



MEMO

711 Westchester Avenue, Suite 405
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To: Croton on Hudson Planning Board Members
From: Lori Lee Dickson, Esq. and Jeannette Koster, Esq.
Date: July 28, 2026
Re: Special Permits, In General and Pursuant to Chapter 230

SPECIAL USE PERMITS

The Village's local zoning laws (Chapter 230) establish which uses are permissible "as of right" and which uses require the applicant to obtain a special use permit (set forth in Attachment B "Special Permit Schedule"). Special use permits (may also be referred to as special exceptions, special exception permits, or conditional use permits) provide an additional method of review for certain types of land uses. When an applicant requests a permit for a use that is allowed as of right, permission is automatically granted provided it conforms to the criteria set forth in the zoning law. When a use is subject to special permit review (Chapter 230 Art. X), that use has been determined legislatively by the Board of Trustees to be compatible with as-of-right uses, but is still subject to review due to concerns about community character or public health, safety, and welfare. Special use permits should not be confused with variances. While variances are quasi-judicial remedies for landowners seeking a use not allowed in the local zoning laws, special use permits acknowledge that certain uses are actually harmonious with current zoning once specific conditions have been met. Village Law § 7-725-b define the special use permit as "an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met."

For example, a convenience store may be a use which is desirable in a residential neighborhood, but the municipality may want to control factors such as lighting, traffic,

hours, etc. Instead of (a) allowing the use as of right in the district without any limitation, or (b) requiring the owner to seek a use variance, the use can be controlled through the issuance of a special use permit.

Village Law §7-725-b provides the statutory authority to issue special use permits and establishes the procedures for their issuance. The Village Board of Trustees establishes by local law which uses require a special use permit, what criteria applicants must meet to obtain one, and who issues the permit. If an applicant can demonstrate that the proposed use conforms with the conditions imposed by the local zoning law, the permit must be granted unless the Planning Board has reasonable grounds supported by substantial evidence in the record (obtained during the public hearing process) to deny the application.

Chapter 230 Article X Special Permit Uses

§ 230-55. Purpose; when required.

Any use in any part of this chapter made subject to a special permit by the Village Board of Trustees may be permitted on application and after public notice and hearing. Such use shall be deemed to be prohibited unless a special permit has been granted by the Village Planning Board and filed with the Village Clerk.

The purpose of a special permit use is to allow for the proper integration of uses in the community and appropriate zoning districts. Because of their characteristics, or the special characteristics of the area in which they are to be located, special permit uses require consideration and conditions so that they may be properly located with respect to the objectives of this chapter and their proposed use is in harmony with local zoning laws and will not adversely affect the neighborhood if such requirements are fully met. If an application for a special use permit does not meet the statutory conditions for its use, it shall be deemed a non-conforming use.

§ 230-56. Renewal.

The grant of a special permit for the use indicated therein may be conditioned on periodic renewal, which renewal may be granted only following upon public notice and hearing. Such renewal shall be withheld or granted subject to terms and conditions additional to or different from those in the original grant only upon a determination that:

- A. The factors which justified the original grant no longer exist or have changed sufficiently to require additional or different terms and conditions; or
- B. The terms and conditions of the original special permit have not been or are not being complied with, wholly or in part. A notice of violation pursuant to § 230-173 shall be prima facie evidence of lack of conformity with such terms and conditions.

§ 230-57. Application.

Application for a special permit pursuant to this article shall be made, in writing, to the Village Planning Board, accompanied by such fee as the Village Board of Trustees may from

time to time set by resolution.¹ Such petition shall be supported by a preliminary site development plan containing information required by Article XI of this chapter. All conditions associated with a special permit must be addressed to be deemed a complete application by the Building Department. The submission must include the following documentation:

- A. A description of the proposed use, with reference to the appropriate use and regulations of this chapter, including any supplementary regulations applying thereto. This description should identify any potential detrimental impacts to adjacent properties and impacted communities.
- B. A basic cost-benefit analysis or similar study to review the estimated municipal costs, services and prospective revenues which would be generated by the proposed use. At their discretion, either the Building Department or Planning Board may require a municipal impact study from any application.
- C. Evidence that the proposed use is consistent with the goals of the Village Comprehensive Plan.
- D. A traffic and circulation study projecting the effects of the proposed use of the existing and probable future traffic and access in the vicinity of the proposed use.
- E. Copies of environmental assessments or permit applications and supporting materials which may be required to meet New York State or federal regulations.
- F. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 196, Article I, Stormwater Management and Erosion and Sediment Control, shall be required for any special permit approval that qualifies as or authorizes a land development activity as defined in Chapter 196, Article I. The SWPPP shall meet the performance and design criteria and standards in Chapter 196, Article I. The approved special permit shall be consistent with the provisions of Chapter 196, Article I.

§ 230-58. Review of application.

Every application for a special permit shall be filed with the Building Department both electronically and with eight hard copies. The number of hard copies of the application and supporting documentation needed for the Planning Board may be modified by the Building Department. The application shall be distributed by the Building Department to the Board of Trustees which shall provide comment to the Planning Board, if any, within 30 days. The Planning Board may also adopt such terms and additional conditions to the special permit as it deems appropriate to achievement of the foregoing objectives and the following goals:

- A. The accessibility of all proposed structures to fire and police protection.
- B. The compatibility of the location, size and character of the proposed use with the orderly development of the zoning district in which it is located and with that of adjacent properties in conformity with the zoning district applicable to such properties.
- C. The safety, convenience and congruity with the normal traffic of the neighborhood and of the pedestrian and vehicular traffic generated by the proposed use, taking into particular account the location and size of such use, the nature and intensity of operations involved

in or conducted in connection therewith, its site layout and its relation to access streets.

