

GARDNER PLANNING BOARD **RULES GOVERNING SPECIAL PERMITS**

Section 1 – Authority

Massachusetts General Law (MGL), Chapter 40A (The Zoning Act), Section 9 provides that zoning ordinances may allow for certain classes of special permits to be issued by a Special Permit Granting Authority (SPGA), and further that such SPGA shall adopt and from time to time amend rules relative to the issuance of such permits, and such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for submission and approval of such permits. Such rules and any amendments thereto shall be filed in the Office of the City Clerk.

The Planning Board is empowered by the Gardner Zoning Code to act as a Special Permit Granting Authority (SPGA) of the following:

- 1) Water Supply Protection Overlay District, Section 520C and Section 550C of the Code.
- 2) Smart Growth Planned Unit Development (SGPUD), under Section 540 of the Code.
- 3) Marijuana Establishments, under Section 1070 of the Code.
- 4) Infill Development, under Section 630 of the Code.
- 5) Open Space Residential Development (OSRD), under Section 810 of the Code.
- 6) Development Overlay District I (some cases), under Section 530 of the Code.
- 7) Flood Plain, sheds not necessary to Flood Plain uses, under Section 510 of the Code.
- 8) Senior Residential Development, under Section 840 of the Code.
- 9) Accessory Uses to Assisted Living Residents or Continuing Care Retirement Community, under Section 840 C of the Code.

Section 2 – General

The Planning Board, acting in its capacity as SPGA, shall adhere to all criteria and requirements for such permits as outlined in the Zoning Act and the Gardner Zoning Code, as well as the requirements contained in these Rules. The Board may not consider an application for a special permit associated with a use not provided for under the Zoning Code, except if such use has received prior approval from the Zoning Board of Appeals. A special permit may be granted when the Planning Board has found that the proposed use will not be unreasonably detrimental to the established or future character of the neighborhood and City, and that the special permit is in harmony with the general purpose and intent of the Zoning Code. The Planning Board must give due consideration to the specific standards described in the Zoning Ordinance, as well as to the adequacy and accessibility of public highways and municipal utilities, the sufficiency and suitability of off-street parking, loading facilities, screening and landscaping, and the effect on the amenity of the neighborhood. The foregoing is more specifically described in Subsection 675-1170 of the Zoning Code.

Section 3 - Applications

Petitioners should discuss proposed applications, particularly the possible need for special reports or studies and calculating filing fees, with the staff of the Planning Department prior to formally submitting such applications.

Applications for special permits shall be made on forms approved by the Planning Board and provided by the Planning Department, examples of which are attached.

The petitioner shall file an application for a special permit with the City Clerk, and shall then file a copy of such application certified by the City Clerk as to the date and time of filing in that office with the Planning Board in the manner and form prescribed by the Zoning Code and these Rules.

Applications for special permits shall be complete when submitted to the Planning Board. A complete application shall consist of all plans, documents, forms, calculations, and filing fees, in size, number and amount as prescribed by the Zoning Code and these Rules. The Planning Department shall review the application for completeness, and, in the event that such application is incomplete, shall notify the petitioner of the incomplete items.

In no case will an application be accepted without the appropriate filing and processing fees. An application lacking substantial items shall be rejected. An application lacking items deemed to be minor in nature by the Planning Department may be accepted, however, all missing items must be submitted prior to the date of the interdepartmental staff meeting or such other date as is determined by the Planning Department.

Section 4 – Filing Fees

Filing and processing fees in the amounts listed in the following schedule shall be paid at the time of filing an application for a special permit. Advertising fees shall be paid by the applicant directly to The Gardner News upon receipt of an invoice. No reviews or hearings will be scheduled without receipt of the filing and processing fees. No permit will be issued unless the advertising fee has been paid.

