

§ 174-9. Special Permit Requirements.

In acting on applications for special permits, the special permit granting authority, whether the Board of Appeals or as otherwise designated by this chapter, shall conform to the procedural, decision making and filing requirements of Chapter 40A of the General Laws, shall make general and, as appropriate, specific findings as provided herein or called for by the subject matter and may impose conditions, limitations and safeguards. No special permit shall issue except upon a general finding that the use sought and its characteristics shall be in harmony with the intent and purpose of this chapter, shall not be in conflict with public health, safety, convenience and welfare and shall not be substantially detrimental or offensive to the neighborhood or destructive of property values herein. In addition, the following special requirements shall apply:

- A. Decision considerations. Special permits shall be granted only if the special permit granting authority determines that the proposal's benefits to the town will outweigh any adverse effects for the town or the vicinity, after consideration of the following preferred qualities, among other things:
 - (1) Location.
 - (a) The proposal should be located near uses which are similar to the proposed use, or if not, the nearby uses should be ones likely to benefit from rather than be damaged by having the proposal nearby or be permanently buffered from it.
 - (b) Providing adequate water and drainage for this location should pose no special public problems.
 - (c) The site should be able to accommodate the proposal without substantial environmental damage due to wetland loss, habitat disturbance or damage to valuable trees or other natural assets.
 - (2) Activity type and mix.
 - (a) Nonresidential proposals should contribute to the diversity of services available locally.
 - (b) Residential proposals should serve housing needs of local residents.
 - (3) Visual consequences.

- (a) Scenic views from public ways and developed properties should be considerably treated in the site arrangement and building design.
 - (b) Visibility of parking and service areas from public streets should be minimized through site arrangement, and such areas should be screened from abutting premises.
 - (c) Except on Route 9 and in special circumstances, domestic scale should be maintained in the building's design through massing devices, such as breaks in wall and roof planes and through the design of architectural features.
- (4) Access.
- (a) Access to the location should increase existing traffic by no more than ten percent (10%) at any point, taking into consideration any special access provisions committed (ride-sharing, etc.).
 - (b) Pedestrian and vehicular movement to, from and within the site should be safe and convenient and arranged so as not to disturb abutting properties.
- (5) Development rate.
- (a) Townwide, development should not outpace the ability of the town to provide necessary off-site services, including schools, water and local road capacity.
 - (b) Development making unusually large demands on service capacities should not be allowed to preempt smaller developments from gaining a fair share of that capacity.

B. Accessory apartments. Special permits for accessory apartments may be issued upon referral of the application and receipt and consideration of a report, or after thirty-five (35) days elapse without such report, from the Board of Health, certifying that adequate provisions have been made in accordance with the requirements of the Board of Health for drainage and for the disposal of sewage and waste generated by the occupancy of the apartment, and from the Planning Board, describing the lot on which the dwelling is located, the neighborhood where it is located and the effect of the proposed apartment thereon, the adequacy of ingress and egress provisions, the recommendations of the Planning Board as to the advisability of granting the special permit and any restrictions that should be imposed as a condition thereof and the provisions for off-street parking in a manner consistent with the character of the premises. If the decision of the Board of Appeals differs from the recommendations of the Planning

Board, the reasons therefor shall be stated in the decision. The accessory apartment shall comply with the following conditions and requirements:

- (1) The habitable floor area of the accessory unit shall not exceed twenty-five percent (25%) of the habitable floor area of the entire dwelling plus that of any accessory building used for the accessory dwelling.¹
- (2) There is no other apartment on the lot on which the accessory apartment is proposed.
- (3) Not more than the required minimum exterior alterations have been or will be made to the one-family house and to any accessory buildings, and the site plan of the lot and floor plans of the dwelling thereon have been filed with the Building Inspector prior to the application to the Board of Appeals.
- (4) The total cumulative number of accessory apartments permitted by the Board of Appeals since January 1979 shall at no time exceed five percent (5%) of the total number of one-family houses in Southborough at the beginning of the year in which the application is filed, based on the Assessor's records. Residences containing apartments shall be counted as one-family houses for the purposes of this subsection.

