

MARSHFIELD PLANNING BOARD
RULES AND REGULATIONS GOVERNING WATER RESOURCE PROTECTION
SPECIAL PERMIT
AMENDED AUGUST 10, 2009

1.0 GENERAL PROVISIONS

1.1 Purpose and Authority:

The following rules are hereby adopted by the Planning Board as provided in Chapter 40A of the Massachusetts General Laws, for the purpose of establishing uniform procedures for the granting of special permits for uses within the Water Resource Protection District. For the purposes of this special permit, the Planning Board is the special permit granting authority.

1.2 Adoption and Amendment:

These rules and regulations may be adopted and from time to time amended by majority vote of the Planning Board members present and voting, provided such adoption or amendment is taken after a public hearing.

1.3 Effective Date:

These rules and regulations are effective when voted. A copy shall be filed with the office of the Town Clerk, with appropriate endorsements, such as:

Date of adoption
Date filed with Town Clerk
Amendments

2.0 APPLICANT (Petitioner)

An application or petition for a Special Permit may be brought by a property owner, agent, or prospective purchaser who submits certification (such as an executed purchase and sales agreement) or property interest and authority to file.

3.0 APPLICATION FOR SPECIAL PERMITS

3.1 Official Application Form

Application for Special Permits shall be made on an official form which shall be furnished by the Town Clerk or the Clerk of the Planning Board upon request.

3.2 Contents of An Application:

The completed application form, original plan, and nine (9) copies shall be submitted to the Planning Board with an additional copy filed forthwith with the

Town Clerk by the applicant. The following information shall be furnished by the applicant:

- 3.2.1 A site plan drawn at a scale of 1" = 40', unless another scale is previously requested by the applicant and found suitable by the Board;
- 3.2.2 A professional engineer, registered architect or registered landscape architect shall prepare the plan;
- 3.2.3 The plan shall be stamped by the registered land surveyor who performed the instrument boundary survey and who shall certify the accuracy of the locations of the building, setbacks and all other required dimensions, elevations and measurements and shall be signed under the penalties of perjury;
- 3.2.4 The scale, date and north arrow shall be shown;
- 3.2.5 Lot number, Dimensions of lot in feet, Size of lot in square feet, and Width of abutting streets and ways;
- 3.2.6 Easements within the lot and for property abutting thereon;
- 3.2.7 The location of existing or proposed building(s) on the lot shall be shown with the total square footage and dimensions of all buildings and building elevations and floor plans, and perspective renderings;
- 3.2.8 The location of existing wetlands, water bodies, walls, one-hundred year floodplain elevation, and other natural features; streams, wetlands, vistas, slope areas, geological features, unique vegetation, historic features, and others that may be important to the site;
- 3.2.9 A landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings;
- 3.2.10 Percent of building lot coverage and percentage of paved (impervious) area used for parking, loading, and access within the property;
- 3.2.11 Existing and proposed topographical lines at two-foot contour intervals on the tract and within 50' thereof;
- 3.2.12 The location and a description of proposed open space or recreation areas;
- 3.2.13 Existing and proposed street, parking, drainage, and utility systems shall be prepared by a professional engineer registered in Massachusetts
- 3.2.14 The applicant shall submit information regarding: all measures proposed to prevent pollution of surface water or groundwater, soil erosion, increased runoff, and flooding;
- 3.2.15 A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers/fertilizers from vandalism, corrosion and leakage, and to provide for control of spills (during and after construction).
- 3.2.16 A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal methods (during and after construction);
- 3.2.17 Evidence of application to the Massachusetts Department of Environmental Protection (DEP) for any industrial waste treatment or disposal system and/or

