



**TOWN OF CEDAR POINT  
PLANNING BOARD MEETING  
6:30 P.M. - TUESDAY, JANUARY 7, 2020  
CEDAR POINT TOWN HALL**

1. Call to Order
2. Roll Call
3. December 3, 2019 Meeting Minutes
4. New Business
  - Text Amendment for Special Use Permits in the Cedar Point Unified Development Ordinance, Section 3.10.
5. Public Comments
6. Comments from Board Members
7. Adjourn

Next meeting Tuesday, February 4, 2020 at 6:30 P.M.

**Tab 3 Minutes from December 3, 2019  
Meeting**



Town of Cedar Point  
Planning Board Meeting  
December 3, 2019

The Town of Cedar Point Planning Board held its regularly scheduled monthly meeting on Tuesday, December 3, 2019 at 6:30 PM. Chairman Heironimus determined a quorum to be present and opened the meeting.

PRESENT: Chairman Heironimus, Vice Chairman Williams, Members Garavaglia, Marello, Riggs, Zimmerman, Bragg, Reilly, Town Administrator Rief, and public

The Minutes from the November 12, 2019 meeting were presented for Board consideration and approval. Member Reilly made a **Motion** to approve the Minutes as presented. The Motion was seconded by Member Bragg. The Motion carried unanimously.

Mr. Rief discussed the reasoning behind the Board of Commissioners vote against the rezone request for PSF&W Investments, Inc., which was the proposed climate-controlled storage unit. Discussion amongst the members ensued.

Mr. Rief explained the differences and similarities between a traditional rezoning request and a conditional rezoning request.

The Conditional Rezone Request is a request to rezone approximately .40 acres of property located at 102 Dolphin Bay Estates from R-15 Residential District to B-1 Conditional District. This property's septic capacity is for a one-bedroom home if the zoning remains residential. The location is more suitable for a professional office, in this case, an accounting office is proposed.

Mr. Rief presented a brief overview of the application.

Neighboring property owners voiced their concerns to the Board. These concerns included sewer failure, runoff, increased traffic and an unpermitted addition. Mr. Rief responded to each of the concerns and demonstrated that the additional had been permitted. David Ward, real estate agent for the applicant, spoke in favor of the request.

Vice Chairman Williams made a **Motion** to approve the Conditional Rezoning Application. Member Marello seconded. Members Garavaglia and Zimmerman voted Nay. The Motion carried 5-2.

There being no further business to discuss, the meeting was adjourned. Member Riggs made a **Motion** to adjourn the meeting. Vice Chairman Williams seconded. The meeting adjourned at 8:50 PM

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Jennifer Heironimus, Chairman

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Jayne Calhoun, Town Clerk

**Tab 4 Text Amendments for  
Special Use Permits**

## **Existing Language UDO Section 3.10**

### **3.10 SPECIAL USE PERMIT**

#### **A. INTENT**

Special Uses because of their inherent nature, extent of development, or external effects, require special care in the control of their location, design, and methods of operation, in order to insure protection of the public health, safety, and welfare. It is the intent of this section to set forth the information to be submitted with applications for Special Use Permits and to state the standards by which each application shall be judged.

The criteria and procedures established in this section are intended to ensure that the design and construction of site elements include appropriate consideration of the relationship and balance among site elements, the relationship of the proposed development to natural features and neighboring developments, access and circulation systems, mitigation of erosion and sedimentation, mitigation of storm water drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring development and streets, and mitigation of traffic impacts.

#### **B. APPLICABILITY**

The Cedar Point Board of Commissioners may approve permits for Special Uses in the zoning district where the Special Uses are specified by this ordinance. The Board of Commissioners may impose such reasonable and appropriate conditions and safeguards upon these Special Use permits as to ensure that the spirit and intent of this ordinance are preserved and that such Special Use will not adversely affect the public interest.

1. Written application for a Special Use Permit shall be submitted to the Town Administrator or his designee no later than thirty (30) days prior to the next regular monthly meeting of the Planning Board. Such written application shall indicate the section of this ordinance under which a permit is being sought and shall contain the information required by the appropriate section and such other information as may be required to ensure compliance with this ordinance.