C. Hazardous waste facilities. Special permits for hazardous waste facilities may be issued only in BV, BH, ID, IP and SP Districts upon site assignment by the Board of Health, approval by appropriate federal and state agencies, including the Hazardous Waste Facility Site Safety Council, and the conclusion of siting processes by the Local Assessment Committee, as provided in Chapter 21D of the General Laws. In considering a special permit for such a facility, the Board of Appeals shall give due weight to the findings and comments of the Planning Board, Conservation Commission, Fire Chief, Police Chief, Metropolitan District Commission and the Local Assessment Committee, including the imposition of conditions, limitations and safeguards called for in the recommendations of these agencies.

D. Large signs. See Section 174-11, E. Special Permits for Signs.
[Amended 4-8-2002 ATM, Art 70]

¹ 2 Editor's Note This Article also provided for the redesignation of former Subsection B(4).(5) and (6) as Subsection B(2), (3) and (4), respectively.

- E. Nonconforming uses, lots and structures. Special permits may be issued for the extension or alteration of legally nonconforming uses, structures and lots, including a change in the nonconforming use to another nonconforming use, provided that the Board of Appeals finds that such extension, alteration or change shall not be substantially more detrimental to the neighborhood, will not increase the extent of nonconformance in size or in impact and that the cost thereof shall not exceed fifty percent (50%) of the assessed value of the nonconforming structure at the time of application. No special permits under this subsection shall be granted for nonconforming signs subject to Chapter 93 or 93D of the General Laws.
- F. Wetland and Floodplain District uses. Special permits may be issued for alterations, additions and new structures and uses in WFP Districts only when the following conditions are met:
- (1) The Board of Appeals finds no potential detrimental impact on the neighborhood, as provided in the lead-in of this section above.
 - (2) The application is referred to the Planning Board, the Conservation Commission and the Board of Health, and their reports are received and given due consideration, or thirty-five (35) days elapse following the referral without the receipt of said reports.
 - (3) No alteration, fill, additions or new construction will occur within the floodway, as defined by the Federal Emergency Management Administration.
 - (4) The land is not, in fact, subject to flooding and not unsuitable for the purposes of the special permit due to topography, soils or hydrological conditions; if located in a floodplain, a registered professional engineer certifies that the proposed development shall not result in any increase of flood levels during the occurrence of a one-hundred-year flood and that adequate protection shall be provided against the effects of current, uplift, battering and washout.
 - (5) If the special permit is for the construction or improvement of access to existing uses or to land not in a WFP District, it must be shown that there is no feasible alternate access and that the natural flow of watercourses will not be impeded or altered.
 - (6) If the special permit is for the construction of a barn, garage or other accessory building or structure, the applicant shall prove, to the satisfaction of the Board of Appeals, that the special permit will not result in an increase of ground coverage by principal and

accessory structures of more than twenty-five percent (25%), compared to the conditions in May 1975.

- (7) The Board of Appeals may consider compensatory storage and other mitigating measures acceptable to the Conservation Commission to meet the requirements of this Subsection F.
 - (8) If the special permit is for a dam, watercourse alteration, excavation, drainage or wetland improvements or mosquito control activities, the Board of Appeals shall consider also the broader impacts thereof and weigh any potential detrimental impacts against the benefits of the proposed improvements.
- G. Two-family dwelling. The conversion of a one-family house which has been in existence for two (2) years or longer to a two-family dwelling is allowed by special permit from the Board of Appeals. The application will be considered after receipt of a report, or after thirty-five (35) days elapse without such a report, from the Board of Health certifying that adequate provisions have been made in accordance with the requirements of the Board of Health for drainage and the disposal of sewage and waste generated by the occupancy of the two-family dwelling. There shall also be a report from the Planning Board describing the lot on which the dwelling is located, the neighborhood where it is located and the effects of the proposed two-family dwelling thereon, the adequacy of ingress and egress provisions, any recommendations by the Planning Board as to the advisability of granting the special permit and any restrictions that should be imposed as conditions thereof and the provisions for off-street parking in a manner consistent with the character of the premises. If the decision of the Board of Appeals differs from the recommendations of the Planning Board, the reasons therefor shall be stated in the decision. The two-family dwelling shall comply with the following conditions and requirements:
- (1) The lot on which a one-family residence is to be converted to a two-family dwelling must be a minimum of fifteen thousand (15,000) square feet.
 - (2) There must be no other apartment on the lot on which the two-family residence is proposed.
 - (3) Not more than the required minimum exterior alterations have been or will be made to the one-family house and to any accessory buildings, and the site plan of the lot and floor plans of the dwelling thereon must be filed with the Building Inspector prior to the application to the Board of Appeals.

