

ARTICLE 5

SPECIAL USE PERMITS

Section 5.1 Purpose

The purpose and intent of Special Use Permit approval 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 Law.

The Special Use Permit procedure is intended to provide greater flexibility in land uses while at the same time preserving neighborhood characteristics and assuring compatibility between the special permitted uses and uses on adjoining properties and the Town as a whole.

Section 5.2 Authorization to Grant Special Use Permits

- A.** In accordance with Town Law 274-b, the Planning Board shall hear and determine all applications for Special Use Permits for uses that are so listed in Article 3 and elsewhere in this Law. After evaluating the application using the standards established in this Article and considering the intent and purpose of this Code, the Planning Board may approve, approve with conditions, or deny the application for Special Use Permit. Article 5 applies unless it is inconsistent with the provisions of the Town Law, in which case, the provisions of the Town Law, as amended from time to time, shall govern.
- B.** 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. These conditions may include, but are not limited to, the following:
1. Limiting the hours of operation.
 2. Requiring fencing, screening, and landscaping to protect adjacent or nearby property.
 3. Limiting the number, size and location of signs.
 4. Controlling the number and location of driveway entrances.
- C. Temporary Special Use**
- The Planning 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 or such extension thereof as may be granted by the Board, provided that any such renewal or extension shall be subject to the same procedure as specified herein for the original issuance of the special use permit involved.
- D.** If conditions are imposed by the Planning Board, those conditions shall be satisfied before the Zoning Official can issue a Certificate of Zoning Compliance. However, the Planning Board may authorize the Zoning Official to issue the Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. This may be necessary, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in

compliance with the approved site plan. The amount and form of such performance bond shall be determined by the Town Board, after consultation with the Planning Board, Counsel to the Town, Zoning Official, and/or other appropriate parties.

E. Area Variance prior to Special Use Permit

Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an area variance without the necessity of such determination by the Zoning Official. 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 5.3 Procedure for Special Use Permit Application

A. Pre-Application Conference

1. A pre-application conference may be held with the Planning Board prior to the preparation and submission of a formal application for a special use permit. At such time, the Board and the applicant shall review the application form, the materials and information needed to complete the application, and preliminary issues that may be involved with the project.
2. In order for the pre-application conference to be useful, the applicant shall provide a sketch plan(s) showing general existing site conditions and a schematic proposal of the project.

B. Application

An applicant for a Special Use Permit shall submit a completed Special Use Permit application, to the Zoning Official, who shall forward it to the Planning Board. The application shall contain the following information and materials:

1. An application for a Zoning Permit
2. An application for Site Plan Review
3. A written statement which shall contain the following information:
 - a. The tax map number of the parcel or parcels on which the project will occur, and the name of the owner of record for those parcels.
 - b. general description of the project, including the nature of the use and anticipated hours of operation.
 - c. A list of any encumbrances, covenants or easements on the property.
 - d. A development schedule indicating phased development, if any.
 - e. The estimated completion date of the project.
4. If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted.
5. If the proposed project is in or near a floodplain, the applicant shall submit Environmental Assessment Form, with Part I completed and signed by the applicant.
6. Any other information that the Planning Board determines is necessary for meaningful review of the application, based on the nature of the project or the site.

The Planning Board may waive any particular submission requirement(s) it determines unnecessary for review of a particular project.

C. Public Hearing

1. 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. Notice of the public hearing shall be published in the following ways by the applicant, along with proof of such notices filed with the Planning Board at the time of the Public Hearing:
 - a. By publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing; and
 - b. The applicant shall provide by certified mail with return receipt a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of the perimeter of the site that is the subject of the application. However, if a townhouse or condominium project is one of the properties within the 100 foot radius from the applicant's property or if a Homeowners Association owns one of the properties within said 100-foot radius, notice shall be given to the Management Committee, Board of Directors, the condominium owner's association, or the Homeowners Association rather than to each individual unit owner. Notice may also be mailed to such other persons as the chairperson of the Planning Board may direct. Such notices shall be mailed to the address shown on the current assessment roll, at least ten (10) days prior to the public hearing; and
 - c. For all applications that meet the requirements contained in Section 239-m of NYS General Municipal law, by mailing, at least ten (10) days prior to the public hearing and accompanied by a full statement of the application, notice of such hearing to the Allegany County Planning Board; and
 - d. For all applications where the site is within 500 feet of any municipal boundary, by sending a notice of public hearing to the clerk of that municipality at least ten (10) days prior to the public hearing.

D. Referral to County Planning Board

Referrals shall be made to the Allegany County Planning Board where that is required by General Municipal Law section 239-m.

