

Article 32 – Special Permit – Framingham Zoning By-Laws  
Fall Special Town Meeting October 18, 2016  
Revised October 17, 2016  
Sponsor: Framingham Planning Board

**Framingham Planning Board**

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**Planning Board Members:**

Christine Long, Chair  
Lewis Colten, Vice Chair  
Victor Ortiz, Clerk  
Thomas F. Mahoney  
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**Planning Board Staff:**

Amanda L. Loomis, Planning Board Administrator  
Raphaela Morais-Peroba, Communications Outreach Coordinator

**MOTION**

**Article 32: Amend the Framingham Zoning By-law – Section VI.E Special Permit**

I move that Town Meeting vote to amend the Framingham Zoning By-Law with deleted, changed, or amended items in “red-line” format (new text is underlined and deleted text is stricken through) by deleting the existing Section VI.E., Special Permits By-Law and replacing it with a new Section VI.E., Special Permits By-Law, with background information as attached.

**Sponsor: Planning Board**

Article 32: Section VI.E Special Permit Regulations– Framingham Zoning By-Law  
Fall Special Town Meeting  
September 22, 2016, updated October 17, 2016

The Town’s Special Permit regulations were originally adopted in Annual Town Meeting of 1987. Since the adoption of the Special Permit regulations, there has been various updates and amendments made. Below is a timeline related to the Special Permit regulations:

- Annual Town Meeting – April 22, 1987
  - Section V.E. Special Permit, approved under Article 47
- Annual Town Meeting – April 20, 1988
  - Section V.E.1, approved under Article 44
- Special Town Meeting – November 28, 1989
  - Section V.E.3(a)(2), approved under Article 13
- Annual Town Meeting – April 10, 1991
  - Sections V.E.3.(b) and V.E.2(a), approved under Article 46
- Special Town Meeting – January 14, 1992
  - Section V.E.1.(b), approved under Article 1
- Special Town Meeting – October 27, 1993
  - Section V.E.3.a(6) – approved under Article 14
- Annual Town Meeting - April 11, 1996
  - Section V.E.3.a(6) deleted, approved under Article 18
- Special Town Meeting – May 7, 1996
  - Section V.E.1.b.(1), approved under Article 10
- Special Town Meeting – June 27, 1996
  - Section V.E.1.b(1) (deleted), approved under Article 9
  - Section V.E.1.b.(2) (recodified to Section V.E.1.b.(1), approved under Article 9

- Annual Town Meeting – April 24, 2007
  - Section V.E.5 Expiration of Special Permit, approved under Article 26
- Annual Town Meeting – April 29, 2008
  - Section V.E.2.(e) Procedure for Special Permit, approved under Article 12
  - Section V.E.2.c Decisions, approved under Article 36
- Annual Town Meeting – April 29, 2008
  - Section III.A.3 Historic Reuse, approved under Article 28

This update to the Special Permit regulations is consistent with Massachusetts General Law, case law, best practices, and the Zoning By-Law Recodification Work Plan. The Planning Board will be holding a public hearing on Thursday, October 20, 2016 at 6:30pm to review and consider this Article for the Fall Special Town Meeting. The following sections of this document contain three editions of Section VI.E. Special Permit regulations that are anticipated to be presented to Fall Special Town Meeting.

Section One is a marked up edition showing the comparison between the existing Section VI.E and the proposed revisions to the Special Permit Regulations that will replace the existing language. New wording is underlined and language to be deleted has been stricken.

Section Two is a comparison as to what was shown in the Fall Special Town Meeting Warrant with revisions made since the printing of the Warrant. Language that was added since the printing of the warrant is underlined and language that was deleted is stricken out.

Section Three is a clean edition of the proposed language to be voted upon at Fall Special Town Meeting.

**Section One – Comparison between existing Section VI.E Special Permit Regulations and Proposed Section VI.E Special Permit Regulations**

**E. SPECIAL PERMITS**

**I. Special Permit Granting Authority**

a. The SPGA shall be the Zoning Board of Appeals (ZBA), the Planning Board (PB), or other board/officer as specified in Section II.B Table of Uses, other special permit By-Law, and/or designated herein.

~~**I. Special Permit Granting Authority**~~

~~a. The SPGA shall be the Board of Appeals, except where another Board or officer is specifically designated as the SPGA for a particular type of special permit.~~

~~b. The Planning Board as the SPGA:~~

~~(1) There shall be one Associate Member of the Planning Board in cases where the Planning Board acts as the SPGA. Such position of Associate Member shall be subject to the following:~~

~~(a) The Associate Member shall serve by appointment made jointly by the Planning Board and the Board of Selectmen.~~

~~(b) The Board of Selectmen and the Planning Board shall appoint an Associate Member by majority vote of the combined membership of both Boards. The term of office shall expire on July 1, or until a successor is appointed and qualified. Thereafter, an Associate~~

~~Member shall be appointed on an annual basis by the Board of Selectmen and Planning Board acting jointly.~~

- ~~(e) In the event of a vacancy in the position of Associate Member, the position shall be filled in the same manner as in the case of the original appointment.~~
- ~~(d) The Chairperson of the Planning Board may require such Associate Member to be in attendance at special permit hearings, and may designate such Associate Member to sit on the Board for the purpose of acting on a special permit application in the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board, or in the event of a vacancy on the Board.~~

## **2. Procedure for Special Permit**

### **a. Determination by the Building Commissioner**

Prior to filing an application for Special Permit the Petitioner shall submit plans to the Building Commissioner for project determination. The Building Commissioner shall have two weeks to make a project determination. Accordingly, plans should be submitted a minimum of two weeks prior to the expected filing date of a project. The Building Commissioner shall advise the Petitioner in writing as to the pertinent sections of the Zoning By-Law and General By-Laws and shall determine which board is the appropriate SPGA.

