
DIVISION 3. SPECIAL DEVELOPMENT APPLICATIONS

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- 5.3.1 PURPOSE.** This Division is established for the purpose of listing special development applications that are not otherwise referenced by the land use listings within the individual zones. The special development applications are created to provide alternative procedures through which relief from the general land use provisions can be requested.
 - 5.3.2 CHANGE OF ZONING (REZONING).** Changes to zoning boundaries are considered by the Zoning Examiner (Examiner) at a public hearing for recommendation to the Mayor and Council. Mayor and Council make the final decision. Rezoning are processed in accordance with the Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#). (Ord. No. 9967, §5, 7/1/04)
 - 5.3.3 VARIANCES.** Requests to vary the provisions of the *Land Use Code (LUC)* require Board of Adjustment (B/A) approval through the Board of Adjustment Full Notice Procedure, Sec. 23A-50 and Sec. 23A-52. Application requirements shall be established by the Development Services Department Director and shall include, but not be limited to, property ownership information, a site plan, elevations, and other information that may be necessary to evaluate the request. (Ord. No. 9967, §5, 7/1/04)
 - 5.3.3.1 Findings for Approval.** The Board of Adjustment (B/A) may approve a variance request subject to the findings listed in Sec. 5.1.7.3.B.
 - 5.3.3.2 Issuance of Permits.** On variance requests that have been approved by the Board of Adjustment (B/A), permits shall not be issued before the end of the appeal period.

- 5.3.3.3 Expiration of Approval. Any variance granted through this process or on appeal shall be null and void if building permits are not issued or compliance with conditions of approval does not occur within one hundred eighty (180) days from the date of approval. A shorter time period for compliance may be required as a condition of approval. Two (2) extensions of up to one hundred eighty (180) days each may be granted by the Development Services Department Director for good cause. An exception to the length of the approval period is a variance granted for lot size reduction for which a plat has been recorded in compliance with the variance. (Ord. No. 8785, §1, 12/16/96; Ord. No. 9179, §1, 12/14/98; Ord. No. 9967, §5, 7/1/04)
- 5.3.4 DESIGN DEVELOPMENT OPTION (DDO).** This Section is established to provide the ability to modify, under certain criteria, the Development Designator provisions applicable to a land use within each zone. The ability to modify a requirement is not intended as a method of deleting or waiving the requirement but is intended to assist in the design and development of a project and: (Ord. No. 9967, §5, 7/1/04)
- Encourage the efficient use of land through design innovation.
 - Provide administrative relief to zoning requirements that do not affect the adjacent properties and the surrounding neighborhood and community.
 - Provide the ability to modify design requirements in instances where the strict application of the requirement may not be practical due to topography; existing development, whether on site or on adjacent properties; or life safety issues.
 - Provide for energy conservation through flexible site and building design.
 - Provide for consideration and implementation of alternative design solutions within the intent of the regulation in a timely and efficient manner.
- 5.3.4.1 Applicability. The following Development Designator requirements may be considered for modification under this Section.
- A. Setback provisions, including separation between buildings.
 - B. Height of accessory walls and fences. (This does not include screening as required in Article III, Division 7, Landscaping and Screening Regulations.)
- 5.3.4.2 Review. Review of modification requests shall be in accordance with the Limited Notice Procedure, Sec. 23A-40. Application requirements shall be established by the Development Services Department Director and shall include, but not be limited to, property ownership information, a site plan, elevations, and other information that may be necessary to evaluate the request. (Ord. No. 9967, §5, 7/1/04)
- 5.3.4.3 Findings for Approval. The Development Services Department Director may approve a modification to a Development Designator requirement as provided by this Section, if all the following findings are made. (Ord. No. 9967, §5, 7/1/04)
- A. The modification is not a request previously denied as a variance. (Ord. No. 9179, §1, 12/14/98)
 - B. The modification is to a Development Designator provision and not to performance criteria that apply to the use within the zone, i.e., a setback requirement greater than required under the Development Designator provisions for the land use.
 - C. The modification is to the Development Designator provisions and not to performance criteria required of a Special Exception Land Use in order for such use to be allowed in the zone, i.e., a building height less than required under the general provisions of the zone.

