

Town of Tolland, Connecticut

Plan of Conservation & Development – Zoning Implementation

Meeting 2 – Site Plan & Special Permit Criterion:  
A Review of Application Procedures



April 13, 2020

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April 13, 2020

Andrew Powell, Chair  
Planning & Zoning Commission  
21 Tolland Green  
Tolland, CT 06084

Re: Application Procedures – Site Plan & Special Permit

Dear Chairman Powell:

The following is a preliminary draft of the recommended changes to the site plan and special permit provisions in the Zoning Regulations. This preliminary draft is based the recommendations of the Plan of Conservation and Development to encourage economic development and create a land use permitting process that is more user-friendly and predictable. The recommended changes are based on my review of the provisions. I will lead a facilitated discussion and review of these provisions and my recommended amendments at the April 27, 2020 Planning & Zoning Commission meeting. I look forward to your thoughts and questions, as well as those of the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald J. Poland".

Donald J. Poland, PhD, AICP



## **Permitted and Conditional Uses (Revisited)**

**Permitted Uses:** Uses that are allowed as-of-right (by staff zoning permit or by commission site plan) and by law do not require a public hearing. Permitted uses are (and should be) the uses a community most want to encourage—investment flows to the path of certainty and least resistance. Permitted uses (by zoning permit or site plan) are as-of-right uses, which indicates that if the use (and application) complies with the requirements of regulations (i.e. bulk, area, site design, etc.), then the use should be approved. Therefore, permitted (as-of-right) uses should not include subjective provisions and conditional criterion.

**Conditional Uses (special permits):** Uses that are allowed via a conditional permitting process (by commission) and such process requires a public hearing, by law. Section 8-2 of the Connecticut General Statutes (CGS) states that the zoning commission:

“may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit...subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values.”

The law governing conditional uses (special permits) recognizes that while a use may be desired and acceptable in a certain zoning district, the use (based on the unique characteristics and qualities of the use) may not be suitable in *all locations* within said zoning district. Therefore, the Commission may establish specific standards (and conditions) in the regulations that must be demonstrated (by the applicant) and complied with before the conditional use (special permit) is approved.

When considering any application for special permit, the Zoning Commission: “must determine that;

- (1) the proposed use of the property is expressly permitted under the zoning regulations,
- (2) the standards in the regulations are satisfied, and
- (3) any conditions necessary to protect public health, safety, convenience and property values as provided by Section 8-2 of the CGS can be established”

If all three requirements are satisfied, the Commission must approve the application.



## **Tolland Zoning Regulations – Existing Site Plan Criterion**

### **Findings – Considerations - Recommendations**

**Findings:** The existing site plan requirements are excessive and exceed the statutory authority for the regulation of as-of-right uses and site plan application considerations. As stated earlier, permitted as-of-right uses (by zoning permit or site plan) that comply with the standards and requirements set forth in regulations (i.e. use, bulk, area, site design, etc.) should be approved. Therefore, the regulations should not provide additional requirements, especially subjective standards, that need to be demonstrated and met as part of the application process.

**Consideration:** The Commission should consider removing the excessive requirements in Section 20-9 of the Regulations.

**Recommendations:** A proposed text amendment for Section 20-9, including the removal of excessive provisions, has been provided in this document. See page 10 below.

## **Tolland Zoning Regulations – Existing Site Plan Criterion**

### **Section 20-9.E.4**

A. Conformity with Section 1-1.

B. **Traffic considerations.** Vehicular access shall be provided to the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and on the lot to avoid traffic congestion on any street. At least the following items of the site plan shall be evaluated to determine the conformity of the site plan with this standard:

1. The effect of the proposed development on traffic conditions on abutting streets.
2. The number, locations and dimensions of vehicular and pedestrian entrances, exits, drives and walkways.
3. The visibility in both directions of all exit points of the site and the visibility of a vehicle entering or exiting the site to the driver of a vehicle traveling on the street.
4. The location, arrangement and adequacy of off-street parking facilities.
5. Interconnection of parking areas via access drives within and between adjacent lots, in order to provide maximum efficiency, minimize curb cuts and encourage safe and convenient traffic circulation.



