

## **ARTICLE 17**

### **SPECIAL USES**

#### **1701 PURPOSE**

The functions and characteristics of an increasing number of new kinds of land uses, combined with experience regarding some of the older, familiar kinds of uses calls for a more flexible and equitable procedure for properly accommodating these activities in the community. The forces that influence decisions regarding the nature, magnitude, and location for such types of land use activities are many and varied depending upon functional characteristics, competitive situations, and the availability of land. Rather than assign all uses to special, individual, and limited zones, it is important to provide controllable and reasonable flexibility in requirements for certain kinds of uses that will allow practicable latitude for the use of land, but that will also allow practicable latitude for the security of the health, safety, convenience and general welfare of the community.

In order to accomplish such a dual objective, provision is made in this Ordinance for a more detailed consideration of certain specified activities as each may relate to proposed conditions of location, design, size, operation, intensity of use, generation of traffic and traffic movements, concentration of population, processes and equipment employed, amount and kind of public facilities and services required, together with many other possible factors. Land and structure use possessing these particularly unique characteristics are designated as “special uses” and may be authorized by the issuance of a “Special Use Permit”, with such conditions and safeguards attached as may be deemed necessary for the protection of the public welfare.

The following sections, together with references in other Articles, designate what uses require a Special Use Permit.

#### **1702 APPLICATION PROCEDURE**

Applications shall be submitted through the Zoning Administrator to the Planning Commission. Each application shall be accompanied by the payment of a fee in accordance with the duly adopted “Schedule of Fees”. Provided further, that the Township may charge additional fees to cover its costs of review by attorneys, engineers or other experts retained by the Township to review the application. Payment of such costs shall be deemed an automatic condition of a Special Use Permit.

The application shall include the following:

- A. Special form supplied by the Zoning Administrator filled out in full by the applicant.

B. Site plan drawn to a readable scale, of the total property involved showing the location of abutting streets, the location of all existing and proposed structures, the types of structures and their uses.

C. A statement with supporting evidence regarding standards specified in Section 1704.

D. A lighting plan, describing the location and illumination of all outdoor lighting in sufficient detail to allow the Planning Commission to consider the extent of any adverse effect on neighboring property or motorists.

**1703 NOTICE OF PUBLIC HEARING, REVIEW, FINDINGS, AND ISSUANCE OF SPECIAL USE PERMITS**

A. Upon receipt of an application for a special land use which requires a discretionary decision, the Planning Commission shall publish and provide required notices of a public hearing as follows:

1. Publish notice of the request in a newspaper of general circulation in Whitehall Township.

2. Notice shall also be sent by mail or personal delivery to the owner(s) of property for which the application is being reviewed. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in Whitehall Township.

3. The notice shall be given not less than fifteen (15) days before the date of the application will be considered for by the Planning Commission. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection. The notice shall do all of the following:

(a) Describe the nature of the request;

(b) Indicate the property that is subject to the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used;

(c) State when and where the request will be considered by the Planning Commission; and

(d) Indicate when and where written comments will be received concerning the request.

4. If a Planning Commission meeting is adjourned, the only required new notice of such adjourned meeting is to announce the time, date and location of such adjourned meeting, at the meeting which is being adjourned.

B. The Planning Commission shall review the proposed development and accompanying site plan, pursuant to the standards and requirements set forth in this Article, prior to making a recommendation to the Township Board as to any Special Use Permits.

C. Following such hearing, said Planning Commission shall recommend either to grant (with or without conditions) or deny the permit for such special use and shall state its reasons for its recommendation in the matter. Such decision shall be communicated to the Township Board, which shall entertain such special use request and review the recommendation at its next regular meeting. The Township Board shall either grant or deny such request and state the reasons for its decision. All conditions, limitations, and requirements upon which any such permit is granted shall be specified by the Township Board in its decision and shall be filed with the Zoning Administrator for the Township. Any conditions, limitations or requirements upon which approval is based shall be reasonable and designed to protect natural resources, the health, safety and welfare and the social and economic well-being of the area adjacent thereto and of the community as a whole; constitute a valid exercise of the police power and be related to the purposes which are effected by the proposed use or activity; be consistent with the intent and purpose of the Zoning Ordinance; designed to insure compatibility with adjacent uses of land and the natural environment; and be designed to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, and otherwise comply with applicable sections of this Ordinance.

#### **1704 GENERAL STANDARDS FOR MAKING DETERMINATIONS**

The Planning Commission and Township Board shall review the particular facts and circumstances of each proposal in terms of the following Standards and shall find adequate evidence showing that the proposed special use:

A. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.

B. Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage facilities, refuse disposal,

and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;

C. Will not create excessive additional requirements at public costs for public facilities and services; and will not be detrimental to the economic welfare of the community.