2. The Town Administrator will prescribe the application form for Special Use Permits.

3. Applications for special use permits may be made by the owner of the property or the owner's authorized representative (including but not limited to a contract purchaser of the property, provided that such contract purchaser or other authorized representative produces evidence of authority to proceed with the application).

4. Applicants are encouraged to meet with Town Administrator staff before filing a Special Use Permit application to review specific permit and application requirements.

5. Upon receipt of a Special Use Permit application, the Town Administrator shall first determine whether the application is complete, including the payment of all required application fees. If the Town Administrator determines that the application is not complete, he shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Town Administrator shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Comprehensive Plan, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case and report his findings to the Planning Board.

6. The Planning Board will review all applications for special use permits and make recommendations to the Board of Commissioners regarding the issuance thereof.

7. A public hearing shall be held by the Cedar Point Board of Commissioners prior to any decision on a Special Use Permit and such public hearing will be scheduled within 45 days after the Planning Board's review unless the mayor determines that the public interest will be promoted by a delay in which case the hearing may be delayed by order of the mayor for up to an additional 31 days.

8. Notice of the public hearing shall be given at least fourteen (14) days in advance of such hearing as follows:

- a. To the applicant and owner of the property by certified mail, return receipt requested;
- b. To the owners of property, as determined from the Carteret County GIS information, abutting the property that is the subject of the special use permit application by certified mail, return receipt requested; and
- c. By posting a notice on the subject property visible from the nearest public street, or in the public right of way nearest to the subject property, indicating that the property is the subject of a zoning proceeding and giving the telephone number of Cedar Point Town Hall where additional information may be obtained.

The notice of public hearing will generally describe the nature of special use permit sought, and the date, time, and place of the hearing.

9. For notice of public hearing given by certified mailing, such notice is deemed given upon depositing a copy of the same in the United States mail.



10. In addition to notice given as aforesaid, notice of the public hearing shall also be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

11. The Town Administrator, working in cooperation with the Town Clerk and the Town staff, is responsible for ensuring that all notices of the public hearing are properly given and shall file a statement certifying this with the Board of Commissioners.

12. At the public hearing, any person may appear in person or be represented by agent or attorney and make relevant comments and present relevant information. Parties with legal standing may ask questions of others making comment during the hearing. The mayor is authorized to impose reasonable time limits on presentations.

13. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any other reasons set for in *Section 3.10(C), GENERAL STANDARDS/FINDINGS OF FACT*, rests on the party or parties urging the requested permit should be denied.

#### C. FINDINGS OF FACT/DECISION

The Town Commissioners shall not approve an application for a Special Use permit, or approve vested rights in connection therewith, unless it makes each of the following findings concerning the proposed special use:

1. The applicant has met the requirements of this ordinance and all other applicable ordinances.
2. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. That the use, as proposed, will not overburden the firefighting capabilities and the water supply capacity within the town as said facilities and capabilities will exist on the completion date of the special use for which application is made. That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.
4. That the use or development complies with all required regulations and standards of this Ordinance;
5. That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and
6. That the use or development confirms with the general plans for the physical development of the Town as embodied in the Town's Comprehensive Plan.

The Board of Commissioners will act by majority vote. The decision of the Board will be reduced to writing and signed by the mayor.

In granting any Special Use Permit, the Board of Commissioners may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of those conditions and safeguards, when made a part of the terms under which the Special Use Permit is granted, shall be considered a violation of this ordinance and will be punishable under Chapter 4 of this ordinance. The Board of Commissioners may prescribe a time limit within which a Special Use Permit shall begin or shall be completed. Failure to comply within the time limit set shall void the Special Use Permit.

If a Special Use Permit application is submitted simultaneously with a rezoning request to a Condition Use District, hearings on both matters shall be held concurrently. The Town Commissioners must act on the rezoning request before it may act on the Special Use Permit application. If the rezoning request is denied, the Special Use Permit application is moot, and no Board action is required on such request.

#### D. WRITTEN NOTICE

The Town Administrator shall cause notice of the disposition of the application to be delivered by certified mail to the applicant and any party who has filed a written request for a copy with the Town Administrator at the time of the hearing.