- D. The modification is not to a requirement of an overlay zone, such as, but not limited to, Scenic Corridor, Environmental Resource, Major Streets and Routes Setback, or Airport Environs.
- E. The modification is not to a setback requirement of a Flexible Lot Development (FLD). The FLD already provides less stringent standards than those applicable to other development. (Ord. No. 10636, §15, 2/24/09)
- F. The modification applies to property that cannot be developed in conformity with the provisions of this Chapter due to physical circumstances or conditions of the property, such as irregular shape, narrowness of lot, or exceptional topographic conditions.
- G. The modification does not delete or waive an *LUC* requirement but provides an alternate solution.
- H. The modification does not create a situation where the proposed development substantially reduces the amount of privacy which would be enjoyed by nearby residents any more than would be available if the development was built without the modification.
- I. The modification does not create a situation where proposed development will obstruct significant views of dramatic land forms, unusual stands of vegetation, or parks from nearby properties substantially more than would occur if the development were built without the modification.
- J. The modification does not create a situation where proposed development will block visibility on adjoining streets for either vehicular or pedestrian traffic.
- K. The modification does not create a situation where the proposed development will interfere with the optimum air temperature/solar radiation orientation of buildings on adjoining properties substantially more than would occur if the buildings or structures were built without the modification.
- L. The modification does not create a situation where the proposed use of the property will impose objectionable noise levels on adjoining properties greater than would occur if the buildings or structures were built without the modification.
- M. The modification is designed to mitigate any negative impacts that may be created by the modification.
- N. The modification does not create a situation where the development will result in an increase in the number of residential dwelling units or the square footage of nonresidential buildings greater than would occur if the development was built without the modification.
- O. The modification does not reduce the setback from a street to less than is allowed under the provisions of Sec. 3.2.6.5.B.
- P. The modification is not for an increase in height of more than two (2) feet to an accessory wall or fence, except that an increase of up to four (4) feet may be considered for entry features on walls and fences.

5.3.4.4 Expiration of Approval. Any Design Development Option (DDO) approval granted by the Development Services Department Director shall be null and void if building permits are not issued implementing the DDO or compliance with conditions of approval does not occur within one hundred eighty (180) days from the date of approval. One (1) extension of up to one hundred eighty (180) days may be granted by the Development Services Department Director for good cause. (Ord. No. 9967, §5, 7/1/04)

5.3.5 DESIGN DEVELOPMENT OPTION (DDO). This Section is established to provide an administrative process through which specific Development Regulations of the *LUC* may be modified. This procedure is not intended to delete or waive *LUC* regulations but is intended to accomplish: (Ord. No. 9967, §5, 7/1/04)

- Design flexibility in *LUC* compliance.
- Originality and innovation in site planning and architectural design.
- Energy conservation through site and building design.
- Alternative design solutions within the intent of the regulation.
- Enhancement of community aesthetics.

5.3.5.1 Applicability. The following Development Regulations may be considered for modification under this Section.

- A. Landscaping and screening provisions.
- B. The number of off-street motor vehicle parking spaces.
- C. The location and number of bicycle parking spaces.

5.3.5.2 Review. Review of Design Development Option (DDO) requests shall be through a Limited Notice Procedure, Sec. 23A-40. Prior to a decision by the Development Services Department Director, the Design Review Board (DRB) shall review the request and provide the Development Services Department Director with a recommendation. Application requirements shall be established by the Development Services Department Director and shall include, but not be limited to, property ownership information, a site plan, elevations, and such other information as may be necessary to evaluate the request. (Ord. No. 9967, §5, 7/1/04)

5.3.5.3 Findings for Approval. The Development Services Department Director may approve a design modification, as provided by this Section, if all of the following findings are made. (Ord. No. 9967, §5, 7/1/04)

