

Town Meeting Version (4-10-09)

Proposed Amendment of the Charlemont Zoning Bylaw, to replace the existing Section 23 Special Permits with the one submitted here and to delete Section 32.2 Special Permit Criteria as it becomes part of Section 23.

Introduction:

The change submitted here for approval by town meeting is just one section of the comprehensive bylaw overhaul that was submitted last year.

The language of this section has not been changed except in very minor ways.

Given that the review of special permit applications is the bread and butter responsibility of the Planning Board, we think that

- Clarifying the procedure will benefit both the applicant and the Board, and
- The revised language of the criteria will tell the applicant more clearly what considerations will be applied in the review and make reviews more consistent over time.

Please note that much of the language in here is taken directly from the State Zoning Law and is not the Planning Board's invention. We are required by law to follow those regulations and think that having them spelled out in more detail helps the applicant understand the rules the Board has to work with.

This revision has the unanimous support of the Planning Board and the Board of Selectmen.

Reading help:

Please understand that *text in italics represents new wording*,
Regular type represents language we are keeping from the present bylaw, and
Underlined text and in () represents wording we are deleting from the present bylaw.

The footnotes (endnotes) are for the public education process only and will be deleted in the final bylaw.

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Proposed Amendment to the Charlemont Zoning Bylaw, Annual Town Meeting 2009

Section 23 Special Permits

23.1 Special Permit Granting Authority (SPGA). Special permits shall be granted by the Planning Board only for proposals in compliance with the provisions of this *Bylaw*, and of *M.G.L.* Chapter 40A, and upon written determination by the Planning Board that the proposal will not have adverse effects which overbalance its beneficial effects on the town, as measured by the purposes of the Bylaw. In acting on *Special Permits* the Planning Board shall consider the *Special Permit Criteria* listed in Section 23.9.

23.2 Procedures.

(Special Permits shall only be issued following public hearings held within 65 days after filing of an application with the planning board, a copy of which shall forthwith be hand-delivered or sent by certified mail to the town clerk by the applicant.)

*The Planning Board encourages applicants to appear before the Board for a pre-submission meeting to discuss the project and to establish possible waivers to the submission requirements based on the scale and simplicity of the specific proposal.*ⁱ

Special Permits shall be granted, denied, or issued with conditions by the Planning Board according to the provisions of Chapter 40A of the Massachusetts General Laws.

An applicant for a Special Permit shall file a completed application with the Planning Board Clerk and the Town Clerk. The Town Clerk shall acknowledge receipt of the application by signing and dating the application. The application submitted to the Planning Board Clerk shall include 3 (three) copies each of the Special Permit application.

23.3 Permit lapse. A Special Permit shall lapse 24 monthsⁱⁱ after the date of granting of the permit if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun sooner except for good cause. The 24-month period shall be extended by the time required to pursue and await the determination of an appeal (referred to in Section 17 of Chapter 40A, M.G.L.).

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23.4 SPGA Rules and Regulations. Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, the Planning Board may adopt its own rules relative to the issuance of Special Permits. The Planning Board's rules and regulations may relate to the size, form, content and style of the plans, fees, and procedures for submission and approval of such Special Permits, shall not be inconsistent with the General Laws and provisions of this Bylaw, and shall be adopted following due public process. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

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23.5 Application Fee. A fee shall be collected by the Town Clerk at the time that an application for a Special Permit is submitted. Said fee shall reflect the cost of printing, advertising, and mailing for the permitting process. Any additional reasonable expenses in excess of the filing fee, such as fees for outside consultants engaged by the Planning Board pursuant to Section 23.7 below shall be assessed to the applicant and must be promptly paid in order for the application to be heard and decided by the Special Permit Granting Authority. The Planning Board shall notify the applicant if additional expenses are expected to be assessed and the estimated cost of such expenses.

23.6 Waivers. Upon written request from the applicant prior to or as part of the filing of an application, the Planning Board may waive the submission of such materials, plans, studies, and analyses or parts thereof, as may not be needed for, or relevant to, consideration of the application, if the potential impact of the development is minimal in the opinion of the Planning Board. Such waiver shall be discussed and decided at a posted Planning Board meeting to allow for public input.