E. Decision

1. The Planning Board shall decide on the application within sixty-two (62) days after the close of the public hearing. The time within which the Planning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.
2. The concurring vote of a majority of all members of the Planning Board shall be necessary to grant a special use permit.

F. Filing of Decision and Notice to Applicant

1. The Planning Board shall file a copy of its decision on the application with the Town Clerk within five (5) business days of the decision.
2. A copy of the decision shall be mailed to the applicant within five business days of the decision.

G. Expiration of Special Use Permit

A Special Use Permit shall expire one (1) year from the date of approval if a building permit has not been issued or if, in cases where a building permit is not needed, use of the property in accordance with the grant of Special Use Permit has not commenced.

The Planning Board may grant an extension of the Special Use Permit for up to one additional year when the applicant is able to demonstrate a legitimate need to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors. The applicant shall apply to the Planning Board for such extension, prior to the expiration of the Special Use Permit. The extension of the Special Use Permit is deemed to be a *de minimus* action that does not require a public hearing. However, the Planning Board may choose to hold a public hearing prior to any such extension.

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.

Nothing in this section shall be construed to prohibit the Planning Board from requiring, as a condition of approval, that a grant of Special Use Permit must be renewed periodically.

H. Abandoned Application

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.

"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 Code or by the requirements of the State Environmental Quality Review Act.

I. Revocation of Approval of Special Use Permit

The Planning Board shall have the authority to revoke a 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. Prior to a public hearing on this issue, the Zoning Official shall pursue abatement of the failure to comply as a violation in accordance with Article 7 of this Code.

J. Amendments to Special Use Permits

The grant of Special Use Permit shall provide the applicant/owner with approval to conduct the use as approved. 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. 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.

However, an amendment to the Special Use Permit shall not be required if

1. Such use is a permitted (as-of-right) use in the zoning district in which the lot is located, as shown in the Land Use Table in this Code, or
2. Such use is determined by the Planning Board to be substantially the same as the use for which a Special Use Permit has already been issued.

Section 5.4 Standards for Review

When making a decision to approve, approve with conditions, or deny a Special Use Permit, the Planning Board shall consider the following standards. In approving a Special Use Permit, the

Planning Board shall find that the project conforms to these standards, or 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 part of the approved Special Use Permit.

- A.** The proposed project is consistent with the Town's Comprehensive Plan and any amendments thereto; and
- B.** The proposed project is in harmony with the general purposes and intent of this Law and complies with all applicable requirements of this Code; and
- C.** The proposed project is compatible with the surrounding neighborhood in terms of use and scale and does not adversely affect the character or orderly development of the surrounding neighborhood or adjacent areas; and
- D.** If located near any parcel being used for an agricultural activity, the proposed use will not unduly adversely affect the pre-existing agricultural use; and
- E.** The proposed project will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town. In support of this standard, the applicant shall demonstrate that:
 - 1. The size and location of the site are adequate for the use proposed; and
 - 2. Essential infrastructure and community services, including streets, roads, police and fire protection, emergency vehicle access, and water supply and sewage disposal systems exist to adequately serve the proposed project or will be provided on-site by the applicant. All on-site water supply and sewerage disposal systems shall be approved, in writing, by the appropriate authority; and
 - 3. the proposed project will not unduly increase traffic volumes or unduly affect traffic flow or safety in the vicinity of the site, and the capacity of the existing road system is adequate to handle the anticipated traffic from the proposed project; and
 - 4. the proposed project will not generate noise, odor, dust, air emissions, light or vibrations that will adversely affect the Town, neighborhood and/or adjacent properties; and
 - 5. site drainage is adequately provided for, to the satisfaction of the Planning Board and Zoning official; and
 - 6. the proposed site plan conforms to all requirements of Article 6 of this Code.
- F.** The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic feature of major significance; and will enhance or complement a user's experience of these types of areas.
- G.** Any proposed open space is usable for the purpose for which it is proposed; adequate legal provision has been made such that these areas will remain as permanent open space; and adequate provisions have been made for the maintenance of the open space areas.

Section 5.5 Planning Board Findings

Prior to issuing a Special Use Permit, the Planning Board shall make all of the following findings:

- A.** The proposed project is consistent with the Town of Caneadea Comprehensive Plan; and

- B.** The proposed project will not unreasonably interfere with the orderly land use and development in the Town of Caneadea; and
- C.** The benefits to the applicant and the public of the proposed project will exceed any burdens to the Town and residents therein; and
- D.** The proposed project will not be detrimental to the public health, safety or welfare of the community; and
- E.** The proposed project complies with all applicable provisions of this Law, including the standards in Section 6.5, or will comply with those provisions based on conditions that will be attached to the approval, unless variances have been properly granted by the Town of Caneadea Zoning Board of Appeals.