- D. The compatibility of the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site with adjacent land and buildings and their appropriate development.
- E. Protection of adjacent properties or impacted communities.
- F. The preservation of ecological or environmental assets of the site or adjacent lands.

§ 230-59. Public hearing; escrow amounts.

Upon the filing of an application deemed complete by the Building Department, the Planning Board will place the application upon its agenda in due course for a presentation and then a public hearing. No application shall be processed or placed on an agenda until all applicable outstanding fees, fines, taxes, professional fees and escrow amounts are paid and the Building Department deems the application complete. At any stage, if an application should fall into arrears regarding the foregoing or if escrows are not replenished per § 178-2, the Building Department may administratively remove the application from any agenda and stay the public hearing until the arrears has been paid or not process the related application or issue relevant permits. The Building Department may, at its discretion deem an application abandoned after giving reasonable notice regarding the same.

§ 230-60. Goals and objectives; referral to county; notice of public hearing.

- A. The Planning Board, in considering any application for a special permit hereunder, shall make findings on the objectives and goals listed in § 230-58 and, in addition, may refer legislative matters to the Board of Trustees so as to ensure that the public health, welfare and safety shall be protected, that the environmental and land resources of the community shall be put to the best possible use and that any authorization hereunder shall not create fiscal burdens upon the community at large or an adverse impact upon adjacent property and its permitted use by right under this chapter.
- B. Applications shall be referred, when required by law, to the Westchester County Planning Department for review pursuant to the Westchester County Administrative Code at least 30 days' prior to the required public hearing. Notice of the public hearing shall be published at least once not less than 10 days' prior to the date of the hearing in the official newspaper, and notice of hearing shall be mailed not less than 10 days' prior to the date of the hearing to all owners of property abutting and within 200 feet of the property for which such application is made and to any other person(s) the Planning Board may deem to be particularly affected. In the case of any special permit application pertaining to real property within a distance of 500 feet of the boundaries of any municipality or state or county road, park or other state-owned facility, notice of such hearing shall be mailed to the Clerk of such municipality, and to the County Planning Department not less than 10 days' prior to such hearing. Provided that due notice shall have been published and that there shall have been substantial compliance with the remaining provisions of this section, the failure to give notice in exact conformance herewith shall not be deemed to invalidate any action taken in connection with the grant or denial of any special permit.

§ 230-61. Conditions; notice of decision.

- A. The Planning Board, in approving any special permit hereunder, shall require conformance to any supplementary regulations applying to such uses generally and may establish additional conditions, including but not limited to:
- (1) Increasing required lot size or yard dimensions;
 - (2) Controlling the location and number of vehicle access points;
 - (3) Increasing street widths;
 - (4) Limiting the number, size and location of signs;
 - (5) Requiring fencing, screening, landscaping, or other facilities to protect adjacent properties;
 - (6) Requiring alternate location and layout of buildings;
 - (7) Architectural features;
 - (8) Site plan conditions related to the special permit and effected parcels;
 - (9) Further define or limit the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this chapter.
- B. The decision of the Village Planning Board shall immediately be filed in the office of the Village Clerk and a copy thereof mailed to the applicant.

§ 230-62. Timing, appeals and waivers.

- A. Unless specifically exempted in the decision of the Planning Board, any regulation or conditions of such special permit shall not be subject to appeal before the Zoning Board of Appeals, and any such appeal shall render such permit void and without effect without necessity of further action by the Village. Any person aggrieved by any decision of the Planning Board hereunder shall, within 30 days of the filing of the decision, apply to a court of competent jurisdiction pursuant to the Village Law and Article 78 of the Civil Practice Law and Rules.
- B. No requirement or conditions imposed by this article for any special permit use shall be waived by the Planning Board, Board of Appeals or the Board of Trustees and shall be the minimum requirements for any authorization hereunder. No requirement or conditions imposed by this Article for any special permit use shall be varied or reduced to such an extent that it would frustrate the purpose of this law or eviscerate a requirement or condition in its entirety. The grant of a special permit shall authorize only one special permit use and shall be limited only to the use described and approved in such permit. Special permits shall, unless subject to periodic renewal at the discretion of the Planning Board, be granted for an indefinite period but shall expire automatically two years from the date of grant, unless at such time substantial construction has begun pursuant to the approved application. The Building Department shall have the discretionary authority to

issue a one-year extension for good cause shown.

§ 230-63. Performance guaranty.

The Planning Board may, as a condition to the grant of a special permit, require a bond on terms satisfactory to the Building Department, guaranteeing performance of the final site development plan approved therein.

§ 230-64. Final site development plans.

The applicant shall be required to submit to the Planning Board site development plans contemporaneously with its special permit application. Upon recommendation of the Building Department, and at the discretion of the Planning Board, the Planning Board may streamline its process and contemporaneously review site development plans and any application for a special permit. The Planning Board shall approve, approve conditionally or disapprove such plans, in accordance with Article XI of this chapter and such regulations as the Village may have adopted or may in the future adopt under such article.