



**ORDINANCE NO. 433**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, ADOPTING CHAPTER 82 ZONING, ARTICLE II ADMINISTRATION, DIVISION 3 BOARD OF ZONING ADJUSTMENT, SUBDIVISION IV CONDITIONAL USES TO AUTHORIZE THE BOARD OF ZONING ADJUSTMENT TO CONSIDER CONDITIONAL USE APPLICATIONS; TO ESTABLISH THE CONDITIONAL USE APPLICATION PROCESS, THE APPEAL PROCESS, AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY, THE REPEAL OF ALL CONFLICTING ORDINANCES, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Sewall's Point, Florida (the "Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Town's Code of Ordinances currently requires all restaurants and food stores doing business within the Town to secure a permit for such use from the Town Commission; and

**WHEREAS**, the Town Commission wishes to amend the Code of Ordinances to provide for the Board of Zoning Adjustment (the "BZA") to review applications for these conditional uses; and

**WHEREAS**, the Code sets forth the authority and procedures of the BZA and the Town Commission wishes to authorize the BZA to hear and decide these conditional use applications; and

**WHEREAS**, the Town Commission wishes to include within the ordinance the conditional use application process including, but not limited to, objective criteria for considering a conditional use and to also provide for an appeal to the Town Commission; and

**WHEREAS**, the Town Commission finds and declares that the adoption of this ordinance serves a public purpose and is in the best interest of the health, safety and welfare of the Town.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:**

**Section 1.** The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

**Section 2.** Chapter 82 Zoning, Article II Administration, Division 3 Board of Zoning Adjustment, Subdivision IV Conditional Uses is hereby adopted to read as follows:

**Subdivision IV. Conditional Uses**

**Sec. 82-125. – Generally; application.**

- (a) Generally. The board of zoning adjustment may authorize conditional uses in accordance with this subdivision.
- (b) Application process. The applicant shall complete and submit an application for the conditional use to the town along with the appropriate filing fee. The filing fee will be approved from time to time by resolution. The town may also request a deposit from the applicant sufficient to cover the anticipated costs, including but not limited to, ~~plan review engineering~~ fees, attorney fees, and the administrative costs of the hearing. The applicant shall be required to reimburse the town for all costs, fees and expenses incurred in connection with the application for the conditional use.

**Sec. 82-126. – Hearings; notice; appeal.**

- (a) Hearings. Before granting a conditional use, the board of zoning adjustment shall hold a public hearing to consider the application. The board will review the application according to the objective criteria set forth below and may request additional documentation from the applicant as needed. The burden of proof to demonstrate that the use meets the intent of this criteria remains at all times on the applicant. Before granting any conditional use, the board must find that the applicant has established the criteria by competent substantial evidence. The board shall approve the permit, approve the permit with conditions, or deny the permit.

(b) Notice. The notice of the public hearing shall include, at a minimum, the date, time and location of the hearing, the address of the subject property, and the proposed conditional use.

(1) Posted notice. The applicant shall post the notice on the property that is the subject of the application. Such notice shall be able to withstand normal weather events and shall meet the number, size and font requirements established by the town.

(2) Mailed notice. The applicant shall mail a notice of the public hearing to all record owners of real property located within 300 feet of any part of the subject property. The notice shall be sent by certified mail, return receipt requested and it shall be in a form approved by the town.

(3) Timing of notice. The posting and mailing of the notices shall be completed at least 15 days prior to the date of the hearing.

(4) Proof of notice. Prior to the hearing, the applicant must establish, to the reasonable satisfaction of the town, compliance with the notice requirements. If the applicant fails to adequately establish compliance with the notice requirements, the town manager may cancel the hearing until such time that the applicant complies with such requirements.

**Sec. 82-127. – Criteria; conditions of approval; term of approval.**

(a) Objective criteria. Each application for a conditional use permit shall be reviewed against the following objective criteria established to prevent or minimize adverse effects upon other adjacent properties and the surrounding neighborhood. The applicant shall establish the following criteria by competent substantial evidence.

- (1) Compatibility. The use will be compatible with the existing or permitted uses of adjacent property. Factors by which compatibility of the use shall be reviewed include scale, height, mass and bulk, design, intensity, and character of activity. The town may request design changes to mitigate the impacts upon adjacent properties and the surrounding neighborhood.
- (2) Noise. This use will comply with Section 22-68 General prohibitions of noise; however, special events which exceed this standard may be permitted by Section 22-70 Temporary permit. A noise impact analysis by a qualified professional may be required.
- (3) Odor. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive, obnoxious or unpleasant beyond the property line of which the principal use is located. Any process, including the preparation of food, which may involve the creation and emission of any such odors, shall be provided with both a primary and secondary safeguard system so that odor control may be maintained in the event of a failure in the primary safeguard system.
- (4) Lighting and glare. There shall be no direct glare visible from any residential district caused by unshielded floodlights or other sources of high intensity of lighting. Lighting shall complement the existing building and shall not cause a glare to passing pedestrians or vehicles or residential districts. Seasonal lighting and decoration shall be allowed.
- (5) Signage. Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties and shall otherwise comply with Chapter 74 of this Code.
- (6) Traffic flow and safety. Adequate ingress and egress will be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency as determined by recognized engineering or other professional standards.

