

ARTICLE XLVI
Special Use Permits

[Amended 6-12-1989 by L.L. No. 4-1989; 1-26-1998 by L.L. No. 1-1998]

§ 280-318. General provisions.

- A. A use listed as requiring a special use permit shall not be presumed to be an allowable use. It shall be the responsibility of the petitioner for a special use permit to prove to the satisfaction of the Town that the items listed in this section and under the section of that particular special use are met. These uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered on an individual case.
- B. No special permit shall be authorized by the Town unless, in addition to other requirements specified in this chapter, it finds that such special permit:
 - (1) Will be in harmony with the general purposes and intent of this chapter.
 - (2) Will not create a hazard to health, safety or the general welfare.
 - (3) Will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
 - (4) Will not otherwise be detrimental to the public convenience and welfare.
- C. In authorizing any special permit, the Town Planning Board may prescribe appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety or general welfare.

§ 280-319. Application procedure.

- A. Applications for special use permits shall be acted on by the Planning Board after a public hearing.
- B. A plan or the proposed development of a site for a permitted special use shall be submitted with an application for a special use permit, and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping and other pertinent information that may be necessary to determine if the proposed special use meets the requirements of this chapter.
- C. If a special use permit is granted, the applicant will then proceed with site plan approvals and with any other required approvals or permits.

§ 280-320. (Reserved)¹

§ 280-321. Nursery schools and day-care centers.

No special use permit for a nursery school or day-care center shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

1. **Editor's Note:** Former § 280-314, Wind energy conversion systems (WECS), was repealed 6-25-2007 by L.L. No. 3-2007. See now Art. L, Commercial Wind Energy Conversion Systems, (WECS).

- A. Nursery schools or day-care centers shall not receive an occupancy permit until licensed by the State of New York.
- B. Adequate outdoor play space shall be provided based on the number of children. There shall be a minimum of 75 square feet per child under the age of three and 100 square feet per child three years and older. No play area or equipment shall be located in a front yard.
- C. Where a nursery school or day-care center abuts a residential property or an area zoned residential, there shall be a minimum thirty-foot buffer with adequate screening as determined by the Planning Board.
- D. Child discharge and pickup areas shall not be in the public right-of-way.
- E. There shall be one off-street parking space for each full-time staff person and a minimum of three spaces for parents and visitors.

§ 280-322. Commercial radio and television transmission facilities.

Commercial radio and television transmission facilities may be permitted in the R-A District, provided that:

- A. A special use permit is obtained by the property owner from the Planning Board.
- B. Any tower shall be set back from all property lines a distance equal to or greater than its height.
- C. Each tower shall be built sufficiently strong to permit shared usage (multiplexing), and developers shall be encouraged to utilize their towers in this manner.
- D. Each tower shall be approved by the Federal Communications Commission.
- E. All towers at least 200 feet high shall be approved by the Federal Aviation Administration.

§ 280-323. Private airports and heliports.

No special use permit for a private airport or heliport shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. All proposed airports shall, at a minimum, meet the spacing requirements as listed in § 249 of Article 14 of the State of New York General Business Law.
- B. All proposed airports shall be reviewed and approved by the United States Federal Aviation Administration and the New York State Department of Transportation.
- C. The proposed location of airports, including storage areas, taxi strips and runways, shall recognize the public safety, comfort and general welfare needs of the residents.

§ 280-324. Commercial picnic grounds and groves.

No special use permit for commercial picnic grounds and groves shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. The size of the parcel will be determined by the Planning Board based on the magnitude of the proposed development, but in no instance shall it be less than 10 acres.
- B. There shall be a minimum of 100 feet in an undisturbed state along side and rear property lines. Any fencing or additional plantings of vegetation in these strips of land needed to adequately buffer adjacent properties shall be determined by the Planning Board.
- C. A copy of the Erie County Health Department annual inspection certificate shall be provided to the Town Building Inspector/Code Enforcement Officer.
- D. The Town Building Inspector/Code Enforcement Officer shall make periodic inspections of each operating facility to ensure the proper structural maintenance of all structures and the adequate cleanup of litter.
- E. The size, location and materials used in the construction of off-street parking facilities shall be determined by the Planning Board based on the intensity of use of the proposed development.

