



LIMITATIONS TO THE ADMINISTRATION OF SPECIAL EXCEPTIONS
TO THE ZONING ORDINANCE IN MASSACHUSETTS

by

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ABSTRACT:

Since the discretionary powers of administrative bodies legally require limits, and since the special exception needs guides on its administration in order to achieve its planning purposes, this thesis deals with what these limits and guides should be. In Massachusetts, the courts have allowed the local bodies administering special exceptions broad discretionary powers, generally requiring them simply to abide by the basic statutory purposes of zoning, as set forth in the enabling act. These purposes are clearly stated in the act, but the bodies which are to administer the special exception and the definition of this tool itself, are less precise. On the local level, the special exception is experiencing wide usage in Massachusetts, both in the gross numbers of exceptions provided, and in the varieties of land use to which they are applied. In general, few specific limits are being imposed upon the administration of special exceptions in local ordinances and by-laws. Planning consultants who have written a large number of Massachusetts ordinances seem to agree that use of the exception should be confined only to those land uses which because of factors of design, nuisance, definition, location, or wide community importance, need more controls and individual judgment than can be provided directly in the ordinance or by-law. In general, the author feels that the administration of the special exception can best be guided by taking the following steps:

1. On the state level, provide a clearer definition of the special exception in the enabling act, and definite provision for the planning board as a possible administrator and referral agency. Since this body can most readily interpret the planning goals behind the zoning map, its use as an administrator should be encouraged.
2. On the level of the local zoning ordinance, include a general statement to guide the granting body, defining and giving the purposes of the special exception. Make more sparing use of the special exception, in light of the valid planning goals it may pursue, and surround each exception with many individual limits and guides.

LETTER OF TRANSMITTAL

Massachusetts Institute of Technology
Cambridge, Massachusetts

May 26, 1958

Professor John T. Howard, Head
Department of City and Regional Planning
Massachusetts Institute of Technology
Cambridge, Massachusetts

Dear Professor Howard:

In partial fulfillment of the requirements for the degree of Master in City Planning, I respectfully submit this thesis, entitled "LIMITATIONS TO THE ADMINISTRATION OF SPECIAL EXCEPTIONS TO THE ZONING ORDINANCE IN MASSACHUSETTS.

Sincerely yours,

Diana M. Collins

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Introduction

The special exception is a means by which certain specified uses may be permitted in certain zoning districts at the discretion of a local administrative body. The uses which may be permitted by special exception, and the districts in which they may be allowed, are spelled out in the local zoning ordinance. The ordinance may also state some controlling limits or guides for the administrative body to follow in determining whether or not to grant the exception. In some jurisdictions, the special exception may be called a "special use," a "use permit," or a "special permit."

Whatever title it may be given, the special exception differs considerably from the variance. Special exceptions are listed and authorized in the zoning ordinance, while each particular variance is not. The variance permits an individual property-owner to use his land in conflict with the terms of the zoning by-law, if there is hardship present. The special exception, on the other hand, as directly provided for in the ordinance, allows a property-owner to use his land in a given manner, provided certain stated conditions are complied with. The body administering the special exception must find that the conditions set forth for exceptional uses are present in each case. The body granting the variance must judge that there is hardship

on the part of the property-owner. The granting of special exceptions is an administrative act, given to the administering body as a matter of original jurisdiction. The granting of the variance, however, is a quasi-judicial act, which comes to the board on appeal.

In Massachusetts, as in many other states, the special exception is generally the province of the board of appeals, although provision is also made in the enabling act for the special exception to be administered by the selectmen or by the city council.¹ Before acting on an applicant's request for a special exception, the board must hold a public hearing. The board then weighs the particular circumstances surrounding the exceptional use in question against the conditions set forth in the zoning ordinance, and either grants or denies the special exception. It may impose its own requirements upon the landowner as a condition to granting the exception.

The Problem

This administrative process is far from simple. The zoning ordinance is an expression of legislative action. To place within the zoning by-law provision for special exceptions to be acted upon by an administrative body is therefore a delegation of legislative power to an administrative agent. The courts have made it plain that any

¹Mass. Gen. Laws. Ch. 40A, Sec. 4. See Appendix B

delegation of legislative power must be accompanied by limits upon the discretion of the administrator who receives such power. The administrators of the special exception are legally required to be limited in their exercise of judgment.

Beyond the legal requirements, there are more specific reasons for limiting the discretion of boards given the power to grant special exceptions. In general, the city planner employs the special exception as a means whereby uses which require a certain amount of judgment as to their effects upon the community and a certain amount of control over their operations, may receive the monitoring they need. If the board of appeals or other granting body has no guides for its judgment on special exceptions, uses may be permitted which are not carefully enough controlled. The planner may want to limit the board more specifically, beyond the legal limits set by the courts, in order to make the granting of the special exception more nearly a finding of fact that particular conditions exist or do not exist, and less an act of administrative discretion.

Objectives

The special exception is becoming more and more widely used as a planning tool. Sometimes the goals for which the special exception is intended are not achieved because

there are not enough effective guides for its administration. In order to make the special exception a more useful aid to zoning, both the use of the special exception itself, and the types of limitations which may be placed upon it, need to be better understood.

The purpose of this thesis is to explore current practice and methods of limitation, and to suggest ways in which the administration of the special exception may be limited in order to make it a more effective tool. In order to pursue this purpose, three areas have been considered.

