

## Proposed Ordinance Change

**Article xx.** Shall an ordinance entitled “Chapter 14 Land Use” be amended by moving jurisdiction for granting and denying applications for conditional uses from the Board of Appeals to the Planning Board by adding the underlined language and deleting the language in strikeover type as shown below?

### **ARTICLE 3: ZONING DISTRICT STANDARDS**

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Section 3.2.C. Conditional Uses:

The following uses are permitted only upon the issuance of a conditional use permit by the ~~Appeals Board~~ Planning Board, subject to the provisions of Article ~~13 14~~ (Zoning Board of Appeals Planning Board) of this chapter and any special provisions, standards or requirements specified below: ...

...

Section 3.3.C. Conditional Uses:

The following uses are permitted only upon the issuance of a conditional use permit by the ~~Appeals Board~~ Planning Board, subject to the provisions of Article ~~13 14~~ (Zoning Board of Appeals Planning Board) of this chapter and any special provisions, standards or requirements specified below: ...

...

Section 3.8.C. Conditional uses. The following uses are conditional uses in the recreation and open space zone, subject to approval by the ~~Board of Appeals~~ Planning Board. ...

Section 3.8.D. Standards for conditional uses. In addition to the criteria listed in Article ~~13 14~~ (Zoning Board of Appeals Planning Board), the Planning Board ~~board of appeals~~ shall consider the following criteria when reviewing conditional uses in the recreation and open space zone: ...

...

Section 3.9.C. Conditional Uses:

The following uses are permitted only upon the issuance of a conditional use permit subject to the provisions of Article ~~13~~ 14 (~~Zoning Board of Appeals~~ Planning Board) of this Chapter and any special provisions, standards or requirements specified below: ...

...

Section 3.10.C. Conditional uses: The following uses are permitted only upon the issuance of a conditional use permit by the ~~Appeals Board~~ by the Planning Board, subject to the provisions of Article ~~13~~ 14 (~~Zoning Board of Appeals~~ Planning Board) of the Land use Ordinance and any special provisions, standards or requirements specified below: ...

## **ARTICLE 7: TOWNWIDE PERFORMANCE STANDARDS**

...

Section 7.10.D. A home occupation that is not listed in paragraph (C) of this section but is similar to and no more objectionable than those home occupations listed in that paragraph, shall be permitted as a conditional use subject to the requirements of this Article 7 (Town wide Performance Standards) and Article ~~13~~ 14 (~~Planning Board~~ Zoning Board of Appeals) of this chapter. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.

...

Section 7.23.B.7. Prior to permitting an Accessory Dwelling Unit in either an existing structure or a new structure, the Board of Appeals shall require the applicant to hire a licensed Site Evaluator (SE), not at public expense, to certify that any existing subsurface wastewater disposal system (SSWD) proposed to be used, or a new system to be built, meets or will meet the current standards of the Maine State Plumbing Code Subsurface Wastewater Disposal Rules for the number of bedrooms being proposed for the structure. A full copy of the results shall be included in the Conditional Use Permit Application and submitted to the ~~Board of Appeals~~ Planning Board.

## ARTICLE 13: ZONING BOARD OF APPEALS

### 13.1 Jurisdiction and authority.

The Board of Appeals shall have the following jurisdiction and authority:

- A. Subject to the provisions of section 13.4, to hear and decide appeals from, and review orders, decisions, determinations or interpretations made by the building authority;
- B. Subject to the provisions of section 13.5, to hear and grant or deny applications for variances from the terms of this article;
- ~~C. Subject to the provisions of section 13.6, to hear and grant or deny applications for conditional uses, as specified in this article;~~
- C. ~~D.~~ To initiate changes and amendments to this Article 13.

...

### 13.3 Conduct of Hearings

...

C. Public hearings.

...

(2) Notice.

...

(b) In the case of hearings related to a use variance, or a nonconforming use, ~~or a conditional use~~ involving a particular parcel or tract of land, by mail to the owners of all the property within five hundred (500) feet of such parcel or tract;

...

### ~~13.6 Conditional uses~~

~~A. Authority. The board of appeals may, subject to the procedures, standards and limitations set out in this section, approve the issuance of a conditional use permit authorizing development of conditional uses listed in this article.~~

~~B. Procedure:~~

~~(1) Application. Applications for conditional use permits shall be submitted to the building authority. A nonrefundable application fee, as established from time to time by the selectmen to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the code enforcement officer but shall in all instances contain at least the following information and documentation:~~

- ~~a. The applicant's name and address and his or her interest in the subject property and a copy of the deed;~~
  - ~~b. The owner's name and address if different than the applicant;~~
  - ~~c. The address, or chart, block and lot number as shown in the records of the office of the assessor of the subject property;~~
  - ~~d. The zoning classification and present use of the subject property;~~
  - ~~e. The particular provision of this article authorizing the proposed conditional use;~~
  - ~~f. A general description of the proposed conditional use;~~
  - ~~g. Where site plan approval is required by Article 10 (Site Plan Review), a copy of a site plan application that has been determined by the Planning Board to be complete as defined by Article 10 (Site Plan Review).~~
- ~~(Amended May 14, 2011)~~

~~(2) Public hearing. A public hearing shall be set at a reasonable place and time (not to exceed 60 days from receipt of a completed application for conditional use), advertised and conducted by the board of appeals in accordance with this Article 13 (Zoning Board of Appeals).~~