### **b. Pre-Application Submission to Technical Review Team**

- i. **Special permits that require the Planning Board to be the SPGA -** Prior to the filing of an application for a special permit, the Petitioner shall also meet with the Technical Review Team (TRT) after having submitted to the TRT a cover letter enclosing site plans, colored renderings, and any other documentation prepared for the project, which shall be known as a TRT Preliminary Review Package, used to assist in the review of the project prior to the official filing. Within two weeks of having received the TRT Preliminary Review Package, the TRT shall hold a Preliminary Project Review Meeting (PPRM) with the petitioner to review and discuss the proposed application. A TRT Report shall be provided to the Petitioner and the SPGA as determined in Section VI.E.2.b. The TRT Report shall include, but shall not be limited to: a list of submitted documents, the minutes from the TRT PPRM, and comments/recommendations for the proposed project.
- ii. **Special Permits that require the Zoning Board of Appeals to be the SPGA –**
  - a) Petitioners that only require special permits from the ZBA shall work with the ZBA Administrator to determine if a TRT meeting is necessary. In the event that a TRT meeting is determined to be necessary, the Petitioner shall follow the requirements set forth in Section VI.F.2.b.i.
  - b) Petitioners that require permits from both the Planning Board and the Zoning Board of Appeals shall be required to comply with Section VI.F.2.b.i.

### **c. Filing of an Application(s)**

Once the requirements of Section VI.E.2.a. and b. have been satisfied, the Petitioner shall submit the following documentation to the SPGA:

- i. One original copy of the application(s);
- ii. Full and half size paper site plans that have been prepared by a Professional Engineer and/or Land Surveyor licensed in the Commonwealth of Massachusetts (plans must be signed and stamped);
- iii. Full and half size paper architectural plans prepared by a Professional Engineer and/or Professional Architect licensed in the Commonwealth of Massachusetts (plans must be signed and stamped). Architectural plans shall bear the seal of the registered design professional unless exempted by M.G.L. c. 143 s. 54A.;
- iv. Copies of supporting documentation (number determined by the SPGA);
- v. Any other documentation specified in the SPGA Rules and Regulations; and
- vi. One electronic copy of all materials submitted, all of which shall be known as the Application Package. If the submitted documentation has been deemed complete with the SPGA, the SPGA will file one copy of the application with the Town Clerk.

**d. Application Distribution**

The SPGA shall transmit copies of the Application Package that have been deemed complete to TRT Departments, Building Commissioner, and such other appropriate Town departments, boards, and offices as determined by the SPGA, for review and comment.

**e. Board and Department Comment**

- i. Prior to the first public hearing, the TRT shall hold a second plan review meeting, if applicable. A TRT Report shall be generated and submitted to the SPGA as part of the record.
- ii. When a Petitioner provides revised/modified plans and/or documentation for a project, the Petitioner shall provide the revisions to the SPGA a minimum of 5 business days prior to the next scheduled public hearing for the project. The Petitioner shall provide either a written description highlighting the changes made to the plan and/or a marked-up version of the site plans to easily identify changes made since the last edition.
- iii. Questions, comments, and/or modifications from the TRT, Building Commissioner and other appropriate departments, boards, and offices shall be provided to the SPGA within 35 days. The SPGA shall not close a public hearing until all TRT departments have provided questions, comments, modifications, and/or statements of no comment, or until the 35-day comment period has lapsed, whichever is sooner.

**a. Application**

~~— Prior to the filing of an application for a special permit, the Applicant shall submit plans to the Building Commissioner. The Building Commissioner shall advise the applicant in writing as to the pertinent sections of the Zoning By Law and shall determine which board is the appropriate SPGA. The applicant shall then submit four or more copies (as may be required) of the application and plans to the designated SPGA and shall forthwith file one copy with the Town Clerk. The SPGA shall transmit copies thereof to the Building Commissioner and other appropriate Town Boards and offices, as determined by the SPGA. If the Board of Appeals is the SPGA, it shall forthwith transmit copies to the Planning Board which may, within 35 days of the date of filing with the Town Clerk, submit a report to the Board of Appeals and to the applicant containing recommendations and reasons therefor to aid the Board of Appeals in judging the application. The Board of Appeals shall not hold a hearing or render a decision on any~~

~~application until said report has been received and considered, or until the 35-day period has expired, whichever is earlier. Failure of the Planning Board or other Town Boards and offices to submit said report within the specified time period shall be deemed concurrence thereto.~~

**f. Public Hearing Procedures**

- i. **Public Hearing:** The SPGA shall hold a hearing on said application in accordance with M.G.L. c. 40A, Section 9 and 11, within 65 days of filing with the Town Clerk.
- ii. **Notice and Publication of Public Hearing:** Notice of such hearings shall be published in accordance with M.G.L. c. 40A, Section 11 and Section VI.C of this By-Law, in addition to any other parties that the SPGA deems appropriate for notification.
- iii. **Audio/Video Recording of the Public Hearing:** The SPGA shall make an audible audio and/or video recording of all its proceedings and deliberations. Such recordings shall be kept in the offices of the SPGA and/or by the Town for a period of two years, and shall be made available to any person for listening, viewing, and/or copying purposes during regular business hours in the offices of the SPGA.
- iv. **Minutes:** The SPGA shall also keep a detailed written record of the proceedings as required by law. Copies of the minutes shall be filed within 14 days with the Town Clerk. A copy of the minutes shall be posted to the Town's website upon filing them with the Town Clerk.

**b. Hearings**

~~The SPGA shall hold a hearing on said application in accordance with G. L. Ch. 40A, Section 11, within 65 days of filing with the Town Clerk. Notice of such hearings shall be published by the SPGA as provided in chapter 40A and Section VI.C of this By law.~~

**g. Peer Review Consultant**

If, in the discretion of the SPGA, a peer review of the Application is required to evaluate the impacts of a proposed project, the SPGA may require the Petitioner to retain a Peer Review Consultant approved by the SPGA. In the event that the Petitioner requires review by both the ZBA and the PB, the ZBA and PB may jointly contract a Peer Review Consultant, at the Petitioner's expense, for the project to ensure consistency and adequacy of review.

**h. Decisions**

The decision of the SPGA shall be made within 90 days following the close of a public hearing for a special permit, unless an extension is granted by the Petitioner. A special permit issued by an SPGA shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.