- A. The modification is not a request previously denied as a variance. (Ord. No. 9179, §1, 12/14/98)
- B. The modification is not to a special requirement or finding to determine whether the use should be allowed in the zone.
- C. The modification is not to a condition of approval for a rezoning or Special Exception Land Use application.
- D. The modification is not to a requirement of an overlay zone, such as, but not limited to, Scenic Corridor, Environmental Resource, Major Streets and Routes Setback, or Airport Environs.
- E. The modification does not create a situation where the proposed development will adversely impact adjacent properties or development.
- F. The modification does not create a situation where the proposed development substantially reduces the amount of privacy which would be enjoyed by nearby residents any more than would be available if the development was built without the modification.
- G. The modification does not create a situation where proposed development will block visibility on adjoining streets for either vehicular or pedestrian traffic.
- H. The modification provides design alternatives to better integrate the development into the design character of the immediate neighborhood.

- I. The modification does not create a situation where the development will result in an increase in the number of residential dwelling units or the square footage of nonresidential buildings greater than would occur if the development was built without the modification.
- J. The modification does not result in the deletion or waiver of an *LUC* requirement.
- K. The modification does not lower the height of a required screening device to a point where it cannot accomplish its purpose.
- L. The modification does not decrease the required area, in square footage, of landscaping.
- M. The modification does not result in either a decrease in off-street motor vehicle parking spaces of more than five (5) spaces or the provision of less than ninety (90) percent of the required parking. (Ord. No. 9138, §1, 10/5/98)
- N. The modification in off-street motor vehicle parking spaces is for the purpose of improving the site design in a manner which will further the intent of the DDO. This includes improvements such as, but not limited to, enhancement of landscaping, pedestrian facilities, or bicycle provisions beyond the requirements of the *LUC*. (Ord. No. 9967, §5, 7/1/04)
- O. The modification does not decrease the number of bicycle parking spaces by more than ten (10) percent and in no event shall the modification lower the requirement to less than two (2) spaces.
- P. The modification to the location of bicycle parking does not make access to the bicycle parking area less convenient or reduce the security of the bicycle parking area.
- Q. The modification in the number of bicycle parking spaces is for the purpose of improving the site design in a manner which will further the intent of the DDO. This includes improvements such as, but not limited to, enhancement of landscaping or pedestrian facilities beyond the requirements of the *LUC*. (Ord. No. 9967, §5, 7/1/04)

5.3.5.4 Expiration of Approval. Any DDO approval granted by the Development Services Department Director shall be null and void if building permits are not issued implementing the DDO or compliance with conditions of approval does not occur within one hundred eighty (180) days from the date of approval. One (1) extension of up to one hundred eighty (180) days may be granted by the Development Services Department Director for good cause. (Ord. No. 9967, §5, 7/1/04)

5.3.6 NONCONFORMING USE OR STRUCTURE. Nonconforming uses or structures may continue to operate or be used as provided in Sec. 1.2.7, except for advertising and outdoor signs which are regulated by the Sign Code, Chapter 3 of the Tucson Code. A nonconforming use may be discontinued, resumed, expanded, or substituted with another nonconforming use, and nonconforming structures can be reconstructed or expanded as provided below. Application requirements shall be established by the Development Services Department Director and shall include, but not be limited to, property ownership information, the date of when the nonconforming use was established, proof of establishment, a site plan, elevations, and other information that may be necessary to evaluate the request. (Ord. No. 9967, §5, 7/1/04)

5.3.6.1 Nonconforming Use. The following requirements concerning nonconforming uses apply.

- A. *Discontinuance of Nonconforming Use.* A nonconforming use may be resumed if the nonconforming use activity has been discontinued for less than six (6) months.
 - 1. A discontinued nonconforming use may be substituted with another nonconforming use, as provided by Sec. 5.3.6.1.D and Sec. 5.3.6.1.E, provided such nonconforming use is substituted within the six (6) month period.