SPECIAL PERMIT	Advertising Fee	Filing & Processing Fees
Water Supply Protection Overlay Districts	Covered by Fee	\$750.00
Smart Growth Planned Unit Development (SGPUD)	Covered by Fee	\$750.00 plus \$50 per dwelling unit and \$0.25 per square foot of gross floor area of non-residential buildings
Flood Plain, sheds not necessary to Flood Plain uses	Paid by applicant	\$750.00
Infill Development	Covered by Fee	\$750.00
Open Space Residential Development (OSRD)	Covered by Fee	\$750 plus \$60 per lot
Development Overlay District I (some cases)	Covered by Fee	\$750.00 plus \$50 per dwelling unit and \$0.25 per square foot of gross floor area of non-residential buildings
Marijuana Establishments	Covered by Fee	\$750 plus .25 per square foot of building space for Retail \$750 plus .15 per square foot of building space for Any other Marijuana Establishment
Senior Residential Development	Covered by Fee	\$750.00 plus \$50 per dwelling unit and \$0.25 per square foot of gross floor area of non-residential buildings
Accessory Uses to Assisted	Covered by Fee	\$750.00 plus .25 per square

Living Residents or Continuing Care Retirement Community		foot of gross floor area
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Section 5 – Waiver of Fees

The per unit filing and processing fees may be waived by the Planning Board for dwelling units which are classed affordable as defined by Massachusetts General Laws, Chapter 40B, or as defined by the City in the Zoning Code.

Section 6 – Special Reports or Studies

When, in its opinion, foreseeable issues such as drainage, traffic, health, and safety may be involved in a special permit application, the Planning Board may require special reports or studies to be prepared in association with an application for a special permit. The scope or detail of such reports or studies shall be determined by the Planning Department and shall be forwarded to qualified consultants or engineers selected by the Planning Board after consultation with the petitioner. The petitioner may appeal the choice of the Planning Board only upon a claim that the consultant or engineer has a conflict of interest or does not meet minimum required qualifications. The appeal shall be made to the Mayor who may act within twenty (20) days to overturn the Planning Board’s selection. In the event that no decision is made by the Mayor within twenty (20) days following the filing of an appeal, the Planning Board’s decision shall stand. The time within which the Planning Board has to act on the original application shall be extended by the time of any appeal regarding selection of the consultant. Such reports or studies shall be paid for by the petitioner in the form of a check payable to the consultant or engineer selected, which check shall be held by the Planning Department until the report or study has been accepted by the Planning Board.

Section 7 – Reviews by Other Boards and Departments

Application for special permits shall be forwarded by the Planning Department to other City boards and departments for review and comment. City boards and departments shall include, but are not limited to, Public Works, Engineering, Fire, Police, Building, Health, and Conservation.

The Planning Department may schedule an interdepartmental staff review meeting at which the petitioner may present an application to City boards and departments for comment regarding such items as design, utilities, drainage, traffic, health and safety. Comments and recommendations from other City boards and departments shall be delivered in writing or in person to the Planning Board prior to or at the public hearing convened on the application for special permit. Failure of such City board or department to submit comments or recommendations to the Planning Board within thirty-five (35) days of receipt of an application for special permit shall be deemed lack of opposition thereto.

Section 8 – Withdrawal of Application

An application for a special permit may be withdrawn without prejudice by the petitioner in accordance with the following procedures:

- (1) An application for which no notice of hearing has been published may be withdrawn without prejudice by submission of a letter to the Planning Board requesting such withdrawal. The letter requesting withdrawal shall be filed with the City Clerk and attached to the subject application. All filing and processing fees will be returned to the petitioner. If the request for withdrawal is received after the Planning Department has

delivered the notice to the newspaper for publication, the advertising fee must be paid by the petitioner.

- (2) An application for which notice of a public hearing has been published may be withdrawn without prejudice only with the approval of the Planning Board. The petitioner shall present a letter to the Board requesting such withdrawal, and the Planning Board, upon convening the public hearing, shall vote to accept or deny such request, and shall notify the petitioner in writing of such action, which notice shall be filed with the City Clerk and attached to the subject application. One-half of the filing and processing fee may be returned to the petitioner with approval of the Planning Board. The advertising fee must be paid by the petitioner.

