

## **ARTICLE II**

### **Exceptions and Variances**

#### **~ 305-4. Special exceptions.**

- A. A special exception is a use that would not be appropriate generally or without restriction throughout a particular zone but which, if controlled as to number, area, duration, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in a particular zone as an exception only if a specific provision for such exception is made in this chapter and then only by permission of the Board of Adjustment.
- B. In acting upon an application for a special exception, the Board of Adjustment shall take into consideration whether:
  - (1) The specific site is an appropriate location for the proposed use or structure;
  - (2) The proposal is not detrimental, injurious, obnoxious or offensive to the neighborhood;
  - (3) There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of accessways and off-street parking;
  - (4) Adequate and appropriate facilities and utilities will be provided to ensure the proper operation of the proposed use or structure; and
  - (5) The proposed use or structure is consistent with the spirit of this chapter and the intent of the Master Plan.

#### **~ 305-5. Variances.** [amended 04-03-2006 by Ord. No. 07-06]

- A. A variance is a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this chapter will result in unnecessary or undue hardship.
- B. To be eligible for the granting of a Variance by the Zoning Board of Adjustment, the applicant must satisfy several tests and criteria, which are consistent with the state statute [RSA 674:33, as amended] and applicable case law. The applicable tests and criteria are outlined in the application form for a variance or are available from the Planning and Zoning Office.

#### **~ 305-6. Exception, Variances, and *Special Use Permits***

As noted on the Permitted Use Table in Section 305-13, certain residential, commercial, or other business uses require a Special Use Permit [SUP]. The performance standards by which the Planning Board will review and judge a SUP application are outlined below. The granting of a SUP is a discretionary action on the part of the Board, and while guided by the these performance

standards the decision to approve or deny such a permit will be dependent upon specific site and building conditions analyzed in relationship to the specific design, development, and operational management of the proposed use and the potential for impacts of the proposed use on the overall neighborhood and the City in general. Where the proposed project triggers both a SUP and Site Plan and/or a subdivision application, then the applicant may make one filing for both types of approval and the hearings will be held concurrently. The following standards shall apply, as determined by the Board to be applicable, to all SUP reviews:

1. The specific use and buildings, and its size, location and design are appropriate for the surrounding neighborhood and the City as a whole.
2. The specific use and buildings will not be detrimental, injurious, obnoxious, or offensive to the neighborhood, and the granting of the Special Use Permit [SUP] will not be contrary to the overall public interest.
3. The granting of the SUP is consistent with the spirit and intent of the zoning ordinance.
4. The value of the surrounding properties will not adversely diminished by the granting of the SUP.
5. The specific and unique needs of the proposed use will function safely and in an environmentally sound fashion.
6. The subject property has the required lot area and the land is of a character [slope, natural constraints such as ledge or wetlands, etc.] to adequately support the proposed use and the associated required improvements including, but not limited to, parking, drainage, and utilities.
7. The traffic, [including residential and commercial both customers and truck/delivery vehicles], generated by the proposed use will not create adverse impacts for the surrounding neighborhood.
8. If the proposed industrial use will operationally involve any second shifts, or will be open past 9 PM, then the potential for impacts [noise, traffic, etc.] to the surrounding neighborhood will be reviewed by the Board.
9. The site is designed to eliminate or minimize the impacts of lighting to the surrounding neighborhood.
10. If during the course of the review and analysis of the proposed project adverse or obnoxious impacts are found to be created then the applicant may, through the design and construction of certain optional on-site or off-site improvements, alleviate these impacts on the surrounding neighborhood to satisfy the concerns of the neighborhood, abutters and the Board. Each individual improvement will be judged and considered by the Board for its effectiveness and ability to overcome the identified negative impacts.
11. Any Special Use Permit plan involving any type of day care, nursing, sheltered care, or related assisted living facility shall demonstrate that safe and secure outside facilities [play areas, decks or patios, gazebos, grassed sitting areas, etc] are available and accessible to the clients or residents, as applicable, of the facility.

In reviewing each application, the Board reserves the right to condition the use, time of operation, the size, location, or setbacks of the buildings, or any other component of the facility or use that is necessary to protect the integrity of the surrounding neighborhood and the City as a whole.

In addition to the Special Use Permit conditions above, any Motor Vehicle Oriented Business in the I-1 zoning district must conform to the following conditions:

1. No outside sales or display of vehicles typical of a car or used car lot.

2. Any such activity must be conducted on a site with a building and office of at least 1500 square feet.
3. The only customer activity on the site must be associated with a scheduled inspection of a vehicle and the closing of the sale.
4. All maintenance work performed on any vehicle shall be conducted in the building associated with this use.
5. The owner/manager of the facility must provide as part of the special use permit application an operations plan for the storage, handling, and process of all oils, fluids, and old parts.
6. No storage of old parts is allowed.
7. The City reserves the right to inspect the property and the building.
8. The only type of motor vehicle oriented business activity allowed in the I-1 district is the sale of autos, trucks, or heavy construction type equipment. The only allowed maintenance work allowed shall be work to be done on vehicles intended for sale. No outside repair work is permitted.

**~ 305-7. Municipal facilities.**

This chapter and the restrictions contained herein shall not pertain in any way to the City of Franklin or any facilities that it owns, operates or constructs in the carrying out of its municipal functions.