

Background Materials – June 12, 2023– Planning Board Meeting

Prepared by Anne Capra, Director of Planning and Conservation, 6/6/23

Cable Access Channel 15 –The Cable Studio has indicated that this meeting will be live streamed on Channel 15.

AGENDA ITEM #1 Open Comment Period

This 10-minute period is set aside for the public to offer comments on items not on the posted agenda, in accordance with the adopted policy, as amended 8/8/22, posted on the Town of South Hadley Planning and Conservation Department webpage here:

<https://southhadley.org/DocumentCenter/View/9842/Open-Comment-Period-Policy---As-Adopted-2022-08-08>

Action Needed: Allow members of the public to offer comments to the Board.

AGENDA ITEM #2 Minutes

Planning and Conservation Coordinator Colleen Canning will forward minutes separately.

Action Needed: Vote to approve the minutes.

AGENDA ITEM #3 Correspondence

Correspondence is attached.

Action Needed: No action needed.

AGENDA ITEM #4

Accessory Dwelling Unit Bylaw Discussion

A member of the public has requested to know whether the “900 square foot max cap include a garage space or not and driveways to these garages”? I have invited the Building Commission to join us for this discussion. Below is his previously provided explanation of floor space (May 2, 2023, email).

The bylaw is currently under review by the Attorney General’s Office. Until review is completed, the bylaw for this discussion is as posted online here:

[Accessory-Dwelling-Unit-Bylaw---Proposed---March-2023---FINAL \(southhadley.org\)](#)

Bylaw definition of an ADU:

Accessory Dwelling Unit (ADU) – definition from MGL c.40A Sec1A

A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area than 1/2

the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as described herein.

Damian Cote <dcote@southhadleyma.gov>
To: Anne Capra <acapra@southhadleyma.gov>

Tue, May 2, 2023 at 9:08 AM

Hello,

The gross area of a building is the exterior measurement of each "floor". Floors by definition are generally anything that is not a crawlspace or inhabitable attic.

The building code does not share the other definitions and the closest I would use that touches on these concepts is;

[RB] HABITABLE SPACE. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

❖ An area within a building used for living, sleeping, dining or cooking is a habitable space. Those areas not meeting this definition include bathrooms, closets, hallways and utility rooms. Habitable spaces are typically occupied, and as such they are more highly regulated than accessory use areas.

Damian J. Cote, MFA, CBO, CFM
Building Commissioner

Building Department
116 Main Street
South Hadley, MA 01075
413-538-5030 ex 6112
www.southhadley.org/238/Inspection-Services

It is my understanding that a garage would not be considered part of the calculated floor area of a dwelling as it is not considered habitable space. However, I do not believe it was never the intention of the ADU Bylaw to allow for detached ADUs with their own garages and driveways. The bylaw requires Site Plan Review for detached ADUs. Per Chapter 255-148 Site Plan Review Criteria, there are a number of standards that will be applied in review of a detached ADU to ensure the dwelling is well nested on the site and compatible with neighborhood characteristics. Each site will be unique but in general, plan approval could possibly be conditioned upon limiting the construction of additional or future accessory structures (i.e. garages) to an ADU. Similarly, site plan approval could limit the number of driveway curb cuts, restrict parking to an area shared with the principal dwelling, and/or restrict the construction of new driveways and parking areas beyond that provided for the principal dwelling. Accommodations for ADA accessibility should not be limited as this was one of the stated purposes of the bylaw. Site planning will need to carefully consider the standards in 255-148 for approval.

[Town of South Hadley, MA Site Plan Review Search: § 255-148 Review criteria. \(ecode360.com\)](http://www.ecode360.com)

Action Needed: Discuss questions raised by the public regarding review and permitting accessory dwelling units. Seek clarification from the Building Commissioner as to whether or not a garage is considered part of the dwelling "floor area".

