

CHAPTER 17

SPECIAL LAND USES

SECTION 17.01 DESCRIPTION AND PURPOSE. The purpose of this Chapter is to provide regulations for uses which are not essentially incompatible with uses permitted by right in a given district but which should not be permitted without restrictions or conditions being imposed by reason of special problems presented by the use itself or its particular location in relation to neighboring properties. The special land use permit procedure established herein is designed to provide the Planning Commission with an opportunity to review and act upon any application for a conditional use permit.

SECTION 17.02 PROCEDURE FOR ALL SPECIAL LAND USES. Any special use shall meet and continuously follow and adhere to the approved site development plan conditions placed upon the use and the requirements for approval and the requirements of the district in which they are located.

- (a) Applications: The applicant shall submit to the Planning Commission, Township Board, or Zoning Administrator, as the case may be, through the Township Clerk, an application which shall include a site plan per the requirements of Chapter 19 and written evidence and drawings showing that all the requirements for the applicable special use are met.
- (b) Public Hearing and Notices: All special land use applications and required supporting documentation shall be promptly transmitted to the Planning Commission. The Planning Commission shall hold at least one public hearing on all special land use requests it receives and shall provide notice for said hearing in the manner provided in Section 31.01 of the zoning ordinance.
- (c) Decisions: The Planning Commission shall, within a reasonable time after review or after the public hearing, deny, approve or approve with conditions the request. In rendering a decision on whether to deny, approve or approve with conditions a Special Land Use permit, the approving body shall incorporate in their decision a statement containing the conclusions relative to the Special Land Use which specifies the basis for the decision and all additional conditions, limitations and requirements upon which the Special Land Use Permit is granted. The statement shall be recorded in a record of the approval action and be filed together with the Special Land Use application and site plan with the Zoning Administrator
- (d) Conditions: Reasonable conditions may be required with the approval of a special land use, by the Planning Commission. The conditions may include, but are not limited to, conditions necessary 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, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- (1) Be designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - (2) Be related to the valid exercise of the police power, and purposes which re affected by the proposed use or activity.
 - (3) Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.
- (e) Record Of Conditions: The conditions imposed with respect to the approval of a special land use shall be recorded in the record of the approval action, and shall remain unchanged except upon the mutual consent of the Planning Commission and the landowner. The Planning Commission shall maintain a record of conditions which are changed.

SECTION 17.03 GENERAL DISCRETIONARY STANDARDS. The following discretionary standards shall serve as the basis for decisions by the Planning Commission involving special land use permits. The Commission shall find that in addition to any specific standards such as the minimum or maximum height and area regulations of the applicable zoning district and other applicable standards contained in the various chapters of this ordinance, (ref. Chapter 16 General Provisions and Design Standards Applicable to Specific Uses, Chapter 22 Access and Private Road and Driveway standards, Chapter 23, Parking and Loading, Lighting and Chapter 19 Site Plan Review), the proposed use shall:

- (a) Be designed, constructed, operated and maintained so it will be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the area in which it is proposed.
- (b) Be adequately served by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, water and sewage facilities and schools.
- (c) Not create excessive additional requirements at public cost for public facilities and services.
- (d) Not involve uses, activities, processes, materials and equipment, or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
- (e) Be consistent with the intent and purpose of the zoning district in which such use will be located and not set precedents for development which could adversely affect the long term plans and policies of the Township.
- (f) Be compatible and consistent with the Heath Township Master Plan.

SECTION 17.04 ISSUANCE OF A SPECIAL LAND USE PERMIT. The Planning Commission shall grant a Special Land Use permit upon the finding that all of the requirements of this Ordinance pertaining to such Special Land Use are fulfilled in each case.

SECTION 17.05 PERFORMANCE GUARANTEE. The Planning Commission may require as a condition of its approval that the applicant file surety in the form of a performance bond, letter of credit, or certified check in a form satisfactory to the Township and in an amount established by the decision making body conditioned upon the prompt and complete compliance with all the provisions of this Ordinance and the requirements upon which the approval has been conditioned. The Planning Commission shall, in establishing the form and amount of the surety, consider the type and scale of the use and its operations, the prevailing cost to complete required improvements, safety measures and/or to rehabilitate the property upon default of the operator, court costs and other reasonable expenses. If the owner of the property and the operator of the proposed use shall be separate, each of them shall be required to execute the bond as principal.

SECTION 17.06 TIME LIMITS AND EXPIRATION OF PERMIT. A Special Land Use permit and the conditions imposed shall run with the land, regardless of land ownership. The Planning Commission may reserve the right of annual review of compliance with conditions and limitations imposed upon such use and may limit the duration of the Special Land Use permit where the use is of a temporary nature. A Special Land Use permit will remain in effect unless or until one or more of the following occurs:

- (a) An activity or use authorized by the Special Land Use permit has not commenced within two years of the date of issuance and the conditions of authorization do not specify a greater period of time before commencement.
- (b) The use ceases for a consecutive period of one year and a longer period of inactivity was not specified in the conditions of approval contained in the permit.
- (c) The use as authorized by the Special Land Use permit is of a temporary or terminal nature and has been terminated in compliance with the conditions of the Special Land Use permit.
- (d) The Special Land Use permit is revoked for reasons of non-compliance or violation as outlined in Section 17.07.

A Special Land Use permit which is expired, terminated or revoked as a result of one of the above circumstances shall be considered null and void and a new Special Land Use permit will be required for the activity to recommence.

SECTION 17.07 COMPLIANCE, VIOLATION, REVOCATION OF PERMIT.

- (a) The Planning Commission shall be the decision making body pertaining to Special Land Use permit violations and revocation questions.
- (b) Construction in Compliance with Final Site Plan: Any building permit issued for construction pursuant to an approved Special Land Use shall be valid only so long as there is compliance with the approved site plan and any other conditions of approval as set forth by the approving body. Any deviation from the approved site plan or conditions shall operate to automatically invalidate the building permit and shall be a violation of this Ordinance.
- (c) If a violation of any condition of approval or applicable regulation is found to exist subsequent to construction or commencement of the authorized Special Land Use the Zoning Administrator shall notify the permit holder/land owner and the Planning

Commission that a violation exists. The notice shall describe the violation and further state and that the Special Land Use permit may be revoked if the violation is not remedied within 45 days or less (as specified by the Zoning Administrator in the letter of notification). If the violation is not corrected within the specified time, the Zoning Administrator shall suspend the permit and place the matter on the next agenda of the Planning Commission for consideration of formal revocation action. Prior to formal action on the revocation question a public hearing shall be held upon notice in accordance with the procedures specified in Section 31.01

SECTION 17.08 APPEALS AND VARIANCES. Unless appealed through the courts, the Planning Commission shall have final authority with respect to approval, approval with conditions, denial or revocation of a special land use permit. Furthermore, once a special land use permit has been approved by the Planning Commission, the Zoning Board of Appeals may not accept an application to waive or modify any written standard or imposed condition pertaining to the approved special land use.

Prior to a decision by the Planning Commission to approve or deny a special use permit, an application for a variance from any written standard other than the discretionary standards of Section 17.03 may be made to, and decided upon by the Zoning Board of Appeals. If the Zoning Board of Appeals waives or modifies a standard, the Planning Commission may accept the waiver or it may modify to a lesser degree, or uphold the standard as originally specified in the Zoning Ordinance, if in its discretion, compliance is deemed necessary to satisfy the discretionary standards of Section 17.03.