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6. The location, arrangement and adequacy of truck loading and unloading facilities.
7. Patterns of vehicular and pedestrian circulation both within the boundaries of the development and in relation to the adjoining street and sidewalk system.
8. The location, arrangement and adequacy of facilities for the physically handicapped in accordance with state requirements.
9. The location, arrangement and adequacy of landscaping within and bordering parking and loading facilities.

C. **Environmental considerations.** For the protection of environmental quality and the preservation and enhancement values, at least the following items of a site plan shall be evaluated by the Commission to determine the conformity of a site plan with these standards:

1. The location, height and materials of walls, fences, hedges and plantings so as to ensure harmony with adjacent development, the screening of parking and loading areas and the concealment of storage areas, utility installations and other such features.
2. The prevention of dust and erosion through the planting of ground cover or installation of other surfaces.
3. The preservation of natural attributes and major features of the site, such as wetlands, easily eroded soils, historic structures, major trees, unique topographical formations, notable rock outcrops and scenic views both from the site and onto or over the site.
4. The design and arrangement of buildings and necessary facilities and the installation of proper shielding so as to minimize noise levels at the property boundary.
5. The use of Low Impact Development strategies to maintain the existing site hydrology to minimize downstream impacts while maintaining the pre-development water quality from the site.
6. The location, height and materials of walls, fences, hedges and plantings to minimize artificial light levels at the property boundary.

D. Preparer.

E. Architectural plans.

F. Off-site information.

G. Impact analysis.

H. Additional information.

I. Referrals.

J. Sites of Archaeological Significance.



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- K. Procedure. The Commission may hold a public information meeting on an application for site plan approval.
- L. Additional standards for approval. In reviewing and acting upon an application for site plan approval, the Commission shall take into consideration the health, safety and welfare of the public in general and the immediate neighborhood in particular, as well as the following factors:
1. The general conformity of the site plan with the intent of the town's Plan of Development; however, the Plan of Development shall not take precedence over specific provisions of these regulations.
  2. The arrangement of buildings, structures and uses on the site.
  3. The adequacy of design of the interior vehicular circulation system to provide safe and convenient access to all structures, uses, parking spaces and loading spaces.
  4. Provision for safe pedestrian movement within and adjacent to the site.
  5. The adequacy of access for fire, police and ambulance services.
  6. The adequacy of design of the storm drainage system to accommodate any increase in stormwater runoff and to minimize soil erosion and sedimentation.
  7. The adequacy of water, sewage disposal/treatment and other public facilities to accommodate the development.
  8. The location, intensity and direction of outdoor lighting and the proposed times for its use.
  9. The size, location and type of any outdoor storage facilities, including dumpsters.
  10. The size, location and type of signs and their appropriateness to the neighborhood.
  11. The adequacy of the landscaping treatment, including any buffers and other screening.
  12. The impact of noise, odors, lighting, dust and smoke.
- M. Phasing.



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## **Tolland Zoning Regulations – Existing Special Permit Criterion**

### **Findings – Considerations - Recommendations**

**Findings:** The existing special permit considerations and conditions are simplistic and effective. They should be maintained. That said, other provisions in Section 20-8 Special Permits can be improved.

**Consideration:** The Commission should consider improving the provisions of Section 20-8 of the Regulations.

**Recommendations:** A proposed text amendment for Section 20-8 Special Permits that focuses on general improvements to the provisions is provided in this document. See page 17 below.

