

## What Are Special Exceptions About?

Special Exception permits are required for activities that, by their very nature, impose disproportionate burdens on the surrounding areas. Gas stations are listed in Section 59-C-1.31(e) of the County Code: they are not permitted in residential zones at all and must obtain a Special Exception permit to be built even in commercial zones.

In evaluating a Special Exception, the general standard is set out in 59-G-1.2.1.

. . . the [reviewer] must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location . . . . Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. *Inherent adverse effects alone are not a sufficient basis for denial of a special exception.* Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

In short, under this language, the very reasons that cause the Special Exception requirement to be imposed – the inherent adverse effects – cannot be the sole basis to deny the application. That may, at first, seem illogical. However, Special Exceptions apply to operations that range from “necessary evils” (such as gas stations) to welcome (but somewhat burdensome) uses such as a community swimming pool. The Zoning Ordinance balances the effects by making the applicant show there is a “need” for the activity which justifies burdening the community.

Most operations subject to Special Exception permits, such as restaurants, hotels, conference centers, and the like, must only satisfy a *county-wide* need showing. Others though, such as gas stations, must show that the *local neighborhood* **both** needs **and** will benefit from the use because they are the ones being burdened by the inherent adverse effects of the station. The ordinance further makes clear that the reviewer must look at whether the neighborhood has other options to satisfy any “need” that may exist for the service. Gas stations cannot rely on satisfying a *regional* need; rather they must directly benefit the local neighbors.