2. The right to resume a nonconforming use is lost if the discontinuance is for six (6) months or more or if a change to a conforming use occurs. Determination of discontinuance shall be based upon a consideration of relevant activities and records, including, but not limited to, business license records and/or utility records and the continued maintenance of the property which indicates the intent to continue or discontinue such use. Property left in disrepair or in an unkempt condition shall be considered in the discontinuance of the use.
- B. *Expansion of a Nonconforming Use.* A nonconforming use may be expanded within an existing or new structure or in land area subject to approval by the Examiner through a Zoning Examiner Full Notice Procedure, Sec. 23A-50 and 23A-53, and provided such expansion complies with the following criteria. (Ord. No. 9967, §5, 7/1/04)
1. The expansion is being undertaken within five (5) years of the time the use became nonconforming.
 2. The expansion complies with *LUC* requirements. These requirements include, but are not limited to, setbacks applicable to the use itself or for new construction, bicycle and motor vehicle parking regulations, and landscaping and screening requirements.
 3. The expansion is for the principal use or for a use that is accessory and incidental to the operation of the existing nonconforming use. (Ord. No. 8808, §1, 1/27/97)
 4. The amount of expansion does not exceed fifty (50) percent of the floor area of the existing building or land area devoted to the existing nonconforming use. Incremental expansions, cumulatively, shall not exceed the fifty (50) percent provision.
 5. The expansion area adjoins the land area, within the same lot, which houses the nonconforming use.
 6. The expansion must comply with the development criteria listed for the Land Use Class of the nonconforming use in the most restrictive zone in which the nonconforming use is permitted as of right.
- C. *Substitution With a Use Within the Same Land Use Class.* An existing nonconforming use may be substituted with the same use or another use from the same Land Use Class without affecting the nonconforming status of the use or structures on the property. The substitution may be approved by the Development Services Department Director through a Zoning Compliance Review, Sec. 23A-31, if the substitute use complies with criteria 2, 3, 4, and 5 as listed in Sec. 5.3.6.1.D. (Ord. No. 9967, §5, 7/1/04)
- D. *Substitution With a Use From a Different Land Use Class.* A nonconforming use may be substituted with a use from a Land Use Class that is different from the one to which the existing nonconforming use belongs, provided it is approved through a Zoning Examiner Full Notice Procedure, Sec. 23A-50 and Sec. 23A-53, and provided the use complies with the following criteria before and after the substitute use is in operation. (Ord. No. 9967, §5, 7/1/04)
1. The substitute use is a use permitted in the most restrictive zoning classification in which the existing nonconforming use is permitted as of right.
 2. The substitute use does not generate additional traffic or noise, have longer hours of operation, have additional outside lighting, or cause other negative impacts on adjoining properties greater than those associated with the existing nonconforming use.
 3. The substitute use provides parking as required by the *LUC*. A parking variance may be requested in accordance with Sec. 5.3.3, Variances. (Ord. No. 9179, §1, 12/14/98)

4. The substitute use does not propose an extension or enlargement of the structure or of the areas occupied by the nonconforming use, except as provided for expansion in Sec. 5.3.6.1.B and Sec. 5.3.6.1.C.
 5. Any new signs proposed for the substitute use shall be of such height, area, and illumination as to be the least detrimental to neighboring properties, but in no event shall a new sign exceed any signage limitations of the Sign Code.
- E. *Change in Nonconforming Status.* When a substitute use is allowed in a zone which is a more restrictive zone than the zone in which the existing nonconforming use is first allowed, the nonconforming status for that parcel changes to the more restrictive zone.
- F. *Nonconforming Parking Areas.* Nonconforming parking areas may be reconstructed, repaved, restriped, or improved with landscaping, additional buffers, lighting, or similar modifications, including the redesign of the parking area layout. The proposed modifications may be approved by the Development Services Department Director through Zoning Compliance Review, Sec. 23A-31, if the modifications meet the following criteria. (Ord. No. 9967, §5, 7/1/04)
1. The modifications are in the interest of public health and safety.
 2. The modifications do not increase the intensity of the nonconforming use of the parking lot.
 3. There is a reduction, or no change, in the adverse impact of the nonconforming parking lot on adjacent residentially zoned properties.