## **Tolland Zoning Commission – Existing Special Permit Criterion**

- A. **Standards for approval.** Except as otherwise provided herein, a use allowed by special permit shall conform to all requirements of the zoning district in which it is proposed to be located and the standards contained herein. The Commission may grant a special permit after considering the health, safety and welfare of the public in general and the immediate neighborhood in particular, as well as the following factors:
1. The location and size of the proposed use; the nature and intensity of the operations associated with the proposed use; the size, shape and character of the site in relation to the proposed use; and the relationship of the proposed use and site to the adjacent and local land uses and sites.
  2. The location, type, size and height of buildings and other structures associated with the proposed use in relation to one another and in relation to nearby development.
  3. The impact of the proposed use on traffic safety and circulation on nearby streets and the ability of such streets to adequately accommodate the traffic to be generated by the proposed use.
  4. The existing and future character of the area in which the use is proposed to be located and the compatibility of the proposed use with the area.
  5. The impact of the proposed use on the natural characteristics of the site and the surrounding environment.
  6. The adequacy of and impact on water supply, sewer or septic facilities, drainage and other public facilities to accommodate the proposed use.
  7. Where the proposed use involves the conversion of a structure designed and built originally for other uses, the adaptability of the structure to the proposed use, particularly in relation to the public health and safety.
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8. The proposed use shall preserve important open space, views or vistas and other significant features of the natural environment.

**B. Conditions and safeguards.** In granting a special permit, the Commission may attach such conditions and safeguards as may be required to protect the public health, safety and general welfare and to ensure continued compliance with these regulations. Such conditions and safeguards may include, but shall not be limited to:

1. A maximum number of employees;
2. Hours of operation;
3. Periodic review and renewal of the special permit by the Commission to determine continuing compliance therewith;
4. A date of expiration of the special permit;
5. Improvements to existing public facilities to accommodate the use allowed by the special permit;
6. Conservation restrictions necessary to protect and permanently preserve unique natural site features;
7. Soil erosion and sediment control measures in accordance with the provisions of Article IV; or
8. A bond in accordance with the provisions of Section 22-7.N.





## **Section 20-9 Site Plan – Proposed Text Amendment**

### **Section 20-9. Site Plan**

#### **A. When Required**

1. A Site plan shall be submitted as required throughout in these Regulations.
2. A Site Plan shall accompany the application for a Special Permit, unless staff or the Commission determine a Site Plan is not necessary for the proposed use or determine the Site Plan can be submitted separately after the Special Permit approval is granted.

#### **B. Site Plan Application Requirements**

1. The following shall be submitted as part of a Site Plan application:
  - a. A completed Site Plan application form.
  - b. Application fee.
  - c. Seven (7) full-size (24" x 36") paper copies for Site Plan and eight (8) paper copies for Special Permit. The application shall also provide a pdf of a Site Plan containing the information required Section 20-10. Staff may determine and require more or less than the total number of plans required above depending the circumstance of specific applications. In addition, staff may determine and require that reduced-size (11" x 17" or 12" x 18") copies of plans be provided.
  - d. Preparer. The Site Plan shall be prepared, signed and sealed by the appropriate design professional licensed by the State of Connecticut.
  - e. Architectural elevations. The Commission may require the applicant to submit preliminary architectural drawings that show exterior wall elevations, roof lines and facade materials of proposed buildings and structures.
  - f. Off-site information. The shall include off-site information that is applicable to the application. For example, open space and recreation areas, the location of buildings, parking areas and curb cuts on adjoining properties, including those across the street; traffic lights and controls, public trees, catch basins, manholes, hydrants, utility poles and utility lines located in adjacent streets; and zoning district boundary lines.
  - g.



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- h. Additional information. During its consideration of an application for Site Plan approval, the Commission may require the submission by the applicant of such additional information as the Commission deems necessary to determine compliance of the Site Plan with these Regulations.

**C. Sites of Archaeological Significance**

For all proposed development located within a high sensitivity area, as shown on the Town's official archaeological map available in the Planning Office, the State Archaeologist will be contacted to determine if there is evidence of sites of archaeological significance on the subject property. Any significant sites shall, where possible, be left undisturbed and recommendations by the State Archaeologist shall be complied with.

**D. Phasing**

In cases where the development of the property is proposed to be undertaken in phases, the Commission may grant Site Plan approval limited to each phase of development. Each phase shall be capable of independent existence without the completion of succeeding phases.