§ 280-325. Barns for nonagricultural storage purposes.

No special use permit for a barn for nonagricultural storage purposes shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. All storage must be within the enclosed barn.
- B. The storage of anything which would adversely affect public health or safety is specifically prohibited.

§ 280-325.1. Garden centers with outdoor display/storage. [Added 11-28-2011 by L.L. No. 14-2011]

No special use permit for a garden center with outdoor display/storage shall be authorized in the C-1 District unless the applicant's project meets the requirements of § 280-312B and the following:

- A. All outdoor storage, display or sales of merchandise/products must be a minimum of 50 feet from any residential use or zoning property line. This fifty-foot area must include a fence (of at least six feet in height) or another form of screening (hedge line, etc.) approved by the Planning Board.
- B. Materials stored in these areas must not exceed six feet in height (except for trees and other plant materials).
- C. No open storage of materials such as mulch, stone, sand, soil, fertilizers shall be allowed, unless in an area completely screened from surrounding properties. These materials can also be stored and sold in bags. The area devoted to storing these types of materials is limited to less than 10% of the site.
- D. All outdoor use areas (storage, display, sales, etc.) must be clearly shown on approved plans, and no outdoor uses shall take place outside of these areas. These outdoor display areas shall only encompass less than 30% of the subject property.

§ 280-326. Banks and drive-through banks. [Added 9-25-2000 by L.L. No. 5-2000]

- A. No special use permit for a bank or drive-through bank in an NC Neighborhood Commercial District shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4), and the following:
 - (1) The bank building shall not be larger than 2,500 square feet.
 - (2) The bank building architecture shall be compatible with the surrounding uses.
 - (3) Any drive-through lanes proposed shall be a minimum of 100 feet from any residential structure (measured from the actual drive-through machines, including ATM's, to the residential building footprint). The drive-through lanes, including the stacking area, and ATM equipment shall be screened (landscaped area or fencing) from residentially zoned areas or residential uses.
 - (4) In general, the operating hours shall not include times prior to 8:00 a.m. or after 9:00 p.m. (ATM's are assumed to be twenty-four-hour operations).
- B. No special use permit for a bank or drive-through bank in the H-C Hamburg Commercial District shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3), and (4), and the following: **[Added 9-13-2004 by L.L. No. 4-2004]**
 - (1) Buffering of surrounding residential areas.
 - (2) Meeting of any overlay zoning requirements.
 - (3) Proper access and internal traffic flow, and access management techniques: cross access, shared driveways, etc.

§ 280-327. New or used motor vehicle sales and service.

No special use permit for new or used motor vehicle sales and service facilities shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. The property has frontage along Camp Road (NY Route 75) between the boundaries of the New York State Thruway (I-90) and the railroad tracks north of Nash Road.
- B. The site shall not include the outdoor storage of any junk or unregistered vehicles.
- C. The Town Building Inspector/Code Enforcement Officer shall make periodic inspections of each operating facility to ensure the proper structural maintenance of all structures and the adequate cleanup of litter and motor vehicle parts.
- D. The size, location and materials used in the construction of off-street parking facilities shall be determined by the Planning Board based on the intensity of use of the proposed development.

§ 280-328. Terminals for local trucking and delivery service.

No special use permit for terminals for local trucking and delivery service shall be authorized

unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. Terminals for local trucking and delivery service, but not including any tractor, trailer or tractor-trailer combination, or automobile conveyor, provided that all vehicle loading, unloading and parking is on the premises.
- B. These facilities are to be located on a major or arterial highway.
- C. The lot shall not be located within 500 feet of any residential building.

§ 280-329. Commercial car washes.

