

Town of Amherst, NY  
Monday, June 5, 2017

## Chapter 203. Zoning

### PART 8.. ADMINISTRATION AND ENFORCEMENT

#### § 8-6. Special Use Permit

##### 8-6-1. **Applicability.**

- A. Special uses within the zoning districts are generally considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses require individual review and may require the imposition of conditions in order to assure the appropriateness of the use in a particular zoning district.
- B. A special use permit shall be required in accordance with the district use tables in Part 3, Part 4 and Part 5.
- C. The ZBA shall hear and decide all applications for special use permits in accordance with § 274-b of NYS Town Law.

##### 8-6-2. **Application Requirements.**

- A. An application for a special use permit shall be submitted in accordance with § 8-2-2, Application Requirements.
- B. All applications shall be complete in accordance with § 8-2-2D before the Commissioner of Building is required to review the application. An application shall not be considered complete until a SEQR determination under Town Code, Chapter **104**, Environmental Quality Review, as amended, can be made.

8-6-3. **Action by the Planning Director.** When applicable, the Planning Director shall prepare a report that reviews the request for a special use permit.

8-6-4. **Action by the Commissioner of Building.** The Commissioner of Building shall prepare a report that reviews the request for a special use permit.

##### 8-6-5. **Action by the ZBA.**

- A. Within 62 days following receipt of the application, the ZBA shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings.
- B. After review of the special use permit application and the public hearing, the ZBA shall make written findings of approval, approval with modifications or conditions, or denial.
- C. After conducting the public hearing, the ZBA shall render a decision within 62 days thereafter. The time within which the decision shall be rendered may be extended by mutual consent of the petitioner and the Board.

- D. The ZBA may approve, approve with modifications, or disapprove the application for a special use permit.
- E. The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon approval of a special use permit, any such conditions shall be met in connection with issuance of permits by applicable agents and officers of the Town.

#### 8-6-6. **Review Criteria.**

- A. In rendering a decision, the ZBA shall consider and make findings that the proposed use:
  - (1) Will be generally consistent with the policies of the Comprehensive Plan;
  - (2) Meets any specific criteria set forth in this Ordinance;
  - (3) Will be compatible with existing uses adjacent to and near the property;
  - (4) Will be in harmony with the general purpose of this Ordinance;
  - (5) Will not tend to depreciate the value of adjacent property;
  - (6) Will not create a hazard to health, safety or the general welfare;
  - (7) Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
  - (8) Will not otherwise be detrimental to the public convenience and welfare.
- B. Commercial recreation activities not conducted within completely enclosed buildings may be permitted by the Zoning Board of Appeals in accordance with this Section. In evaluating the application for the special permit, In addition to the review criteria in § 8-6-6A, the ZBA may also consider the proximity of the any commercial outdoor recreation activities to residential and nonresidential properties, noise, odors, lighting and hours of operation. In approving a permit, the ZBA may impose conditions to eliminate or mitigate off-site impacts of the commercial outdoor recreation activity.

#### 8-6-7. **Conditions on Special Use Permits.**

- A. The ZBA may impose such conditions upon the premises benefited by a special use permit as may be necessary to prevent or minimize adverse effects upon other property in the neighborhood, including limitations on the time period for which the permit is granted.
- B. Such conditions shall be expressly set forth in the resolution authorizing the special use permit.

8-6-8. **Notice of Decision.** The decision of the ZBA shall be filed in the Office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the petitioner.

8-6-9. **Renewal of Special Use Permits with Specific Time Periods.** Special use permits that have been issued for specific time periods are subject to review for compliance with all of the conditions imposed at the time of approval of the initial permit. Following a public hearing on the matter, the ZBA may deny a renewal of a special use permit when any of the following apply:

- A. The petitioner has failed to comply with one or more of the conditions of the prior approval;
- B. Substantial new issues regarding the permit conditions during the operation of the use have arisen;
- C. The general requirements of this Zoning Ordinance have not been met;

- D. There are changes in the area or neighborhood which would be incompatible with the special use.

8-6-10. **Period of Validity.**

- A. A special use permit shall become null and void six months after the date on which it was issued unless the special use is established within six months of the date of ZBA approval.
- B. A special use permit shall become null and void upon a finding by the Commissioner of Building that any of the conditions in the permit have been violated.
- C. A special use permit shall be deemed to authorize only the particular use or its operation for which it was issued, and such permit shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of six consecutive months.