**E. Site Plan Approval**

1. Pursuant to Section 8-7d of the General Statutes, a decision shall be rendered not later than 65 days after the official day of receipt. The petitioner or applicant may consent to one or more extensions provided the total extension of all such periods shall not exceed 65 days. Additional extensions may apply if an application has also been submitted to the Inland Wetlands Commission, pursuant to General Statutes.
2. A Site Plan may be approved with modifications by the Commission or denied only if it fails to comply with the standards set forth in these Regulations. A decision to deny or modify a Site Plan shall set forth the reasons for such denial or modification.
3. To ensure that structures and the uses of land are arranged in a manner that enhances the public health, safety and general welfare, as a condition of approval the Commission may require such modifications of the proposed plans as it deems necessary to comply with the spirit as well as the letter of these Regulations.
4. Site plans shall be in conformity with Section 1.1 of these Regulations.
  - b.

**F. Guarantee Requirements**

Unless otherwise prohibited by the General Statutes, the following provisions shall apply.

As a condition of Site Plan approval, the Commission or applicant may request that surety be posted with the Town to guarantee satisfactory completion of all proposed site improvements shown on the



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approved Site Plan if the applicant is requesting a Certificate of Occupancy prior to completion of all site work.

1. Such surety may be posted at any time before all modifications of the Site Plan are complete, except that the Commission may require surety for erosion control prior to the commencement of any modifications.
2. No certificate of occupancy shall be issued before a required surety is posted.
3. An itemized estimate of the cost of the site improvements shall be prepared by the applicant's engineer, including a separate inflation factor, which shall not be greater than 10% of the estimate, for the estimated construction period, and shall be submitted to the Town Engineer for approval.
4. The surety shall be posted with the town for an initial period of 18 months unless an extension of time shall be requested by the applicant and granted by the Commission, or until such time as the improvements are accepted by the Commission.
5. Reduction of surety. Upon the completion of at least 25%, 50% and/or 75% of the cost of the site improvements subject to the surety, the applicant may request in writing a reduction of the surety. Within 65 days of the date of such request, the site shall be inspected by the Town Planner, the Town Engineer or other appropriate town official to determine if the portion of the required site improvements for which the reduction is being requested has been satisfactorily completed in accordance with the approved Site Plan. Based upon these findings, the Commission may authorize the reduction of such surety or deliver to the applicant a written explanation as to the additional modifications that must be completed before the surety, or portion thereof, may be released.
6. Release of surety. Before the release of a surety, the Commission:
  - a. Shall require the applicant to submit as-built drawings.
  - b. Shall not accept the landscaping portion of the improvements until such time as the vegetative cover and plantings have survived one complete winter and summer season or 12 months, whichever comes first. In such case, the Commission shall retain a portion of the surety to cover the mortality and/or poor performance of the required landscaping.
7. Form and type of surety.
  - a. Be in a form and surety type satisfactory to the Commission.



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- b. The Commission shall accept surety bonds, cash bonds, passbook or statement savings accounts and other surety including, but not limited to, letters of credit, provided such bond or surety is in a form acceptable to the Commission and the financial institution or other entity issuing any letter of credit is acceptable to the Commission. In the case where a bank or insurance company is involved with the surety, the bank and/or insurance company shall be authorized to conduct business in the State of Connecticut.

**G. Post Approval Requirements**

1. A certificate of zoning compliance shall be issued by the Town Planner after all the site improvements have been completed in accordance with the approved Site Plan.
  2. If the site improvements cannot be completed because of weather or if an alteration does not require the vacating of the premises or if a portion of a building or development is ready for occupancy before the completion of the entire building or development or for other pertinent reasons, a conditional certificate of zoning compliance may be issued by the Town Planner for a period not to exceed 180 days. Failure to complete the improvement within the time permitted, will result in a violation of the conditional certificate of zoning compliance and a violation of these Regulations. Appropriate enforcement action will be taken to ensure compliance.
  3. Certificate of occupancy. A certificate of occupancy shall not be issued by the Building Official until the Town Planner or ZEO has determined that the site improvements have been completed in accordance with the approved Site Plan and has issued a certificate of zoning compliance. A conditional certificate of zoning compliance may be issued in accordance with subsection 2 above.
  4. As-built drawings required:
    - a. No certificate of zoning compliance or certificate of occupancy shall be issued until as-built drawings have been submitted to the Town Planner and are determined to be in substantial compliance with the approved Site Plan. If a conditional certificate of zoning compliance is issued in accordance with Section 20-9.F subsections (2) and (3), the as-built drawings shall indicate those improvements to be completed and revised final as-built drawing shall be submitted upon their completion.
    - b. The as-built drawings shall:
      - 1) Be prepared at the same scale as the Site Plan by an engineer and/or surveyor, as appropriate, registered and licensed in Connecticut.
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- 2) Show the actual installation of all site improvements, the exact location of buildings and other required items at a level of detail at or exceeding that of the approved Site Plan.
  - 3) Include a certification by the engineer and/or surveyor as to substantial compliance with the approved Site Plan.
  - 4) List or show all deviations from the approved Site Plan.
- c. The Town Planner shall submit all as-built drawings which substantially deviate from the approved Site Plan to the Commission for its determination of acceptance or need for plan amendment.