AGENDA ITEM #5

Open Comment Period Policy Review

In recent months, the format and intent of the open comment period has been brought into questions. Similarly, the Selectboard revised their public comment policies in March 2023 in response to a March 7, 2023 Supreme Judicial Court decision in Barron v. Kolenda. Attached is a both a memo from Town Administrator Lisa Wong regarding the changes to the Selectboard policies, and a link to the Planning Board's Open Comment Period Policy as revised and adopted August 8, 2022:

[Open-Comment-Period-Policy---As-Adopted-2022-08-08 \(southhadley.org\)](#)

Here is a link to a presentation by Mass. Municipal Association on the March 7, 2023 Supreme Judicial Court decision in Barron v. Kolenda that I attended yesterday. I don't think anything presented necessarily changes the approach the Selectboard has taken. Still seems to be lots of gray area.

[MMA webinar reviews implications of SJC ruling in Southborough case](#)

Selectboard Policies, as revised March 21, 2023 (see pg. 13, #5 for Comment Period):

[Selectboard-Policy-as-of-March-21-2023 \(southhadley.org\)](#)

5. The chair or their designee shall devote a period at each meeting to public comment (the "public comment period") to the extent that doing so does not interfere with the public body's ability to perform its duties in an orderly, efficient, and timely manner. The point of the meeting at which the public comment period takes place shall be at the beginning of the meeting; the duration of the public comment period shall be no more than 10 minutes; and the time for which such individuals and/or entities are permitted to speak shall be no more than 2 minutes; however, that the Chair shall, to the best of their ability, allow for more time for public comment to take into consideration the number of people in attendance who wish to speak; ensure that each individual and/or entity who is permitted to speak is allotted an equal amount of time in which to do so. The order in which individuals and/or entities are permitted to speak shall be in the sole discretion of the Chair or their designee.

While public comments are not required to pertain to an agenda item for that particular meeting, such comments must pertain to a matter within the public body's jurisdiction. Public comments on matters outside the public body's jurisdiction will not be permitted. Because they are not Constitutionally protected, the following comments shall likewise not be permitted: true threats, incitement to imminent lawless conduct, statements that were found by a court of law to be defamatory, and sexually explicit statements made to appeal to prurient interests.

Individuals and/or entities who are permitted to speak during the public comment period shall begin their remarks by stating their name and address, including their town or city of residence. Individuals and/or entities who are permitted to speak during the public comment period shall do so only through the Chair or their designee.

Entities who are permitted to speak during the public comment period must select a single spokesperson through which to do so. The spokesperson must identify themselves and the entity for which they are speaking, including his/her official position within said entity, as well as the entity's physical address. Individuals and/or entities who are permitted to speak during the public comment period shall not be permitted to assign their time to another entity or individual to speak on their behalf unless such assignment is required as a reasonable accommodation for such individuals and/or spokespersons because they have a disability.

If an individual and/or spokespersons for an entity permitted to speak during the public comment period requires a reasonable accommodation to speak because of their disability, they must contact the office of the Selectboard at least 48 hours prior to the meeting to arrange for such accommodation, which may include permitting said individual or spokesperson to speak for a longer time than the other individuals and/or entities permitted to speak during the public comment period.

Recommendation:

I recommend the Board review the Selectboard's adopted policy and consider adopting the same policy to maintain consistency across Town boards.

Action Needed: Discuss the Selectboard's adopted policy and determine if it meets the needs of the Planning Board for use as the Open Comment Period.

AGENDA ITEM #6 Planning & Conservation Department Report on Planning Projects and Development Updates

Housing Production Plan - Community Forum #2 –RESCHEDULED

NEW Date & Location:

Thursday, June 22, 2023

7-9 PM

South Hadley Senior Center, 45 Dayton Street, South Hadley, MA

Agenda: <https://southhadley.org/AgendaCenter/ViewFile/Agenda/06222023-5078>

Please join us to learn about housing development and constraints within South Hadley, and discuss draft goals, strategies and opportunities to create much need housing for people of all incomes and stages of life. To stay informed, visit www.shhousingplan.org, and sign up for email updates at links.shhousingplan.org/email.

