

ARTICLE X. – SPECIAL LAND USE REVIEW

Sec. 1000. - Intent:

This Article is intended to regulate uses which may be compatible with uses in some, but not all, locations within a particular zoning district. The purpose of the Special Land Use standards of this Article is to accomplish the following:

- 1. Provide a mechanism for public input on decisions involving more intense land uses.
- 2. Establish criteria for both new development and infill/redevelopment consistent with the Township's land use goals and objectives as stated in the Township Master Plan.
- 3. Regulate the use of land on the basis of impact to the Township overall and adjacent properties in particular.
- 4. Promote a planned and orderly development pattern which can be served by public facilities and serviced in a cost-effective manner.
- 5. Ensure uses can be accommodated by the environmental capability of specific sites.
- 6. Provide site design standards to diminish negative impacts of potentially conflicting land uses.
- 7. Provide greater flexibility to integrate land uses within the Township.

Whenever a special land use is requested, the provisions and conditions of this Section shall apply in addition to the provisions and conditions of the other aforesaid Sections. Only those uses listed as special land uses in the Table of Uses in Article 4 of this Ordinance shall be considered for special land use permit review and approval.

Sec. 1001. – Special land use review applicability and type:

A special land use permit shall not be issued until an application is approved in accordance with the procedures and standards set forth herein and all necessary review, inspection, and permit fees have been fully paid. The extent of site plan review for various types of projects is classified into the types below:

- 1. Board of Trustees Approval: When designated in the Table of Uses in Article 4, the Board of Trustees, upon recommendation from the Planning Commission, shall have the authority to grant special land use permits and to attach conditions to a permit.
- 2. Planning Commission Approval: For all other special land uses, the Planning Commission shall have the authority to grant special land use permits and to attach conditions to a permit.

Sec. 1002. – Procedure:

- 1. Application for a special land use permit shall be made by filing the application form, required information, and required fee with the Township.
- 2. An application for a special land use permit shall contain the following information:
  - A. The applicant's name, address, and telephone number.
  - B. The names and addresses of all record owners and proof of ownership.

- C. The applicant's interest in the property and if the applicant is not the fee-simple owner, the owner's signed authorization for the application.
- D. Legal description, address, and tax parcel number of the property.
- E. A scaled and accurate survey drawing correlated with a legal description and showing all existing buildings, drives, and other improvements.
- F. A detailed description of the proposed use.
- G. A site plan, which plan shall meet all the requirements of Article 9 herein.
- H. A statement with regard to compliance with the criteria required for approval in Section 1003 and any specific standards required by the Ordinance for the requested use

Failure to provide the required information and materials as part of the application for special land use approval shall render the application deficient and said application shall be held in abeyance until the petitioner submits all required items. The Zoning Administrator may waive the submission of a site plan where such information is not material to Planning Commission or Board of Trustees action, specifically where no physical changes to the site are proposed.

- 3. The Planning Commission shall hold a public hearing, or hearings, upon any application for special land use, notice of which shall be in the manner required by Section 301, Public hearing notice requirements.
- 4. *Planning Commission action:*
  - A. The Planning Commission shall conduct the required public hearing. At the public hearing, the Planning Commission shall review the application for special land use approval in accordance with Section 1003 and any specific standards in Article 11.
  - B. The Planning Commission shall approve, approve with conditions, or deny special land use permit application. The Planning Commission may table the application before reaching a decision. For special land uses that require Board of Trustees approval, the Planning Commission shall recommend that the Board of Trustees either approve, approve with conditions, or deny the special land use (based on findings outlined in Section 1003) and the accompanying site plan. The Planning commission's decision, the basis for their decisions, and all conditions imposed, shall be described in a written statement which shall be made a part of the record of the meeting.
- 5. *Board of Trustees action:*
  - A. When required, the Special Land Use request and other pertinent information, together with the recommendation of the Planning Commission, shall be placed on the agenda of the next Board of Trustees meeting. The Board of Trustees shall either approve, approve with conditions, or reject the request. The Board of Trustees may table the application before reaching a decision.
  - B. The decision on a special land use required by the Board of Trustees shall be made a part of the public record and incorporated into a resolution that includes a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any condition imposed.

