

**Form 10-1 Model Special Permit Decision**

[on municipal agency letterhead]

**Findings and Decision**

RE: Application of [name of applicant] for a Special Permit DATE:

**Procedural History**

1. Application to construct multifamily dwellings pursuant to [section \*] of the Anytown Zoning By-Laws was made by the above-referenced owners and filed with the Planning Board on [date].
2. A public hearing on the Special Permit application was held on [date].
3. This Special Permit application is accompanied by and augmented by a Development Plan, entitled Pine Woods, dated [date].
4. The plans and other submission material were reviewed by the Planning Board, its consulting legal counsel [name], and its consulting engineer [name]. Throughout its deliberations, the Planning Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, all as made at the public hearing.

**Findings****a. General**

1. The subject property is located at [address], as shown on the Development Plan entitled "Pine Woods." The property consists of [number] acres. The terrain is upland; the land slopes in a general southwesterly direction through the building sites. There is wetland. The site abuts [names of neighbors].
2. The applicant proposes to build twenty-four condominium units on the site, distributed in six four-family structures. No dwelling unit shall contain more than two bedrooms. The property is intended to be developed in a condominium form of ownership administered by a condominium unit owners trust (hereafter, Pine Woods Unit Owners Trust).
3. The condominium site will be served by an existing private way. Said private way is of suitable pavement width, grade, layout, and drainage, so as to be acceptable to the Planning Board for access purposes to the condominium site.

**b. Special Permit Criteria**

[Section \*] of the Zoning By-Law states that the Planning Board shall review:

1. The need for the proposed use in the proposed location;
2. The existing and future character of the neighborhood in which the use is to be located;
3. The location of main and accessory buildings in relation to one another;
4. The height and bulk of buildings in relation to other structures in the area;
5. Traffic circulation within the site, amount, location and access to parking, traffic load or possible circulation problems, and safety on existing streets;
6. Availability of water to the site and adequate disposal of sewage and storm water;
7. Location and type of display signs and lighting, loading zones, and landscaping;
8. Safeguards to protect adjacent property and the neighborhood in general from detriment;
9. Qualities of the natural environment; and
10. Potential fiscal impact.

The Planning Board has considered all of the above-referenced criteria and will impose conditions in the Special Permit relating to these criteria.

**c. Specific Findings**

1. The proposal will provide for a mixture of housing types without detracting from the surrounding area or the environment.
2. The proposal will encourage the preservation of open space and the promotion of more efficient use of land in harmony with natural features; a more creative approach to land development; conservation of natural resources and scenic qualities; diversity and variety in the development pattern of the community; better design and land planning resulting in efficient street, utility, and service provision.
3. The proposed use, development of multifamily structures (condominiums) will have less impact on the Town's municipal services, generally, than would a comparably sized subdivision. Water usage, rubbish collection, utilization of the school system, and involvement of the Department of Public Works and other municipal services will be substantially less than would result from a subdivision of single-family homes of comparable size.

4. Less than 20% of the gross land area will be covered by buildings, roads, parking areas, or impervious surfaces.
5. The density of the development will be no more than one dwelling unit per gross acre.
6. No building will exceed thirty-five feet in height.
7. The structures will meet all dimensional lot requirements.
8. No commercial use or accessory commercial use is proposed for the premises.
9. [Street] is adequate to carry the additional traffic to be generated by the construction of the twenty-four condominium units on the site.
10. The configuration of driveways and parking areas within the development is sufficient to minimize potential traffic congestion or safety hazards on the site.
11. The applicant proposed to address drainage by directing surface flows to three (3) retention basins, each with a subsurface drain for discharge to groundwater. The preliminary drainage designs are shown on applicant's plans. Two (2) of the proposed basins have been located directly adjacent to the southerly property line, or just to the north of the homes already complaining of severe drainage conditions.

### Decision

In view of the foregoing, the Planning Board hereby decides that the aforesaid property is a proper parcel to be developed under [section \*] of the Anytown Zoning By-Laws in that it meets all requisite criteria. It is therefore decided to grant a Special Permit for the development of multi-family structures in accordance with the terms and conditions stated below.

1. Notwithstanding any future amendment to the Anytown Zoning By-Law, Massachusetts G.L. c. 40A, or any other legislative act:
  - a. the maximum number of dwelling units to be constructed under this Special Permit shall be twenty-four (24).
  - b. the tract of land on which the multifamily structures are to be located shall not be altered or used except:
    - (1) as granted by this Special Permit;
    - (2) as shown on the Development Plan entitled Pine Woods, referenced above;
    - (3) in accordance with subsequent approved plans or amendments to the Special Permit.
  - c. the entire tract of land and buildings to be constructed shall not be used, sold, transferred or leased except in conformity with this Special Permit. If applicant

petitions for amendments to this Special Permit, he must submit all plans and information to the change as required by applicable rules.

