

SECTION 108. SPECIAL EXCEPTIONS

108. Authority.

The planning board may approve the issuance of a special exception permit in strict compliance with this ordinance.

108.1. Powers and duties.

The planning board shall hear and decide only those special exceptions which are authorized by this ordinance and which are specifically listed in the various zoning districts as special exceptions.

The planning board shall decide such questions as are involved in determining whether such special exceptions should be granted, and by majority vote, to grant such conditions and safeguards as are appropriate under this ordinance or to deny such special exception when not in harmony with the purposes and intent of this ordinance.

108.2. Conditions.

In hearing requests for special exceptions under this section the planning board shall consider the following:

- (a) That the requirements of the zone in which the property in question is located have been complied with.
- (b) That the proposed use, although not generally appropriate in the zone for which it is sought, is appropriate for the location for which it is sought because of the peculiar physical characteristics of that location.
- (c) That the proposed use will conform to the general character of the neighborhood in which the use would be located.
- (d) That there would be no significant adverse effect resulting from such use upon the public health, safety and general welfare of the neighborhood in which the use would be located.
- (e) That the proposed use will not have an undue adverse effect upon the property values of adjacent properties.
- (f) That the proposed use will not place an undue burden on municipal services.
- (g) That the proposed use will not create unreasonable traffic congestion on contiguous or adjacent streets.

- (h) That the proper operation of the special exception will be ensured by providing and maintaining adequate and appropriate utilities, drainage, access, parking and loading and other necessary site improvements.
- (i) Private roads as listed in section 111.2(c)(20) may be required to provide the following:
 - (1) Evidence that the road is owned by a nonprofit corporation subject to bylaws of a road homeowners association.
 - (2) Map of property to include roads.
 - (3) Written stipulation recorded on map that road will not be submitted to city for acceptance as a public street unless it is built to city standards for public streets.
 - (4) Description of any provision for utility access and public services.

In granting an exception, the board may prescribe appropriate conditions or safeguards. In most cases where review by the planning board is required for the granting of an exception the planning board may suggest appropriate conditions or safeguards and these may be incorporated in the terms under which exception is granted. Violation of such conditions shall be deemed a violation of this ordinance.

Before granting an exception in a resource protection zone or in shoreland areas, as defined, the board may request pertinent information from the applicant and shall determine that, except as specifically exempted in this ordinance, the proposed use:

- (1) Will not result in unsafe or unhealthful conditions.
- (2) Will not result in erosion or sedimentation.
- (3) Will not result in water pollution.
- (4) Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat.
- (5) Will conserve shoreland vegetation.
- (6) Will conserve visual points of access to waters as viewed from public facilities.

- (7) Will conserve actual points of public access to water.
- (8) Will conserve natural beauty.
- (9) Will avoid problems associated with the floodplain development and use.
- (10) Is in conformance with the provisions of section 104.21 of this ordinance.

(Ord. of 7-13-87 § 2)

108.3. Application and granting procedures.

- (a) Before taking action on any application for special exception the planning board shall hold a public hearing. The application shall be received by the planning board at least thirty (30) days prior to a regularly scheduled meeting of the planning board. The applicant will pay a fee which will be promulgated by the city council. The fee will be reviewed by the city council from time to time.

The planning board shall notify interested parties by placing a notice of hearing in one (1) newspaper with local circulation at least seven (7) days prior to the hearing stating the nature of the appeal and the time and place of the public hearing thereon. Owners of abutting property shall be notified by direct mail.

- (b) For the purposes of this article, the owners of property shall be considered to be the parties listed by the assessor of taxes for the City of Old Town as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the planning board.
- (c) The request shall be in order for hearing at the next meeting of the planning board.
- (d) At any hearing a party may appear by agent or attorney. Hearings shall not be continued to other times except for good cause.
- (e) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman.
- (f) A right of appeal under the provisions of this chapter secured by vote of the planning board shall expire if the work or change involved is not commenced within one year of the date of which the special exception is granted.

- (g) If the planning board shall deny a request for special exception, a second request of a similar nature shall not be brought before the board within two (2) years from the date of the denial by the board of the first request, unless in the opinion of a majority of the board, substantial new evidence shall be brought forward, or unless the board finds in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of facts shall have been made.

(Ord. of 8-19-85; Ord. of 9-5-89)

108.4. Expansion or enlargement of use and or special exception permit.

It shall be unlawful for any structure, building or use of premises previously authorized by special exception permit to be enlarged or expanded without securing, prior to such enlargement or expansion, a new permit therefor pursuant to the provisions of this section.