~~(3) Action by the board of appeals. Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision, in a manner and form specified by Article 13 (Zoning Board of Appeals), granting the application for a conditional use permit, granting it subject to conditions as specified in subsection (d), or denying it. The failure of the board to act within thirty (30) days shall be deemed an approval of the conditional use permit, unless such time period is mutually extended in writing by the applicant and the board. Within five (5) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.~~

~~C. Conditions for conditional uses:~~

~~(1) Authorized uses. A conditional use permit may be issued for any use listed as a conditional use in the regulations applicable to the zone in which it is proposed to be located.~~

~~(2) Standards. Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:~~

- ~~a. There are unique or distinctive characteristics or effects associated with the proposed conditional use;~~
- ~~b. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and~~
- ~~c. Such impact differs substantially from the impact which would normally occur from such a use in that zone.~~

~~D. Conditions on conditional use permits. The board of appeals may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use permit and in the permit. Violation of such conditions shall be a violation of this article.~~

~~E. Effect of issuance of a conditional use permit. The issuance of a conditional use permit shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the town, including but not limited to a building permit, a certificate of occupancy, subdivision approval and site plan approval.~~

~~F. Limitations on conditional use permits. No conditional use permit shall be valid for a period longer than six (6) months from the date of issue, or such other time as may be fixed at the time granted not to exceed two (2) years, unless the conditional use has been commenced or is issued and construction is actually begun within that period and is thereafter diligently pursued to completion;~~

~~provided, however, that one (1) or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two-year period is not exceeded thereby. A conditional use permit shall be deemed to authorize only the particular use for which it was issued and such permit shall automatically expire and cease to be of any force or effect if such use shall for any reason be discontinued for a period of twelve (12) consecutive months or more.~~

~~G. Appeals from board decisions. Appeals from any decision of the board of appeals or, where applicable, the planning board respecting a conditional use permit shall be to superior court.~~

## **ARTICLE 14: PLANNING BOARD**

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### **14.4 Conditional uses**

A. Authority. The Planning Board may, subject to the procedures, standards and limitations set out in this section, approve the issuance of a conditional use permit authorizing development of conditional uses listed in this ordinance.

B. Procedure:

(1) Application. Applications for conditional use permits shall be submitted to the Long Island Planning Board. A nonrefundable application fee, as established from time to time by the selectmen to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the code enforcement officer but shall in all instances contain at least the following information and documentation:

- a. The applicant's name and address and his or her interest in the subject property and a copy of the deed;
- b. The owner's name and address if different than the applicant;
- c. The address, and lot number as shown in the town tax records;
- d. The zoning classification and present use of the subject property;

- e. The particular provision of this ordinance authorizing the proposed conditional use;
- f. A general description of the proposed conditional use;
- g. Where site plan approval is required by article 10 (site plan review), a copy of a site plan application that has been determined by the planning board to be complete as defined by Article 10 (site plan review).

## **(2) Conduct of hearings**

a. Rights of all persons. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the board shall exclude irrelevant, immaterial and unduly repetitious evidence.

b. Rights of parties. The applicant and any interested party shall in addition have the following rights:

- i. To present witnesses on their behalf and offer rebuttal evidence;
- ii. To cross-examine all witnesses testifying in opposition to their position through the chair, and
- iii. To examine and introduce any documents produced at the hearing

c. Board rules to govern. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the planning board.

(3) Public hearing. A public hearing shall be set at a reasonable place and time (not to exceed 60 days from receipt of a completed application for conditional use), Notice of the date, time and place of such hearing shall be published in a newspaper of local circulation at least ten (10) calendar days before the hearing. At least ten (10) calendar days before the public hearing, the applicant must provide notice to include a copy of the application to all persons owning or occupying properties within five hundred (500) feet of the site proposed for the conditional use being applied for by certified mail, the applicant must then submit a list of all property owners notified and copies of return receipts to show that notices were received by all property owners.

(4) Action by the Planning Board. Within thirty (30) days following the close of the public hearing, the Planning Board shall render its decision, in a manner and form specified by Article 14(Planning Board) granting the application for a conditional use permit, granting it subject to conditions as specified in subsection (D), or denying it. The failure of the board to act within thirty (30) days shall be deemed an approval of the conditional use permit, unless such time period is mutually extended in writing by the applicant and the board. Within five (5) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.

C. Conditions for conditional uses:

(1) Authorized Conditional Uses. A conditional use permit may be issued for any use listed as a conditional use in the regulations applicable to the zone in which it is proposed to be located.

(2) Standards. Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:

a. There are unique or distinctive characteristics or effects associated with the proposed conditional use;

b. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and

c. Such impact differs substantially from the impact which would normally occur from such a use in that zone.

D. Conditions on conditional use permits. The Planning Board may impose such reasonable conditions upon the property or owner benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the Board decision authorizing the conditional use permit and in the permit. Violation of such conditions shall be a violation of this article.

E. Effect of issuance of a conditional use permit. The issuance of a conditional use permit shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building



or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the town, including but not limited to a building permit, a certificate of occupancy, subdivision approval and site plan approval.

F. Limitations on conditional use permits. No conditional use permit shall be valid for a period longer than six (6) months from the date of issue, or such other time as may be fixed at the time granted not to exceed two (2) years, unless the conditional use has been commenced or is issued and construction is actually begun within that period and is thereafter diligently pursued to completion; provided, however, that one (1) or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two-year period is not exceeded thereby. A conditional use permit shall be deemed to authorize only the particular use for which it was issued and such permit shall automatically expire and cease to be of any force or effect if such use shall for any reason be discontinued for a period of twelve (12) consecutive months or more.

G. Appeals from board decisions. Any decision of the planning board regarding a conditional use permit shall be to the Board of appeals.