

### § 23.05 Status of Special Exception

(from New Hampshire Practice, Vol. 15, *Land Use Planning and Zoning*, Third Edition, Atty. Peter J. Loughlin)

There is little difference between the legal status of a permit obtained directly from a municipal building official because a particular use is permitted as a matter of right, and a permit obtained from a municipal building official after the board of adjustment has found that the use complies with the conditions for a special exception.<sup>31</sup> In other words, a special exception provided for by ordinance is a permitted use when approved.<sup>32</sup>

A permit obtained as a result of a special exception is not personal to the applicant and it cannot be limited to the use only of the applicant.<sup>33</sup> A special exception runs with the land and not a particular owner, hence a condition restricting the use to the particular owner would be inappropriate.<sup>34</sup> This is not to say, however, that a provision cannot be included in the land use regulations indicating that a permit obtained as a result of a special exception must be acted upon within six months or a year, nor is a provision prohibited which expresses under certain circumstances that a use allowed by special exception might be lost by abandonment.<sup>35</sup>

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31 *Navin v. Exeter*, 115 NH 248, 339 A.2d 12 (1975); *Geiss v. Bourassa*, 140 NH 629, 670 A.2d 1038 (1996) (in reviewing the status of a special exception the trial court erred when it applied the review standard which is appropriate to the scope of a variance or nonconforming use).

32 3 E. Ziegler, Rathkopf's *The Law of Zoning and Planning*, § 41.14. Note, however, that the granting of a special exception for one particular use does not automatically permit the landowner to use the property for any other use permitted by special exception.

33 *Vlahos Realty Co., Inc. v. Little Boar's Head District*, 101 NH 460, 146 A.2d 257 (1957).

34 3 E. Ziegler, Rathkopf's *The Law of Zoning and Planning*, § 41.14.

35 *Lawlor v. Salem*, 116 NH 61, 352 A. 2d 721 (1976) (abandonment was found where intent to abandon existed and overt act on the part of landowner indicated intent to abandon).