No special use permit for commercial car washes as permitted in the C-2 District shall be authorized unless the applicant's project requests the requirements of § 280-312B(1), (2), (3) and (4) and the following:

A. No new commercial car washes (to be constructed after the adoption of this local law) shall be allowed on property fronting South Park, Southwestern, McKinley, or Route 5.

A.B. These facilities shall not be located within 200-500 feet of any residential structure or within 500-1000 feet of another such facility.

B.C. Architectural features of the car wash buildings and other buildings on the property be in harmony with the surrounding uses.

C.D. Visibility from the road shall be minimized through proper siting, setbacks, existing topographic features, berthing, and landscaping features.

§ 280-330. Filling stations, gasoline stations and automotive repair services (oil change, muffler and brake shops, collision shops and tire shops).

Filling stations and/or gasoline stations are permitted as a special use, provided that all servicing of vehicles, except fueling and minor emergency repairs, will be conducted in an enclosed building. No special use permit for these uses shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. The Town Building Inspector/Code Enforcement Officer shall make periodic inspections of each operating facility to ensure the proper structural maintenance of all structures and the adequate cleanup of litter.
- B. No part of any building used as a filling station, gasoline service station or towing and recovery impoundment area, and no filling pump, lift or other service appliance, shall be erected within 200 feet of any R District boundary or within 300 feet of any school, church, playground or park located in an R District. **[Amended 1-14-2013 by L.L. No. 1-2013]**
- C. No gasoline or oil pump, no oiling or greasing mechanism and no other service appliance shall be installed in connection with any filling station, gasoline service station or towing and recovery impoundment area within 20 feet of any street line. **[Amended 1-14-2013 by L.L. No. 1-2013]**
- D. Two reservoir spaces for each gasoline pump shall be provided on the lot for waiting vehicles. Such reservoir space shall not include space at the pump or required parking space.

- E. Storage of gasoline shall be in underground tanks approved by the American Insurance Association and all applicable state and federal regulations.
- F. There shall be no use of the lot, except for landscaping or screening, within 20 feet of any R District boundary.
- G. All portions of the lot not enclosed in a building and used for a reservoir space or for the storage, parking or servicing of a motor vehicle shall be subject to the provision of § 280-266 of this chapter.

§ 280-331. Towing and recovery impoundment areas. [Amended 1-14-2013 by L.L. No. 1-2013]

The following uses are permitted as a special use, provided that they are conducted within a completely enclosed building or within an area enclosed by a solid wall or fence at least eight feet in height:

- A. Towing and recovery impoundment areas, but not including auto wrecking or the storage of motor vehicles not eligible for New York State motor vehicle inspection stickers.
 - (1) The Town Building Inspector/Code Enforcement Officer shall make periodic inspections of each operating facility to ensure the proper structural maintenance of all structures and the adequate cleanup of litter.
 - (2) The size, location and materials used in the construction of off-street parking facilities shall be determined by the Planning Board based on the intensity of use of the proposed development.

§ 280-332. Bed-and-breakfast establishments and tourist homes. [Added 2-22-1999 by L.L. No. 3-1999]

No special permit for a bed-and-breakfast establishment or tourist home shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3) and (4) and the following:

- A. The applicant shall be the owner and full-time resident of the premises, and the bed-and-breakfast or tourist home use shall be subordinate and incidental to the residential use of the structure.
- B. All guestrooms shall be contained within the principal structure and limited to the first and second floors of said structure.
- C. No external modifications of the structure shall be allowed in conjunction with the creation of a bed-and-breakfast or tourist home use, and no visible evidence of the conduct of the establishment other than the posting of one sign, in accordance with Article XXXVI, shall be present.
- D. The architectural integrity and arrangement of interior spaces must be maintained and the number of guestrooms shall not be increased, except as required to meet health, safety and sanitation requirements.
- E. Accommodations shall not exceed a maximum of four guestrooms.

