

Section 9**SPECIAL PERMITS**

(As Amended through June 19, 2013 Special 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

(As Amended through June 19, 2013 Special Town Mtg.)

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.
- e. Applications for special permits shall also comply with the submission requirements and approval criteria for site plan review unless otherwise specified in this bylaw, and no separate site plan approval application or approval process shall be required. Where an applicant is applying for a special permit in

which no site alterations are involved, no site plan submission shall be required and the site plan approval criteria shall not apply.

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

(As Amended through June 19, 2013 Special Town Mtg.)

Except in the case of a special permit for changing a nonconforming use or structure, which is governed by Section 2F(2), the SPGA must make written findings on the following mandatory standards, requiring that a proposed use will:

1. Comply with all applicable land use district, overlay district, and other specific requirements of this and other bylaws and regulations, and be consistent with the purpose and intent of this bylaw and of the land use district in which it is located;
2. Be suitable to the surrounding neighborhood and the “Land Use Area” in which it is located. Land Use Areas are identified and described in the section of South Hadley’s Master Plan entitled “Land Use Area Vision Statements” (pages 1-10 through 1-19). In making this determination the Planning Board shall take into consideration any guidance provided by the Land Use Goals articulated in South Hadley’s Master Plan, goals articulated in South Hadley’s Open Space and Recreation Plan, and input from relevant Boards, town officials, and the public.

3. Be compatible with existing uses and uses allowed by-right in the neighborhood, Land Use Area, and zoning district;
4. Be compatible with the existing character of the neighborhood and Land Use Area, and/or zoning district. "Character" shall be understood to include prevalent patterns of: site design; setbacks from property lines; amount and location of parking; amount, type, location and quality of open spaces and landscaped areas; amount, type, and location of impervious surfaces; distances and relationships between buildings; density of building(s) relative to land area; building massing; architectural style and detailing; materials; buffering from adjacent uses; traffic volume and timing; noise; odors; and light.
5. Be suitable for the property on which it is proposed, considering the property's, scenic, cultural and historic significance, and its ability to be buffered or screened from neighboring properties and public roads.
6. Provide safe access for fire, police, and other emergency vehicles.
7. Provide adequate water, drainage and waste disposal systems without causing significant harm to any natural water system or overloading any public water, drainage, or sewer system, or any other municipal facility.
8. Not cause significant traffic congestion, impair pedestrian or bicycle safety, or overload existing roads, sidewalks and trails, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.
9. Not result in excessive air, water, noise, or light pollution, or create any other public or private nuisance;
10. Not degrade the scenic, rural, or historic character of the town with structures or other lot features which are deemed visually objectionable in light of prevailing community as reflected in the goals articulated in South Hadley's Master Plan;
11. Be consistent with the South Hadley Master Plan, provided that the Comprehensive Plan provides legally sufficient guidance and that the applicable provision of the Master Plan is not inconsistent with any specific provision of this Bylaw;
12. Comply with applicable criteria for site plans under Section 12E.

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:

13. For projects involving the removal of existing housing, not adversely affect the availability of affordable housing in the Town.
14. Not have an overall off-site impact that is significantly greater than the overall off-site impact that would be caused by full development of the property with uses permitted by right, considering relevant environmental, social, visual, and economic impacts.

15. The adequacy and configuration of off-street parking and loading areas, including their nuisance impact on adjoining properties and on properties generally in the district;
16. Harmony of signs and exterior lighting, if any, with surrounding properties;
17. The location of the site, and proposed buildings or structures thereon, with respect to flood plains and floodways of rivers or streams;
18. 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; or
19. 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.