- i. **Notice of Decision:**
  - a) **Mailings:** Notice of a SPGA decision shall be sent to interested parties as required in M.G.L. c. 40A, Section 9 and following the same procedure outlined in Section VI.E.2.f.ii, herein. Said notice of decision shall set forth the Petitioner's name, the property address(es) of the project, special permits applied for, the date of the Decision made by the SPGA, the nature and vote of the decision, the reasons therefor, and any conditions and safeguards prescribed by the SPGA in said decision, and the date the decision was filed with the Town Clerk.
  - b) **Publication:** The notice of the SPGA's decision shall be published once in a newspaper of general circulation in the Town, at the expense of the Petitioner.

Said publication shall to occur no more than twelve calendar days after the filing of the decision with the Town Clerk.

**~~e. Decisions~~**

~~The decision of the SPGA shall be made within 90 days following the public hearing for a special permit. A special permit issued by an SPGA shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board and a unanimous vote of a three member board.~~

~~The Board shall make an audible audio tape recording of all its proceedings and deliberations. Such recordings shall be kept in the offices of the SPGA for a period of two years, and shall be made available to any person for listening or copying purposes during regular business hours in the offices of the SPGA.~~

~~The SPGA shall also keep a detailed written record of the proceedings as required by law, copies of which shall be filed within 14 days with the Town Clerk, and notices of decisions sent to the appropriate persons as required in G.L. 40A, Section 11. Said notices shall set forth the nature and vote of the decision, the reasons therefor, and any conditions and safeguards prescribed by the Board in said decision. Notice of the nature and vote of the decision shall be published once by the SPGA in a newspaper of general circulation in the Town, at the expense of the applicant, said publication to occur no more than twelve calendar days after the filing of the decision with the Town Clerk. Said notices shall also be mailed to the chairperson of the precinct in which the property is located, as well as the chairperson of the Town Meeting Standing Committee on Planning and Zoning, whose names shall be provided to the SPGA by the Town Clerk following their election.~~

**i. Failure to Act**

In accordance with M.G.L. c. 40A, Section 9, failure by the SPGA to take final action within 90 days following the public hearing and/or any granted extension of time, if applicable, shall be deemed to be a grant of the special permit. Such grant of a special permit by failure of the SPGA to act within 90 days shall be known as a “constructive approval.” A Petitioner who seeks such approval by reason of the failure of the SPGA to act within such time prescribed, shall notify the Town Clerk within 14 days in writing from the expiration of said 90 days or granted extension of time, if applicable, of such constructive approval. The Petitioner shall also send notice of such constructive approval to parties in interest by mail, and each such notice shall specify that appeals, if any, shall be made pursuant to M.G.L. c. 40A, Section 17 and shall be filed within 20 days after the date the Town Clerk received such written notice from the Petitioner that the SPGA failed to act within the time prescribed.

**~~d. Failure to Act~~**

~~As provided in G.L. c. 40A, Section 9, failure by the special permit granting authority to take final action within ninety days following the public hearing or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed, shall notify the town clerk, in writing within fourteen days from the expiration of said ninety days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and~~

~~shall be filed within twenty days after the date the town clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed.~~

**ej. Change, Extension or Modification of a Special Permit**

Any change, extension, corrections, additions, substitutions, alterations, or modification of a special permit that is deemed material by the SPGA shall require a vote by a two-thirds vote of a board with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board at a public meeting in accordance with M.G.L. c. 40A, Section 11.

**3. Conditions of Approval of Special Permit**

**a. The SPGA shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:**

- i. The property and the neighborhood are appropriate for such a use and/or structure.
- ii. The use and property can support and/or will provide adequate and appropriate facilities for the proposed use, and that the special permit application meets the dimensional requirements set forth in Section IV.E, unless a dimensional variance is granted. The use and property shall provide safe and viable access to and from the site, and be consistent with the Master Land Use Plan and other Town Plans.
- iii. The use and/or structure(s) as developed will not create a hazard to abutters, pedestrians, vehicles, and/or the environment.
- iv. The use and/or structure(s) are consistent with the intent of the Zoning District as outlined in Section II.A, and with the Purpose and Intent of appropriate By-Laws associated with the special permit application.
- v. The utilities and other public services to the site are adequate.
- vi. The use and/or structure(s) will not create an undue burden on abutting properties, the neighborhood, and/or the Town.
- vii. Traffic and pedestrians can access and circulate the project safely without conflict.
- viii. The use and/or structure will not have substantial adverse impacts to the natural environment, the historic character of the neighborhood, and/or the visual environment.
- ix. The Petitioner provides proper mitigation for impacts to traffic, infrastructure, Town services, and/or undue impacts created in Section VI.E.3.a.vi.

**b. In approving a special permit, the SPGA may attach such conditions, safeguards, limitations, and/or requirements for performance guarantees as it deems necessary to serve the purposes of the Zoning By-Law, to protect the Town, and to maintain the character of the associated neighborhood. Such conditions may include, but are not limited to, the following:**

- i. Screening and buffering of the use, structures, and/or other parts of the premises for the purposes of safety, light and/or noise pollution, stormwater run-off/erosion, etc. through the use of fences, plantings, and/or other buffering techniques.
- ii. Requirements that front, side, and/or rear setbacks be greater than the minimum requirements as provided in Section IV.E.
- iii. Modification of the exterior features, façade, and/or appearance of the structure.

**Comment [A1]:** This section was added at a previous Town Meeting – therefore this language will remain the same but the citation letter changes from e. to j.

- iv. Limitation of size, number of occupants, method or time of operation, and/or extent of facilities.
- v. Regulation of number, design, and/or location of access drives or other traffic features.
- vi. Provision of a bond and/or other security to insure compliance with the conditions of authorization.
- vii. Mitigation of traffic and/or infrastructure mitigation to ensure that the petitioner properly mitigates its impacts on the Town and/or neighborhood.
- viii. Inclusion of information and/or conditions prepared by a Peer Review Consultant ensuring the project is consistent with the Zoning By-Law, the requirements of the Town, and that the Petitioner mitigates its impacts on the Town and/or neighborhood.