- H. Multifamily housing for the elderly is allowed by special permit per the Schedule of Use Regulations , § 174-8.
- (1) The Zoning Board of Appeals shall grant a special permit for elderly housing only after considering the following criteria.
 - (a) No development shall exceed an average per site of a maximum three (3) units per contiguous acre exclusive of wetlands, and six (6) bedrooms per contiguous acre exclusive of wetlands. No unit shall have more than three (3) bedrooms. Any application submitted to the Zoning Board of Appeals for a Special Permit for Multifamily Housing for the Elderly prior to December 19, 1997 shall be exempt from the exclusion of wetlands when calculating the maximum number of units per site.
 - (b) Evidence shall be shown that, to the greatest extent possible, the development is offering to provide for the needs of Southborough residents of varying economic levels.
 - (c) The units shall have an exterior design that is consistent with the styles of the surrounding residential neighborhoods and the Town of Southborough in general.
 - (d) Wherever possible pedestrian connection to local services should be incorporated into the site design to lessen the dependency on the automobile.
 - (e) The plan shall be designed to maximize the preservation of the natural features of the site through the use of cluster housing, and/or creative site planning. Wherever possible existing vegetation should be retained throughout the site as a natural buffer to adjacent properties.
 - (f) The proposed development shall satisfy the criteria of this chapter (174-9) outlined in paragraph A., Decision considerations.
 - (g) The total cumulative number of units approved under this section by the Zoning Board of Appeals since January 1998 shall at no time exceed seven (7%) percent of the total number of one-family houses in Southborough at the beginning of the year in which the application is filed, based on the Assessor's records. Residences containing

apartments shall be counted as one-family houses for the purpose of this subsection.

- (2) The granting of a Special Permit by the Zoning Board of Appeals for multifamily housing for the elderly does not relieve the applicant from receiving all other applicable approvals, including Conservation Commission, Board of Health, and Site Plan approval from the Planning Board (re:174-10).

I. Adult uses.

- (1) Purpose and intent. This bylaw is enacted pursuant to MGL C. 40A, Section 9A, to serve the compelling interests of the Town of Southborough by preventing the clustering and concentration of adult entertainment enterprises as defined herein because of the deleterious effect on character and values of adjacent areas.
- (2) Definitions. As used in this section, the following terms shall have the meanings indicated:

ADULT BOOKSTORE - An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272, § 31.

ADULT VIDEO STORE - An establishment having as a substantial or significant portion of its stock- in-trade videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272 § 31.

ADULT PARAPHERNALIA STORE - An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272 § 31.

ADULT MOTION-PICTURE THEATRE - An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272 § 31

- (3) Special permit standards. No special permit may be granted by the Zoning Board of Appeals for an adult bookstore, adult video store,

adult paraphernalia store or adult motion-picture theater unless the following conditions are satisfied:

- (a) No adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater may be located less than one thousand (1,000) feet from a residential zoning district, school, library, church or other religious use, child care facility, park, playground, recreational areas or another adult bookstore, adult video, adult paraphernalia store or adult motion-picture theater. The distance of one thousand (1,000) feet shall be measured from all property lines of the proposed adult use.
 - (b) No pictures, publications, videotapes, movies, covers or other implement, items or advertising that fall within the definition of adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater merchandise or are erotic, prurient or related to violence, sadism or sexual exploitation shall be displayed in the windows of or on the building of any adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semipublic, outside such establishments.
 - (c) No special permit shall be issued to any person convicted of violating the provisions of MGL C. 119, § 63, or MGL C. 272, §28.
- (4) All existing adult bookstores, adult video stores, adult paraphernalia stores and adult motion- picture theaters shall apply for such special permit within ninety (90) days following the adoption of this subsection.
- (5) Any special permit granted under this section shall lapse within one (1) year of the date of the grant, not including the time required to pursue or await the termination of an appeal referred to in MGL C 40A, § 17, if substantial use thereof has not sooner commenced, except for good cause, or, in the case of permit for construction, if construction has not began within one (1) year of the date of grant, except for good cause.