Section 9 – Public Hearing

Pursuant to the Zoning Act, the Planning Board shall convene a public hearing on an application for a special permit within sixty-five (65) days of the filing of the petition with the City Clerk. Notice of such hearing shall appear at least once in each of two successive weeks in a newspaper of general circulation in the City of Gardner, the first publication to be not less than fourteen (14) days before the hearing, and such notice shall be posted in a conspicuous place in City Hall for a period of not less than fourteen (14) days before such hearing. Notice of the public hearing shall be sent by mail, postage prepaid, to all parties of interest¹ as defined in the Zoning Act.

Section 10 – Public Hearing, Rules of Procedure

The public hearing shall be convened at the time and place set forth in the notice, at which time the Chairman, or the designee of the Planning Board in the Chairman's absence, shall read aloud the notice of the hearing, and the Chairman shall describe the following rules of procedure for the hearing for those in attendance:

- (1) As a Special Permit Granting Authority, the Planning Board is acting in a quasi-judicial capacity – much the same as the Zoning Board of Appeals – and must follow certain specific statutory rules in considering a petition for a special permit;
- (2) The Chairman shall state that a recording is being made of the hearing for the purpose of the minutes, and shall ask if anyone else in attendance is making a recording;
- (3) The petitioner, or the petitioner's representative, shall be given the uninterrupted opportunity to present the details of the proposal to the Planning Board, during which time only Planning Board members may ask questions or seek clarification. During the presentation the petitioner shall provide the Planning Board with data, documentation, and testimony demonstrating that the proposal meets the standards set forth in the Zoning Code for such Special Permit;
- (4) The Chairman may request a report on the petition from the Planning staff which may include comments or recommendations received from other City boards or departments, as well as any points raised during the interdepartmental review meeting. The Planning staff, or a consultant or engineer, may present the findings of any special report or study prepared pursuant to Section 6.0 of these Rules;

¹ Parties in interest are defined as the petitioner; abutters; owners of land directly opposite on any public or private street; abutters to abutters within 300' of the property line; and the planning board of every abutting town.

- (5) The Chairman shall allow reasonable discussion between the petitioner, the Planning Board, and the Planning staff on any reports, comments, or recommendations;
- (6) The Chairman shall then allow others in attendance at the hearing to make comments, ask questions, or seek clarification. The Chairman shall first ask if there are any parties of interest in attendance who wish to speak in favor of the petition, and shall next ask if there are any in attendance who wish to speak in opposition to the petition. All questions or comments from those in attendance shall be directed to the Chairman of the Board. Persons wishing to be heard during this portion of the hearing shall state their name and address for the record prior to speaking;
- (7) Following the presentation and discussion on the petition, the Chairman may ask for a motion that the hearing be closed, or in the event additional information or testimony is required, may announce that the hearing will be continued to a later meeting, the time and place of which will be stated to those in attendance;
- (8) Following the close of the public hearing, the Chairman may announce that the Planning Board will deliberate on the matter of the petition later in the same meeting or during a subsequent meeting of the Planning Board, the date of which shall be given, and that a decision on the petition will be filed with the City Clerk as expeditiously as possible taking into account the circumstances and complexity of the factual and legal issues developed during the hearing.

Section 11 – Conditions

A Special Permit may be issued subject to such conditions or safeguards, including limitations of time and use, as the Planning Board shall deem to be reasonable and necessary.

Section 12 – Decision of the Planning Board

Pursuant to the Zoning Act, Sections 9 and 11, and the provisions of the Zoning Code, the Planning Board shall render a decision on an application for a special permit within ninety (90) days following the date of the public hearing, and shall cause a written record of such decision to be filed with the City Clerk. Notice of the filing of the decision shall be sent to all parties of interest² as defined in the Zoning Act, and to every person present at the hearing that requested such notice and provided the address to which such notice should be sent. The notice shall specify that appeals, if any, must be made pursuant to Section 17 of the Zoning Act, and such appeal must be made within twenty (20) days of the filing of the decision with the City Clerk.

Section 13 – Appeals

Any person, or municipal officer, or board aggrieved by a decision of the Planning Board may appeal such decision by bringing an action in superior court within twenty (20) days after the decision has been filed in the office of the City Clerk. Such appeal shall be in form and content and manner as provided for in Section 17 of the Zoning Act, and notice of such appeal must have been received by the City Clerk within the twenty (20) day period.