#### H. Amendments

All site improvements shall be carried out in strict compliance with the Site Plan approved by the Commission. Minor amendments to the approved Site Plan may be approved only in writing by the Town Planner and/or Town Engineer upon the written request of the applicant. All other amendments or modifications to the Site Plan shall require the approval of the Commission.

#### I. Expiration of Site Plan

All site improvements in connection with an approved Site Plan shall be completed within the time period specified in the General Statutes. Failure to complete all site improvements within such period shall result in automatic expiration of the approval of such Site Plan.

#### J. Continuance

All conditions and improvements shown on the approved Site Plan shall continue in force as long as the use indicated on the approved Site Plan shall be in operation, regardless of any change in ownership of the property.



## **Section 20-8 Special Permit – Proposed Text Amendment**

### **Section 20-8. Special Permit**

The Special Permit uses as set forth in these Regulations are deemed to be permitted uses in their respective districts when granted by the Commission, subject to compliance with the requirements and standards set forth in this Section in addition to all other requirements of these Regulations. All such uses are hereby declared to possess such special characteristics that each shall be considered as an individual case.

#### **A. Submittal Requirements: Special Permit**

The following items shall be submitted when applying for a Special Permit.

1. A completed Special Permit application form.
2. Application fee.
3. Site Plan pursuant to Section 20-9. The applicant may choose to submit the Site Plan application concurrently with, or subsequent to, the Special Permit application. By a majority vote of members present, the Commission may waive this requirement when a Special Permit use does not entail exterior changes to the building, additional parking, and other such changes to the site.
4. Special Permit plan contents as required in Sections 20-8 and 20-10.
5. The application submission shall address all off-site and on-site impacts, requirements, improvements and considerations, including but not limited to building location, traffic, storm drainage, sanitary sewerage, water supply, parking and circulation, landscaping and environmental and aesthetic considerations. Sufficient information to address these major impacts shall be provided by the applicant, but such information may be generalized or shown in preliminary form except as hereafter noted. Detailed plans for facilities, structures and improvements shall not be required at this time.
6. Traffic Study:
  - a. The construction of more than 50 dwelling units, 100 parking spaces or 40,000 square feet of gross floor area or any proposal which, in the Commission's judgment, would generate high levels of traffic shall be accompanied by a traffic study prepared by a licensed traffic engineer.
  - b. At a minimum, the traffic study shall include data and information on existing and projected average daily vehicle trips on nearby roads, peak-hour traffic, adequacy of



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rights-of-way and travel ways, existing roadway capacity, traffic accidents, the traffic impact of the proposed development, traffic generation data, the location of existing roads within 1,000 feet of the development site, traffic lights and intersections and recommendations for safe pedestrian and vehicular circulation, including provisions for safe sidewalks and crosswalks for pedestrians. Where applicable, the applicant shall include the written recommendations of the Connecticut Department of Transportation.

7. Additional information. At any time during its consideration of an application for a Special Permit, the Commission may require the submission by the applicant of such additional information as the Commission deems necessary to determine compliance of the proposed use with these Regulations, including but not limited to information regarding soils, storm drainage, sanitary sewerage, water supply, streets or traffic circulation. All additional information requested by the Commission shall be submitted a minimum of 10 days prior to a public hearing, so that the Commission, staff, public and any consultants contracted by the Commission have adequate time to review the information before the expiration of the time limits set forth in the General Statutes. The Commission may choose not to accept any modifications to an application after it has been received, except those modifications specifically requested by the Commission.