(Ord. No. 9456, §1, 10/16/00)

5.3.6.2 Nonconforming Structure. The following requirements apply to nonconforming structures.

A. *Reconstruction.*

1. Any nonconforming building or structure or groups of nonconforming buildings or structures damaged by natural causes, such as, but not limited to, fire, flood, and lightning, may be reconstructed and used as before with the following limitations.
 - a. Permits to reconstruct the building or structure must be issued within twelve (12) months of the occurrence.
 - b. The reconstruction of the building or structure may not exceed the original footprint or square footage as it existed at the time of the occurrence.
 2. Except as set forth in Sec. 5.3.6.2.A.1, a nonconforming structure that is demolished loses its nonconforming status.
- B. *Expansions.* Nonconforming structures, as provided in Sec. 1.2.7, may continue to be utilized as they existed at the time such structures became nonconforming; however, any expansions made to nonconforming structures from that date shall be in compliance with current regulations. The proposed expansion of a nonconforming building or structure to rebuild any part of a building damaged or demolished due to a government act, such as right-of-way condemnation, shall not count toward the fifty (50) percent expansion requirements of Sec. 5.3.6.1.B; however, such new construction shall comply with current *Land Use Code (LUC)* requirements.

- C. *Loss of Nonconforming Status.* When a building or structure is altered to comply with applicable development criteria of the underlying zoning, the nonconforming status of that building or structure is terminated.
- D. *Nonconforming Parking Areas.* Nonconforming parking areas may be modified, without affecting the nonconforming use status, per Sec. 5.3.6.1.F. (Ord. No. 9456, §1, 10/16/00)

5.3.7 TEMPORARY USE OR STRUCTURE. Certain land uses or structures not permitted within specific zones may be allowed on a temporary basis if authorized through Zoning Compliance Review, Sec. 23A-31, provided such request for a temporary use complies with the following. (Ord. No. 9967, §5, 7/1/04)

5.3.7.1 Qualification for Permit. For certain land uses or structures to be allowed on a temporary basis, the land use or structure must comply with one (1) or more of the following special circumstances.

- A. The circumstances constitute a substantial hardship, such as, but not limited to, a natural disaster, e.g., fire or flood, or a government action that has resulted in damage to an existing structure on the subject property.
- B. A temporary structure, such as a mobile or modular unit, occupied as a caretaker's facility or a home for the eventual resident may be allowed during the construction of a permanent structure. The temporary structure shall be on the same site as the construction. (Ord. No. 9138, §1, 10/5/98)
- C. The temporary location of off-street parking facilities during the structural expansion or remodeling of an existing building. Such temporary facilities do not have to comply with requirements of a permanent parking facility but must, at a minimum, provide the following.
 - 1. Screening from adjacent residential development. Since this is a temporary facility, screening cannot be achieved by the use of landscaping unless mature vegetation which can act as the screen exists on the site.
 - 2. Dustproofing.
- D. A temporary real estate office may be allowed during construction of a project, provided:
 - 1. The temporary use is terminated at the end of one (1) year from the date the approval was granted; however, additional twelve (12) month extensions may be granted, provided sales activity for the project continues and ten (10) percent or more of the lots or units remain unsold.
 - 2. The temporary office structure is located on a lot and complies with *Land Use Code (LUC)* zoning requirements applicable to that lot.
 - 3. The temporary office structure is located in the same subdivision within which sales occur.
 - 4. The temporary use or structure complies with any additional conditions required by the approval authority.
- E. A temporary construction equipment yard for public improvement projects involving street improvements or the placement of utilities within public rights-of-way, provided solutions are implemented to mitigate potential negative impacts to adjacent residential development. Such solutions include, but are not limited to, screening of equipment, setbacks, hours of operation, and limited or restricted use of residential streets.
- F. Repealed. (Ord. No. 8786, §1, 12/16/96)

G. The temporary placement of a mobile telecommunications tower facility on nonresidential property may be permitted upon the demonstration by a telecommunications provider that the facility is necessary for its operations; the facility is set back from any residentially zoned property by a distance equal to the height of the proposed tower and base; and the tower and base does not exceed sixty-five (65) feet from the existing grade. The temporary use authorized by this subsection shall be approved for a period not to exceed sixty (60) days and may be approved for one extension of time not to exceed sixty (60) days. (Ord. No. 8899, §1, 7/7/97)

5.3.7.2 Bond Required. A cash or assurance bond in the amount of one thousand (1,000) dollars for a residential use and five thousand (5,000) dollars for a nonresidential use is required, unless stipulated otherwise in the qualification criteria in Sec. 5.3.7.1, to guarantee termination of the temporary use. The cash or assurance bond shall be provided to the City before any permit for the use is issued. (Ord. No. 8786, §1, 12/16/96)

5.3.7.3 Refund. The bond, as required in Sec. 5.3.7.2, is refunded when the temporary use or structure is removed by the applicant in accordance with Sec. 5.3.7.4.