Section 14 – Extensions

The required time limits for a public hearing or the rendering of a decision on an application for a special permit may be extended by written agreement between the petitioner and the Planning Board, and such agreement shall be filed with the City Clerk and attached to the subject application.

² Refer to footnote 1.

Section 15 – Recording of Special Permit

Pursuant to Section 11 of the Zoning Act, no special permit, or any extension, modification, or renewal thereof shall take effect until a copy of the decision has been recorded in the Registry of Deeds.

Section 16 – Lapse of Special Permit

Pursuant to Section 9 of the Zoning Act, and Subsection 1170 of the Gardner Zoning Code, a special permit shall lapse if substantial use thereof or construction has not begun, except for good cause, within twelve (12) months of the date that the special permit was recorded.

Section 17 – Modifications to Special Permits

A special permit issued by the Planning Board may be modified in the following manner:

(1) **Minor Changes:**

Changes in plans or conditions attached to a special permit which are deemed by the Planning Board to be minor in nature and which are in compliance with the provisions of the Zoning Code may be allowed following presentation to the Planning Department of drawings denoting such changes accompanied by a narrative description; including the reason such changes are necessary. The Planning Department may consult with other City boards or departments and will make a recommendation to the Planning Board. The Planning Board will announce its decision regarding such requested changes and its reasons therefore, at a regularly scheduled public meeting. The Planning Board may vote to approve such changes only if it finds that the scope and nature of the original permit has not been expanded.

(2) **Major Changes:**

Changes in plans or conditions attached to a special permit which are deemed by the Planning Board to be major in nature shall be subject to a petition to modify the special permit and shall follow the same procedures for notice, public hearing, and decision as for the original permit. The petition shall be accompanied by the advertising fee and the filing and processing fees.

Section 18 – Enforcement

Conditions imposed upon a special permit by the Planning Board pursuant to Section 1170 of the Zoning Code may be enforced by the Planning Board through the Building Commissioner. In the instance of infractions deemed by the Board to be minor in nature the holder of the special permit will be notified either verbally or in writing and directed to take corrective action. Repeated infractions or infractions deemed by the Planning Board to be major or having a direct impact on the health, safety, and welfare of the residents of the City shall result in a Notice of Violation sent to the permit holder by certified mail, a copy of which shall be sent to the Building Commissioner. The Planning Board may request the Building Commissioner to impose a Stop Work Order on the project site and may further direct the permit holder to appear before the Board at a public meeting to secure compliance with the conditions attached to the special permit. Violation of the provisions of the Zoning Code shall be enforced pursuant to Subsection 675 of the Zoning Code.

Section 19 – Amendments to Rules Governing Special Permits

The Planning Board may from time to time amend its Rules Governing Special Permits. Proposed amendment(s) shall be subject to a public hearing, notice of which shall appear at least once in each of two successive weeks in a newspaper of general circulation in the City of Gardner, the first publication

to be not less than fourteen (14) days before the hearing, and such notice shall be posted in a conspicuous place in the City Hall for a period of not less than fourteen (14) days before such hearing. Notice shall provide a general description of the proposed amendment(s), and shall state the time and place where copies of the proposed amendment(s) may be examined. Amendments(s), once adopted by the Planning Board, shall be filed in the Office of the City Clerk.

Section 20 – Compliance with the Planning Board’s Rules Governing Special Permits

All plans and all procedures relating thereto shall in all respects comply with the provision of these Rules, unless the Planning Board authorizes a variation when, in the judgment of the Planning Board, such action is in the public interest, not inconsistent with the Zoning Code, and promotes public health and safety. The applicant shall request in writing the requirement for which a waiver is being requested. In waiving strict compliance, the Planning Board may require such alternative conditions as will serve substantially the same objective as the standard Rules waived.

ADOPTED by vote of the Planning Board on _____.

Filed in the Office of the City Clerk: _____
City Clerk

Date