**B. Standards for Approval**

1. Except as otherwise provided herein, a use allowed by Special Permit shall conform to all requirements of the zoning district in which it is proposed to be located and the standards contained herein.
2. The Commission shall consider the health, safety and welfare of the public in general and the immediate neighborhood in particular and the following factors:
  - a. The location and size of the proposed use; the nature and intensity of the operations associated with the proposed use; the size, shape and character of the site in relation to the proposed use; and the relationship of the proposed use and site to the adjacent and local land uses and sites.
  - b. The location, type, size and height of buildings and other structures associated with the proposed use in relation to one another and in relation to nearby development.
  - c. The impact of the proposed use on traffic safety and circulation on nearby streets and the ability of such streets to adequately accommodate the traffic to be generated by the proposed use.



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- d. The existing and future character of the area in which the use is proposed to be located and the compatibility of the proposed use with the area.
  - e. The impact of the proposed use on the natural characteristics of the site and the surrounding environment.
  - f. The adequacy of and impact on water supply, sewer or septic facilities, drainage and other public facilities to accommodate the proposed use.
  - g. Where the proposed use involves the conversion of a structure designed and built originally for other uses, the adaptability of the structure to the proposed use, particularly in relation to the public health and safety.
  - h. The proposed use shall preserve important open space, views or vistas and other significant features of the natural environment.
3. Where it is projected that the additional traffic resulting from the proposal will reduce the Level of Service to C or below, the Commission shall not approve the project unless and until provision has been made for the improvement of said condition.

**C. Conditions and Safeguards**

In granting a Special Permit, the Commission may attach conditions and safeguards to protect the public health, safety and general welfare and to ensure continued compliance with these Regulations. Such conditions and safeguards may include, but shall not be limited to:

1. A maximum number of employees.
2. Hours of operation.
3. Improvements to existing public facilities to accommodate the use allowed by the Special Permit.
4. Conservation restrictions necessary to protect and permanently preserve unique natural site features.
5. Soil erosion and sediment control measures in accordance with the provisions of Article 4.
6. A financial guarantee in accordance with the provisions of Section 20-9.F.

**D. Limit of Special Permit**

A Special Permit shall authorize only the particular use or uses specified in the Commission's approval.

**E. Effective Date**

No Special Permit shall become effective until it has been filed in the town's land records in accordance with the provisions of the General Statutes.

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**F. Duration and Expiration of Special Permit**

1. Unless otherwise established by the Commission, a Special Permit, along with any conditions and safeguards attached thereto, shall remain with the property as long as the use allowed by the Special Permit remains in operation. Such conditions and safeguards shall continue in force regardless of any change in ownership of the property.
2. A Special Permit shall expire if the required Site Plan associated therewith is not submitted and accepted within 12 months following approval of the Special Permit. An extension of not more than six (6) months may be granted by the Commission upon written request by the applicant prior to the expiration date.
3. If a building permit is not obtained for a special permit which was issued by the Commission prior to the enactment of these Regulations within two (2) years from the date of adoption of these Regulations and/or substantial construction has not begun on a building or structure or no use has been established on a lot for which building, structure or use within two (2) years from the date of issuance of said building permit, such special permit for said building, structure or use shall become null and void.

**G. Noncompliance with Special Permit**

Failure to strictly comply with the documents, plans, terms, conditions and safeguards approved as a part of the Special Permit shall be a violation of these Regulations. The ZEO shall notify the applicant, in writing, of the specifics of the noncompliance and shall provide a reasonable time period for compliance therewith. Unless there is full compliance within such time period, the Commission may, following a duly advertised public hearing, rescind and revoke such Special Permit.

**H. Amendments or Modifications**

Amendments to an approved Special Permit which are determined by the Town Planner shall be in accordance with the provisions of Section 00-0 (Permitted Uses – Commercial Use Tables).