In the event that the Petitioner is not the owner of the land, the Petitioner shall provide an affidavit signed by the party, e.g., the Petitioner and/or the land owner, who shall be responsible for mitigation measures and/or conditions contained within the Decision. Such statement of responsibility shall be part of the Decision as an exhibit/appendix that is recorded with Registry of Deeds or filed with Registry District of the Land Court, as applicable.

**3. ~~Conditions of Approval of Special Permit~~**

- ~~a. The SPGA shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:
 
  - ~~(1) The specific site is an appropriate one for such a use or structure.~~
  - ~~(2) Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off street parking. Except for residences requiring fewer than five stalls, adequacy of proposed off street parking facilities shall be determined by the Planning Board, in accordance with the provisions of Section IV.A., IV.B., IV.C. and VI.E. of this By-Law.~~
  - ~~(3) The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians.~~
  - ~~(4) The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By Law.~~
  - ~~(5) All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient.~~~~
- ~~b. In approving a special permit, the SPGA may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as:
 
  - ~~(1) Requirement of screened parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting, or other devices.~~
  - ~~(2) Modification of the exterior features or appearance of the structure.~~
  - ~~(3) Limitation of size, number of occupants, method or time of operation, or extent of facilities.~~
  - ~~(4) Regulation of number, design, and location of access drives or other traffic features.~~
  - ~~(5) A bond or other security to insure compliance with the conditions of authorization.~~~~

~~The Applicant, when other than the owner(s), and the owner(s) of land will be responsible for mitigation measures or conditions which are required as part of a favorable decision for issuance of a special permit.~~

#### **4. Repetitive Application**

No appeal, application, and/or petition that has been unfavorably and finally acted upon by the SPGA shall be reconsidered within two years after the date of final unfavorable action unless the SPGA finds that there have been specific and material changes in the conditions upon which the previous unfavorable action was based. Such reconsideration of an application shall include:

- a. The SPGA by a supermajority vote must consent to such reconsideration of the application.
- b. Notice is given to interested parties of the time and place of the proceedings when the question of such consent is considered.
- c. The application review procedure shall be in accordance with the procedures for all special permits specified in Section VI.E.2. herein.
- d. The SPGA shall weigh the reapplication to determine the specific and material changes that have occurred in the conditions upon which the unfavorable decision was based and shall describe such changes in the record of its proceedings.

#### **4. Repetitive Application**

~~No application which has been unfavorably and finally acted upon by the SPGA shall be reconsidered within two years after the date of final unfavorable action, unless said authority finds specific and material changes in the conditions upon which the previous unfavorable action is based, and only after notice is given to interested parties of the time and place of the proceedings when the question of such consent is considered. Four out of five members of the Planning Board must consent to such reconsideration. The application procedure and the consent shall be in accordance with the procedures for all special permits specified in Section VI.E.2. herein.~~

#### **5. Expiration of Special Permit**

Pursuant to M.G.L. c. 40A, Section 9, a special permit granted under this section shall lapse within three years, not including such time required to pursue or await the determination of an appeal as referred to in M.G.L. c. 40A, Section 17.

- a. **Request for an Extension of Time:** Prior to the expiration of a special permit granted by a SPGA, a Petitioner may request an Extension of Time. The Petitioner must show good cause for such request and/or in the case of a permit for construction, if construction was not begun by such date expect for good cause. A request for an Extension of Time shall follow the procedures outlined in Sections VI.E.2.c-f, h, and i.

#### **5. Expiration of Special Permit**

~~Pursuant to MGL, Chapter 40A §9, a special permit granted under this section shall lapse within two years, not including such time required to pursue or await the determination of an appeal as referred to in MGL, Chapter 40A §17, from the grant thereof, if a substantial use thereof has not sooner commenced expect for good cause, or in the case of a permit for construction, if construction was not begun by such date expect for good cause.~~

**Section Two – Changes made to the proposed Special Permit Regulations since the printing the Fall Special Town Meeting Warrant**

**E. SPECIAL PERMITS**

**1. Special Permit Granting Authority**

- a. The SPGA shall be the Zoning Board of Appeals (ZBA), the Planning Board (PB), or other board/officer as specified in Section II.B Table of Uses, other special permit By-Law, and/or designated herein.

**2. Procedure for Special Permit**

**a. Determination by the Building Commissioner**

~~Once a~~ Prior to filing an application for Special Permit the Petitioner ~~has met with the TRT for a PPRM,~~ shall submit plans to the Building Commissioner for project determination. The Building Commissioner shall have ~~40 days two weeks~~ to make a project determination ~~and therefore,~~ Accordingly, plans should be submitted a minimum of two weeks prior to the expected filing date of a project. The Building Commissioner shall advise the Petitioner in writing as to the pertinent sections of the Zoning By-Law and General By-Laws and shall determine which board is the appropriate SPGA.

**Comment [A2]:** Moved from proposed Section VI.E.2.b to proposed Section VI.E.2.a

**b. Pre-Application Submission to Technical Review Team**

~~Prior to the filing of an application for a special permit, the Petitioner shall meet with the Technical Review Team (TRT) for the review of plans. The Petitioner shall submit a TRT Cover Letter, site plans, and any other documentation, which shall be known as a TRT Preliminary Review Package, prepared for the project to assist in the review of the project prior to the official filing. Within two weeks of submitting a TRT Preliminary Review Package, the TRT shall hold a Preliminary Project Review Meeting (PPRM) with the petitioner to review and discuss the proposed application. A TRT Report shall be provided to the Petitioner and the SPGA as determined in Section VI.E.2.b. The TRT Report shall include, but not limited to: a list of submitted documents, the summary of the TRT meeting, and comments/recommendations for the proposed project.~~

**Comment [A3]:** Edits made to this section for clarification purposes

**Comment [A4]:** Moved from proposed Section VI.E.2.a to proposed Section VI.E.2.b

- i. Special permits that require the Planning Board to be the SPGA - Prior to the filing of an application for a special permit, the Petitioner shall also meet with the Technical Review Team (TRT) after having submitted to the TRT a cover letter enclosing site plans, colored renderings, and any other documentation prepared for the project, which shall be known as a TRT Preliminary Review Package, used to assist in the review of the project prior to the official filing. Within two weeks of having received the TRT Preliminary Review Package, the TRT shall hold a Preliminary Project Review Meeting (PPRM) with the petitioner to review and discuss the proposed application. A TRT Report shall be provided to the Petitioner and the SPGA as determined in Section VI.E.2.b. The TRT Report shall include, but shall not be limited to: a list of submitted documents, the minutes from the TRT PPRM, and comments/recommendations for the proposed project.