1. The broad legal and statutory limitations upon the administration of the special exception, as expressed in court opinion, and in the enabling act.
2. Current practice regarding the special exception in Massachusetts: the ways in which the special exception is used, the ways in which the administration is specifically limited in local zoning ordinances, and the purposes behind this use and limitation.
3. Ways in which the administration of special exceptions may be more effectively limited, and how these limits might be expressed

within the enabling act, within the local zoning ordinance, and within the administrative procedures of the granting body.

Method of Research

Massachusetts is used as the sample area throughout this study. It is hoped that some of the information gathered and conclusions reached may be valid for other jurisdictions as well, but the specific intent of the thesis is to contribute to better zoning practice in this state.

Pursuing the first area of research, the body of law set forth in court decisions on special exceptions in Massachusetts and the provisions of the Massachusetts enabling act have been explored.

Current practice in Massachusetts has been culled from 199 local zoning ordinances now in force.¹ The planning objectives for the use of the special exception and alternative proposals for methods of limiting and guiding its administration were discussed with nine consultants, who collectively have written zoning ordinances for approximately 72 Massachusetts communities. Consultants were chosen for interview because it was assumed that they would have clearer and more objective views of the general

¹The Planning Division of the Massachusetts Department of Commerce lists 209 communities having zoning ordinances or by-laws. 199 were available.

issues than local planning officials, and because this method allowed for a sample of thinking based upon experience with a larger number of communities than would have been possible to canvass in any other way within the time period of this thesis.

Chapter I

Legal Limits on the Administration of the Special Exception in Massachusetts

Background

Judicial review has limited the discretionary powers of administrative bodies for some time. The courts have jealously guarded the delegation of legislative power, seeking to keep the discretion of administrations within specific limits, and watching these limits closely to see that they are not exceeded. As a background to considering the limits placed by the courts on the administration of the special exception, it may help to set forth some of the principles which guided early decisions dealing with other administrative agencies.

As early as 1911 the Massachusetts Supreme Judicial Court held that when an administrative body (in this case, the Boston board of health), is delegated power by the legislature, it must contain its authority strictly within the bounds of its grant of power, as stated in the local ordinance.¹ A year later, dealing with the delegation of power to license mercantile establishments granted to the board of aldermen of Malden, the court made the point that the local legislative body must always limit its grant of power.

¹Commonwealth v. Drew. 208 Mass 493, 94 NE 682 (1911)

A use of property lawful in itself and having no essential tendency toward harm to the public, while it may be subject to reasonable regulation, cannot be made utterly dependent upon the unrestrained arbitrament of the board of aldermen.¹

Another principle concerning the limits to discretionary power emerges from a 1916 case concerning the validity of a Lexington by-law requiring that the selectmen issue a permit for all stables or factories. (This by-law would probably have been a special exception today.) Concerning the ordinance, the court said,

It should afford some standard of conduct to the landowner so that he may know where to locate, how to design, construct, equip and otherwise prepare for use his proposed building, and some principle to direct the licensing board as to the exercise of its judgment and discretion in issuing or denying the permit.²

Here the court is not only concerned with placing limits upon the administrative agency, but is also aware that another need for such standards is to make it possible for the citizen to know where he stands with regard to the by-law.

In summary, these three early decisions bring forth principles which are accepted today in reviewing the administration of special exceptions; that the legislative must place limits upon its grant of power to the adminis-

¹Goldstein v. Conner. 212 Mass 57 at 59, 98 NE 701 (1912)

²Kilgour v. Gratto, 224 Mass 78, 112 NE 489 at 490 (1916)

trative body, that this body must keep within these limits, and that such limitations are important not only in the way they check the administration, but also for their value in informing the citizen.

The importance of limiting the discretionary power of administrators of the special exception, in particular, has been expressed by the courts of a number of states. Last year, two decisions, one in New Jersey and one in Maryland, emphasized the importance of such limits. In the Rockhill case a local New Jersey zoning ordinance containing a large number of special exceptions was struck down, largely because the court felt that the special exceptions were "ruled by vague and illusive criteria," and that the whole by-law was, therefore, an unlawful delegation of legislative power.¹ Huff v. Board of Appeals of Baltimore County, a Maryland case decided only a few months later, upheld a local ordinance permitting a "floating" manufacturing zone by special exception. The court based its decision largely on the premise that the standards set forth in the ordinance to guide the administering body were adequate.² These two recent cases help to set the stage for a discussion of Massachusetts court experience, for although they come to reverse decisions, both

¹Rockhill v. Township of Chesterfield. 23 NJ 117, 128 At 2d 473 (1957)

²Huff v. Board of Appeals of Baltimore County. 214 Md 48 133 At 2d 83 (1957)

emphasize the doctrine that limits upon the body administering special exceptions must be present in order for the administrator to be acting legally.

Statutory Limits; the Enabling Act

The Massachusetts enabling act is the source of the broad standards which limit administrators of special exceptions. Both the local boards and the courts look to the act in order to determine the general boundaries within which administrators may grant special exceptions.