- waste-water treatment system over 10,000 gallons per day capacity (during and after construction);
- 3.2.18 Projections of downgradient concentrations of nitrogen, phosphorus, and other relevant chemicals to be disposed of on-site, at property boundaries and at other locations deemed pertinent by the Board, prepared by a Hydrogeologist or Registered Professional Engineer possessing experience and education in Water Supply Protection and Hydrology.
- 3.2.19 Any additional information which the Board may require. The Board may engage a Massachusetts Professional Engineer experienced in groundwater evaluation, hydrogeology or hazardous and toxic materials to review the application for completeness and correctness and shall require the applicant to pay for the cost of the review.
- 3.2.20 A locus plan at 1"=100', 200' or 400' scale showing the location, names, and present widths of the Secondary Streets bounding, approaching or within reasonable proximity of the site, and including the tracts of land, ownership, and topography taken from assessor's plans or field survey if available, or properties there-in.
- 3.2.21 The application shall also furnish a narrative summary of the vital statistics of the project. Such statistics shall include: Total gross and net square footage, number of parking spaces, and estimated amounts of water consumption and sewer discharge.

3.3 LAYOUT AND DESIGN STANDARDS

NOTE: These standards apply to the application during and after construction.

- 3.3.1 All streets, drainage, water system, sewerage, utilities, grading, and other improvements shall be made in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Marshfield.
- 3.3.2 SAFEGUARDS – Provision shall be made to adequately protect against toxic or hazardous materials discharge or loss through corrosion, accidental damage, spillage, or vandalism through such measures as provision for spill control in the vicinity of chemical or fuel delivery points, and the creation of secure storage areas for toxic, corrodible or dissolvable materials.
- 3.3.3 DISPOSAL – No disposal of hazardous wastes within Water Resource Protection Districts shall occur. All provisions of M.G.L.Chapter 21C (the Massachusetts Hazardous Waste Management Act) or other local, state, or federal law or regulations shall be adequately satisfied.
- 3.3.4 FILL – Fill material used in a Water Resource Protection District shall contain no solid waste, toxic or hazardous materials, or hazardous waste. Adequate documentation shall be provided to ensure proper condition of the fill. The Board may require soils testing by a certified laboratory at the applicant's expense.
- 3.3.5 SPILL CONTAINMENT – For industrial and commercial uses, an emergency response plan to prevent contamination of soil or water in the event of accidental spills or the release of toxic or hazardous materials shall be submitted to the Board, if deemed necessary by the Board, for approval prior to granting of a

- Special Permit. Recommendations from the Marshfield Fire Department on said plan shall be sought. All costs shall be borne by the owner of the premises.
- 3.3.6 **MONITORING** – Periodic monitoring shall be required when the site location and land use activities indicate a significant risk of contamination to the water supply, which risk shall be as determined by the Board based upon recommendations of the Marshfield Department of Public Works, Board of Health and Conservation Commission. Such monitoring may include analyses of water for appropriate substances and the installation of groundwater monitoring wells constructed and located as specified by the Department of Public Works. All costs shall be borne by the owner of the premises.
- 3.3.7 **ON-SITE RECHARGE** – All storm water runoff from impervious surfaces shall be recharged on-site unless, in conducting its review, the Planning Board determines that either recharge is not feasible because of unique site conditions or is undesirable because of uncontrollable risks to water quality from such recharge. Such recharge shall be any surface infiltration through vegetated surfaces unless otherwise approved by the Board during the site plan review. If dry wells or leaching basins are approved for use, they shall be constructed after oil, gas and sediment traps have been installed. Drainage from loading areas for toxic or hazardous materials shall be separately collected for safe disposal.
- 3.3.8 **GRADE REDUCTION** – Soil overburden shall not be lowered to finished exterior grades less than five (5) feet above maximum groundwater elevation, unless technical evidence are to be provided showing to the Board's satisfaction that groundwater quantity or quality will not be detrimentally affected. Technical evidence may include, without limitation, a determination of soils and geologic conditions where evaporation/transpiration occurs.
- 3.4 **NITROGEN LOADING REGULATION**
- 3.4.1 Authority and Effective Date – The Town of Marshfield Planning Board, in accordance with, and under the authority of Article XIII, Section 13.03 (4) (a) of the Marshfield Zoning Bylaws, hereby adopts the following regulations:
- 3.4.2 Findings and Purposes

Whereas the Town of Marshfield does not have a sewer system to treat wastewater from development within its Water Resource Protection District, the disposal of this wastewater through septic systems within the District poses a threat to the drinking water quality of the public supply wells the District is designed to protect. The primary contaminant of concern coming from the septic systems is nitrogen.