In the case of approval or approval with conditions, the Town Administrator or Town Clerk shall issue the Special Use Permit in accordance with the action of the Town Commissioners and the applicant shall record it in the office of the Carteret County Register of Deeds within ten (10) days of receipt. No Special Use Permit will be effective, and no further permits or approvals for the development may be issued, until the Special Use Permit has been filed with the Register of Deeds. A copy of the Special Use Permit, with proof of filing with the Carteret County Register of Deeds, shall be delivered to the Town Administrator within ninety (90) days after the Special Use Permit is issued to the applicant.

Any construction authorized by a Special Use Permit must receive construction drawing approval and a Zoning Compliance Permit as detailed in *Sections 3.5 and 3.7*.

#### E. APPEAL

An aggrieved party may appeal a decision by the Town Commissioners on an application for a Special Use Permit to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by N. C. G. S. § 160A-388(e2)(2).

#### 4. EFFECT OF DENIAL OR WITHDRAWAL

When the Town Commissioners shall have denied an application or the application shall have been withdrawn, by written notice, after publication of the first public hearing notice required in *Section 3.10(I), NOTICE OF PUBLIC HEARING*, Town staff shall not accept another application for the same or similar Special Use, affecting the same property or a portion thereof, until the expiration of one year from the date of denial or withdrawal.

#### 5. VESTING

A vested right pursuant to *Section 3.6, VESTED RIGHTS* is established by the issuance of a Special Use Permit pursuant to this section.

#### 6. DEVIATIONS

After a Special Use Permit has been approved, the Town Administrator is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the Town Commissioners but the Town Administrator shall not have the authority to approve changes that constitute a modification of the approved plans. A modification shall require approval of the Town Commissioners. If the Town Administrator is uncertain whether a requested deviation is a “minor change” or a “modification”, it shall be treated as a modification and referred to the Town Commissioners for review and approval.

#### 7. CRITERIA USED FOR DETERMINATION

The Town Administrator shall use the following criteria in determining whether a proposed action is a minor change or a modification:

- a. Any change in a specific condition imposed during the approval of a Special Use Permit shall constitute a modification.
- b. A substantial change in use or enlargement by greater than ten (10) percent of an authorized use shall constitute a modification.
- c. A ten (10) percent or greater increase in intensity of use shall constitute a modification. An increase in the number of dwelling units is an example of an increase in intensity of use.
- d. An increase of intensity of less than ten (10) percent may be considered a minor change if the Town Administrator finds that the development, as changed or modified, will continue to be in general conformance with the approved Special Use Permit.
- e. Structural alterations that significantly affect the basic size, form, style, ornamentation, and/or character of buildings shown on an approved plan or described in the applicant’s narrative shall be considered a modification.
- f. Substantial change in the amount and/or location of open space, recreation facilities, or landscape screening shall constitute a modification.

- g. Changes to signage which increase the number of signs, or increase the sign face area, beyond that approved as part of the Special Use permit process shall be considered modifications.
- h. Any change in parking areas resulting in an increase or reduction of ten (10) percent or more in number of spaces shall constitute a modification.
- i. Substantial change in pedestrian and/or vehicular access or circulation patterns shall constitute a modification.
- j. Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval shall constitute a modification.
- k. Substantial change in the location or extent of street and utility improvements or rights-of-way, including water, sewer, and storm drainage facilities, which would result in a different level of service than was represented to the Town Commissioners during the public hearing process, shall constitute a modification.
- l. Any combination of minor changes that in the determination of the Town Administrator are, taken together, substantial in nature.

#### 8. REVIEW OF RECORD REQUIRED

The Town Administrator shall, before deciding whether a proposed change to a special use is a minor change or modification, review the record of the proceedings of the original Special Use Permit approval. The Town Administrator's decision shall be based upon the applicant's request, a review of the record of the original request, and the Town Administrator's findings under the criteria of *Section 3.10(I), CRITERIA USED FOR DETERMINATION*.