These general statutory limits take two forms. First, there are the broad standards within which zoning itself must operate. These purposes of zoning, set down in Section 3 of the Zoning Enabling Act, guide the consideration of any board which must make decisions affecting local zoning administration.¹

The second set of statutory standards for guiding local decision-making on special exceptions appears in the section of the act which deals specifically with exceptions. In allowing for special exceptions the enabling act states that such special uses must be "applicable to all of the districts of a particular class and of a character set forth in such ordinance or by-law," and that they shall be "in harmony with the general purpose and intent

¹Mass. General Laws, Ch. 40A, Sec. 3. See Appendix B.

of the ordinance or by-law and may be subject to general or specific rules therein contained."¹ The mandatory word "shall," used with regard to the first two requirements, indicates that, however else it may act, the local board must observe these standards. By using the permissive word "may" regarding any further standards which might be placed in the local by-law or ordinance, the act implies that provision for such specific limits may not be necessary in all cases. This clause has been interpreted in a variety of ways by the courts.

Besides providing for special exceptions and setting a few broad guides for their administration, Section 4 also mentions possible administrators. It indicates that the board of appeals, or the selectmen of a town or city council of a city, as the local ordinance may provide, may grant special exceptions.² Again, the permissive "may" is used, and this language has given rise to controversy as to whether or not the planning board is expressly excluded as an administrator of special exceptions. A recent Superior court decision has upheld a North Andover zoning by-law provision in which motels were subject to special exception approval by the planning board alone. Actually, this decision has clouded the issue even further,

¹Mass. General Laws, Ch. 40A, Sec. 4. See Appendix B.

²Ibid.

for the court took the view that the by-law provision was not a special exception, but simply a review procedure whereby the planning board was seeing that the "many and sufficient standards" set forth were complied with by the applicant.¹ The case has been appealed, and if upheld by the Supreme court, whose decisions are controlling, it may open the door to a method of administering the special exception which has not been expressly provided for in the enabling act.

Judicial Limits

Because the enabling act leaves areas of question as to how the special exception may be administered and how its administration may be limited, and because many local ordinances and by-laws do the same, court interpretation becomes important. The courts have set for themselves two different methods of review when considering special exception cases, so it is necessary to discuss Massachusetts court decisions in two groups. The first group contains decisions regarding special exceptions which were denied by the local board and subsequently appealed to the courts by the individual denied the special exception. The second group consists of those cases in which a special exception was granted by the local body and appeal was made

¹Helen Stevens Coolidge, et al. v. Nicholas F. Nicetta, et al. Superior Court in Equity, Docket No. 11426 (1958)

by taxpayers of the local community, who contended that they had been injured by the special exception.

Until 1954, in cases where the special exception in question was denied by the administering body, the courts were guided primarily by the planning implications of the use under consideration. In all these decisions, the court upheld the denial of the special exception. In *Wilbur v. Newton*, the Supreme court decided that the board of aldermen was within its rights in denying a permit for earth removal in a residence district, because the use could be shown to be detrimental to a rapidly-growing residential area.¹ In a later case, also concerning earth removal, substantially the same finding was made. The court concluded that the applicants did not show to its satisfaction that their proposed action would not be detrimental to the town.² A similar decision occurred in 1954.³ A later, 1954, decision, *Prendergast v. Board of Appeals of Barnstable*, upset this smooth course by raising some fundamental questions about the power of judicial review over a local body's refusal to grant a special exception.⁴

¹302 Mass 38, 18 NE 2d 365 (1938)

²*Wayland v. Lee*. 328 Mass 637, 91 NE 2d 835 (1950)

³*Raimondo v. Board of Appeals of Bedford*. 331 Mass 228, 118 NE 2d 67 (1954)

⁴331 Mass 555, 120 NE 2d 916 (1954)

Concerning the board of appeals' refusal to grant a special exception to allow a beach house in a residence zone, the court stated that the local administrative body is better equipped to find local facts than a state court. If, therefore, the local body finds that the use would be injurious to the health, safety and welfare of the community, the court cannot substitute its own finding of fact for this. Since no one has a legal right to an exception, the court cannot order one to be granted, unless it finds some misuse of legal power by the administrative body.

In reviewing the Prendergast decision, one author has stated, "If taken at face value, this language (of the decision) implies that a board's denial of a variance (or exception) can never be unlawful, and thus never reversed, and some members of the bar have informally taken the opinion to mean just that."¹ Since the Prendergast case, a number of decisions have strengthened this precedent.² It seems now to be accepted that, where an exception has been denied by the local administration, the Massachusetts

¹William J. Curran, ed. Annual Survey of Massachusetts Law. Little, Brown & Co., Boston, Vol. I, 1954, p. 148. (The Prendergast decision used the term "variance" to imply both variance and special exception.)

²For example: Cefalo v. Board of Appeals of Boston
332 Mass 178, 124 NE 2d 247 (1955)
Sheehan v. Board of Appeals of Saugus
332 Mass 188, 124 NE 2d 253 (1955)
Blackman v. Board of Appeals of Barnstable
334 Mass 446, 136 NE 2d 198 (1955)

courts must stay within the facts sent to them by the local body, and must decide the case only on the basis of whether or not the local administration acted within its legal powers. The question of whether adequate limits have been placed upon the discretion of the local administrative body might be one of the legal points the court would be willing to review. So far, in cases where the special exception has been denied, they have only done so in a cursory fashion. And the precedent of Prendergast is not likely to encourage any broadening of judicial review where the denial of special exceptions is concerned.

Review of special exceptions granted by the local body is quite another matter. Here, the Massachusetts courts are willing to scrutinize the local board's decision carefully, both as to finding of fact and as to legal authority. Since the Massachusetts Supreme Court has denied itself (and lower courts) such substantial reviewing power where special exceptions have been denied, it is in circumstances where the exception has been granted that precedents emerge regarding limits to the discretion of the local board.