Sec. 1003. - Standards for special land uses:

The Planning Commission, and the Board of Trustees when required, shall review the particular circumstances and facts of each proposed use in terms of the following standards and required findings, and with respect to any additional standards set forth in this Ordinance. The Planning Commission, either as part of its final decision or in its recommendation, shall find and report adequate data, information, and evidence showing that the proposed use meets all required standards and:

1. Will be harmonious, and in accordance with the objectives, intent, and purpose of this Ordinance; and
2. Will be compatible with a natural environment and existing and future land uses in the vicinity; and
3. Will be compatible with the Township master plans; and
4. Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways and structures, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for such services; and
5. Will not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property, or the public welfare; and
6. Will not create additional requirements at public costs for public facilities and services that will be detrimental to the economic welfare of the community.

Sec. 1004. - Conditions of approval:

1. *Authority:* The Planning Commission or Board of Trustees, when applicable, may at its discretion impose additional conditions of approval, when it is determined that such increases in standards or additional conditions are required to achieve or assure compatibility with adjacent uses and/or structures.
2. *Scope:* Conditions that are imposed by the Planning Commission or Board of Trustees, when applicable, shall:
  - A. Be related to and ensure the review considerations of Section 1003, Standards for special land uses, and the applicable specific regulations are met.
  - B. Special land use approval is applicable to a property, not property owners, so long as use remains in effect under terms set from the Section 1005, Effectiveness.
  - C. The conditions shall remain unchanged unless an amendment to the special land use permit is approved by the approving body of the special and use permit in that case.
3. Approval of a special land use, including conditions made part of the approval, is attached to the property described in the application and not to the owner of such property. A record of conditions imposed shall be made a part of the minutes of the Planning Commission and the Board of Trustees, as applicable.
4. A development agreement in accordance with Section 305, Development Agreements, shall be recorded.

5. A violation of a requirement, condition, or safeguard shall be considered a violation of this Ordinance and grounds for the approving body to revoke such special land use approval in accordance with Section 1008.

Sec. 1005. – Effectiveness:

1. *Remain in force.* Upon receipt of site plan approval, special land use approval shall continue in force so long as the particular use or activity continues to operate as approved on the approved site, unless otherwise specified in the approval.
2. *Expiration:* Any special land use approval granted shall expire unless a final site plan effectuating the special land use is submitted within one (1) year of the date of approval. If the submission of a site plan was waived, any special land use approval granted shall expire unless a building permit effectuating the special land use is submitted within one (1) year of the date of approval.
3. *Extension:* Upon written application filed prior to the termination of the one (1) year period as provided above, the approving body may authorize a single extension of the time limit for an additional one (1) year period. Such extension shall be granted based on evidence from the applicant that the development has a reasonable likelihood of commencing construction during the one (1) year extension period.
4. *Resubmittal:* No application for a special land use permit which has been denied wholly or in part shall be resubmitted for a period of one (1) year from the date of denial, except on the grounds of new evidence or proof of changed conditions relating to all of the reasons noted for the denial found to be valid by the Planning Commission or Board of Trustees. A resubmitted application shall be considered a new application.
5. The decision of the Planning Commission or Township Board with respect to a special land use permit shall not be appealable to the Board of Zoning Appeals.

Sec. 1006. - Amendments, expansions, or change in use:

The following provisions apply when there is an amendment or a proposed expansion to approved special land use or when there is a proposed change from one Special Land Use to another.

1. *Amendments:* Any person or agency who has been granted a special land use permit shall notify the Township of any proposed amendment to the approved special land use permit and associated site plan. The Zoning Administrator shall determine whether the proposed amendment requires new special land use approval. New special land use approval may be required when such amendment is a departure from the operation or use described in the approved application or causes external impacts such as additional traffic, hours of operation, noise, additional outdoor storage, or display.
2. *Expansions:* The expansion, change in activity, reuse or redevelopment of any use requiring a special land use permit shall require resubmittal in manner described in this Article. A separate special land use permit shall be required for each use requiring special land use review on a lot, or for any expansions of a special land use, which has not previously received a special land use permit.
3. *Change in Use:* The applicant shall be responsible for informing the Zoning Administrator of any significant change in an approved use, operations, or activities prior to any such change. The

Zoning Administrator shall determine if a new special land use approval is required. A significant change shall mean any departure from the operation or use described in the approved application or any change that may cause external impacts such as additional traffic, hours of operation, noise, additional outdoor storage, or display.

