

## ARTICLE XVIII. SPECIAL USE PERMITS

### 143-140 Purpose of a Special Use Permit

- A. The purpose and intent of a Special use permit is to allow certain uses that are not normally permitted under conventional zoning provisions. Specifically authorized special uses appear in Sections 143-44 Agricultural Retail Outlets, 143-53 Driveways, 143-68 Aquifer Conservation (AC) District, 143-72 Wetland Protection (WP) District, Article X Open Space Subdivision, and by any other Section when specified in the Zoning Ordinance. A Special Use shall be approved if the application is found to be in compliance with the Standards of Review in Section 143-144. Further conditions may be placed on the special use permit by the Planning Board to ensure that the special use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the Town.
- B. No structure, building or land requiring a special use permit shall be used, constructed, altered or expanded unless a special use permit specifically required by this article has been granted by the Planning Board.
- C. Any use that was lawfully established prior to the adoption, extension or application of this article and is now permitted by this article subject to a special use permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of this article. A special use permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot on which said use is located.

### 143-141 Planning Board to Administer

~~Wherever a special use is authorized by this ordinance, the authority to administer or grant special use permits shall be vested in the Planning Board. The duration of a special use permit shall be the term of a site plan review or subdivision approval, or if neither are granted in association with the special use permit, the duration shall be the term of the approved project as long as conditions are upheld.~~

*The authority to grant and administer special use permits shall be vested in the Planning Board. A special use permit shall automatically expire if the conditions attached to the permit are not met, and shall be revoked if the conditions attached to the permit are violated. In addition, a special use permit that was granted in connection with a subdivision or site plan approval shall automatically expire when such approval expires, and shall be automatically revoked if such approval is revoked.*

### 143-142 Application and Review Procedure

An application for a special use shall be initiated by filing with the Planning Board for an application for a special use permit. The following procedures shall apply to the processing of such application.

**A. Procedure if Subdivision or Site Plan Approval Also Required**

Where other required development approvals for a special use include subdivision or site plan approval by the Planning Board, the application and review procedure for a special use permit shall be made concurrently or in accordance with the procedures specified in the Subdivision Regulations or Site Plan Regulations as applicable to the particular development. The respective checklists must be followed for submission.

**B. Procedure if Subdivision or Site Plan Approval Not Required**

Where no subdivision or site plan approval would otherwise be required for the special use, the application and procedural requirements of the Site Plan Regulations shall be applied to the application and processing of special use permits with respect to content of applications, requirements for public notice, hearings and timing of decisions by the Planning Board. The respective checklists must be followed for submission.

**143-143 Burden of Persuasion**

The applicant bears the burden of persuasion, through the introduction of sufficient evidence through testimony or otherwise, that the use, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.

**143-144 Standards of Review**

In reviewing an application of a special use permit the Planning Board shall consider the following information in its deliberation, ***including but not limited to***, as applicable to the case:

- A.** Specific authorization for the special use in 143-44 Agricultural Retail Outlets, Sections 143-53 Driveways, 143-68 Aquifer Conservation (AC) District, 143-72 Wetland Protection (WP) District, Article X Open Space Subdivision, and by any other Section when specified in the Zoning Ordinance;
- B.** The compliance of the development plan with the specific standards for such use contained in the Ordinance;
- C.** The results of any special investigative or scientific studies prepared in association with the proposed development;
- D.** Special reports or analyses of the project or its impacts prepared by the Town's departments, its consultants, its boards or commissions;
- ~~**E. The findings, goals and objectives of the Master Plan; and**~~
- E. Other considerations by the Board in order to make an informed decision; and***
- F.** Testimony and evidence introduced at the public hearing on the application.

**143-145 Hearing and Decision**

~~Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a special use permit shall be based upon evidence presented by the applicant. Following a public hearing on the proposed use,~~

†The Planning Board shall issue a special use permit, if it finds, based on the information and testimony submitted with respect to the application, that:

- A. The use is specifically authorized by Sections 143-44 Agricultural Retail Outlets, 143-53 Driveways, 143-68 Aquifer Conservation (AC) District, 143-72 Wetland Protection (WP) District, Article X Open Space Subdivision, and by any other Section when specified in the Zoning Ordinance, as a special use;
- B. If completed as proposed by the applicant, the development plan in its proposed location will comply with all requirements of this Article, and with the specific conditions or standards established in this ordinance for the particular use;
- C. The use will not materially endanger the public health or safety;
- D. The use will be compatible with the neighborhood and with adjoining or abutting uses in the area in which it is to be located and will not impact the abutting properties greater than the impacts of other uses permitted in the underlying Zone;
- E. The use will not have a substantial adverse impact on highway or pedestrian safety; and
- F. The use will not have a substantial adverse impact on the natural resources of the Town.

**143-146 ~~Stipulations~~ Conditions of Approval**

In granting a special use permit, the Planning Board may attach reasonable conditions to its approval, including but not limited to performance guarantees, screening, best management practices, performance standards as appropriate, limitations on structures and lot coverage, and the phasing of a development, where such conditions are shown to be necessary to further the objectives of this ordinance or the master plan, or which would otherwise allow the general conditions of this Article to be satisfied.

Representations made at a public hearing or in material submitted to the Planning Board by an applicant to obtain a special use permit shall be deemed conditions of the issuance of the permit. All other conditions of approval shall be stated in writing in the permit. The Planning Board may require that such conditions be annotated on a site plan or subdivision plan.

**143-147 Denial of Application**

In the event that an application is denied by the Planning Board, a resubmitted application shall follow the same procedures as the original and shall be treated as a new application.

**143-148 Revocation**

In the event of a violation of any of the provisions of these regulations or amendments thereto or in the event of a failure to comply with any prescribed condition of approval or stipulations placed upon such approval, the Code Enforcement Officer **shall** *may* suspend any special use permit immediately, **and** shall notify the Planning Board. ~~**and The Planning Board**~~ shall set a date for a hearing **before it** to determine if such suspensions shall be lifted or if the special use permit shall be revoked. ~~**The Planning Board shall be the hearing body.**~~ In the case of a revocation of a special use permit, the determination of the Planning Board shall be final, unless recourse is sought in a court of competent jurisdiction.

**143-149 Appeals**

Any persons aggrieved by a Planning Board decision on a special use permit may appeal that decision to the Superior Court as provided in the manner provided by RSA 677:15. A Planning Board decision on the issuance of a special use permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5, III).