In a 1936 decision, Lambert v. Lowell, the Supreme Court upheld the principle of the special exception, by stating that the board of appeals was within its rights in granting a special permit for a funeral home in a residence

district, as was provided for by the local zoning ordinance.¹ In this early case, the court did not discuss the necessity for standards to limit the discretion of the board.

In two decisions which followed the Lambert case, special exceptions were upheld specifically because the court found adequate standards to guide the local administrator. The decision in Carson v. Board of Appeals of Lexington, deals with an exception granted to allow a storage garage for buses in a commercial district. The court found that the board of appeals was acting under the following standards; that it must find that "the public convenience and welfare will be substantially served," and that it must find that the use "will not tend to impair the status of the neighborhood." These limits upon the board's discretion were compared to the facts of the case; that a bus line, and hence a garage for buses, was needed by the community, and that the district in which the garage was to be located was a business zone, anyway. The granting of a special exception was thus upheld.²

In the second decision, the Supreme court upheld the granting of a special exception to allow a municipal use in a residence zone, because it again found that adequate

¹Lambert v. Lowell. 295 Mass 224, 3 NE 2d 784 (1936)

²Carson v. Board of Appeals of Lexington. 321 Mass 649, 75 NE 2d 116 (1947)

standards were set forth to guide the board of appeals. These standards were, "that such use not be detrimental or injurious to the neighborhood," and that the actions of the board be "subject always to the rule that due consideration shall be given to conserving the public health, safety, convenience, welfare, and property values."¹

The limits upon the local board of appeals which the court finds adequate in both these cases, are basic statutory provisions, set forth under the purposes of zoning regulations, in Ch. 40A, Section 3 of the enabling act. Thus, although these decisions do recognize the need for limits upon the discretion of the local board of appeals, they indicate that such discretion may be broad, keeping only within the guidelines set forth for zoning in general.

The 1946 decision in Smith v. Board of Appeals of Fall River lies in contrast to the courts' attitude regarding the limits to discretionary power in the foregoing cases, even though two of these decisions followed it in time. This case concerns the granting of a special exception by the board of appeals to allow conversion of an existing structure for up to six families. In striking down the ordinance provision, the court's language was so strong that it might easily have been interpreted to mean that all special exceptions were invalid.

¹Sellors v. Concord. 321 Mass 649, 107 NE 2d 784 (1952)

It (the ordinance provision) purported to delegate to the board of appeals power to bring about situations where the regulations would not be 'uniform for each class or kind of buildings, structures, or land, and for each class or kind of use, throughout each district...it attempted to do this without furnishing any principles or rules by which the board should be guided, leaving the board unlimited authority to indulge in 'spot zoning' at its discretion or whim.¹

The court is here concerned that the special exception, because its granting is a matter of judgment, may not always treat property in like circumstances equally. Moreover, it denounces the attempt to give unlimited discretion to the board of appeals in granting exceptions. Because of the strength of the wording of the decision, one law reviewer stated, "(The decision) cast a long dark shadow on the validity of provisions of local ordinances or by-laws purporting to authorize boards of appeals discretion to allow uses other than those expressly permitted in particular districts."²

Such fears have not been justified, however, for decisions such as Carson v. Board of Appeals of Lexington, and Sellors v. Concord followed the Smith case, and apparently ignored its ruling. Then, in 1955, the court faced up to the Smith decision, distinguishing a portion of it.³

¹Smith v. Board of Appeals of Fall River. 319 Mass 341, 65 NE 2d 547 at 549 (1946)

²William J. Curran, ed., Annual Survey of Massachusetts Law. Little, Brown & Co., Boston, Vol. II, 1955. p. 194

³Burnham v. Gloucester. 333 Mass 114, 128 NE 2d 772 (1955)

The case of Burnham v. Gloucester concerns a special exception to allow a motel in a residence district, which was granted by the board of appeals, and then denied by the Superior court. In reversing the Superior court's decision, the Supreme court relied upon the Prendergast case for the ruling that local facts are best found by the local administrative body, and not by the courts. This was stated even though the case was not a situation in which the court was asked to review the denial of a special exception by a local administrator.

The court then distinguished the Smith decision's contention that the special exception does not treat property in like circumstances equally. It stated that it did not consider the Smith case controlling in this regard, and went on to base its decision upon the question of adequate limits upon the local board. It found the standard that the board of appeals must grant "no permit without considering the effects upon the neighborhood and the city at large," adequate in this particular situation, even though this is only a general statutory limitation. In concluding, the court seemed to realize that such general standards might not apply to other findings of fact.

The degree of certainty with which standards for the exercise of discretion are set up must necessarily depend on the subject matter and the circumstances. It would be difficult, if not impossible, to specify in what circumstances permits should be granted

and in what circumstances denied. That would depend on numerous unforeseeable factors. The board was charged with the quasi-judicial duty of considering the effect of the construction of a motel on the neighborhood and the city and to pass upon the application in each instance 'under the serious sense of responsibility imposed upon them by their official positions and the delicate character of the duty entrusted to them' (Butler v. E. Bridgewater 330 Mass. 33, 37. 110 NE 2d 922, 924). We do not think that greater particularity was required.¹

The Gloucester case goes far in allowing discretion to the administering body. The power to allow motels in residential areas with only broad statutory guides, is considerable discretion indeed. The Gloucester decision, like many of the cases before it, indicates an attitude on the part of the courts to place much weight on the local administration's findings of fact and general judgment and integrity. If planners wish to limit the discretion of the local board beyond the general limitations of the enabling act, it seems that they must write specific limits into the zoning ordinance, for judicial review in Massachusetts generally seems to uphold wide discretionary power.