Once nitrogen released from septic systems reaches groundwater, it is not attenuated, but it is diluted with recharge from precipitation, road and roof runoff, and lawn irrigation. These dilution waters also transport some nitrogen, though not as concentrated as septic system wastewater. Wastewater contributes between 70 and 80% of the nitrogen in groundwater in developed areas.

Excessive nitrogen in drinking water has been linked to serious health effects. Consumption of excessive nitrate-nitrogen by infants has been linked to methemoglobinemia (blue baby syndrome); nitrate occupies the hemoglobin site on red blood cells limiting the transport of oxygen through the blood. There is also a concern that excessive nitrogen in drinking water can be converted to excessive nitrosamines (carcinogenic nitrogen forms) in stomach acid. Excessive nitrogen in groundwater has also been linked to excessive levels of other contaminants.

Due to these health concerns, the US EPA and the Massachusetts DEP have adopted maximum contaminant levels in drinking water. If these levels are detected in a drinking water supply well, utilization of the well must cease and an alternative supply must be found. Treatment technology to remove excessive nitrogen from drinking water prior to its use is currently prohibitively expensive.

Since the Town of Marshfield has invested significant public funds in the development of its current drinking water supply and wishes to avoid the expense and potential health and economic concerns that excessive nitrogen in its drinking water would cause, the Town of Marshfield has adopted a nitrogen loading assessment requirement in its Zoning Bylaws for development in its Water Resource Protection District.

Industrial, community facilities, and residential uses (except one family detached dwellings) to provide a written report that demonstrates that the concentration of nitrate-nitrogen shall not exceed five (5) parts per million (ppm).

3.4.3 Applicability

The following projects which require a special permit in accordance with the Table of Uses in the Marshfield Zoning Bylaw shall be subject to the provisions of this regulation;

- a. New commercial and industrial development.
- b. New community facilities.
- c. New residential uses, including residential subdivisions.
- d. Existing commercial, industrial, or community facilities where a change of use is proposed that will increase the concentration of nitrogen on the site.

3.4.4 Procedures

- a. No permit shall be issued by the Planning Board for any of the above described projects unless the nitrogen loading does not exceed 5 parts per million (ppm).
- b. Water Resource Protection District (WRPD) permits are likely to contain conditions that may affect septic system design. For this reason, it is strongly recommended that WRPD permits be obtained prior to or concurrently with

Board of Health permits. In order to facilitate coordination between boards, the Planning Board will forward all WRPD applications to the Board of Health for their review and comment. The Planning Board allots 30 days to receive Board of Health comments on individual permits.

3.4.5 NITROGEN LOADING CALCULATIONS

- a. Nitrogen loading for the purposes of this regulation, shall be calculated as in the attached form entitled “Town of Marshfield – Planning Board Nitrogen Loading Calculation Form.”
- b. Although Title 5 wastewater flows will be used conventionally in the calculation of nitrogen loading, commercial and industrial development and community facilities may use measured water use flows to calculate nitrogen loads from wastewater. In order to use measured water use flows, an applicant must present annual water bills or equivalent information to support the use of these flows. It is recommended that measured water use information from at least three comparable developments or three years worth of water records be provided. The Town of Marshfield Planning Board shall determine the validity of supporting information and may reject or modify the use of wastewater flows other than Title 5 wastewater flows.
- c. Residential developments may use a wastewater flow that is the mean of Title 5 wastewater flows and Title 5 wastewater flows multiplied by the fraction represented by dividing the average single family residence occupancy in the town by two times the number of proposed bedrooms, i.e., Residential wastewater flow = (Title 5 flow + (Title 5 flow x (average occupancy (2x # of bedrooms). Average occupancy shall equal total town population divided by occupied housing units (both values from the most recent US Census) unless the Planning Board determines that alternative values should be used.
- d. Each lot in residential subdivisions shall be assumed to have 20,000 square feet of lawn in the R1 zoning district and 10,000 square feet of lawn in the R2 district, 2,000 square feet of roof and 500 square feet of paved area unless the Planning Board determines that alternative values should be used.

