

## **ARTICLE VIII SPECIAL USE PERMITS**

### **Section 8.01 Intent and Purpose**

The intent and purpose of the Special Use Permit approval process is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, special uses require careful consideration so that they may be properly located and conditioned in order to minimize their effect on nearby properties and to meet the objectives of this Ordinance.

The function of Special Use Permits is to accept certain uses only upon compliance with specific standards that are presented herein, in addition to all other requirements of this Ordinance. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case for the particular district in which it is located.

### **Section 8.02 Applicability and Authority**

- (A) The Planning Board is hereby authorized to hear and decide all applications for Special Use Permits for uses that are so listed in this Ordinance.
- (1) A Building and Zoning Permit shall not be issued by the Code Enforcement Officer for any use listed in Article IV, Section 4.02, Schedule A or elsewhere in this Ordinance as uses requiring a Special Use Permit, unless and until the Planning Board approves a Special Use Permit in accordance with the provisions of this Article.
  - (2) After evaluating the application for Special Use Permit using the standards established in this Article and considering the intent and purpose of this Ordinance and the Town's Comprehensive Plan, the Planning Board may approve, approve with conditions, or deny the application for Special Use Permit.
  - (3) If the application is approved, the Planning Board may impose any reasonable conditions necessary to preserve the character of the neighborhood and/or to mitigate potential impacts to the neighborhood, to the Town as a whole, or to the environment.
  - (4) The Planning Board may require, as a condition of the issuance of any Special Use Permit, that it shall be periodically renewed, or said Board may issue a temporary Special Use Permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified. If a Temporary Special Use Permit is to be renewed, such renewal shall be subject to the same procedure as specified herein for the original issuance of the Special Use Permit.

- (B) Where a proposed special use permit contains one or more features which do not comply with the zoning regulations, an application may be made to the Zoning Board of Appeals for an area variance without the necessity for an application to and permit denial by the Code Enforcement Officer. The Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for the Special Use permit.

### **Section 8.03 Application Procedure**

- (A) **Submission of Application.** The applicant shall submit a completed application for a Special Use Permit to the Code Enforcement Officer, who shall forward it to the Planning Board.
- (B) **Application Content.** The application shall contain the following information and materials:
- (1) An application for zoning permit.
  - (2) Name, address and contact information for the applicant and the applicant's representative(s), if any. In the event that the property owner is not the applicant, a letter from the property owner giving the applicant permission to make the application shall be required.
  - (3) A map, with north arrow and scale, identifying the site in relation to adjoining public roads and the neighborhood in which it is located. The address and tax map number of the project site shall be provided.
  - (4) Application for Site Plan Review, unless the proposed use is exempt from Site Plan Review pursuant to Section 9.02 of these regulations.
  - (5) Written narrative describing the proposed project, including the nature of the use, proposed development schedule, and other pertinent information.
  - (6) Part 1 of NYSEQRA Environmental Assessment Form
  - (7) Application fee
  - (8) Any additional information that may be required by the Planning Board as it deems necessary and pertinent to carry out its responsibility for a meaningful review of the Special Use Permit application, based on the nature of the project and/or site. The Planning Board may waive any of the above submission requirement(s) that the Board deems unnecessary for a meaningful review of a particular project.

