

CHECKLIST FOR VARIANCE AND SPECIAL EXCEPTIONS

- Application – Complete and signed
- Legal Description – Survey or Deed
- Development Plan/Site Plan/Survey – Complete with all details required by ordinance, instructions and Town Manager
- Payment of Filing Fee
- “Instructions for Petitioners” furnished to petitioners
- List of all interested persons to receive Notice Of Hearing – this is all adjoining land owners and others as determined by the Town Manager. This information obtained by GIS or from County Auditor’s records
- Notice furnished to Hamilton News and Republican Herald (if Steuben County property) or Evening Star (if DeKalb County property) for publication – notice is published one time at least ten (10) days before the hearing. (IC 5-3-1-4(e))
- Notice mailed to interest parties no later than ten (10) days prior to hearing date – this notice is by certified mail.
- Proof of publication from newspapers
- Proof of mailing – furnished by petitioners

TOWN OF HAMILTON, INDIANA
BOARD OF ZONING APPEALS
Application for Appeal Hearing
(Special Exception)

1. Applicant: _____
Address: _____
Phone: _____

2. Owner(s) of property proposed for variance: _____

Owner's address: _____

3. Street address of property: _____
Legal description of property proposed variance (may be attached): _____

4. Present zoning classification: _____

5. Present use of property: _____

6. Proposed use of property: _____

7. Type of Appeal: _____ (a) Request for a Special Exception Variance.
_____ (b) Request for a Temporary Permit.

8. State what you want to do with your property: _____

**BOARD OF ZONING APPEALS
FINDINGS OF FACT**

For the BZA to consider your petition for a Special Exception, you will need to present evidence on the following points. The BZA must make findings of fact on each of these points in deciding whether or not to grant your petition. **Failure to present evidence in support of any of these findings will result in denial of your petition; therefore, please state:**

- A. The Special Exception, which is the improvements as requested by the petitioner will not be injurious to the use, enjoyment, and value to surrounding properties?

- B. The existing use, that is, a single-family resident, is located in a district where such use is permitted?

- C. There are adequate utilities, access roads, drainage ingress and egress and other facilities and no additional utilities, etc are required?

- D. The granting of the Special Exception, that is, improving the non-conforming single-family residents will not impede the normal and orderly development and improvement of the surrounding properties?

Are there any restrictions, laws or covenants governing your property that would prohibit its use for the purpose specified in this application? _____ If yes, please attach a copy of such restrictions.

FOR ZONING ADMINISTRATOR USE ONLY:

1. State the applicable Chapter and Subsection of the Town of Hamilton, Indiana Zoning Regulations that has caused this appeal.

2. Has there been any previous appeal filed regarding this property?

**BURDEN OF THE PETITIONER/
FACTORS TO BE CONSIDERED BY THE BOARD**

The petitioner has the burden of presenting evidence to address the points referenced in paragraph 8 of the petition, which are also the factors that the Board must consider. The findings of fact that the Board must deliberate and decide upon are listed below. All of these facts must be found in the affirmative for the special exception to be granted. **Should one of the facts be found negative, the special exception will be denied.** The findings of fact are:

- a. That there is a public necessity for the special exception at the proposed location.
- b. That the establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, or general welfare.
- c. The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood.
- d. The establishment of the special exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
- e. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
- f. That adequate measures have been or will be taken to provide ingress and egress so designated as to minimize traffic congestion in the public streets.
- g. That the special exception will be located in a district where such use is permitted and that all other requirements set forth in Figure 1 of the Zoning Ordinance, applicable to such special exception, will be met.

FURTHER REQUIREMENTS

Any person to whom is issued an improvement location permit for a special exception who fails to commence construction within twelve (12) months after such permit is issued, or who fails to carry to completion the total development plan thereof within three (3) years after such construction is begun, which ever is later, or who fails to conform to the provisions of the development plan and supporting data finally approved by the Board and upon the basis of which such improvement location permit was issued, may be required by the Board upon its own motion, and shall be required by the Board upon written petition of any person deeming himself aggrieved, to show cause why such approval should not be withdrawn and such improvement location permit revoked.

**Instructions for Petitioners before
The Hamilton Board of Zoning Appeals**

SPECIAL EXCEPTIONS

1. Special Exceptions are uses publicly or municipally operated and those uses traditionally affected with a public interest and those uses entirely private in character but of such an unusual nature that their operation may give rise to unique problems with respect to their impact on neighboring property and public facilities.
2. The Hamilton Board of Zoning Appeals shall approve or deny all special exceptions.