Sec. 1007. – Inspections:

The Township may make periodic investigations of developments authorized by special land use permits to determine continued compliance with all requirements imposed by the Planning Commission or Board of Trustees and this Ordinance. Noncompliance with the requirements and conditions approved for the special land use shall constitute grounds to terminate said approval following a public hearing.

Sec. 1008. – Revocation:

The revocation of a special land use may occur if its recipient fails to abide by its terms, conditions, or development agreement. The revocation procedure is as follows:

1. If the Township receives credible information that the special land use permit or conditions of approval have been violated, the Zoning Administrator shall prepare a report in writing specifying (i) the specific factual details of such violation(s); and (ii) any other information or recommendation relevant to a proper determination by the Planning Commission or the Township Board, whichever approved the special land use permit, as to the nature of such violation(s) and the appropriate action to be taken by the Township.
2. The Zoning Administrator, after the investigation and based on the facts discovered, shall determine if the case goes forward. If the case does not go forward, the Zoning Administrator shall give the approving body a written report as to the why that determination was made. If the case goes forward, the process in subsections 3-8 below shall be followed.
3. The Zoning Administrator shall file the original report prepared under subsection 1 above with the Township Board/Planning Commission and serve a copy of such report upon the owner of the property for which the special land use permit was granted or its authorized agent or employee, personally or by registered mail.
4. Within twenty (20) days from the date such report has been filed with the Township Board/Planning Commission, the Township Clerk/Zoning Administrator shall set a date for a hearing before the Township Board/Planning Commission on the alleged violation(s) for a determination by the Township Board/Planning Commission as to whether or not the Township Board/Planning Commission shall revoke the special land use permit. Notice of this hearing shall be served by the Township Clerk/Zoning Administrator upon the owner of the property for which the special land use permit was granted or its authorized agent or employee, personally or by registered mail, not less than ten (10) days before the scheduled hearing date, and such notice shall contain the following:
  - A. Notice of proposed action;
  - B. Reason for the proposed action;
  - C. Date, time, and place of hearing;

- D. A statement that the property owner may present evidence and testimony and confront adverse witnesses;
  - E. A statement that the property owner has the right to be represented by legal counsel at the hearing.
5. At all such hearings, the property owner shall have the legal right to defend against the allegations made by way of confronting any adverse witnesses, by being allowed to present live witnesses in its own behalf, by being allowed to present other evidence in its own behalf, and by being allowed to present arguments personally or through legal counsel in its own behalf.
  6. The Township Board/Planning Commission shall prepare a written statement of its findings, which may be formal or informal in nature within a reasonable time, not to exceed sixty (60) days, after the conclusion of all such hearings. Such statement of findings may be embodied in a resolution adopted by the Township Board.
  7. If the Township Board/Planning Commission determines after due notice and proper hearing that competent, material and substantial evidence exists that a violation of the special land use permit and the conditions of approval has been committed by a property owner or that, even if no violation has been demonstrated, nevertheless the interests of public health, safety or welfare warrant that the Township Board/Planning Commission revoke the special land use permit issued to the property, the Township Board/Planning Commission may revoke the special land use permit.
  8. *Criteria for revocation:* The Township Board/Planning Commission may revoke the special land use permit upon a determination by the Township Board or Planning Commission that based upon competent material and substantial evidence presented at the public hearing, any of the following exists:
    - A. Violation of the special land use permit, any of the conditions of the special land use and any provisions of a development agreement attached to the special land use permit
    - B. Maintenance of a nuisance upon the premises, including, but not limited to, any of the following:
      - (1) Existing violations of building, zoning, health, fire, or regulatory codes.
      - (2) A pattern of conduct on the property which violates the terms of the special land use permit.
      - (3) A pattern of conduct on the property which creates a public nuisance.
      - (4) Perjury or any material misrepresentation of information in any application required or hearing held pertaining to the grant, renewal, or revocation of any license or permit.