23.7 Review Process. The Planning Board will review the Special Permit application, giving consideration to the factors outlined in Section 23.9 Special Permit Criteria as they affect the Town and the neighborhood adjacent to and surrounding the site. It may require the applicant to provide additional information as necessary to complete its review. After notification of the applicant, the Board may retain outside consultants, such as registered engineers, planners, designers, legal counsel, or other professionals, at the applicant's expense, to review the application and advise the Board regarding any or all aspects of the application. It may make recommendations for modifications to the project, subdivision proposal, or development as is appropriate to protect the Town. The Special Permit process will be conducted in accordance with the Rules and Regulations adopted by the Planning Board that are on file with the Town Clerk.

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23.8 Public Hearing. The Planning Board shall hold a public hearing under this section within 65 days after the filing of an application^{iv}, in conformity with the provisions of M.G.L. Ch. 40A Section 9. The board shall make a decision on the application, and shall file a written record of the decision with the Town Clerk, all within 90 days following the closing of the public hearing^v. The Board shall file the written decision with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90-day maximum time frame.

23.9 (32.2) Special Permit Criteria. In acting upon Special Permits, the Planning Board shall consider the following criteria:

- a) The degree to which the activity, site plan, and building design are consistent with (tourist) economic development activities, including tourism, as identified in the Master Plan.
- b) Capability of *and cost to the Town to* (service the premises) provide municipal services for the proposed use and premises, including police, fire, emergency services, and road maintenance and the ability of existing infrastructure to support the proposed use including but not limited to existing roads and bridges and their condition.
- c) Impact on the Town's *school or other* educational facilities.
- d) Consequences of *sound, light, odor, noise, traffic congestion, or other disturbances for* (adjoining premises) abutting and other properties that may be impacted.
- e) *Environmental impact of the proposal, including the degree to which the proposal results in water, air, noise or light pollution; topographic change; removal of mature trees or other botanical assets; removal of cover vegetation; risk of erosion or siltation, increased storm water runoff from the site; or displacement of natural habitats.*
- f) (Sight distance and traffic safety at the entrance to) Impact on existing traffic conditions and vehicular and pedestrian safety on all roads in town, particularly at intersections with the Mohawk Trail.
- g) (Environmental compatibility with) Degree to which the proposal is compatible with the character of the surrounding area and neighborhood.
- h) Degree to which the proposal preserves scenic views and historic, natural, and cultural resources through site design, landscaping and protection of resources.

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- i) Employment, housing, and fiscal consequences *to the Town.*
- j) *Impact on agricultural or forestry operations or the productivity of the land for those uses.*
- k) *Capability of the Town or other public or private entities to provide water supplies, sewage treatment, and stormwater management.*
- l) *Other impacts on the Town including support of local products and businesses, protection of open space, provision of recreational opportunities for Town residents, and energy conservation.*

23.10 Conformance. When subsequent amendments to the Bylaw are adopted, operations or construction under a Special Permit shall conform to the Amendments unless *substantial* use or construction is commenced within six (6) months after issuance of the permit.^{vi}

23.11 Amendment. *The terms and conditions of any Special Permit approval may be amended in the same manner as required for the issuance of the original approval. Any enlargement, alteration, or construction of any additional structures not previously approved shall require an amendment.*^{vii}

Endnotes:

ⁱ This is an optional step recommended by the Planning Board to improve communication with the applicant

ⁱⁱ Time limit set by state law.

ⁱⁱⁱ The Planning Board's Rules and Regulations spell out how the Board operates; the special permit application also contains a flow chart that identifies each step the applicant, the Board or the town clerk are responsible for by law.

^{iv} This is the maximum number of days allowed for a first public hearing to be held.

^v Since public hearings can be continued, the 90 days are counted from the day the last public hearing was closed, not the first public hearing date.

^{vi} The 6 months time limit is part of state law.

^{vii} Changes to the conditions of a special permit require the same process, i.e. new public hearings, etc.