¹Ibid., at 775

Summary

The courts have limited the discretionary power of administrative bodies for some time. In Massachusetts, because of the policy of review, it is doubtful that any denial of a special exception by a local board would be struck down in court. Few instances where a special exception has been granted have been reversed, either for insufficient limits upon local discretionary power, or for any other reason. In all but one decision, the Massachusetts courts seem to have sanctioned broad discretion with regard to special exceptions, limiting the local board to the guides set forth in the enabling act for zoning in general, and to the general limits set in the act for special exceptions.

Chapter II

Current Use of the Special Exception in Massachusetts

Beyond the broad limitations upon the administration of the special exception set forth by the Massachusetts enabling act and by the courts, lie the specific limits upon its use and administration within the local zoning ordinance, often set down in order to make the exception better achieve its planning goals.

General Reasons for the Use of the Special Exception in Massachusetts

In order to determine these planning goals, nine consultants who have written a large number of Massachusetts zoning by-laws were asked why they used the special exception as a planning tool.

One of the most common reasons given for using the special exception is the case where the characteristics of the use in question show that it needs more safeguards and control than can be placed on the use if it is permitted outright. There appear to be three types of characteristics which the use might have which would justify making it a special exception: first, that it is a use of importance to the community at large, second, that it is a use where design might be an important factor in determining whether or not it should enter the community, and third,

that it is a use which might have characteristics of a nuisance nature. A number of consultants mentioned airports, golf courses, junk yards, and motels as uses of these types, where judgment as to the effects of the particular use upon the community would be necessary.

Another important reason for the use of the special exception is to make it possible to define a particular use. Some uses are difficult to permit directly in the zoning ordinance, because their definitions depend upon the circumstances in which they appear. A private club, for example, could be a commercial use serving alcoholic beverages, emanating noise, and generating traffic, or it could be a use of quiet residential character. A number of the consultants felt that the provisions of the special exception would allow the exercise of judgment as to the possible detriment of such a use.

A third goal for the use of the special exception is to provide for uses which are difficult to locate. Some uses, such as hospitals, utilities, cemeteries, and garden apartments, while they may be of value to a community, might be difficult to permit in specific areas of a community before there was any indication that these uses might wish to locate there. Feeling that they might be unable to subject such uses to advance planning, some consultants suggested that the next best thing would be to

subject them to administrative judgment on location, via the special exception.

A less frequent reason for using the special exception as a planning tool is to allow for flexibility in the zoning ordinance. A few consultants felt that the special exception could be used to provide transition zones between zoning districts. For example, the boundary between a single family and a two-family zone could be softened by allowing as special exceptions, conversions of one-family houses to two-family within the single family district. One other consultant argued that a certain amount of looseness in regulation was needed within the local ordinance, and that the special exception was a good way to provide it. These two opinions on flexibility were strongly opposed by other zoning practitioners, who felt that the special exception had no place as a tool for quantitative flexibility of regulation, but rather, that its purpose was to promote qualitative sensitivity of regulation. In fact, most of the consultants viewed the special exception largely as a tool to encourage the application of the intent of zoning to particular cases requiring more delicacy of regulation than could be provided by direct permission or prohibition of uses.

General Frequency of Use, and General Limits to
the Use of the Special Exception

An examination of 199 Massachusetts zoning ordinances indicates that the special exception has been applied, either to achieve these planning goals, or for other reasons, to nearly every category of land use which might occur.¹ Some communities permit by special exception thirty or more different uses in various zoning districts. Others employ the special exception less frequently. The most common number of special exceptions occurring within Massachusetts zoning ordinances is from ten to twenty. Only sixteen of the 199 zoning ordinances examined had no special exceptions at all.² There seems to be no observable correlation between the date the zoning ordinance was adopted and the number of special exceptions included. Among those municipalities having no special exceptions, for example, three of the zoning ordinances were adopted or last amended prior to 1930, while eight were as late as 1955.³ Nor does the size and complexity of the community

¹For the names of these uses, and the frequency of their occurrence, as special exceptions, see Appendix A.

²The cities of Brockton, Chelsea, Taunton and Worcester, and the towns of Bourne, Essex, Hudson, Northborough, Northbridge, Norton, Oxford, Raynham, Sutton, Wellfleet, West Bridgewater, and Westport.

³A more detailed account of trends in the use of special exceptions by date would require research among zoning ordinances not now in force. This was not considered within the scope of this thesis.

correlate with the number of special exceptions provided. Some small rural communities had more special exceptions in their zoning ordinances than did a number of large cities. In general, the number of special exceptions written into the local zoning ordinance seems to depend upon the zoning policy of the community. But it may be stated that most Massachusetts communities having zoning ordinances or by-laws are employing the special exception, and that many of them are giving this tool frequent use.

To what general limits is the administration of the special exception usually subjected? Most local zoning ordinances recognize the statutory guides which zoning must follow, as set forth in the enabling act.¹ Either in a section on exceptions and variances, or in a section of the by-law dealing with administration in general, they usually admonish the granting body to "consider health, safety, welfare, encourage the best use of land, conserve property values, and permit no offensive uses."² Often the local by-law or ordinance also spells out the grant given by the enabling act allowing the local board to attach its own conditions upon the applicant for the special exception. These general limits and safeguards upon the

¹See Appendix B.