#### 9. ACTION REQUIRED ON PROPOSED MINOR CHANGES

If the Town Administrator determines that the proposed action is a minor change, he/she shall state its findings in writing to the applicant. The applicant shall file with the Town Administrator's an amended site plan, or written statement, outlining in detail the minor change(s) proposed. Town staff shall file the amended site plan or written statement with the originally approved site plan.

#### 10. ACTION REQUIRED ON PROPOSED MODIFICATIONS

If the Town Administrator determines that the proposed action is a modification, he shall require the applicant to submit a request for modification of the approved Special Use Permit. The applicant shall provide an amended site plan, if applicable, and a written narrative outlining the specific changes requested. The Town Administrator shall submit the request to the Town Commissioners. If the Town Commissioners find the modification substantial in its impact, or wishes to have additional public input, it may set a public hearing to receive testimony concerning the modification request.

Any public hearing called pursuant to a request for a modification of an approved Special Use Permit shall be held in conformity with the requirements of *Section 3.10(B 8 -11)*. The Town Commissioners may approve, approve with conditions, or disapprove the application for a modification. The Town Administrator shall file the Town Commissioners' action as an amendment to the original application.

## 11. REVOCATION

The Town Commissioners may revoke a Special Use Permit if it finds that any one, or more, of the following conditions:

- a. That any governmental license or permit required for the activity authorized by a Special Use Permit has not been obtained or has been terminated; or
- b. That any of the applicable requirements of this Ordinance or any conditions attached to the Special Use Permit, or modification thereof, have been violated.

The Town Commissioners may consider reapplication for a Special Use Permit on property on which a previous permit has expired pursuant to *Section 3.10(T)*, *EXPIRATION* or has been revoked under this section, if all of the standards which are set forth in this Ordinance are met.

## 12. EXPIRATION

An approved Special Use Permit expires 24 months from the date of approval if the Zoning Permit has not been issued for the project unless an extension of the expiration date has been granted by the Town Commissioners. Extensions may be in the form of a longer expiration time approved with the initial Special Use Permit, or a separate request made in writing before the expiration of the standard 24 months.

### 3.11 VARIANCE

#### A. INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers requests for relief relating to the requirements of this Ordinance. Nothing in this section shall be construed to authorize the Board of Adjustment to permit a use in a district where that use is neither a permitted, nor a Special Use.

#### B. APPLICABILITY

When a property owner believes unnecessary hardships would result from carrying out the strict letter of this Ordinance he may seek a variance from such requirements. Only the Board of Adjustment has authority to grant such variances, and then only upon application of established legal standards as set forth in this Ordinance.

#### C. PROCEDURE

##### 1. APPLICATION REQUIREMENTS

The application must be filed with the Town Administrator.

## **Proposed Language UDO Section 3.10**

### **3.10 SPECIAL USE PERMIT (SUP)**

#### **A. INTENT**

Special Uses because of their inherent nature, extent of development, or external effects, require special care in the control of their location, design, and methods of operation, in order to ensure protection of the public health, safety, and welfare.

#### **B. APPLICABILITY**

The Cedar Point Board of Commissioners may approve permits for Special Uses in the zoning district where the Special Uses are specified by this ordinance. The Board of Commissioners may impose such reasonable and appropriate conditions and safeguards upon these Special Use permits as to ensure that the spirit and intent of this ordinance are preserved and that such Special Use will not adversely affect the public interest.

#### **C. APPLICATION PROCEDURES**

1. Applicants are encouraged to meet with the Town Administrator before filing a Special Use Permit application to review specific permit and application requirements.
2. The Town Administrator will prescribe the application form for Special Use Permits. Such written application shall indicate the section of this ordinance under which a permit is being sought and shall contain the information required by the appropriate section and such other information as may be required to ensure compliance with this ordinance.
3. Applications for special use permits may be made by the owner of the property or the owner's authorized representative, including but not limited to a contract purchaser of the property, provided that such contract purchaser or other authorized representative produces evidence of authority to proceed with the application, and shall be submitted to the Town Administrator or his/her designee.
4. Upon receipt, the Town Administrator shall first determine whether the application is complete, including the payment of all required application fees. If the Town Administrator determines that the application is not complete, he shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Town Administrator shall schedule the matter for a public hearing before the Board of Commissioners.

