

**REPORT OF PLANNING BOARD ON PROPOSED ARTICLE MAKING REVISION TO
THE ZONING BYLAW
REGARDING CONDITIONS ATTACHED TO SPECIAL PERMITS
(Article 26)
May 8, 2019 Annual Town Meeting**

Article 26

Section 255-130

Article 26. To see if Town Meeting will amend Chapter 255 (the Zoning Bylaw) in Section 255-130 by inserting an item E providing that “a condition of any Special Permit is that the approval is conditioned upon the applicant obtaining all other local, State, and/or Federal approvals required for the activity authorized by the Special Permit” as detailed in the Planning Board’s Report to Town Meeting and as further articulated in Appendix J, or take any other action relative thereto.

The changes to be made in the Zoning Bylaw are as follows:

1. Amend Section 255-130 - “Conditions attached to special permits” of the South Hadley Zoning Bylaw by inserting a new paragraph E would read as follows:

E. A condition of any Special Permit is that the approval is conditioned upon the applicant obtaining all other local, State, and/or Federal approvals required for the activity authorized by the Special Permit.

OBJECTIVE: The proposed amendment seeks to make clear that applicants must obtain ALL local, State, and/or Federal approvals required for the activity authorized by the Special Permit or they will be considered in violation of the Special Permit.

EXISTING PROVISIONS: The existing Section 255-130 of the Zoning Bylaw is in Attachment A.

SUMMARY: This article adds language to Section 255-130 which makes clear that applicants must obtain all applicable local, State, and Federal approvals as a condition of a Special Permit. This is an understood principal in land use law. This amendment simply spells it out in the Zoning Bylaw.

BACKGROUND: During the course of the Planning Board’s review of the 2018 Special Permit application by Chicopee Concrete Services, Inc. a number of residents questioned whether the operator of the gravel pit had all of their required Federal permits. Questions were raised as to why the Planning Board was allowing the application to be considered without evidence of the Federal permits which were alleged to be required. Subsequently, the application was withdrawn but questions were raised as to how the Town’s Special Permit would relate to any other local, State, and/or Federal approval. When Neva Tolopeko, Conservation Commission member, proposed revisions to the Zoning Bylaw, she incorporated this type of amendment proposal in her compilation of suggestions. While the Planning Board and Planning Director did not feel this was necessary, they did not express objection based on the premise it would not require the

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Town's Building Commissioner to determine what permits are required and would not unduly burden applicants for all Special Permit (Bed & Breakfast, alteration of a nonconforming house, flag lot, etc.).

It is a commonly understand principal in land use law that one local permit does not eliminate the obligation of a party to comply with all other applicable laws. However, it was determined to be reasonable to make clear in the Zoning Bylaw that all other applicable approvals must also be obtained. If this amendment is adopted, anyone obtaining a Special Permit but is found later to not have a required local, State, and/or Federal approval, will be in violation of the Zoning Bylaw. This is not anticipated to put the Town in the position enforcing State or Federal laws but will add a form of penalty for violating applicable State and/or Federal laws.

As with all Zoning Bylaw violations, the Building Commissioner will be the responsible party for enforcing this requirement – to the extent local enforcement action is required.

RELATIONSHIP TO MASTER PLAN: There is not a direct, clear relationship to the Master Plan, adopted in 2010. However, this does add some clarity and updating of the Regulatory System in place in South Hadley.

PUBLIC HEARING: The Planning Board conducted a public hearing on this article on Monday April 22, 2019. There were no comments on this specific article at the public hearing.

RECOMMENDATION: The Planning Board, at their April 22, 2019 meeting, by a unanimous vote, voted to recommend adoption of this Article as presented. The Planning Board, at their April 29, 2019 meeting, unanimously voted to approve this report.

ANNOTATED PROVISIONS: An annotated version of the existing Section 255-130 of the Zoning Bylaw is in Attachment B. Letters and words proposed to be deleted are identified with “strike through markings“ while letters and words proposed to be inserted are identified as “italicized, underlined”.

Attachment A

Existing Provisions of Section 255-130

§ 255-130 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 bylaw, that it finds necessary to further the purposes of this bylaw. Violation of any of these conditions or modifications shall be a violation of this bylaw. 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 bylaw.

- 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.

Attachment B

Annotated Provisions of Section 255-130

§ 255-130 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 bylaw, that it finds necessary to further the purposes of this bylaw. Violation of any of these conditions or modifications shall be a violation of this bylaw. 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 bylaw.
- 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. A condition of any Special Permit is that the approval is conditioned upon the applicant obtaining all other local, State, and/or Federal approvals required for the activity authorized by the Special Permit.***