Updated Housing Production Plan Schedule

DATE	TASKS
6/22	Community Forum #2
6/23 – 7/4	Extended Community Forum Public Comment Period
7/5 – 7/16	Draft HPP Compiled
7/17 – 7/31	Draft HPP submitted to Advisory Committee for review
8/1	Draft HPP issued to Planning Board for review
8/14	Planning Board Meeting – Presentation by Utile on HPP highlights, comments from Board; Invite Advisory Committee for discussion (post joint meeting)
8/28	Final Draft HPP issued for public comment (30-day comment period)
9/11	Draft HPP Public Hearing
9/25	Draft HPP Public Hearing continuation (TBD depending on public comment)
9/29	30-day Public Comment Period ends
10/2 – 10/13	HPP revisions by Utile
10/16	Final HPP issued
November	Joint Selectboard & Planning Board Meeting for adoption

Next Meetings and Posted/Pending Agendas

Planning Board meets the 2nd and 4th Mondays of the month.

6/22	Housing Production Plan Community Forum #2, Senior Center, 7pm
6/26	2078 Memorial Drive Special Permit continuance – Baltazar Dental
7/10	<ul style="list-style-type: none"> 72 Lamb Street – Special Permit Alteration Preexisting Nonconforming Structure; Illuminated Sign Permit Subdivision Regulations Update Review
7/24	

8/14	Draft Housing Production Plan Update Presentation by June McCartin, Outwith Studio
8/28	
9/11	Draft Housing Production Plan Public Hearing
9/25	Draft Housing Production Plan Public Hearing Continuance (TBD)

AGENDA ITEM #7 Other New Business (topics which the Chair could not reasonably expect to be discussed/considered as of the date of this notice)

No additional business has been submitted to me as of the date of this notice.

Planning Board Open Comment Period Policy
As Revised and Adopted – August 8, 2022

The Planning Board has a long history of accommodating public comment on nearly all agenda items. It has done so while ensuring and protecting the due process rights of applicants and members of the public on matters presently or anticipated to be brought before the Board. The purpose of this policy is to establish some foundational rules for an open comment period regarding matters that are not on the Planning Board agenda while continuing to protect the due process rights of all persons. Nothing in this policy is intended to alter the Board’s long practice of allowing (at the Chair’s discretion) members of the public to comment on posted agenda items.

An open comment period is to encourage the public to offer ideas for future discussions and agenda items. It is not to be used to debate current or past agenda items or items pending for future agendas.

The Board shall have on its agenda a period for public comment regarding items not on the agenda. This open comment period shall operate under the following conditions:

- 1) The open comment period shall be listed at the very beginning of the meeting.
- 2) The open comment period shall be limited to 10 minutes in total
- 3) Persons speaking during the open comment period shall adhere to the following rules:
 - a. Identify themselves and the topics they wish to speak about at the beginning of the open comment period.
 - b. Persons are not to speak until authorized by the Chair.
 - c. Comments should not be made on any item which is on the posted agenda. Any such comments under the Open Comment Period will be ruled out of order by the Chair.
 - d. Comments must comply with the “Visitors Code of Conduct” adopted by the Selectboard.
 - e. The comments are limited to 2 minutes per person
 - f. Location of Speaker
 - i. When meetings are held “in-person”, persons are encouraged, but not required, to come to the front of the room and speak from the “speakers” chair – not from their chair or position in the audience – as this will better ensure that they can be clearly heard by all present and those watching the meeting.

- ii. When meetings are held virtually, persons wishing to speak need to notify the “host” of the meeting by using the “raise your hand” feature, using the “Google Form” to notify the Planning & Conservation Department staff prior to the meeting, or sending an email to the Department staff prior to the meeting. When the Chair authorizes someone to speak, the person will be moved into the “panelist” position so that the Board members can hear from and see directly the individual.
 - g. The Planning Board has no role in Zoning Bylaw enforcement. Accordingly, the public is expected to refrain from making comments regarding allegations of zoning violations as those should be taken directly to the Building Commissioner who is the Zoning Enforcement Officer.
 - h. Comments must respect applicants’ and abutters’ rights of due process. Therefore, the public is expected to refrain from making comments regarding applications for approvals (Site Plan, Special Permit, Subdivision Definitive Plan, Stormwater Management Permit, or Zoning Map Amendment not requested or proposed by the Planning Board) items which are the subject of an ongoing public hearing or are reasonably expected to be subject to a public hearing and for which an application has already been received. Further, during a Board meeting, the time set aside on the agenda for a hearing is the appropriate time to raise any matter concerning the subject of that hearing, rather than during the Open Comment Period.
- 4) The Board is not anticipated to comment on any of the comments presented under this item. Rather, all members will take the public comments which appropriately conform to the Board’s policy under consideration.
- 5) Following the meeting, and after making necessary research on the items, the Planning Director will discuss with the Chair as to the appropriate meeting at which to schedule Planning Board discussion of any of the relevant/appropriate items offered in the public comment period. If members believe that they want an item included on a future agenda, they may indicate as such under “Other New Business” later in the meeting; however, it should be noted that no staff research on the matter to better inform members will have been conducted.