- F. The length of stay at a bed-and-breakfast or tourist home establishment shall not exceed seven days.
- G. Guestroom living quarters shall not constitute a separate dwelling unit and shall not be leased or rented as such.
- H. The serving of meals at the premises shall be limited to breakfast for lodgers only; no cooking or cooking facilities shall be permitted in individual guestrooms.
- I. Smoke detectors shall be installed in each guestroom and in adjacent hallways and corridors. All emergency exits shall be obvious and clearly identified.
- J. Outside activities shall not be permitted by guests where it will create a nuisance or in any way alter the character of the neighborhood.
- K. All off-street parking shall be regulated in accordance with Articles XXXII and XXXV of the Town Code. Parking areas for four or more vehicles may require adequate screening from adjacent residential uses, if deemed necessary by the Town.
- L. The special permit shall be issued only after a public hearing and upon the determination that the proposed use is in compliance with the conditions and limitations of this section.
- M. The special use permit shall be valid for a period not to exceed two years and shall be renewed for a bi-annual fee of \$200. This permit may be revoked at any time by the Building Inspector upon noncompliance with the conditions and limitations set forth in this section or in the permit itself.
- N. A certificate of occupancy shall be issued by the Building Inspector only after it has been determined that the structure meets the New York State Uniform Building and Fire Prevention Code, and after the special permit has been issued by the Town Board.

§ 280-332.1. Private rental storage; outdoor storage. [Added 12-13-2010 by L.L. No. 10-2010]

No special use permit for outdoor storage in association with private rental storage shall be authorized unless the applicant's project meets the requirements of § 280-312B(1), (2), (3), (4) and the following:

- A. This outdoor storage area must be at least 200 feet from the road right-of-way and include landscaping to properly screen it from the road (if necessary).
- B. All areas abutting residential districts or uses shall be screened from them by a landscaped berm.

§ 280-332.2. Private-Rental storage (a.k.a. public-mini-storage, self service storage facility). [Added 12-13-2010 by L.L. No. 10-2010]

No special use permit for private rental storage shall be authorized unless Applicant's project meets the requirements of § 280-312B(1), (2), (3), (4) and the following:

- A. Mini-storage units shall be set back a minimum of 100 feet from any residential zoning

district or residential structure.

B. Mini-storage units shall not be visible from the highway, and the following options can be utilized to accomplish this:

- (1) A landscaped berm, solid architectural fence or wall can be added in the front yard. These shall be of a height to sufficiently screen the units.
- (2) Full-scale buildings (with an approved architectural style) that include offices or other approved uses along with components listed in Subsection B(1) can be utilized to screen the units.

C. ~~Public~~mini-storage units are prohibited on lots fronting Route 5, Southwestern Boulevard and Camp Road, and in the waterfront area (LWRA) of the Town's Local Waterfront Revitalization Plan (LWRP).

§ 280-332.3. Craft (farm) breweries and craft brewery activities. [Added 1-14-2013 by L.L. No. 1-2013; amended 10-21-2019 by L.L. No. 10-2019; 5-20-2024 by L.L. No. 4-2024]

No special use permit for a craft (farm) brewery or a craft (farm) brewery with craft brewery activities shall be authorized unless the project meets the requirements of § 280-312B(1), (2), (3) and (4), and the following:

A. Definitions.

CRAFT FARM BREWERY — As defined by the farm brewery license under the New York State Liquor Authority.

LICENSED PRODUCT — As defined by the farm licenses in New York State Alcoholic Beverage Control Law (§§ 51-a, 76-a and 61, Subsection 2-a).

B. Principle farm business activities may include (depending on site location and attributes) the following:

- (1) Licensed product tasting.
- (2) Retail sale of licensed product.
- (3) Retail sales of related products, souvenirs, etc.
- (4) Drying spent grain.
- (5) Recovering carbon dioxide and yeast.