**Comment [A5]:** Delete proposed Section VI.E.2.b and replace with two subsections that clearly spell out Technical Review for Planning Board projects and Technical Review for Zoning Board of Appeal projects

ii. **Special Permits that require the Zoning Board of Appeals to be the SPGA –**

- a) Petitioners that only require special permits from the ZBA shall work with the ZBA Administrator to determine if a TRT meeting is necessary. In the event that a TRT meeting is determined to be necessary, the Petitioner shall follow the requirements set forth in Section VI.F.2.b.i.
- b) Petitioners that require permits from both the Planning Board and the Zoning Board of Appeals shall be required to comply with Section VI.F.2.b.i.

c. **Filing of an Application(s)**

Once the requirements of Section VI.E.2.a. and b. have been satisfied, the Petitioner shall submit the following documentation to the SPGA:

- i. One original copy of the application(s);
- ii. Full and half size paper site plans (number determined by the SPGA) that have been prepared by a Professional Engineer and/or Land Surveyor licensed in the Commonwealth of Massachusetts (plans must be signed and stamped);
- iii. Full and half size paper architectural plans prepared by a Professional Engineer and/or Professional Architect licensed in the Commonwealth of Massachusetts (plans must be signed and stamped). Architectural plans shall bear the seal of the registered design professional unless exempted by M.G.L. c. 143 s. 54A.;
- iv. Copies of supporting documentation (number determined by the SPGA);
- v. Any other documentation specified in the SPGA Rules and Regulations; and
- vi. One electronic copy of all materials submitted, all of which shall be known as the Application Package. If the submitted documentation has been deemed complete with the SPGA, the SPGA will file one copy of the application with the Town Clerk.

d. **Application Distribution**

The SPGA shall transmit copies of the Application Package that have been deemed complete to TRT Departments, Building Commissioner, and such other appropriate Town departments, boards, and offices as determined by the SPGA, for review and comment.

e. **Board and Department Comment**

- i. Prior to the first public hearing, the TRT shall hold a second plan review meeting, if applicable. A TRT Report shall be generated and submitted to the SPGA as part of the record.
- ii. When a Petitioner provides revised/modified plans and/or documentation for a project, the Petitioner shall provide the revisions to the SPGA a minimum of 5 business days prior to the next scheduled public hearing for the project. The Petitioner shall provide either a written description highlighting the changes made to the plan and/or a marked-up version of the site plans to easily identify changes made since the last edition.
- iii. Questions, comments, and/or modifications from the TRT, Building Commissioner and other appropriate ~~Town~~ departments, boards, and offices shall be provided to the SPGA within 35 days ~~to the SPGA by the TRT departments~~. The SPGA shall not close a public hearing until all TRT departments have provided questions, comments, modifications, and/or statements of no comment, or until the 35-day comment period has lapsed.

**Comment [A6]:** This Sub-section was added for clarification purposes

**Comment [A7]:** This Sub-section was added for clarification purposes

~~whichever is sooner or all TRT departments have provided questions, comments, modifications, and/or statement of no comment.~~

**Comment [A8]:** Edits made for the purposes of clarification

#### f. Public Hearing Procedures

- i. **Public Hearing:** The SPGA shall hold a hearing on said application in accordance with M.G.L. c. 40A, Section 9 and 11, within 65 days of filing with the Town Clerk.
- ii. **Notice and Publication of Public Hearing:** Notice of such hearings shall be published in accordance with M.G.L. c. 40A, Section 11 and Section VI.C of this By-Law, in addition to any other parties that the SPGA deems appropriate for notification.
- iii. **Audio/Video Recording of the Public Hearing:** The SPGA shall make an audible audio and/or video recording of all its proceedings and deliberations. Such recordings shall be kept in the offices of the SPGA and/or by the Town for a period of two years, and shall be made available to any person for listening, viewing, and/or copying purposes during regular business hours in the offices of the SPGA.
- iv. **Minutes:** The SPGA shall also keep a detailed written record of the proceedings as required by law. Copies of the minutes shall be filed within 14 days with the Town Clerk. A copy of the minutes shall be posted to the Town's website upon filing them with the Town Clerk.

**Comment [A9]:** This addition covers additional parties that are regularly contacted

**Comment [A10]:** Edit made for the purposes of clarification

#### g. Peer Review Consultant

If, in the discretion of the SPGA, a peer review of the Application is required to evaluate the impacts of a proposed project, the SPGA may require the ~~P~~petitioner to retain a Peer Review Consultant approved by the SPGA. In the event that the Petitioner requires review by both the ZBA and the PB, the ZBA and PB may jointly contract a Peer Review Consultant, at the Petitioner's expense, for the project to ensure consistency ~~e~~ and adequacy of review.

**Comment [A11]:** Clarification of who pays for the Peer Review Consultant

#### h. Decisions

The decision of the SPGA shall be made within 90 days following the close of a public hearing for a special permit, unless an extension is granted by the Petitioner. A special permit issued by an SPGA shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.

**Comment [A12]:** Clarification as to the process to extend the review period

##### i. Notice of Decision:

- a) **Mailings:** Notice of a SPGA decision shall be sent to interested parties as required in M.G.L. c. 40A, Section 9 and following the same procedure outlined in Section VI.E.2.f.ii ~~VI.E.2.b.4~~, herein. Said notice of decision shall set forth the Petitioner's name, the property address(es) of the project, special permits applied for, the date of the Decision made by the SPGA, the nature and vote of the decision, the reasons therefor, and any conditions and safeguards prescribed by the SPGA in said decision, and the date the decision was filed with the Town Clerk.
- b) **Publication:** The notice of the SPGA's decision shall be published once in a newspaper of general circulation in the Town, at the expense of the Petitioner. Said publication shall to occur no more than twelve calendar days after the filing of the decision with the Town Clerk.