4.0 FEES

All applications shall be accompanied by two certified checks made payable to the order of the Town of Marshfield. One check shall be for Administrative fees and the second check shall establish an individual special account. Any additional payments required shall be made within 30 days of the billing date.

4.1 Administrative Fees

The filing fee shall be five hundred dollars (\$500.00) for a special permit application.

4.2 Consultant Review Fee/Special Account

4.2.1 Every Special Permit application shall be required to file the following minimum review fee to establish an individual special account. If, in addition, this minimum amount is not sufficient to cover the entire cost of the review, the Board shall adjust said special account. The minimum fee and the adjustment schedule are as follows:

0 - 10 Acres	\$2,000.00
11 – 20 Acres	\$4,000.00
21 – 30 Acres	\$6,000.00
31+ Acres	\$8,000.00

4.2.2 Where specific conditions arising from the land or the nature of the proposal necessitate the assistance of a planning, engineering, traffic, soils, hydrologic or other consultant(s), the Planning Board may engage such consultant services to assist the Board in analyzing the project to ensure compliance with all relevant laws, ordinances, bylaws, regulations, good design principals and state of the art technology. The Board may require that applicants pay a “review fee” consisting of the reasonable costs to be projected to be incurred by the Board, for the employment of consultants engaged by the Board to assist in the review of the application.

4.2.3 Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special individual account for this purpose. Expenditures from this special account may be made at the direction of the Board, without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay all review fees shall be grounds for denial of the application or permit.

4.2.4 Review fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board’s review of a project, any excess amount in the account, including any interest, attributable to a specific project, shall be repaid to the applicant or the applicant’s successor in interest. The applicant must submit a written request for these funds. A final report for said account shall be made available to the applicant, upon request, or the applicant’s successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant’s successor in interest shall provide the Board with the documentation establishing such succession in interest.

4.2.5 Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen providing that such appeal is taken within 14 days of notification of the Board’s appointment of the consultant. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications as

may be set by the Board. The minimum qualifications shall consist either of a four-year college level educational degree in, or one related to, the field of knowledge issue or three or more years of practice in the field at issue or three or more years of practice in the field at issue or a closely related field. Minimum qualifications may be changed at the Board's discretion depending upon the complexity and importance of the proposed project. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

4.3 Other Costs and Expenses

The applicant is responsible for preparing notices and associated costs of mailing to abutters and any parties in interest by certified mail, return receipt requested. The prepared notice shall be reviewed by the Planning Board or its agent before being mailed by the applicant. Return receipts are to be addressed to the Planning Board for further verification. The prepared notices/certified mailing shall be delivered to the Planning Board agent not less than ten (10) business days before the date of the public hearing.

4.4 Modification

The administrative fee to modify an existing special permit is four hundred dollars (\$400). The applicant shall submit a check made out to the Town of Marshfield at the time of the request to modify the WRPD special permit.

4.5 Fee Waiver

Fees can be waived for applications from the Town of Marshfield, Religious and Non-profit Organizations, at the discretion of the Planning Board on a case-by-case basis.

5.0 PLANNING BOARD REVIEW

5.1 Review by Other Town Agencies

Prior to its formal review, the Planning Board shall distribute copies of the plans and supporting documents and information (within 5 business days of the receipt of the complete application) to the following town departments: Conservation Commission, Department of Public Works, Board of Health, Police, and Fire Departments. A copy shall also be delivered to the Groundwater Study Committee, if this committee is active at time of said application.

These departments shall have thirty-five (35) days to review and submit written comments to the Board. Failure of the various Boards and Commission to make

comments within the 35 day time frame shall be deemed lack of opposition thereto.

5.2. Report on Special Permit Decision

If a special permit decision does not incorporate the suggestions and/or requirements of any properly filed report(s) from other town departments or boards, or from other entities commissioned by the Planning Board, or is issued contrary advisory reports, the Planning Board, shall issue a written decision stating the reasons for not following the recommendations or requirements of said report(s).

5.3 Procedural Report

The Board, acting as the Special Permit Granting Authority, shall follow all procedural requirements of Chapter 40A, Section 9 of Massachusetts General Laws. All applicants are advised to review this Chapter in order to understand the special permit granting process.