#### **D. REVIEW PROCESS**

1. Notice of the public hearing shall be given at least ten (10) days, but not more than twenty-five (25) days prior to such hearing as follows:
  - a. To the applicant and, if different, the owner of the property that is the subject of the hearing by first-class mail;
  - b. To the owners of property, as determined from the Carteret County GIS information, abutting the property that is the subject of the special use permit application by first class mail; and,
  - c. By posting a notice on the subject property visible from the nearest public street, or in the public right of way nearest to the subject property, indicating that the property is the subject of a zoning proceeding and giving the telephone number of Cedar Point Town Hall where additional information may be obtained.
2. The notice of public hearing will generally describe the nature of special use permit sought, and the date, time, and place of the hearing.
3. For notice of public hearing given by first-class mail, such notice is deemed given upon depositing a copy of the same in the United States mail.
4. The Town Administrator or his/her designee shall certify to the Board of Commissioners that notice was given in accordance with this section.
5. The public hearing shall be held by the Cedar Point Board of Commissioners prior to any decision on a Special Use Permit.
6. At the public hearing, any person may appear in person or be represented by an attorney to provide factual testimony to the Board of Commissioners. Parties with legal standing may make legal arguments and may ask questions of others providing testimony during the hearing.
7. Following the public hearing, the Board of Commissioners may approve, deny, or approve with conditions, the application for a Special Use Permit within 35 days of the date of the public hearing.
8. In addition to determining that the application meets all other requirements of this ordinance (no variances are permitted), the Board of Commissioners must find the following:
  - a. That the proposed special use conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site;
  - b. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads;
  - c. That adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use;
  - d. That the proposed use will not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas;
  - e. That the establishment of the proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the land development district;
  - f. That the establishment, maintenance and/or operation of the proposed use will not be detrimental to or endanger the public health, safety or general welfare.



- g. That the establishment will be operated in compliance with all local, state and federal laws and will not become a nuisance by creating criminal activity or public disturbance.
9. The Board of Commissioners will act by majority vote. The decision of the Board will be reduced to writing and signed by the mayor.
10. The Board of Commissioners may place conditions on the use as part of the approval to assure that appropriate mitigation measures are associated with the use. The conditions shall become part of the Special Use Permit approval and shall be included in the final site plan application, when one is required.
11. The decision becomes effective upon filing with the Town Clerk.
12. The Town Administrator shall cause notice of the disposition of the application to be delivered in accordance with the North Carolina General Statutes to the applicant, the property owner and to any person who has filed a written request for a copy with the Town Administrator prior to the date the decision becomes final.
13. If at any time after a Special Use Permit has been issued for any special use, the Board of Commissioners finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a Special Use Permit, the permit shall immediately be terminated and the operation of such a use discontinued. Any such "finding" shall be made in an open meeting of the Board and the permit holder's right to due process shall be maintained. If a Special Use Permit is terminated for any reason, it may be reinstated only after a public hearing is held.

**E. APPEAL**

An aggrieved party may appeal a decision by the Town Commissioners on an application for a Special Use Permit to Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by N. C. G. S. § 160A-388(e2)(2).

**F. EFFECT OF DENIAL OR WITHDRAWAL**

When the Town Commissioners shall have denied an application or the application shall have been withdrawn, by written notice, after publication of the first public hearing notice required in *Section 3.10(1), NOTICE OF PUBLIC HEARING*, Town staff shall not accept another application for the same or similar Special Use, affecting the same property or a portion thereof, until the expiration of one year from the date of denial or withdrawal.

**G. VESTING**

A vested right pursuant to *Section 3.6, VESTED RIGHTS* is established by the issuance of a Special Use Permit pursuant to this section.

**H. EXPIRATION**

An approved Special Use Permit expires 24 months from the date of approval if the Zoning Permit has not been issued for the project unless an extension of the expiration date has been granted by the Town Commissioners. Extensions may be in the form of a longer expiration time approved with the initial Special Use Permit, or a separate request made in writing before the expiration of the standard 24 months.