##### i. Failure to Act

In accordance with M.G.L. c. 40A, Section 9, failure by the SPGA to take final action within 90 days following the public hearing and/or any granted extension of time, if applicable, shall be

deemed to be a grant of the special permit. Such grant of a special permit by failure of the SPGA to act within 90 days shall be known as a “constructive approval.” A Petitioner who seeks such approval by reason of the failure of the SPGA to act within such time prescribed, shall notify the Town Clerk within 14 days in writing from the expiration of said 90 days or granted extension of time, if applicable, of such constructive approval. The Petitioner shall also send notice of such constructive approval to parties in interest by mail, and each such notice shall specify that appeals, if any, shall be made pursuant to M.G.L. c. 40A, Section 17 and shall be filed within 20 days after the date the Town Clerk received such written notice from the Petitioner that the SPGA failed to act within the time prescribed.

**j. Change, Extension or Modification of a Special Permit**

Any change, extension, corrections, additions, substitutions, alterations, or modification of a special permit that is deemed material by the SPGA shall require a vote by a two-thirds vote of a board with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board at a public meeting in accordance with M.G.L. c. 40A, Section 11.

**3. Conditions of Approval of Special Permit**

**a.** The SPGA shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:

- i. The property and the neighborhood are appropriate for such a use and/or structure.
- ii. The use and property can support and/or will provide adequate and appropriate facilities for the proposed use, and that the special permit application meets the dimensional requirements set forth in Section IV.E, unless a dimensional variance is granted. The use and property shall provide safe and viable access to and from the site, and be consistent with the Master Land Use Plan and other Town Plans.
- iii. The use and/or structure(s) as developed will not create a hazard to abutters, pedestrians, vehicles, and/or the environment.
- iv. The use and/or structure(s) are consistent with the intent of the Zoning District as outlined in Section II.A, and with the Purpose and Intent of appropriate By-Laws associated with the special permit application.
- v. ~~Adequacy of utilities and other public services.~~ The utilities and other public services to the site are adequate.
- vi. The use and/or structure(s) will not create an ~~undue~~ burden on abutting properties, the neighborhood, and/or the Town.
- vii. Traffic and pedestrians can access and circulate the project safely without conflict.
- viii. The use and/or structure will not ~~impact~~ have substantial adverse impacts to the natural environment, the historic character of the neighborhood, and/or ~~impair scenic vistas~~ the visual environment.
- ix. The Petitioner provides proper mitigation for impacts to traffic, infrastructure, ~~and/or~~ Town services and/or undue impacts created in Section VI.E.3.a.vi.

**b.** In approving a special permit, the SPGA may attach such conditions, safeguards, limitations, and/or requirements for performance guarantees as it deems necessary to serve the purposes of

the Zoning By-Law, to protect the Town, and to maintain the ~~essence of character of~~ the associated neighborhood. Such conditions may include, but are not limited to, the following:

- i. Screening and buffering of the use, structures, and/or other parts of the premises for the purposes of safety, light and/or noise pollution, stormwater run-off/erosion, etc. through the use of fences, plantings, and/or other buffering techniques.
- ii. Requirements that front, side, and/or rear setbacks be greater than the minimum requirements as provided in Section IV.E.
- iii. Modification of the exterior features, façade, and/or appearance of the structure.
- iv. Limitation of size, number of occupants, method or time of operation, and/or extent of facilities.
- v. Regulation of number, design, and/or location of access drives or other traffic features.
- vi. Provision of a bond and/or other security to insure compliance with the conditions of authorization.
- vii. Mitigation of traffic and/or infrastructure mitigation to ensure that the petitioner properly mitigates its impacts on the Town and/or neighborhood.
- viii. Inclusion of information and/or conditions prepared by a Peer Review Consultant ensuring the project is consistent with the Zoning By-Law, the requirements of the Town, and that the Petitioner mitigates its impacts on the Town and/or neighborhood.

In the event that the Petitioner is not the owner of the land, the Petitioner shall provide an affidavit signed by the party, e.g., the Petitioner and/or the land owner, who shall be responsible for mitigation measures and/or conditions contained within the Decision. Such statement of responsibility shall be part of the Decision as an exhibit/appendix that is recorded with Registry of Deeds or filed with Registry District of the Land Court, as applicable.

#### 4. Repetitive Application

No appeal, application, and/or petition that ~~has~~ have been unfavorably and finally acted upon by the SPGA shall be reconsidered within two years after the date of final unfavorable action unless the SPGA finds that there have been specific and material changes in the conditions upon which the previous unfavorable action was based. Such reconsideration of an ~~an~~ repetitive application shall include:

- a. The SPGA by a supermajority vote must consent to such reconsideration of the application.
- b. Notice is given to interested parties of the time and place of the proceedings when the question of such consent is considered.
- c. The application review procedure shall be in accordance with the procedures for all special permits specified in Section VI.E.2. herein.
- d. The SPGA shall weigh the reapplication to determine the specific and material changes that have occurred in the conditions upon which the unfavorable decision was based and shall describe such changes in the record of its proceedings.

#### 5. Expiration of Special Permit

Pursuant to M.G.L. c. 40A, Section 9, a special permit granted under this section shall lapse within three years, not including such time required to pursue or await the determination of an appeal as referred to in M.G.L. c. 40A, Section 17.

**Comment [A13]:** Special Permits through a recent Baker Bill have now been extend to 3 years. This change complies with the changes in MGL

- a. **Request for an Extension of Time:** Prior to the expiration of a special permit granted by a SPGA, a Petitioner may request an Extension of Time. The Petitioner must show good cause for such request and/or in the case of a permit for construction, if construction was not begun by such date expect for good cause. A request for an Extension of Time shall follow the procedures outlined in Sections VI.E.2.c-f, h, and i.

