

**Section 9****SPECIAL PERMITS**

*(As Amended through May 13, 2006 Annual Town Mtg.)*

**(A) Authority**

*(As Amended Dec. 6, 2004 Special Town Mtg.)*

The Planning Board is hereby declared special permit granting authority, and is authorized to hear and decide upon applications for special permits in accordance with the law of the Commonwealth and the provisions of this By-Law. The special permit granting authority (hereinafter, SPGA) shall hear and approve, approve with modifications or conditions, or disapprove all applications for special permits. No special permit shall be authorized unless specific provision for such special permit is made in this By-Law.

**(B) Application Procedure**1. Applications

- a. Applications for special permits shall be filed with the Planning Board, on forms provided for this purpose. Applicants for special permits shall file a copy of said completed form with the Town Clerk. *(As Amended Dec. 6, 2004 Special Town Mtg.)*
  - b. The size, form, contents and style of plans and specifications required as part of an application for a special permit are contained in the Rules and Regulations of the SPGA, a copy of which is on file in the Town Clerk's office.
  - c. The procedure for the submission of Special Permits is prescribed in the Rules and Regulations of the SPGA, a copy of which is on file in the Town Clerk's office.
  - d. All plans and documents required by this By-Law shall be considered integral parts of an application. Applications shall be subject to such Rules and Regulations relating to scale, dimensions, legend, form, fees and other information as may from time to time be promulgated by the SPGA. The SPGA may require additional information in order to review an application adequately and make a decision.
2. Notification. Following the filing of an application, and before taking any action on the proposed special permit, the SPGA shall hold a public hearing on the application within sixty-five (65) calendar days. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where applications, texts and maps

thereof may be inspected shall be published in a newspaper of general circulation in South Hadley once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) calendar days before the day of the hearing, and such notice shall be posted in the Town Hall for a period of not less than fourteen (14) days before the day of said hearing. Notification of such public hearing shall be mailed to all parties in interest as provided in Section 11 of this By-Law.

Within twenty-one (21) calendar days following the filing of an application, and before the public hearing, the SPGA may hold a public forum on an application for a special permit. Notice of said public forum shall be published in a newspaper of general circulation not less than seven (7) days prior to the forum.

The SPGA may require that the applicant or his representative(s) be present at such public forum as a condition of approval of the special permit.

3. Hearings. Public hearings on applications for special permits shall be conducted in accordance with the provisions of Section 11 of the By-Law.
4. Decisions. Within ninety (90) calendar days following a public hearing, the SPGA shall decide to approve, approve with modifications or conditions, or disapprove an application for a special permit. The SPGA shall inform, in writing, the applicant, the Building Commissioner, the Town Clerk, and the Board of Selectmen of its decision and its reasons therefore.
5. Building or Occupancy Permits. Only after a special permit has been approved by the SPGA, and the appeal period specified in Part (E) has elapsed, and the decision of the SPGA has been recorded in the Registry of Deeds, may the Building Commissioner issue a building or occupancy permit. Any such building or occupancy permit must conform to all conditions or modifications attached to said special permit by the SPGA.
6. Vote. Approval of a special permit application, or approval with modifications or conditions, shall require an affirmative vote of at least four (4) of five (5) members of the Planning Board. *(As Amended Dec. 6, 2004 Special Town Mtg.)*
  - a. ***Associate Member – Appointment and Vote***. Pursuant to Section 417 of the General Bylaws of the Town of South Hadley and Chapter 40A, Section 9, MGL, there is to be appointed an Associate Member to the Planning Board. The Selectboard and the Planning Board shall jointly appoint this Associate Member for a three-year term. In the event that a Regular Member of the Planning Board is unable to participate in the voting on a Special Permit application, the Associate Member may so

vote on the application provided that the Associate Member has attended all of the relevant public hearings and meetings on the application. The vote of the Associate Member shall be considered as though a Regular Member of the Planning Board. *(As Amended May 13, 2006 Annual Town Mtg.)*

7. Expiration of Permit. A special permit secured under the provisions of this Section by vote of the SPGA shall expire if the work or change involved is not commenced within one year of the date on which the special permit is authorized, and if the work or change is not substantially completed within two (2) years.
8. Eligible Permittees. Applications for a special permit may be made by a person or corporate entity and, if approved, shall be granted to said person or entity. No special permit approved by the SPGA in accordance with this Section may be transferred or conveyed to any other person or entity other than the original grantee.

**(C) Standards for Special Permits**

In its decision the SPGA must make written findings on the following mandatory standards, requiring that a proposed use will:

- a. Be compatible in type and scale with adjacent land uses and with the character of the neighborhood in which it located;
- b. Be in harmony with the general purpose and intent of this By-Law;
- c. Constitute no significant hazard to abutters, pedestrians, or vehicles; and
- d. Constitute no nuisance by reason of excessive air, water or noise pollution, or by structures or accessories which are deemed visually objectionable in light of prevailing community standards.

In addition, the SPGA may include in its written findings, where applicable, consideration of any or all of the following criteria to be satisfied by the proposed use, building or structure:

- e. The need for the proposed use in the proposed location;
- f. Access to the site from existing or proposed roads, and to proposed structures thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in case of fire or emergency;

- g. The adequacy and configuration of offstreet parking and loading areas, including their nuisance and economic impact on adjoining properties and on properties generally in the district;
- h. The availability and capacity of public services, facilities, and utilities;
- i. Visual and noise screening and buffering;
- j. Harmony of signs and exterior lighting, if any, with surrounding properties;
- k. Required yards and open space;
- l. The amount and type of wastes to be generated by the proposed use and the adequacy of proposed disposal systems;
- m. The impact of the proposed use on the land, surface water and subsurface water, and their ability to sustain such use without degradation;
- n. The location of the site, and proposed buildings or structures thereon, with respect to flood plains and floodways of rivers or streams; or
- o. The absence of any other characteristic of the proposed use that will be hazardous, harmful, offensive or will otherwise adversely affect the environment or the value of the neighborhood or the community.
- p. Provisions for energy conservation, for the use of renewable energy sources, and for protection of solar access.

**(D) Conditions Attached to Special Permits**

- a. Specifications. Upon consideration of the standards and/or criteria listed above, the SPGA may attach such conditions or modifications to a special permit, in addition to those required elsewhere in this By-Law, that it finds necessary to further the purposes of this By-Law. Violation of any of these conditions or modifications shall be a violation of this By-Law. Such conditions or modifications may include, but are not limited to, specifications for: type of construction, increased setbacks and yards, landscaping and screens or buffers, operational controls, sureties, deed restrictions, restrictive covenants, locations of parking and signs; or any other conditions necessary to fulfill the purposes of this By-Law.
- b. Submission of Information. In order to secure information upon which to base its determination, the SPGA may require the applicant to furnish, in addition to the information required for an application for a special permit, such further information as it deems necessary to establish its findings.

- c. Performance Guarantee. A performance guarantee may be required prior to and as a condition of the Special Permit Granting Authority's approval of the Special Permit.
- d. Special Municipal Account. The applicant has paid the Special Municipal Account review fee as determined by the Board.

**(E) Appeal Period**

No special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Hampshire County Registry of Deeds in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

**(F) Assessment of Costs**

Costs of notice of the public hearing, and the fee for recording or registering a special permit with the Registry of Deeds, shall be paid by the applicant.

**(G) Repetitive Petitions**

No petition or application for a special permit under this Section which has been unfavorably acted upon by the SPGA shall be considered on its merits by said SPGA within two (2) years after the date of such unfavorable action, except with the consent of all members of the Planning Board.