PROCEDURE FOR FILING WITH BOARD OF APPEALS

The following items must be submitted to the Board:

- a. An application for Appeal Hearing for Special Exception completed in full.
- b. A legal description of the property involved with the proposed special exception use.
- c. A development plan showing the proposed use.
- d. Your response to the requirements for each individual special exception, these requirements can be obtained from the Town Zoning Administrator.

PUBLIC HEARING PROCEDURE

You will be scheduled for a Board of Appeals Hearing and notified. You must be present at this hearing. Notice of the public hearing must be advertised in the newspaper and must also be given to any person who owns land that touches the property in question. For purposes of determining which property touches your property, ignore all roads, streets, highways and alleys, that is, any property that would touch your property but for such road, street, highway or alley is considered to be an adjoining property and must be notified.

The Town will prepare the legal notice and will submit it to the newspaper for publication, the applicant is responsible for the publication fee. The notice to be sent to persons owning adjoining land will also be prepared by the Town but the petitioner will be responsible for sending the letters by certified mail return receipt requested. These letters must be sent to the adjoining land owners no later than ten (10) days prior to the hearing date. Forty-eight (48) hours prior to the hearing date, the applicant must submit to the Town office a receipt showing that the newspaper advertisement has been paid and the green return cards for the certified mailings.

INSTRUCTIONS FOR PETITIONERS BEFORE THE BOARD OF ZONING APPEALS

Variance

A variance involves a deviation or change from a use or developmental standard contained in the Hamilton Zoning Ordinance. The Hamilton Board of Zoning Appeals shall approve or deny all variances.

Procedure for Filing with Board of Zoning Appeals

The following items must be submitted to the Board:

- A. An application for Appeal Hearing for Variance completed in full.
- B. A legal description of the property proposed for the variance.
- C. A development plan showing the proposed use.
- D. Any other documents required by the Plan Commissioner.

Public Hearing Procedure

You will be scheduled for a Board of Zoning Appeals Hearing and notified. Notice of the public hearing must be advertised in the newspaper and must also be given to any person who owns land that touches the property in question. For purposes of determining which property touches your property, ignore all roads, streets, highways and alleys, that is, any property that would touch your property but for such road, street, highway or alley is considered to be adjoining property and must be notified. The Town will prepare the legal notice and will submit it to the newspaper for publication, the applicant is responsible for the publication fee. The notice to be sent to persons owning adjoining land will also be prepared by the Town but the petitioner will be responsible for sending the letters by certified mail return receipt requested. These letters must be sent to the adjoining land owners no later than ten (10) days prior to the hearing date. Forty-eight (48) hours prior to the hearing date, the applicant must submit to the Town office a receipt showing that the newspaper advertisement has been paid and the green return cards for the certified mailings.

Factors to be Considered by the Board for Their Determination

The Board shall approve or deny variances of use and from developmental standards from the terms of the Hamilton Ordinance. The Board may impose reasonable conditions as part of its approval. The following findings of fact must be made on every variance and all of these facts must be found in the affirmative for the variance to be granted. Should one of the facts be found negative, the variance will be denied. It is the applicant's responsibility and the applicant has the burden of proof to submit evidence to the Board to prove that the request for variance meets all criteria and findings of fact. The findings of fact are:

- A. That the proposed building or structure/use, will not be injurious to the public health, safety, morals, and general welfare of the community.
- B. How will the proposed use and the value of the properties in the area adjacent to the property you own, and for which you are requesting a variance, not be affected in a substantially adverse manner.
- C. The need for the variance arises from some condition peculiar to the property involved.
- D. The strict application of the terms of the ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
- E. The approval does not substantially interfere with the policies, goals and objectives established in the Hamilton Comprehensive Plan. (This applies only to Variance of Use, does not apply to Variance from Development Standards.)

Further Requirements

Any person to whom is issued an improvement location permit for a special exception who fails to commence construction within twelve (12) months after such permit is issued, or who fails to carry to completion the total development plan thereof within three (3) years after such construction is begun, which ever is later, or who fails to conform to the provisions of the development plan and supporting data finally approved by the Board and upon the basis of which such improvement location permit was issued, may be required by the Board upon its own motion, and shall be required by the Board upon written petition of any person deeming himself aggrieved, to show cause why such approval should not be withdrawn and such improvement location permit revoked.