### **Section Three – Clean Proposed Language**

#### **E. SPECIAL PERMITS**

##### **1. Special Permit Granting Authority**

- a. The SPGA shall be the Zoning Board of Appeals (ZBA), the Planning Board (PB), or other board/officer as specified in Section II.B Table of Uses, other special permit By-Law, and/or designated herein.

##### **2. Procedure for Special Permit**

###### **a. Determination by the Building Commissioner**

Prior to filing an application for Special Permit the Petitioner shall submit plans to the Building Commissioner for project determination. The Building Commissioner shall have two weeks to make a project determination. Accordingly, plans should be submitted a minimum of two weeks prior to the expected filing date of a project. The Building Commissioner shall advise the Petitioner in writing as to the pertinent sections of the Zoning By-Law and General By-Laws and shall determine which board is the appropriate SPGA.

###### **b. Pre-Application Submission to Technical Review Team**

- i. **Special permits that require the Planning Board to be the SPGA** - Prior to the filing of an application for a special permit, the Petitioner shall also meet with the Technical Review Team (TRT) after having submitted to the TRT a cover letter enclosing site plans, colored renderings, and any other documentation prepared for the project, which shall be known as a TRT Preliminary Review Package, used to assist in the review of the project prior to the official filing. Within two weeks of having received the TRT Preliminary Review Package, the TRT shall hold a Preliminary Project Review Meeting (PPRM) with the petitioner to review and discuss the proposed application. A TRT Report shall be provided to the Petitioner and the SPGA as determined in Section VI.E.2.b. The TRT Report shall include, but shall not be limited to: a list of submitted documents, the minutes from the TRT PPRM, and comments/recommendations for the proposed project.
- ii. **Special Permits that require the Zoning Board of Appeals to be the SPGA –**
  - a) Petitioners that only require special permits from the ZBA shall work with the ZBA Administrator to determine if a TRT meeting is necessary. In the event that a TRT meeting is determined to be necessary, the Petitioner shall follow the requirements set forth in Section VI.F.2.b.i.
  - b) Petitioners that require permits from both the Planning Board and the Zoning Board of Appeals shall be required to comply with Section VI.F.2.b.i.

**c. Filing of an Application(s)**

Once the requirements of Section VI.E.2.a. and b. have been satisfied, the Petitioner shall submit the following documentation to the SPGA:

- i. One original copy of the application(s);
- ii. Full and half size paper site plans that have been prepared by a Professional Engineer and/or Land Surveyor licensed in the Commonwealth of Massachusetts (plans must be signed and stamped);
- iii. Full and half size paper architectural plans prepared by a Professional Engineer and/or Professional Architect licensed in the Commonwealth of Massachusetts (plans must be signed and stamped). Architectural plans shall bear the seal of the registered design professional unless exempted by M.G.L. c. 143 s. 54A.;
- iv. Copies of supporting documentation (number determined by the SPGA);
- v. Any other documentation specified in the SPGA Rules and Regulations; and
- vi. One electronic copy of all materials submitted, all of which shall be known as the Application Package. If the submitted documentation has been deemed complete with the SPGA, the SPGA will file one copy of the application with the Town Clerk.

**d. Application Distribution**

The SPGA shall transmit copies of the Application Package that have been deemed complete to TRT Departments, Building Commissioner, and such other appropriate Town departments, boards, and offices as determined by the SPGA, for review and comment.

**e. Board and Department Comment**

- i. Prior to the first public hearing, the TRT shall hold a second plan review meeting, if applicable. A TRT Report shall be generated and submitted to the SPGA as part of the record.
- ii. When a Petitioner provides revised/modified plans and/or documentation for a project, the Petitioner shall provide the revisions to the SPGA a minimum of 5 business days prior to the next scheduled public hearing for the project. The Petitioner shall provide either a written description highlighting the changes made to the plan and/or a marked-up version of the site plans to easily identify changes made since the last edition.
- iii. Questions, comments, and/or modifications from the TRT, Building Commissioner and other appropriate departments, boards, and offices shall be provided to the SPGA within 35 days. The SPGA shall not close a public hearing until all TRT departments have provided questions, comments, modifications, and/or statements of no comment, or until the 35-day comment period has lapsed, whichever is sooner.

**f. Public Hearing Procedures**

- i. **Public Hearing:** The SPGA shall hold a hearing on said application in accordance with M.G.L. c. 40A, Section 9 and 11, within 65 days of filing with the Town Clerk.
- ii. **Notice and Publication of Public Hearing:** Notice of such hearings shall be published in accordance with M.G.L. c. 40A, Section 11 and Section VI.C of this By-Law, in addition to any other parties that the SPGA deems appropriate for notification.

- iii. **Audio/Video Recording of the Public Hearing:** The SPGA shall make an audible audio and/or video recording of all its proceedings and deliberations. Such recordings shall be kept in the offices of the SPGA and/or by the Town for a period of two years, and shall be made available to any person for listening, viewing, and/or copying purposes during regular business hours in the offices of the SPGA.
- iv. **Minutes:** The SPGA shall also keep a detailed written record of the proceedings as required by law. Copies of the minutes shall be filed within 14 days with the Town Clerk. A copy of the minutes shall be posted to the Town's website upon filing them with the Town Clerk.

**g. Peer Review Consultant**

If, in the discretion of the SPGA, a peer review of the Application is required to evaluate the impacts of a proposed project, the SPGA may require the Petitioner to retain a Peer Review Consultant approved by the SPGA. In the event that the Petitioner requires review by both the ZBA and the PB, the ZBA and PB may jointly contract a Peer Review Consultant, at the Petitioner's expense, for the project to ensure consistency and adequacy of review.