### **(C) Planning Board Review**

- (1) **Public Hearing.** The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date the complete application is received. The Planning Board shall determine when the application is complete.
- (2) **Public Notice.** Notice of the public hearing shall be provided in the following manner:
  - (a) The Town shall publish a notice of the public hearing in the official newspaper of the Town, at least five (5) days before the public hearing, and
  - (b) The Town shall mail notice of the public hearing to the applicant, at least 10 days before the hearing, and
  - (c) The Town shall mail notice of the public hearing to owners of all properties within a radius of five hundred (500) feet of the perimeter of the property for which the Special Use Permit is being requested. Such notices shall be mailed to the property owner of record at the address shown on the current tax assessment roll and shall be postmarked at least 10 days prior to the date scheduled for the public hearing.
  - (d) If the application is subject to the referral requirements of Section 239-m of General Municipal Law, notice of the public hearing shall be sent to the Cattaraugus County Planning Board at least 10 days before the hearing.
- (3) **Decision.** Within sixty-two (62) days after the close of the public hearing, the Planning Board shall render its decision on the Special Use Permit application, taking into consideration the standards contained in Section 8.04 of this Ordinance. The timeframe within which the Planning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.
- (4) **Filing of Decision**
  - (a) Within five (5) business days after the Planning Board renders its decision, the decision shall be filed in the office of the Town Clerk.
  - (b) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be mailed to the applicant. If the application is denied, the notice of the decision shall include the reasons for the denial.
  - (c) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be provided to the Code Enforcement Officer.
- (5) **Expiration of Approval**
  - (a) If construction has not commenced within one (1) year from the date of the grant of Special Use Permit, that approval shall expire and shall be deemed revoked. Extensions may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the approval shall expire one year from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.

- (b) A Special Use Permit shall expire if the use of the property in accordance with the grant of a Special Use Permit shall cease continuously for one (1) year.

(6) ***Amendments to Special Use Permits***

- (a) The grant of Special Use Permit shall authorize only the particular special use for which the permit was granted. Any extension, enlargement, or change in use shall require the property owner to apply to the Planning Board for an amendment to the Special Use Permit.
- (b) However, an amendment to the Special Use Permit shall not be required if (1) such use is listed as a permitted (as-of-right) use in the zoning district in which the lot is located in Article IV, Section 4.02, Schedule A, or (2) such use is determined by the Zoning Board of Appeals to be substantially the same as the use for which a Special Use permit has already been issued and continues to be in effect.
- (c) The Planning Board shall treat the amendment as a new application and shall follow the review and approval process for Special Use Permits that is contained in this Article.

(7) ***Abandoned Application***

- (a) If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Planning Board, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.
- (b) "No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Zoning Ordinance or by the requirements of the State Environmental Quality Review Act (SEQRA).
- (c) Prior to deeming the application "abandoned" the Planning Board shall contact the applicant and provide him/her with an opportunity to explain the reason for the delay. At the Planning Board's discretion, the Board may extend the time period for the requested application materials.

- (8) ***Revocation of Special Use Permit.*** The Planning Board shall have the authority to revoke the Special Use Permit, after a public hearing, if the current owner or operator fails to comply with any condition(s) of approval of the application or conducts the land use in a manner contrary to the description in the application, and/or conducts the land use in a manner contrary to the regulations of this Zoning Ordinance. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the violation in accordance with Article X of this Zoning Ordinance.

## **Section 8.04 Standards for Approval**

- (A) When making a decision to approve, approve with conditions, or deny a Special Use Permit, the Planning Board shall consider the standards in this section. The Planning Board shall not grant, renew or amend any Special Use Permit unless the Board finds that the proposed project complies with all these standards, and/or the project can be modified or conditioned to bring it into compliance with the standards. In this latter case, conditions of approval or modifications to the proposal shall be incorporated into the approved Special Use Permit.
- (B) In approving a Special Use Permit, the Planning Board shall find that the project complies with all of the following standards:
- (1) The use is consistent with the intent and objectives of the Town of Allegany Comprehensive Plan.
  - (2) The use is consistent with the intent and objectives of this Ordinance and complies with all applicable regulations in this Ordinance.
  - (3) The use will not alter the essential character of the neighborhood in which it is located.
    - (a) A special use shall not be more objectionable to nearby properties than would be the operation of any permitted use that would be allowed in the district.
    - (b) The use is of such character, size and location that in general it will be in harmony with the area in which the property is situated.
    - (c) The use will not tend to depreciate the value of adjacent property.
  - (4) The use will not hinder the normal development of the district in which it is located or of adjacent districts.
  - (5) The use will not create a hazard to the public health, safety or general welfare of the community.
    - (a) Adequate services and utilities will be available to the site prior to occupancy.
    - (b) The use will not generate vehicular traffic that would be hazardous to pedestrians or vehicles or unduly impact public roadways.
    - (c) The use will not generate noise, dust, light, or other impacts that will impair the use, enjoyment and value of adjacent land and buildings.