



Special Permits Information and Procedure

Special Permits are intended to provide for specific uses which are deemed necessary or desirable but which are not allowed by right because of their potential for incompatibility with the characteristics of the zoning district in which they are proposed. The process includes a detailed review to ensure that there are no significant detrimental impacts upon traffic, utility systems, the character of the district, etc. The following sections of the Ware Zoning Bylaw require (or may require) a Special Permit. The Zoning Bylaw is available online at www.townofware.com.

- 1.9 – Nonconformities
- 3.3.2 – District extension
- 4.1 – Use Table
- 4.4 – Accessory Uses
- 4.5 – Temporary Uses
- 4.8.2 – Wireless Communication Facilities
- 4.8.3 – Solar Energy Facilities
- 4.8.4 – Wind Energy Facilities
- 4.8.5 – Earth Removal
- 4.8.6 – Adult Entertainment
- 4.8.8 – Registered Marijuana Facilities and Marijuana Cultivation Sites
- 4.9.1 – Floodplain Overlay District
- 4.9.2 – Aquifer Protection District
- 5.2.2 – Detached Accessory Structures
- 5.3.2 – Exceed the height limits of §5.3.1
- 6.6 – Common Driveway

General Information

- Special Permits are issued by either the Zoning Board of Appeals (§1.9, Nonconformities) or the Planning Board (all others). The applicable board is referred to as the Special Permit Granting Authority (SPGA).
- The applicant does not need to be the owner of record of the property involved, but when different, both the applicant and the owner must sign the application form and sign an Authorization Form.
- Parties in Interest are the petitioner (the applicant), all property owners (abutters) within 300 feet of the boundaries of the petitioner’s parcel, including those across a street or stream, and the Planning Boards of every community that abuts Ware (Belchertown, Hardwick, New Braintree, New Salem, Palmer, Petersham, Warren, and West Brookfield).

Applicant’s Responsibilities

- We recommend that the applicant check with all other town, state and federal laws prior to submitting an application to determine if other laws or regulations will apply, such as fire safety, building, ADA requirements, the Wetlands Protection Act (Conservation regulations), Board of Health regulations, licensing requirements, etc.
- The applicant must file the application for Special Permit with the Town Clerk where it will be time and date-stamped to start the process.
- Note that filing an application with the Town Clerk does not certify that the application is complete. Determination of completeness is made by the Director of Planning & Community Development either prior to filing the application or during review of the application. Should you file your

Your application is not legally complete until all required information and materials have been submitted. Refer to the Zoning Bylaws for what is required.

application with the Town Clerk and it is then determined to be incomplete, your public hearing will be opened within the timeframe required by MA General Laws and the SPGA will then determine whether to continue the hearing or deny the application. All applicants are encouraged to meet with the Director prior to filing the application with the Town Clerk.

- Copies of the application with all required plans and documents must be submitted to the Planning & Community Development Department, along with an electronic (prefer “PDF” format) copy of the application form, plans, and documents. In the event you cannot provide electronic copies, then you must submit 14 paper copies of all plans and documents.

Submittal Check List:

- ✓ 7 – Full size set of Plans
 - ✓ 10 – Reduced set of Plans (11x17”)
 - ✓ 14 – Application Packets Including: Application, Authorization Form, Certified Abutters List (300’ Project Narrative, Traffic Report, Environmental Reports, Operation and Maintenance Report and any other reports supporting your application
 - ✓ 2 – Stormwater Drainage Analysis Report
 - ✓ Filing Fee Check – Payable to “Town of Ware”
 - ✓ CD with all application information in PDF including full size set of plans
- An application for a Special Permit that has been submitted may be withdrawn, without prejudice, by the applicant prior to publication of the public hearing notice. After publication of the public hearing notice, an application can only be withdrawn without prejudice with the approval of the SPGA.
 - The Planning & Community Development Department will compose the legal notice of the public hearing and the Applicant is to arrange for its publication. This notice must be published in a newspaper of general circulation in the community; the Planning Department uses the *Ware River News*, a weekly newspaper published on Thursdays. The notice must be published once in each of the two successive weeks. The first publication in the newspaper must be at least 14 days before the day of the public hearing.
 - The public hearing notice will include the following:
 1. Name of the petitioner;
 2. Description of the property or area;
 3. Street address, if any, or other adequate identification of the location of the area or premises which is the subject of the petition;
 4. Subject matter of the public hearing; and
 5. Date, time, and location of the public hearing
 - The Applicant will mail (first class with Certificate of Mailing proof) the public hearing notice to the applicant, all abutters, and the abutting towns. Proof of mailing is required to be given to the Planning & Community Development Department no later than 2 days prior to the scheduled Public Hearing.

Responsibilities of the Planning & Community Development Department

- Upon receipt of an application, the Planning & Community Development Department will schedule a public hearing. The hearing will be scheduled within 65 days of the date received by the Town Clerk.