**h. Decisions**

The decision of the SPGA shall be made within 90 days following the close of a public hearing for a special permit, unless an extension is granted by the Petitioner. A special permit issued by an SPGA shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.

i. Notice of Decision:

- a) **Mailings:** Notice of a SPGA decision shall be sent to interested parties as required in M.G.L. c. 40A, Section 9 and following the same procedure outlined in Section VI.E.2.f.ii, herein. Said notice of decision shall set forth the Petitioner's name, the property address(es) of the project, special permits applied for, the date of the Decision made by the SPGA, the nature and vote of the decision, the reasons therefor, and any conditions and safeguards prescribed by the SPGA in said decision, and the date the decision was filed with the Town Clerk.
- b) **Publication:** The notice of the SPGA's decision shall be published once in a newspaper of general circulation in the Town, at the expense of the Petitioner. Said publication shall occur no more than twelve calendar days after the filing of the decision with the Town Clerk.

**i. Failure to Act**

In accordance with M.G.L. c. 40A, Section 9, failure by the SPGA to take final action within 90 days following the public hearing and/or any granted extension of time, if applicable, shall be deemed to be a grant of the special permit. Such grant of a special permit by failure of the SPGA to act within 90 days shall be known as a "constructive approval." A Petitioner who seeks such approval by reason of the failure of the SPGA to act within such time prescribed, shall notify the Town Clerk within 14 days in writing from the expiration of said 90 days or granted extension of time, if applicable, of such constructive approval. The Petitioner shall also send notice of such constructive approval to parties in interest by mail, and each such notice shall specify that appeals, if any, shall be made pursuant to M.G.L. c. 40A, Section 17 and shall be filed within 20 days after the date the Town Clerk received such written notice from the Petitioner that the SPGA failed to act within the time prescribed.

**j. Change, Extension or Modification of a Special Permit**

Any change, extension, corrections, additions, substitutions, alterations, or modification of a special permit that is deemed material by the SPGA shall require a vote by a two-thirds vote of a board with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board at a public meeting in accordance with M.G.L. c. 40A, Section 11.

**3. Conditions of Approval of Special Permit**

- a.** The SPGA shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:
- i. The property and the neighborhood are appropriate for such a use and/or structure.
  - ii. The use and property can support and/or will provide adequate and appropriate facilities for the proposed use, and that the special permit application meets the dimensional requirements set forth in Section IV.E, unless a dimensional variance is granted. The use and property shall provide safe and viable access to and from the site, and be consistent with the Master Land Use Plan and other Town Plans.
  - iii. The use and/or structure(s) as developed will not create a hazard to abutters, pedestrians, vehicles, and/or the environment.
  - iv. The use and/or structure(s) are consistent with the intent of the Zoning District as outlined in Section II.A, and with the Purpose and Intent of appropriate By-Laws associated with the special permit application.
  - v. The utilities and other public services to the site are adequate.
  - vi. The use and/or structure(s) will not create an undue burden on abutting properties, the neighborhood, and/or the Town.
  - vii. Traffic and pedestrians can access and circulate the project safely without conflict.
  - viii. The use and/or structure will not have substantial adverse impacts to the natural environment, the historic character of the neighborhood, and/or the visual environment.
  - ix. The Petitioner provides proper mitigation for impacts to traffic, infrastructure, Town services, and/or undue impacts created in Section VI.E.3.a.vi.
- b.** In approving a special permit, the SPGA may attach such conditions, safeguards, limitations, and/or requirements for performance guarantees as it deems necessary to serve the purposes of the Zoning By-Law, to protect the Town, and to maintain the character of the associated neighborhood. Such conditions may include, but are not limited to, the following:
- i. Screening and buffering of the use, structures, and/or other parts of the premises for the purposes of safety, light and/or noise pollution, stormwater run-off/erosion, etc. through the use of fences, plantings, and/or other buffering techniques.
  - ii. Requirements that front, side, and/or rear setbacks be greater than the minimum requirements as provided in Section IV.E.
  - iii. Modification of the exterior features, façade, and/or appearance of the structure.
  - iv. Limitation of size, number of occupants, method or time of operation, and/or extent of facilities.

- v. Regulation of number, design, and/or location of access drives or other traffic features.
- vi. Provision of a bond and/or other security to insure compliance with the conditions of authorization.
- vii. Mitigation of traffic and/or infrastructure mitigation to ensure that the petitioner properly mitigates its impacts on the Town and/or neighborhood.
- viii. Inclusion of information and/or conditions prepared by a Peer Review Consultant ensuring the project is consistent with the Zoning By-Law, the requirements of the Town, and that the Petitioner mitigates its impacts on the Town and/or neighborhood.

In the event that the Petitioner is not the owner of the land, the Petitioner shall provide an affidavit signed by the party, e.g., the Petitioner and/or the land owner, who shall be responsible for mitigation measures and/or conditions contained within the Decision. Such statement of responsibility shall be part of the Decision as an exhibit/appendix that is recorded with Registry of Deeds or filed with Registry District of the Land Court, as applicable.

#### **4. Repetitive Application**

No appeal, application, and/or petition that has been unfavorably and finally acted upon by the SPGA shall be reconsidered within two years after the date of final unfavorable action unless the SPGA finds that there have been specific and material changes in the conditions upon which the previous unfavorable action was based. Such reconsideration of an application shall include:

- a. The SPGA by a supermajority vote must consent to such reconsideration of the application.
- b. Notice is given to interested parties of the time and place of the proceedings when the question of such consent is considered.
- c. The application review procedure shall be in accordance with the procedures for all special permits specified in Section VI.E.2. herein.
- d. The SPGA shall weigh the reapplication to determine the specific and material changes that have occurred in the conditions upon which the unfavorable decision was based and shall describe such changes in the record of its proceedings.

#### **5. Expiration of Special Permit**

Pursuant to M.G.L. c. 40A, Section 9, a special permit granted under this section shall lapse within three years, not including such time required to pursue or await the determination of an appeal as referred to in M.G.L. c. 40A, Section 17.

- a. **Request for an Extension of Time:** Prior to the expiration of a special permit granted by a SPGA, a Petitioner may request an Extension of Time. The Petitioner must show good cause for such request and/or in the case of a permit for construction, if construction was not begun by such date expect for good cause. A request for an Extension of Time shall follow the procedures outlined in Sections VI.E.2.c-f, h, and i.