²Typical clause, as it appears in Town of Auburn, Zoning By-law. As amended, 1956.

local board, as provided for in the enabling act, are sometimes the only ones given to guide the board in its judgment of special exceptions. When other limits are mentioned, they are spelled out in regard to the particular special use in question. These limits will be dealt with when the special exceptions commonly occurring in Massachusetts are discussed in detail. It is important to note with regard to limits and guides set forth in the local ordinance for the granting body, that these limits fall into two groups: the general guides provided by statute, and those set forth to apply to a particular special use.

General Administration of the Special Exception

Three local administrative bodies are given the power to grant special exceptions by various local zoning ordinances. The most common administrator is the local board of appeals. The board of appeals appears as administrator of some special exceptions in nearly every by-law or ordinance which provides for these special permits, and in many it is the sole administrator. There is some difference of opinion as to whether or not this body is the proper administrator of the special exception. It has been recognized by some of the planning profession that the board of appeals is not a body trained in the planning approach, or with knowledge of planning purposes. For this reason, the majority of the consultants interviewed regarded

the appeals board as the wrong administrator of special uses, which they felt should be granted in accordance with the long-term objectives of zoning and the comprehensive plan. On the other hand, a few consultants recognized that a board of appeals has been provided in any community which has zoning, and that the enabling act allows it to have original jurisdiction over special exceptions if so authorized by the zoning by-law or ordinance. Since this body must exist, it might as well be used for the administration of special exceptions. Moreover, the board of appeals, although not expected to be trained in planning principles, is expected to be a fair and impartial judge, with ability to find the facts with regard to each case which comes before it. Therefore, some consultants recommended that the board of appeals be used to grant special exceptions, but that it be carefully guided by the local zoning ordinance.

Another administrative body frequently given the power to grant special exceptions by local zoning ordinances is the city council or board of selectmen. Like the board of appeals, the council or selectmen are mentioned in the enabling act as possible administrators of the special exception. 32 cities and towns in Massachusetts provide for these bodies to grant some special exceptions. In three cities, and in seven towns, the city council or selectmen are empowered to grant three or more categories

of special uses. The use of these executive branches of local government as administrators of the special exception probably originates as a corollary to their general licensing powers. But most of the planning consultants interviewed argued against the use of these two bodies with regard to the special exception. They stated that not only are the city council or selectmen, like the board of appeals, untrained in planning purposes, but their decisions are widely publicized, and are important to their re-election. Whereas the board of appeals is at least expected to keep out of the main stream of politics, the city council or selectmen cannot be.

The third agent for granting special exceptions is the local planning board. The Massachusetts enabling act does not list this body as one of the possible administrators of the special exception, but this fact has not deterred 20 municipalities from allowing the planning board to grant at least one special exception. In six of these communities the planning board administers more than one special permit.

Because the planning board is not provided for in the enabling act as an administrator of the special exception, it is surprising that its use as sole administrator is more common in Massachusetts than is its use as a referral agency. Only seven communities provide for a special

exception to be administered by the board of appeals or city council or selectmen, with referral of the case to the planning board for further review and recommendation. In only one municipality, Haverhill, does the zoning by-law provide for more than one case of such referral, and then in only four situations: garden apartments or row-houses in a single residence district, trailers in a light industrial district, motels or cabins in a light industrial district, and an office or bank in a two-family residence district. The most common special exceptions referred to the planning board is earth removal in any district, which occurs in four zoning by-laws.¹

Regarding the use of the planning board as an administrator of the special exception, a variety of views were expressed by the consultants. Some favored the use of the planning board as sole administrator, since it is the one body which can bring the planning approach to bear. Others indicated that where they now recommend the board of appeals as administrator, with referral to the planning board in certain instances, they would substitute direct administration by the planning agency, if it were legally possible in Massachusetts. If the case on North Andover's use of the planning board as administrator is upheld by

¹Those of Longmeadow, Mansfield, North Andover, and Waltham.

the Supreme court, they may soon be able to do so. Two consultants felt that the planning board would become too bogged down in administrative detail were it given the power to grant special exceptions, and that use of the board of appeals, with referral to the planning board, required in some cases, was a better practice.

In discussing referral to the planning agency for special exception review, some planners favored mandatory referral in all cases. They held that the planning board's recommendation with regard to a particular special exception, although it might not be acted on favorably by the board of appeals, might be good planning publicity for the community at large, and might help to educate the board of appeals to planning goals. Some support was given to referral to the planning board only on those special exceptions where site plan, design, and location criteria were paramount, such as with motels, trailers, airports, and earth removal. Another view was that the planning board should be notified of all special exceptions, but that referral should not be mandatory, the board sending a recommendation only if it wished. One consultant considered any referral too much administrative detail for the planning board to handle. Again, views differed, and there was no majority opinion expressed.

It seems obvious that the questions of "What body

shall administer the special exception?" and "How shall it be administered?" are moot. There seem to be strong differences between the character and quality of the types of bodies given the power to grant special exceptions. Because, with the special exception, a careless or uninformed administration could negate the principles of the zoning ordinance or by-law, questions of administrative structure are important. But it must be remembered that there are other ways of guiding the administration than through its internal composition and external structure. There are statutory limits upon its actions set forth by the enabling act, and there are guides possible within the local zoning ordinance. In order to discuss the latter, more specific, limitations, the special exceptions which occur commonly in Massachusetts zoning ordinances will now be dealt with in detail.

