ORDINANCE NO. 2013-_____

AN ORDINANCE TO AMEND CHAPTER 220 OF THE TOWN CODE, ENTITLED "ZONING," RELATED TO SPECIAL USES.

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

WHEREAS, title 22, section 321 of the Delaware Code provides, "The legislative body of cities or incorporated towns shall provide for the appointment of a board to be known as the board of adjustment and in the rules and regulations adopted pursuant to the authority of this chapter shall provide that the board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein…"; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

WHEREAS, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on _____ and voted _____ in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on _____, as scheduled by prior resolution, with proper notice by publication as required by Town Code Section 220-101;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton:

Section 1. Amend the title of Article VI in Chapter 220 of the Milton Town Code with additions shown by underlining as follows: "Planning and Zoning Commission Site Plan Review and <u>Board of Adjustment</u> Special Use Permits".

Section 2. Amend Section 220-34 of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

A. Purpose and intent. The purpose of special use approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their unusual characteristics or the special characteristics of the area in which they are to be located, special uses require special consideration so that they may be properly located with respect to the objective of this chapter and their effect on nearby properties.

B. Authorization to grant or deny special uses.

(1) The ~~Planning and Zoning Commission~~Board of Adjustment is authorized to approve special uses. The special uses listed in this chapter may be permitted, permitted with conditions, or not permitted by the ~~Planning and Zoning Commission~~Board of Adjustment in accordance with the standards and procedures set forth in this section. In permitting a special use or the modification of a special use, the ~~Planning and Zoning Commission~~Board of Adjustment may impose those standards and requirements expressly specified by this chapter and any additional conditions which the ~~Planning and Zoning Commission~~Board of Adjustment considers necessary and reasonable to protect the best interests of the surrounding property, the neighborhood, or the Town as a whole. These conditions may include, but are not limited to, size or controlling the location and number of vehicle access points, increasing the street width, limiting the number, size and location of sign, limiting hours of operation, and required fencing, screening and landscaping or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this chapter and classified in this chapter as a special use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with special uses.

(2) On application and after public notice and hearing, the ~~Planning and Zoning Commission~~ Board of Adjustment may authorize the issuance, by the Code Enforcement Officer, of a permit for any of the special uses for which this chapter requires such permits.

C. Procedures for special uses.

(1) A property owner(s) or his agent(s) may initiate a request for a special use or modifications of a special use by filing an application which includes a legal description of the property, a proposed current site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives, parking areas and all streets within 250 feet of the lot, plans and elevations necessary to show the proposed development, other drawings or information necessary to an understanding of the proposed use and its relationship to surrounding properties and a filing fee.

(2) In the case where a special use has been approved a building permit shall be issued after the granting of the special use by the ~~Planning and Zoning Commission~~Board of Adjustment, and then only in accordance with the terms and conditions of the special use permit.

(3) Before a special use is permitted the proposed special use shall be subject to public notice and a public hearing.

(4) The ~~Planning and Zoning Commission~~Board of Adjustment, on its own motion, may revoke any special use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing. The forgoing shall not be the exclusive remedy, and it shall be unlawful and punishable for any person to

violate any condition imposed by a special use permit. In such cases a period of 60 days shall be granted the applicant for full compliance prior to revocation of said permit. In cases where there is imminent danger to the public health, safety or welfare, the revocation of the special use permit shall be immediate.

(5) The ~~Planning and Zoning Commission~~Board of Adjustment may require that special use permits be periodically renewed after notice and a public hearing to determine if the original conditions have been complied with or whether conditions have changed since the original special use permit was granted.

(6) The ~~Planning and Zoning Commission~~Board of Adjustment may, at its discretion, waive any submission requirements which it deems to be not relevant to the proposed use and site.

D. Standards governing special uses.

(1) A special use shall comply with the standards of the district in which it is located. In approving such uses, the ~~Planning and Zoning Commission~~Board of Adjustment shall take into consideration the public health, safety and welfare and comfort and convenience of the public in general and of the residents of the immediate neighborhood in general and shall, to the maximum extent possible, further the expressed intent of this chapter and the accomplishment of the following objectives:

(a) In order to grant any special use, the ~~Planning and Zoning Commission~~Board of Adjustment shall find that the request is in compliance with the general purpose and intent of this chapter, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with the use and the size of the site with respect to street giving access thereto.

(b) In order to grant any special use, the ~~Planning and Zoning Commission~~Board of Adjustment shall find that the establishment, maintenance, or operation of the use applied for, under the circumstances of the particular case, will not be substantially detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or will not be substantially detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.

(c) The proposal will not result in the destruction, loss, or damage of any natural, scenic or significant historical resource.

(d) The proposal will not create excessive additional requirements of public costs for public facilities and services and will not be detrimental to the economic welfare of the community.

(e) The proposal will be served adequately by essential public facilities, such as highways, streets, police and fire protection, stormwater drainage, water and sewer, schools, or that the applicant for the proposed special use shall provide that these services be adequately obtained.

(f) The proposal essentially conforms with the Comprehensive Plan.

(g) All proposed structures, equipment or material shall be readily accessible for fire and police protection.

(h) The proposed use shall be of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and shall not be detrimental to the orderly development of adjacent properties, in accordance with the zoning classification of such properties.

(i) The proposal conforms to all applicable requirements of Article VII, Development Guidelines.

(2) In addition to the above, in the case of any use located in, or directly adjacent to, a residential district:

(a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to existing streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not substantially be hazardous or inconvenient to, or incongruous with, the said residential district or in conflict with the normal traffic of the neighborhood.

(b) The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

E. The Board of Adjustment meetings, voting, and additional procedures for special uses shall be governed pursuant to Section 220-85 of this Chapter.

Section 3. This Ordinance shall take effect immediately, except as to any applications filed for a special use filed prior to this Ordinance's effective date. For any such application, the provisions preceding this Ordinance shall apply.

I, MARION JONES, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the _____ day of _____, **2013**, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

_____

MAYOR

SYNOPSIS

This Ordinance amends the Town Code's processes with regard to special uses, also known as special permitted uses. Specifically, it changes the decision-making authority on applications for a special use from the Planning and Zoning Commission to the Board of Adjustment, more in keeping with the established practices in the area. Similarly, the Ordinance clarifies that the standard tracks with area municipalities' findings of not substantially adversely affecting the uses of adjacent and neighboring properties. Finally, the Ordinance identifies that the additional procedures for the Board of Adjustment in Section 220-85 also apply for special use applications.