C. Accessory uses and structures to farm license businesses may include the following (as determined and approved under the SUP process):

- (1) Making and serving of food.
- (2) Hosted party and event space.
- (3) Production of related products such as soft drinks, syrups, and other beverages permitted by New York State Liquor Authority.

- D. The minimum acreage of the lot required for a craft (farm) brewery shall be 15 acres (and must be large enough to accommodate parking, required setbacks, etc.).
- E. Craft (farm) breweries with retail sales will need to show adequate parking and screening from adjacent residential uses.
- F. All manufacturing activities and storage must take place within an enclosed building.
- G. Manufacturing buildings must be located a minimum of 500 feet from any residential structures located on surrounding properties (unless a "sign-off" letter is received from such adjacent residential use) and must have adequate buffering and screening.
- H. Obtain and maintain a farm brewery license from the State of New York Liquor Authority and operate in conformance with said license.

§ 280-332.4. Craft winery. [Added 10-21-2019 by L.L. No. 10-2019; amended 5-20-2024 by L.L. No. 4-2024]

No special use permit for a craft winery shall be authorized unless the project is shown to meet the requirements of § 280-312B(1), (2), (3) and (4) and the following:

A. Definitions.

CRAFT WINERY — As defined by the farm winery license under the New York State Liquor Authority.

LICENSED PRODUCT — As defined by the farm licenses in New York State Alcoholic Beverage Control Law (§§ 51-a, 76-a and 61, Subsection 2-a).

B. Principle craft winery activities may include (depending on site location and attributes) the following:

- (1) Licensed product tasting.
- (2) Retail sale of licensed product (in accordance with New York State law) and must be made on site.
- (3) Retail sales of related products, souvenirs, etc.

C. Accessory uses and structures to farm license businesses may include the following (as determined and approved under the SUP process):

- (1) Making and serving of food.
- (2) Hosted party and event space.
- (3) Production of related products such as soft drinks, syrups, and other beverages permitted by New York State Liquor Authority.

D. The minimum acreage of the lot used for a craft winery shall be five acres (and must be large enough to accommodate parking, required setbacks, etc.).

E. Craft wineries with retail sales will need to show adequate parking and screening from

adjacent residential uses.

F. All manufacturing/process activities and storage must take place within an enclosed building.

G. Manufacturing/process buildings must be located a minimum of 200 feet from any residential structures located on surrounding properties (unless a sign-off letter is received from such adjacent residential use).

H. The winery must operate in accordance with all New York State laws.

§ 280-332.5 Full-scale rental storage buildings

No special use permit for a full-scale rental storage building shall be authorized unless the applicant's project meets the requirements of 280-312 B (1), (2), (3), (4) and the following:

A. The building must be a full-scale building that has the appearance of a commercial structure. It must have windows and must fit into the character of the area in which it is proposed.

B. No outdoor storage is allowed, unless another SUP is granted for outdoor storage.

C. The Planning Board, based on location, will determine the needs for landscaping and other features to fit the proposed project into the character of the area.

§ 280-332.6 Mixed-use buildings in an NC District

No special use permit for a mixed-use building in the NC district shall be authorized unless the applicant's project meets the requirements of 280-312 B (1), (2), (3), (4) and the following:

A. Provision of appropriate parking (as limited in the Intent section of the NC District)

B. Architectural features to meet the character of the area/neighborhood (typically residential in nature – pitched roofs, appropriate windows, etc.).

C. The scale of the building shall be in accordance with the Intent of the NC District, as determined by the Planning Board.

D. Landscaping and buffers as determined by the Planning Board.

§ 280-333. Penalties for offenses.

A. In the event of any violation of a special use permit, the Town may seek enforcement under any available authority, including but not limited to Town Law § 268.

B. Any use receiving a special use permit that subsequently does not meet the requirements and/or conditions of that permit or this chapter shall be subject to fines under Town Law and shall have its permit revoked, and the use shall be terminated within 90 days of notification by the Town.

§ 280-334. Expiration.

A special use permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for a period of more than one year.