Common Special Exceptions in Massachusetts: Reasons for Their Use, and Specific Guides and Limits for Their Administration

In order to facilitate discussion, the common special exceptions appearing in Massachusetts zoning ordinances are grouped here by their general use characteristics. The special exceptions in each group are listed, then their current use and limitations upon their administration in local zoning ordinances and by-laws is discussed, and

lastly, the use and limits recommended by the planning consultants interviewed, is given for each group.

I Open and agricultural uses

The special exceptions which fall in this category are those which are usually permitted by right in agricultural districts, and which commonly appear as special exceptions in single residence districts, or in any residence district. They are: nursery, greenhouse, small livestock, kennel, veterinarian, large livestock, sale of farm produce, ice harvesting, cider or sawmill, golf club, boat-house, ski tow, bathing beach, children's camp, airport, and cemetery.

Very few Massachusetts zoning ordinances place any limits or guides on the administration of these uses. Some by-laws do state, in regard to the keeping of livestock and kennels, and the sale of farm produce, that the administering body must find that the use will be set back a given distance from the nearest road, and from lot lines. Occasionally, in the case of children's camps and airports, a minimum size of tract is specified.

Among the consultants interviewed there was some difference of opinion as to how they would treat these uses. About half stated that they would use the special exception in allowing most of these uses in residence districts.

Among those of this opinion there was general agreement that limits on setback, access, and egress should be set for the sale of farm produce and for airports, and that the children's camp and the airport should have a minimum lot size. Some felt that a parking ratio should be set in the ordinance for the golf club, the bathing beach, the ski tow, and the airport.

Three of the consultants interviewed thought that a large number of these uses could be permitted by right in agricultural and residential districts. They advocated listing a number of these which might have nuisance value, such as the sale of farm produce, the children's camp, and the airport, as "special uses" within the ordinance, with limits set therein directly upon the landowner. Thus, the need for review by an administrative body would not exist, and the landowner could be monitored directly by the building inspector.

There was some argument for making the airport and the cemetery special exceptions in any district, the airport because it has effect upon a large surrounding area, and the cemetery because of the psychological distaste which it frequently engenders.

II Residential uses

These uses include garden apartments, rowhouses, apartments, and lodging houses, and are usually permitted

by special exception in any residence district. When not permitted by special exception, these uses are usually permitted by right in general residence, or multi-family residence districts.

When garden apartments and row-houses are indicated as special exceptions in Massachusetts zoning ordinances, they are usually accompanied by a long series of guides and limits on the administering body. The board granting the special exception must often find that given area, setback, and height requirements are complied with, that there is a given distance between buildings, and a given floor area per dwelling unit. Frequently, the site plan for the series of garden apartments or row-houses must be referred to the planning board for approval before the board of appeals can grant the exception. For reviewing the site plan, the planning board is sometimes given a list of conditions which it must take into account. These often include the following: that adjoining premises are protected, that there is convenience and safety for vehicular and pedestrian traffic, that there is adequate disposal of sewage, refuse, and storm water, and that there are adequate provisions for off-street parking. Sometimes a parking ratio per dwelling unit is given in the ordinance. In such a case, there is usually also a statement for the developer, telling him what elements he must show on the site plan which he submits to the planning board.

Limits upon the administrating body are less frequent with regard to apartments permitted as special exceptions. When limits are mentioned, they usually take the form of a minimum number of rooms or baths per dwelling unit, and a minimum lot size per dwelling unit, which must be found by the board before it can grant the special exception.

These limits occur also where lodging houses are concerned, but even less frequently. More often, guides for the granting body are that the building have the external appearance of a one or two-family structure, and that it be located in an area having other multi-family structures.

Most of the consultants interviewed felt that garden apartments and row-houses should be permitted as special exceptions in residence districts because they are uses difficult to plan for in advance, and uses where location is important. They agreed with the strict limitations which are commonly placed upon such uses.

None of the planners believed that apartments should be permitted by special exception. They held that these structures belong by right in multi-family residence districts only. The suggestion was made that apartments might have limits placed in the ordinance directly on the landowner regarding parking to be provided and density limits.

The same feeling was expressed concerning lodging houses. It was felt that these belong by right in multi-family districts, and should otherwise be prohibited. Again, it was suggested that limits be placed in the ordinance directly upon the builder.

III Transient residential uses

These are uses of service to travelers, or of a moveable character, such as hotels, motels, tourist cabins, and trailers. When permitted as special exceptions, these uses usually require approval in any district. When permitted by right, they are generally allowed only in business districts.

Although infrequently guided with regard to hotels, the administering board must sometimes find that given lot area and set-back requirements are complied with. The same limits occur with regard to motels and cabins. In two cases, the latter special exceptions require site plan review by the planning board, subject to the typical guides mentioned above for garden apartments. A few ordinances require that motels or cabins be situated in a business district, but within 500 feet of a residence district.

Trailers and trailer parks are frequently strongly limited within the local zoning ordinance. The granting board must often find that certain set-back and area requirements are complied with, and often also, that there

be a dust-proof surface planned for the trailers, that there be a given distance between each two trailers, and that sewage and refuse will be adequately taken care of. In a small number of cases, trailer parks require site plan approval by the local board of health before the special exception can be granted.