5.3.7.4 Removal. The temporary use or structure shall be removed on or before the date of expiration of the approval period. Should the zoning compliance certificate be revoked, a temporary use must be removed within fifteen (15) days notice.

A. Removal is to include all improvements installed to accommodate the temporary use or structure.

B. If, after the removal, the property is left graded and vacant, the property is to be reseeded in accordance with the requirements of the grading ordinance for graded but undeveloped properties.

- 5.3.7.5 Forfeiture. If the temporary use or structure is not removed or the site does not achieve compliance, the bond required by Sec. 5.3.7.2 is forfeited.
- 5.3.7.6 Time Limit. Approval for a temporary use or structure may be granted for one (1) year, with an additional one (1) year period granted for good cause, unless otherwise stipulated in the temporary use or structure qualification criteria in Sec. 5.3.7.1. (Ord. No. 8786, §1, 12/16/96)
- 5.3.8 DEVELOPMENT PLAN.** A development plan is a drawing of a project site that provides detailed information as to how a proposed project will be developed in compliance with City ordinances and regulations. When a development plan is required to be processed in accordance with this Section, preparation, application, review, and approval shall be as follows.
- 5.3.8.1 Review Procedure. Preparation, application, review, and approval of development plans shall be in accordance with procedures established in Sec. 23A-34. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9967, §5, 7/1/04)
- 5.3.8.2 Expiration Dates. Expiration dates for development plans are as provided below. For the purposes of Sec. 5.3.8, "construction or building permits" are those permits issued for the construction of the project, such as, but not limited to, infrastructure improvements, building foundations, buildings, paving of vehicular use areas, or similar types of improvements related to the construction and implementation of the project. Permits for: a) clearing, grubbing, and grading of a site; b) construction of a section of sidewalk; c) installation of screening; d) paving of an access driveway but not the parking associated with the use; or e) any similar type of work are not considered "construction or building permits" for purposes of this Section, unless specifically stated otherwise by this Section or the process requiring the applicability of this Section.
- A. *Maximum Review Period*. Except in the case of a Protected Development Right Plan, Sec. 5.3.10, an applicant has one (1) year from the date of application to obtain approval of a development plan that complies with zoning and other development requirements in effect at the time of application, unless an ordinance adopted by Mayor and Council during this period states otherwise. A development plan application that has been in review for a period of one (1) year which has not been approved is considered denied. To continue the review of a development plan for the property, a new development plan which complies with regulations in effect at that time must be submitted. The new submittal initiates a new one (1) year review period. (Ord. No. 9635, §2, 12/10/01)
- B. *Development Plan Approval Period*. Except in the case of a Protected Development Right Plan, Sec. 5.3.10, an approved development plan remains valid for a period of one (1) year from the date of approval. (Ord. No. 9392, §1, 5/22/00; Ord. No. 9635, §2, 12/10/01)
1. If, at the end of one (1) year, building permits have not been obtained, a new development plan application, in compliance with regulations in effect at the time of its resubmittal, is required.
 2. If the project is being developed in phases and permits have not been issued for all phases within the one (1) year period, developers of subsequent phases have one (1) additional year to obtain permits. If, at the end of the two (2) year period, permits have not been issued, review and approval of a revised development plan for the undeveloped portion, in compliance with all regulations and/or ordinances in effect at the time of resubmittal, are required prior to the issuance of building permits.
 3. If construction permits are issued within the required time period, but the construction of the project has not commenced and the permit and development plan approval periods expire, the approval of the development plan is considered expired. Review and approval of a revised development plan, in compliance with regulations and ordinances in effect at the time of resubmittal, are required prior to the issuance of building permits.