To: Selectboard, School Committee
From: Town Administrator Lisa Wong
Re: Selectboard Policies - Public Comment
Date: March 21, 2023

Background: *On March 7, 2023, the Supreme Judicial Court (SJC) issued its decision in Barron v. Kolenda, holding that, with respect to general public forums, the Town of Southborough's Civility Code violated Articles 16 and 19 of the Massachusetts Declaration of Rights. Under this landmark decision, the SJC concluded that a Town may not impose overly broad restrictions on the speech of members of the public who chose to speak during general public comment periods. While this case does not directly apply to discussion under specific agenda items, during public hearings or at Town Meetings, it does place sharp restrictions on the ability of a town to regulate speech during general comment periods.*

The SJC held that "the content sought to be prohibited - **discourteous, rude, disrespectful, or personal speech about government officials and governmental actions** – is **clearly protected by art. 19**, and thus the prohibition is impermissible". "[Article 19] arose out of fierce opposition to governmental authority, and it was designed to protect such opposition, **even if it was rude, personal, and disrespectful to public figures...**".

Our current Selectboard policy states on page 13 under section 5 that: The Selectboard will require that each resident speak in a civil and respectful manner. The Chair will interrupt and stop any resident who uses profanity or behaves in a similarly unacceptable manner. The Selectboard will not act on a matter introduced during Open Forum on the same night unless this rule is waived by unanimous vote of the board.
(www.southhadley.org/DocumentCenter/View/10281/Selectboard-Policy-as-of-January-8-2019)

Given the SJC ruling, it is recommended that the language in our policy be amended to replace #5 with the following:

1. The Chair or his/her designee shall devote a period of time at each meeting to public comment ("public comment period"). The point of the meeting during which the public comment period takes place; the duration of the public comment period, the number of individuals and/or entities who are permitted speak; which individuals and/or entities are permitted to speak; and the time for which such individuals and/or entities are permitted to speak shall be in the sole discretion of the Chair or his/her designee;

provided, however, the chair shall, to the best of its ability, allow each individual and/or entity who is permitted to speak shall be allotted an equal amount of time in which to do so.

2. While public comments are not required to pertain to an agenda item for that particular meeting, such comments must pertain to a matter within the public body's jurisdiction. Public comments on matters outside the public body's jurisdiction shall not be permitted. Because they are not Constitutionally protected, the following comments shall likewise not be permitted: true threats, incitement to imminent lawless conduct, obscenities (or vulgarities), statements that were found by a court of law to be defamatory, and sexually explicit statements made to appeal to prurient interests.

3. Individuals and/or entities who are permitted to speak during the public comment period shall begin their remarks by stating their name and address including town or city of residence.

4. Individuals and/or entities who are permitted to speak during the public comment period shall do so only through the Chair.

5. Entities who are permitted to speak during the public comment period must select a single spokesperson through which to do so, who shall also identify themselves and the entity for which they are speaking, include location address.

6. Individuals and/or entities who are permitted to speak during the public comment period shall not be permitted to assign their time to another entity and/or individual unless such assignment is required as a reasonable accommodation for such individuals and/or spokespersons because they have a disability.

7. If an individual and/or spokespersons for an entity permitted to speak during the public comment period requires a reasonable accommodation to speak because of his/her disability, he/she must contact the Chair at least 48 hours prior to the meeting to arrange for such accommodation, which may include permitting said individual or spokesperson to speak for a longer time than the other individuals and/or entities permitted to speak during the public comment period.

Motion: I move to approve the changes to the Selectboard Policy as presented (or as amended if there are changes to the above recommendation)