The Public Hearing

- The SPGA must hold a public hearing prior to taking action on a Special Permit application, and the hearing must be held within 65 days from the date the application was filed with the Town Clerk.
- The purpose of the hearing is to provide all interested parties an opportunity to hear what the application is for and to ask questions or comment on the application. Information that is known to the owners of the area that may not be known by the SPGA is particularly useful, such as drainage patterns, drainage issues (flooding), traffic issues, etc. Concerns about direct impacts are also useful, as the SPGA may be able to place conditions on an approval to mitigate the impacts.
- The applicant will be asked to make a presentation at the beginning of the hearing. At this time, the applicant should describe the proposal and address issues such as: snow removal, trash removal, hours of delivery, hours of operation, traffic impact, signage, noise/dust, and any proposed mitigation to known impacts on abutting properties. Such information should be presented in the application as well.
- The SPGA will often close the hearing and make a decision on the date of the hearing. However, the SPGA has the authority to continue the hearing to a specific date provided public notice is given pursuant to the Open Meeting Law (MGL, c39, s.23B) without having to send a new notice by mail to parties in interest. A hearing is continued when additional information is required by the SPGA in order for them to make a decision on the application, which could include a site visit.
- A public hearing ends when the rights of interested parties to present information and ask questions is cut off, after all such parties have been heard and no additional comments are being offered. Any information presented after the close of the public hearing cannot be taken into consideration during the deliberations by the SPGA.
- Once the hearing has been closed, the SPGA will deliberate on the application. During this process, a determination will be made as to whether the application meets the requirements of the Zoning Bylaw, including making a finding that the criteria listed in §7.2.4 have been met. The SPGA may also set specific conditions on the approval, which can include modifications to a site plan, setting hours of operation, etc. (see §7.2.5).
- A Special Permit must be approved by a two-thirds vote of the SPGA, which means that four members must vote to approve the application (both the Planning Board and the Zoning Board of Appeals are five-member boards). Fewer than that means the application is not approved.
- The SPGA must take action on a Special Permit application within 90 days of the close of the public hearing. The applicant and the SPGA may agree in writing to an extension of this timeframe if necessary.
- If the SPGA fails to take action within the 90-day period, the application is considered to have been “constructively approved”.

Decision on a Special Permit

- The SPGA may impose conditions, safeguards and limitations on time or use when granting a Special Permit.
- The SPGA cannot impose any conditions which delegate to another board a determination on an issue of substance, or which will require a future decision on an issue of substance by the SPGA.
- The SPGA cannot impose a condition on the performance of which lies entirely beyond the applicant's power.
- The SPGA has the power without holding a further public hearing to correct an inadvertent or clerical error in a decision so that the record will reflect the true intention of the SPGA.
- The SPGA may not make a substantive amendment which will change the result of the original decision or which will grant relief different than that originally granted, without having a new application before it.

After the Decision has been made:

- The Planning Department will prepare the Decision and will file it with the Town Clerk within 14 days of the SPGA's vote. This date is known as the "date of grant" of the Special Permit (in the event of approval).
- Notice of the Decision will be mailed (first class) by the Planning & Community Development Department to the petitioner, parties in interest, and to every person at the public hearing whom requested a notice. The notice will specify that any appeal of the Decision must be made pursuant to MGL, Chapter 40A, Section 17, and filed within 20 days after the date the Decision was filed with the Town Clerk.
- After the 20-day appeal period has expired, the Town Clerk will certify that there has been no appeal filed (if that is the case), and will mail the original Decision to the applicant and provide a copy of the certified Decision to the SPGA.
- The applicant is responsible for filing the Decision with the Hampshire County Registry of Deeds. The Special Permit does not take effect until it is filed at the Registry.
- A Special Permit shall lapse two years from the "date of grant" (unless the SPGA specifies a shorter timeframe) if a substantial use thereof has not commenced except for good cause (in cases when a Special Permit is for construction, said construction must have begun; just obtaining a building permit is not sufficient). Excluded from the lapse period is the time required to pursue or await the determination of any appeal taken pursuant to MGL, Chapter 40A, Section 17.

QUESTIONS?

Call the Planning & Community Development Office at 413-967-9648 x120

Visit the Planning & Community Development Office Monday–Friday 8:00 am – 4:00 pm

The following are the Town of Ware’s surrounding towns for legal notice purposes:

Town of Petersham
Planning Department
PO Box 486
Petersham, MA 01366

Town of Warren
Planning Department
PO Box 609
West Warren, MA 01083

Town of Hardwick
Planning Department
PO Box 575
Gilbertville, MA 01031-575

Town of Palmer
Planning Department
4417 Main Street
Palmer, MA 01069

Town of New Braintree
Planning Department
20 Memorial Drive
New Braintree, MA 01531

Town of Belchertown
Planning Department
PO Box 670
Belchertown, MA 01007

Town of West Brookfield
Planning Department
PO Box 372
West Brookfield, MA 01585

Town of New Salem
Planning Department
19 South Main Street
New Salem, MA 01355