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4. If construction permits are applied for but not issued within the time period required by this Section, the time period is extended an additional three (3) months to allow for completion of the review and for the issuance of permits.
5. If the approval period has expired pursuant to Sec. 5.3.8.2.B.1, .B.2, .B.3, or .B.4 of this Section, the resubmittal to obtain approval of a new development plan initiates a new review period in accordance with Sec. 5.3.8.2.A.

5.3.8.3 Issuance of Building Permits. Review and approval for the issuance of permits for development plans shall be as follows.

- A. *Approved Development Plan.* The approved development plan shall be filed with the official building records for the site and shall be the basis for the issuance of building permits. Building permit applications shall include a copy of the approved development plan bearing the appropriate approval signature. (Ord. No. 9392, §1, 5/22/00)
- B. *Change From, or Expiration Of, an Approved Development Plan.* Building permit applications involving construction which changes from the approved development plan or if the approval has expired shall be accompanied by a copy of an amended development plan bearing the Development Service Department's approval. (Ord. No. 9967, §5, 7/1/04)
 1. The Development Services Department Director may approve minor changes from the approved plan without processing the plan through the entire review process. Determination as to whether the change is minor or major is made by the Development Services Department Director on a case-by-case basis. Changes in site design include, but are not limited to, building height, density, land use, parking, and traffic circulation. (Ord. No. 9967, §5, 7/1/04)
 2. Major changes from the approved plan require review and recommendation of approval of the new plan by the review agencies. If the development plan is required as a special requirement imposed by the Mayor and Council, a major deviation shall require approval by the Mayor and Council prior to review of the revised plan.

(Ord. No. 9392, §1, 5/22/00)

5.3.9 SPECIAL EXCEPTION LAND USES. Special Exception Land Uses are uses which are not allowed by right within a zone but are permitted if approved through a particular review process. Within each zone, there is a section or subsection entitled Special Exception Land Uses which lists those land uses that are eligible for consideration within that zone under one (1) of the Special Exception Land Use review procedures.

5.3.9.1 Purpose. Special Exception Land Uses are often desirable but may have detrimental effects on adjacent properties or neighborhoods or on the surrounding community if not properly designed and controlled. A special review of these land uses is necessary to ensure that avoidable problems or hazards are not created and that such uses are consistent with the intent of this Chapter and the zones under which they are permitted.

5.3.9.2 Review and Approval Procedures. Special Exception Land Uses are reviewed under one (1) of three (3) different procedures. The applicable procedure is provided in the individual zone for the land use. The procedures are as follows. Application requirements shall be established by the Development Services Department Director and shall include, but not be limited to, information on the subject property and surrounding uses, proposed use, traffic considerations, land use impact analysis, and any other information as appropriate to evaluate the requests. (Ord. No. 9967, §5, 7/1/04)

- A. *Approval by the Development Services Department Director.* This is an administrative procedure requiring review and approval by the Development Services Department Director through a Limited Notice Procedure, Sec. 23A-40. Approval shall be granted if the Development Services Department Director finds the proposal in compliance with the findings as listed in Sec. 5.3.9.3. The approval may be subject to conditions as provided in Sec. 5.3.9.4. The Director's decision may be appealed in accordance with the Board of Adjustment Appeal Procedure, Sec. 23A-61. (Ord. No. 9967, §5, 7/1/04)
- B. *Approval by the Zoning Examiner.* This is an administrative procedure requiring a public hearing and approval by the Zoning Examiner in accordance with a Zoning Examiner Full Notice Procedure, Sec. 23A-50 and Sec. 23A-53. The Zoning Examiner may approve the request if all the findings as listed in Sec. 5.3.9.3 are complied with. If approved, the approval may be subject to conditions as provided in Sec. 5.3.9.4. The Zoning Examiner's decision may be appealed through the Mayor and Council Appeal Procedure, Sec 23A-62. (Ord. No. 9967, §5, 7/1/04)
- C. *Approval by the Mayor and Council.* This is a legislative procedure requiring a public hearing by the Zoning Examiner and approval by the Mayor and Council in accordance with a Zoning Examiner Legislative Procedure, Sec. [5.4.1](#) and Sec. [5.4.3](#). (Ord. No. 9967, §5, 7/1/04)

