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SPECIAL USE PERMIT

Description:

A Special Use Permit (SUP) is a regulatory control tool that is used in conjunction with zoning, and a municipality must have zoning in order to use special use permits. A special use permit is sometimes referred to as conditional use, special permit, or special exception.

In most municipal zoning regulations, there are many uses that are permitted as-of-right; that is, with no discretionary review of the proposed project. In the case of a SUP, the proposed project's use is allowed, but presents challenges that need special attention in order to lessen those impacts upon the area. An SUP is often utilized when the use is acceptable or desired in zoning districts, for the convenience of residents/businesses—for example, gas stations, banks, convenient stores, senior housing communities, or converting a carriage house into an accessory apartment for a senior citizen or his caregiver.

Concerns associated with SUPs include traffic impacts, noise, lighting, landscaping, and screening. The goal of the review is to assure that the proposed project is in harmony with its surroundings, and will not adversely affect the neighborhood. A special use permit allows a board discretionary authority to review proposed development projects for designated uses or for uses in specific zoning districts.

A special use permit is applied for and granted by a review board. The review board is typically the planning board or zoning board of appeals, as authorized in the local zoning ordinance or law. State statutes prescribe the procedure for all special use permit applications.¹

Reference:

¹ *Local Government Handbook* (2009), 6th edition, p. 149. Albany, NY: New York State Department of State.

Benefits:

- If there is a concern that a proposed project will diminish the community character or have an adverse effect on neighboring property values, a special use permit provides a municipality with the ability to mitigate any possible adverse impacts. For example, in the case of an accessory dwelling unit, a review to ensure that a garage apartment blends with the architectural styles of the neighborhood could make the difference between a housing addition that fits into the neighborhood versus one that is in stark contrast to existing architecture and, therefore, a neighborhood detractor. For a variety of housing models, secondary dwelling units, or temporary residential units, a more routine use of the special-use-permit review process could keep their development to a

more consistent high standard, leading more community residents to be more willing to accept them.

- Special use permits can ensure that an appropriate variety of good quality housing stock is available for residents of all ages, abilities, and incomes. The intention is to make sure the use is the right fit for a particular location or site.

Impediments or barriers to development or implementation:

- A municipality must first have zoning in place in order to utilize the special use permit tool. Municipalities have no authority to require information or conformance with standards if those standards are not spelled out in the zoning regulations. Courts will generally uphold decisions based on those standards, provided they are in accordance with the goals of the municipality's comprehensive plan.
- A municipality must authorize the code enforcement officer to enforce the special use permit conditions.
- If a municipality has a cumbersome SUP application process, it may deter applicants from applying, resulting in illegal projects. The application and review process should not be so intimidating that property owners are inclined to avoid it and compromise safety with illegal projects. For example, illegal attic, basement, or garage apartment conversions may not have adequate exits for fire emergencies, or they could lack proper utility service connections, or insufficient ventilation.

Resource—statutory authority:

- Special Use Permits defined:
 - General City Law, §27-b;
 - Town Law, §274-b;
 - Village Law §7-725-b.
- Approval of special use permit:
 - General City Law §27-b;
 - Town Law §274-b;
 - Village Law §7-725-b

Resource—written and web:

- *Local Government Handbook* (2009), 6th edition. Albany, NY: New York State Department of State.
http://www.dos.ny.gov/lg/publications/Local_Government_Handbook.pdf.
- (May, 2007; reprint January, 2008), *Guide to Planning and Zoning Laws of New York State: James A. Coon Local Government Technical Series*. Albany, NY: New York State Department of State, Division of Local Government Services.
http://www.dos.ny.gov/lg/publications/Guide_to_planning_and_zoning_laws.pdf.

- M. Scott Ball (n.d.) *Aging in Place: A Toolkit for Local Governments*. Atlanta, GA: Community Housing Resource Center and the Atlanta Regional Commission. This community tool kit addresses many aspects of aging in place, including: housing choice and affordability, planning and zoning, health care, transportation, walkability and mixed generation communities.
<http://www.co.vernon.wi.gov/VCCP/documents/agingInPlace.pdf>.
- James Coon and Sheldon Damsky (2005), *All You Ever Wanted to Know About Zoning*, 4th edition. Albany, NY: New York Planning Federation. For pricing and ordering information: New York Planning Federation Book Store:
<http://www.nypf.org/editable/bookstore1.html>. Or, Amazon:
<http://www.amazon.com/Ever-Wanted-Know-About-Zoning/dp/0811349500>.
- Thomas Daniels, John Keller, Mark Lapping, Katherine Daniels, and James Segedy (2007), *The Small Town Planning Handbook*, 3rd edition. Albany, NY: American Planning Association Publication.
<http://www.planning.org/APAStore/Search/Default.aspx?p=3656>.