- (7) Parking. Adequate off-street parking, loading areas, and adequate stacking will be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.
- (8) Hours of operation. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of the hours of operation.
- (b) Conditions of approval. The board of zoning adjustment may prescribe conditions, limitations, requirements and safeguards to a conditional use permit to prevent or minimize adverse effects on adjacent properties and the surrounding neighborhood. It is a violation of this Code for any person to violate or to refuse or fail to comply with any term or condition of this permit. If a term or condition is violated, the board may, after giving proper notice of a public hearing, apply additional conditions, suspend or revoke the conditional use permit, or recommend to the town the use of any other means of enforcement available to the town at law or in equity. The board may apply any one or more of these remedies for a violation, and it may reinstate a conditional use permit if all violations are adequately addressed. If the permittee provides written consent to the revocation of the permit, the town manager is authorized to revoke the permit and notify the board. Conditions of approval include, but are not limited to, the following:
- (1) Licenses and permits. The use is licensed, permitted and insured in accordance with all applicable laws, ordinances, rules and regulations, and the owner has a valid Martin County business tax receipt for the use.
- (2) Hours of operation. Hours of operation may be limited to ensure compatibility with adjoining properties.
- (3) Buffering. Additional buffering beyond that which is required by the Code may be required in order to protect and provide compatibility with adjoining properties.
- (4) Screening devices. Light shields or other screening devices may be required to avoid offsite glare.

(5) Other conditions. Any other reasonable conditions to permit development of the town without creating adverse effects on adjacent properties, the surrounding neighborhood, or the community at large.

(c) Term of approval. An approved conditional use permit shall run with the property, and the ownership of a conditional use permit may be transferred to another party. The term of the approval shall be as follows:

(1) Timeline. The board of zoning adjustment may prescribe a reasonable time limit within which certain required actions related to the conditional use shall be commenced or completed or both.

(2) Extension. No later than 60 days prior to the expiration of a conditional use permit, an applicant may deliver a written request for an extension of the permit to be considered by the board of zoning adjustment. The applicant shall deliver the written request to the town manager. If the applicant establishes that the permittee has been working diligently to meet the established timeline(s), the board may grant a reasonable extension of the timeline(s). If the applicant fails to deliver the written request for an extension in accordance with the 60 day timeline, no extension shall be considered by the board.

(3) Abandonment or discontinuance. When a conditional use is discontinued or abandoned, after establishment, for a period of six (6) months or more, the use shall not be reestablished without a new application approved in accordance with the requirements of this section.

**Sec. 82-128. – Appeals.** The applicant or the town may appeal the decision of the board of zoning adjustment to the town commission. If the applicant wishes to appeal the decision, he or she is required to deliver a written notice of appeal to the town manager within fifteen (15) days of the written decision of the board of zoning adjustment. If the town appeals the decision, it will notify the applicant of the appeal and the date, time, and location of the town commission hearing. The hearing on the appeal will be scheduled at the next available town commission meeting. The appeal will not be a hearing de novo, but shall be limited to appellate review of the record created before the board of zoning adjustment. The town commission’s decision shall be final.

**Section 3. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 4. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5. Codification.** The sections of the ordinance may be made a part of the Town Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

**Section 6. Effective Date.** This ordinance shall take effect immediately upon adoption.

Commissioner Kurzman offered the Ordinance for its first reading and moved its adoption. The motion was seconded by Commissioner Tompeck, and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	✓	—
JAMES W. CAMPO, VICE MAYOR	✓	—
FRANK FENDER, COMMISSIONER	✓	—
DAVE KURZMAN, COMMISSIONER	✓	—
JOHN TOMPECK, COMMISSIONER	✓	—

Passed first reading at the Regular Meeting of the Town Commission held on the 27<sup>th</sup> day of April, 2021.

Commissioner Kurzman offered the Ordinance for its second reading and moved its adoption. The motion was seconded by Commissioner Fender, and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	✓	—
JAMES W. CAMPO, VICE MAYOR	✓	—
FRANK FENDER, COMMISSIONER	✓	—
DAVE KURZMAN, COMMISSIONER	✓	—
JOHN TOMPECK, COMMISSIONER	✓	—

Passed second reading at the Regular Meeting of the Town Commission held on the 25<sup>th</sup> day of May, 2021. The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission on this 25<sup>th</sup> day of May, 2021.

TOWN OF SEWALL'S POINT, FLORIDA

Kaija Mayfield  
Kaija Mayfield, Mayor

ATTEST:

April Stoncius  
April Stoncius, CMC, Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: Glen J. Torcivia  
Glen J. Torcivia, Town Attorney  
Florida Bar No. 343374