Public Hearing: The Planning Board shall schedule a public hearing within sixty five (65) days of receipt of an application. Notice of said hearing shall be advertised in newspapers of general circulation in the town of Marshfield and mailed to parties of interest as required.

Action by the Board: Within ninety (90) days of the close of the public hearing, the Planning Board shall file a decision with the Town Clerk, indicating approval, conditional approval, or denial of the special permit.

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision for that application by the Board.

6.0 DISPOSITION OF APPLICATION

6.1 Withdrawal of Application

An application may be withdrawn without prejudice by an applicant by notice in writing to the Clerk of the Board, which notice the applicant shall also deliver to the Town Clerk, at any time prior to the first publication of the notice of the public hearing.

After such notice, withdrawal of an application shall be permitted only by Board vote, which shall consist of a majority present and voting.

6.2 Reconsideration

No vote on an application may be reconsidered after the meeting has adjourned.

6.3 Appeals

Any person aggrieved by a decision of the Board as Special Permit Granting Authority may appeal such decision as provided in MGL 40A, Section 17 within twenty (20) days after such decision has been filed in the office of the Town Clerk.

6.4 Reapplication

No application which has been unfavorably and finally acted upon by the Board shall be reconsidered for a Special Permit within two (2) years after the date of the said final unfavorable action, unless the Board finds, by vote of four members, specific and material changes in the condition upon which the previous unfavorable action was based and such changes are described in the record of the Board's proceedings, and after notice is hereby given to parties in interest of the time and place of the proceedings to reconsider in the same manner as provided for in Section 6.3 of these rules and regulations.

6.5 Lapse of Special Permit

No special permit shall be authorized by the Board without the express condition that it will lapse if substantial use under the permit is not commenced within two (2) years from the date of final action by the Board, except for good cause of the final determination of an appeal.

6.6 Extension of Special Permit

Approval in all cases is granted for a two (2) year period from the date of the filing of such approval with the Town Clerk. If a development is not completed in its entirety in that time, the applicant must again petition the Planning Board for re-approval. The applicant shall apply for re-approval sixty days prior to the lapse of the special permit. All applications under this section must comply with the bylaw and its rules and regulations in force at the time of application.

6.7 Recording

No special permit shall take effect until a copy of the decision, bearing the certification of the Town Clerk, that twenty (20) days have elapsed after the filing of the decision and no appeal has been filed, is recorded in the Registry of Deeds and is indexed under the name of the record owner of the land.

7.1 PERFORMANCE GUARANTEE

As a condition of the Special Permit, the applicant shall post a bond, or other form of surety, as a safeguard for performance, and/or a penal sum in a form and amount acceptable to the Board, prior to the expiration of the twenty (20) day appeal period, unless the Board shall specify otherwise. If the applicant is not the owner and must

purchase the property in question in order to assume such obligations, or if another form of ownership or control is in force, such person or entity shall comply with the provisions of this subsection within twenty (20) days following the date of such purchase or control. If said performance guarantee shall lapse before completion and certification of final inspection by the Board, a new guarantee shall be filed expeditiously by the application/controller of the land and/or project.

8.0 SEVERABILITY OF PROVISIONS

THE PROVISIONS OF THESE Rules and Regulations are severable. If any provision of these Rules and Regulations is held invalid, the other provisions shall not be affected thereby. If the application of these Rules and Regulations, or any of its provisions to any person or circumstances is held invalid, the application of these Rules and Regulations and their provisions to other persons and circumstances shall not be affected thereby.

9.0 WAIVER OF FULL COMPLIANCE

Full compliance with these rules and regulations may be waived by the Planning Board, provided such waivers are deemed to serve the public interest and are not conflicting with Chapter 40A MGL. Requested waivers shall be submitted in writing at the time of the application.

10.0 VIOLATIONS

Written notice of any violation of this bylaw shall be provided by the Building Inspector to the owner of the premises, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than 30 days be allowed for either compliance or revitalization of a plan for longer term compliance. In the enforcement of this bylaw, the Building Inspector shall notify the Health Inspector of any violations and seek the Health Inspector's and/or Agent's assistance.