5.3.9.3 Findings. The following findings are considered by the Development Services Department Director and Zoning Examiner when evaluating a request in accordance with Sec. 5.3.9.2.A and Sec. 5.3.9.2.B. The use: (Ord. No. 9374, §1, 4/10/00; Ord. No. 9967, §5, 7/1/04)

- A. Meets the standards expressly applied by all adopted codes and regulations for that type of land use or for the Land Use Class applicable to the proposed use.
- B. Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions as provided in Sec. 5.3.9.4.
- C. Provides for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking.
- D. Can be adequately and efficiently served by public facilities and services, such as water, stormwater drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the City or the Pima County Health Department.
- E. Complies with the *General Plan* and any applicable subregional, area, or neighborhood plan. (Ord. No. 9374, §1, 4/10/00; Ord. No. 9517, §4, 2/12/01)

5.3.9.4 Conditions of Approval. In approving an application, the Development Services Department Director or Zoning Examiner may impose such reasonable and appropriate conditions and safeguards as may be necessary to ensure compliance with the criteria for approval. Such conditions and safeguards may also be imposed to reduce or minimize any potentially injurious effects on adjacent properties; the character of the neighborhood; or the health, safety, or general welfare of the community. Such conditions may include, but not be limited to: (Ord. No. 9967, §5, 7/1/04)

- A. Setbacks for structures or activities greater than the minimum required by the applicable zoning district.
- B. Structural or vegetative screening greater than that required by the landscaping and screening regulations of this Chapter to buffer the surrounding land uses from the proposed use.
- C. Limitations on the height, size, or illumination of signs more restrictive than the applicable requirements of the Tucson Sign Code.

- D. Limitations on the conduct of the proposed use, such as, but not limited to, hours of operation, or use of loudspeakers or external lighting, as necessary to protect adjacent land uses.
- E. Dedication of necessary right-of-way for streets, alleys, drainageways, and utilities.

5.3.9.5 Mayor and Council Decision. Where the final decision is made by the Mayor and Council in the Zoning Examiner Legislative Procedure, the findings of the Zoning Examiner and any proposed conditions shall be forwarded to the Mayor and Council for their consideration. The decision by the Mayor and Council shall take into consideration whether or not the proposal satisfies the findings in Sec. 5.3.9.3. The Mayor and Council may either approve the application, approve the application with conditions, or deny the application. (Ord. No. 9374, §1, 4/10/00; Ord. No. 9967, §5, 7/1/04)

5.3.10 PROTECTED DEVELOPMENT RIGHT. A protected development right is a right granted to undertake and complete the development and use of property as shown on the Protected Development Right Plan (see Sec. 6.2.16) without compliance with changes in zoning regulations and development standards adopted during the period of the Protected Development Right, except as provided by Arizona Revised Statutes (ARS), Sec. 9-1204. In the event of a conflict between the provisions of this *Land Use Code (LUC)* and ARS, Sec. 9-1201 through 9-1205 inclusive, as they may be amended, the statutory provisions shall govern.

5.3.10.1 Grant of Protected Development Right. A protected development right shall be granted upon approval by the Mayor and Council of a plan identified at the time it is submitted as a Protected Development Right Plan.

5.3.10.2 Effective Date of Protected Development Right. A protected development right shall be deemed established with respect to a property on the effective date of Mayor and Council approval of the Protected Development Right Plan.

5.3.10.3 Duration of Protected Development Right. The duration of the protected development right shall be three (3) years for a non-phased development and five (5) years for a phased development, with a single two (2) year extension permitted at the discretion of the Mayor and Council in either event, as provided in Arizona Revised Statutes (ARS), Sec. 9-1203.

5.3.10.4 Modification of Development Plan Expiration Dates. Notwithstanding Sec. 5.3.8.2, a development plan that has been designated a Protected Development Right Plan shall expire upon termination of the protected development right.

(Ord. No. 9635, §2, 12/10/01; Ord. No. 9750, §2, 8/5/02)