. Notice shall be given by mail to all owners of property within a 300-foot radius of the boundary lines of the property for which a special exception is requested. The list of property owners within the stated radius shall be provided by the applicant from the most recent tax roll information as provided by the county appraiser's office. The applicant must furnish an affidavit signed by the person responsible for providing the list. Notwithstanding any other provision contained in this section, failure to provide written notice to any adjacent property owners shall not constitute a jurisdictional defect provided that proper legal notice has been published.

(Code 1977, app. A, § X(J)(8); Ord. No. 7-08, § 4, 4-10-2008; Ord. No. 19-11, § 1, 11-10-2011)

Formerly, [§ 78-368](#)

**Sec. 78-371. - Filing fee.**

Upon filing an application for special exception, the applicant shall pay a fee to the village at the time of filing of such application. The fee shall be in an amount as established by resolution of the village council and on file in the village clerk's office, shall not be reimbursable, and is intended to defray costs of administering, processing, and reviewing the application. Additionally, to cover all additional administrative costs, actual or anticipated, including, but not limited to, engineering fees, consulting fees, attorneys' fees and special studies, the applicant shall compensate the village for all such costs prior to the processing of the application, or not later than 30 days after final application approval, whichever is determined as appropriate by the community development director.

(Code 1977, app. A, § X(J)(9); Ord. No. 7-08, § 4, 4-10-2008)

Formerly, [§ 78-369](#)

**Secs. 78-372–78-390. - Reserved.**