2. The common land remaining after the construction of the multifamily dwellings shall be subject to the following conditions and restrictions:
  - a. restricted to recreational, agricultural, conservation, or park purposes;
  - b. open to such uses to at least the owners and occupants of the units which the multifamily dwellings are designed to serve;
  - c. restricted so that no structure shall be erected thereon except as an incident to the above uses;
  - d. the Pine Woods Unit Owners Trust may make such reasonable restrictions upon the use of the common land as are necessary to the protection of the permitted uses;
  - e. the common land may be subject to a Conservation Restriction, as defined by Massachusetts G.L. c. 184, ss. 31-33, in perpetuity, running to the Town of Anytown through its Conservation Commission, at the election of the applicants and/or trust. Said Restriction shall be negotiated with the Town, but shall contain at least restrictions "a" and "c," above.
3. The Pine Woods Unit Owners Trust instrument shall contain the following article:

"The construction and operation of the condominium is governed by a Special Permit issued by the Anytown Planning Board on [date], a copy of which is available for inspection at the Town Clerk's office, Town Hall, Anytown."
4. No certificate of Occupancy shall be granted by the Building Inspector without first obtaining Board of Health approval for a sewage system on the lot.
5. Any and all plans which may be approved by the Conservation Commission pursuant to an Order of Conditions shall be made a part of the Special Permit. If there is any inconsistency between the submitted Special Permit as drawn on the Development Plan entitled Pine Woods and the plans as may be approved by the Conservation Commission, the applicant shall submit an amended plan to the Planning Board for approval. Said amended plan shall be accompanied by a letter setting forth any and all changes from the submitted Development Plan and shall include three (3) sets of revised drainage calculations, if applicable.
6. There shall be no spotlighting on the premises.
7. Issuance by the Planning Board of this Special Permit shall not be treated as, nor deemed to be, approval by the Board of Health for a permit for the construction and use on any lot of an individual sewage system.
8. Post-development rates of off-site runoff shall be kept at or below pre-development rates for a twenty five (25) year storm. No building permit shall be issued until an instrument has been signed by the Planning Board indicating that its consulting

engineer has approved drainage design for the site, and until the reasonable fee of the consulting engineer in reviewing such design has been paid by the applicant.

- a. If snow removal is to be accomplished entirely on-site, without transport of snow off-site, calculations to support this practice shall be included in the drainage plan submitted by the applicant. If snow removal is to be accomplished by off-site transport, evidence shall be submitted of a suitable arrangement to accept such snow, prior to the issuance of a building permit.

9. The applicant shall be responsible for keeping the drainage system in a clean and well functioning condition, and shall do nothing which would alter the drainage patterns or characteristics as indicated on the plans approved by the Planning Board.

10. Garbage and domestic trash shall be collected weekly by a private contractor, at the expense of the Pine Woods Unit Owners Trust. Until such weekly collection, unit owners shall store garbage and domestic trash in appropriate receptacles of rodent-proof material, and locate such receptacles properly. The Town of Anytown shall not be responsible for the collection of any solid waste, including garbage, from the subdivision.

11. A duly authorized agent of the Town shall have the right to enter upon the common areas of the condominium to ensure continued compliance with the terms and conditions of this Special Permit.

12. The terms and conditions of this Special Permit shall be enforced by the trustees of the Pine Woods Unit Owners Trust to the extent necessary to comply, including if necessary any proceeding at law or in equity against any person or persons violating or attempting to violate any such condition or restriction, either to restrain the violation or to recover damages. If the trustees fail to enforce said conditions and/or restrictions, any Unit Owner, or the Town of Anytown may bring a proceeding at law or in equity against any person or persons or the Trust in violation thereof to enforce compliance with said conditions and/or restrictions. The trust instrument shall contain an article with the foregoing language therein.

13. No building permit shall be issued for construction until an instrument has been signed by the Planning Board indicating that the following items of the Special Permit have been satisfied:

- a. approval of final form of all legal documents by the Planning Board;
- b. compliance with Board of Health requirements;
- c. letter from Anytown Fire and Water District indicating that potable water supply is available for condominium use;
- d. content and form of any Conservation Restriction, at the election of the applicant.

14. Conditions of approval of all permits issued by other boards or agencies of the Town of Anytown, including conditions of approval of the Definitive Subdivision Plan entitled Pine Woods, shall be considered conditions of approval under this Spe-

cial Permit. In the event that said permits contain conditions conflicting with the conditions hereof, the Planning Board reserves the right to amend the conditions of this Special Permit, after hearing, so as to render it consistent.

**Record of Vote**

The following members of the Planning Board vote to grant a special permit subject to the above-stated terms and conditions:

\_\_\_\_\_  
\_\_\_\_\_

The following members of the Planning Board are in opposition to the grant of the special permit:

\_\_\_\_\_

Filed with the Town Clerk on [date].

\_\_\_\_\_  
Town Clerk

Copy of Findings and Decision mailed to:

**Author's comments:** A special permit decision is used merely as an illustration. Variance, administrative, and comprehensive permit decisions appeals may take much the same form.

To grant a special permit or variance, the granting authority must show that it has considered all relevant factors set forth in the local zoning regulations and/or the statute. A decision to deny a variance or special permit need not be as detailed.

**Text reference:** § 10.07