D. Will not involve uses, activities, processes, materials, equipment, and/or conditions of operation that will be hazardous, detrimental, or a nuisance to any person, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, vibrations, glare, or odors.

E. Will be consistent with the intent and purposes of this Ordinance.

F. Special standards may also apply to the particular proposed use, pursuant to Article 18.

The Planning Commission and Township Board shall state its findings and conclusions separately, as to each factor (A)-(F), above. The Township Board may make its own separate findings and conclusions, or may adopt the findings and conclusions of the Planning Commission.

#### **1705 CONDITIONS AND SAFEGUARDS**

A. Prior to making any recommendation to the Township Board, the Planning Commission may recommend, and prior to granting any Special Use Permit, the Township Board may impose, additional conditions or limitations upon the establishment, location, construction, maintenance, or operation of the use authorized by the Special Use Permit, as in their judgment may be appropriate for the protection of the public interest.

B. Conditions and requirements stated as part of Special Use Permit authorization shall be the continuing obligation of Special Use Permit holders. The Zoning Administrator is authorized to make periodic investigations of developments authorized by a Special Use Permit to determine compliance with all conditions and requirements.

C. The Planning Commission shall recommend, and the Township board shall establish, a deadline for completion of the project, which deadline may be extended from time to time by the Zoning Administrator, upon request of the applicant and for good cause shown.

D. Special use permits may be issued for an unlimited period of time or for a specific duration of time, as recommended by the Planning Commission and/or as determined by the Township Board. In the event that a Special Use Permit is

granted only for a specific duration of time, then at the expiration of such time the Special Use Permit shall be deemed terminated unless renewed according to the procedures otherwise applicable for the issuance of an original Special Use Permit.

E. All plans, specifications, and statements submitted with the application for a Special Use Permit shall become, along with any changes ordered by the Planning Commission, a part of the conditions of any permit issued thereto.

#### **1706 PERFORMANCE GUARANTY**

In authorizing a Special Use Permit, the Planning Commission may recommend, and the Township Board may require, that a temporary or permanent cash deposit, certified check, performance bond, letter of credit, and/or other guaranty acceptable to the Township Board, in such amount and upon such terms as the Township Board shall deem appropriate, be furnished by the applicant and/or property owner(s), to insure continued compliance with the terms of this Ordinance, the terms and conditions of the Special Use Permit, and with any other requirements related to any construction upon, use of, or improvement of any property authorized by such Special Use Permit. Any such financial guaranty shall be deposited with the Township Treasurer prior to the issuance of the Special Use Permit. As work progresses, the Township Board may authorize a partial rebate in or reduction of the amount of any such financial guaranty.

#### **1707 TERMINATION OF SPECIAL USE PERMIT**

Special Use Permits may be terminated in the event that there is a material violation of the terms or conditions of such Special Use Permit by the owner(s) or occupant(s) of the property granted the Special Use Permit. In such event, the Special Use Permit shall be terminated pursuant to the following procedure:

A. The Zoning Administrator or the Township Board shall provide the owner(s) of the property with a written statement detailing the alleged violation or nonconformity with the terms and conditions of the Special Use Permit. Such statement shall be deemed an order to correct the alleged violation or deficiency.

B. In the event that such violation or such deficiency has not been cured within thirty (30) days after the issuance of such statement, then the Township Board shall review the matter at a regular meeting or special meeting called for such purpose. The owner(s) shall be provided with written notice of such meeting, and may be present at such meeting to present his/her position and facts supporting his/her position.

C. if the Township board determines that there does exist a material violation or nonconformity, with respect to the terms and conditions of the Special Use

Permit, which was not cured within thirty (30) days, then the Township Board may, in its discretion, take the following action:

1. Defer the matter for up to an additional thirty one (31) days in order to give the owner(s) additional time to complete cure of any deficiency or nonconformity, if such attempts at cure have previously been undertaken but have not yet been completed;
2. If the owner(s) has filed a request to amend the Special Use Permit such that the alleged violations or non-conformities with the existing Special Use Permit would no longer be deemed violations or nonconformity, the Township Board may defer further action until the hearing on the permit amendment is reviewed and a determination made by the Township Board, as in the case of an application for an original permit;
3. Terminate the Special Use Permit.

#### **1708 DECISION OF THE TOWNSHIP BOARD; APPEALS**

The decision of the Township Board shall contain the findings and determination of the Township Board in each case. The signature of the supervisor and clerk of the Township Board shall be affixed thereon.

Any persons aggrieved by the decision of the Township Board shall have the right to appeal to the Circuit Court for Muskegon County, which appeal shall be brought within thirty (30) days after issuance of the decision by the Township Board.