Most consultants interviewed believed that hotels do not belong in any district but a business zone, as they are of a commercial character. As such, the use should be permitted by right. Some suggested that parking and set-back requirements might be set in the ordinance directly on the builder.

In the case of motels and cabins a few consultants suggested that they be permitted by right, but with limits, and only in business districts. The majority held that the motel should be a special exception because of the difficulty of planning for it in advance, and because it might create a traffic nuisance if not properly monitored. In this case, it should be permitted by special exception only in a business district, and site plan referral to the planning board should be required, because of the importance of individual design and location.

Most consultants agreed that the trailer or trailer park should be a special exception because of the possibility of its becoming a nuisance without proper control. All favored strong limits, including site plan approval

and area and set-back requirements. Some felt that the body granting the special exception should also be told to require some type of screening around a trailer park.

IV Conversion

The two most common types of conversion allowed by special exception in Massachusetts are the remodeling of a single family house to accommodate two families, and the change of a one or two family house to provide for three or more families, or for roomers. These types of conversion may be allowed by special exception in single residence districts only, in any residence district, or may require special exception approval in any zoning district. Usually, Massachusetts zoning ordinances permit conversion by right in any non-residence district.

Both types of conversion are usually granted subject to one or more of the following guides: that the structure be found to maintain the character of a single family home, that there be no exterior changes in the building, that additional stairs be placed within, not outside the structure, that the area of the lot be a certain minimum size (generally larger than the minimum for the district as a whole), that there be a certain floor area per dwelling unit, and that the consent of a certain percentage of the abutting property owners be obtained. In a few

cases, all of these limits are found in the same zoning ordinance, but generally only one of two of them is chosen to guide the administration of the special exception.

There was some disagreement among the planners interviewed as to how to treat conversions. Several consultants felt that conversion is a use of neighborhood, rather than community-wide significance, and that it should be permitted by right in districts where it is economically necessary. Others felt that conversion is best treated outside the zoning ordinance in the building code, with limits to be enforced on the landowner directly by the building inspector. Only a few consultants stated a need for using the special exception provisions with regard to conversion. These planners considered limits upon its administration essential, naming density standards and conditions regarding exterior changes as being particularly necessary guides.

V Institutional uses and utilities

Special exceptions falling into this category are private educational institutions, hospitals and other medical institutions, philanthropic uses, any of the municipal uses, telephone exchanges, and public utilities. They are usually permitted by special exception either in single residence districts alone, or in any residential

district. Such uses are usually permitted by right in any non-residential district, or where not made special exceptions, are permitted by right in any district.

There are few limits placed in Massachusetts by-laws to guide the administration of these uses. Occasionally, private educational institutions, such as nursery schools, are required to have dense planting or fencing at the edges of public ways. Sometimes hospitals or medical institutions are given set-back requirements. No guides were found in local ordinances for utilities.

Only a few consultants felt that institutional uses and utilities should be special exceptions. Those of this opinion felt that only one or two of such uses would be needed in most communities, and that providing for them by special exception would give the community an opportunity to fix their location. With regard to utilities in particular, a small number of those interviewed felt that even though the state might order location within the community, the town might have an opportunity to influence design if the special exception provision were used.

The majority of the consultants viewed institutions and utilities as logical uses to be permitted by right or directly prohibited in the zoning ordinance. A few suggested that hospitals and other philanthropic institutions have parking and set-back requirements written directly into the zoning ordinance, without having the use go to a local board for approval. With regard to utilities, most of the planners felt that the Massachusetts Department of Public Utilities would place such uses where it wanted them, anyway, and that it would be useless to employ the special exception as a locational device. The view of trained planners that institutions and utilities should not be special exceptions is contrary to general practice in Massachusetts, where such uses appear among the most common special exceptions in local ordinances and by-laws.

VI Less intensive commercial uses

The special exceptions grouped in the category of less intensive commercial uses include the neighborhood store, the funeral parlor or mortician, and the private club. All of these uses are generally permitted by right in business districts, but are permitted by special exception in residence districts.

When a neighborhood store is allowed in a residence district by special exception, the granting board must

usually find that there is public necessity for the use, and occasionally must also receive the consent of a percentage of the abutting land-owners. A private club is often limited in the number of sleeping rooms it may have, and may also be required not to serve alcoholic beverages and not to be operated for profit. No limits or guides were found in Massachusetts ordinances or by-laws for mortuaries.

None of the consultants interviewed believed that a neighborhood store should be permitted in a residence district by special exception. They held that as a business use, it should be permitted only in a business district, and that if such a district is found necessary in the middle of a residential area, it should be zoned outright. The same feeling held true for the mortuary, although not unanimously. Most planners considered it a business, and not a reasonable special exception in a residence zone. Some found it a permissible special exception in a business zone, but suggested that strict parking requirements be set and that access and egress be reviewed by the granting board, since the funeral parlor might generate a great deal of traffic. It is interesting to note that limits of this type, although favored by the consultants, do not currently appear in any Massachusetts zoning ordinance.

VII More intensive commercial uses

This group includes the commercial amusement and the commercial garage or filling station. These uses are permitted by special exception in business districts. Usually they are permitted by right in industrial zones, and where not mentioned as special exceptions, are also permitted in business zones.

The commercial amusement is not frequently limited within the zoning ordinance. In two ordinances there is a requirement that the use must be at least 1000 feet within the business district, apparently to insure its distance from residential uses to which it might be a detriment. It should be mentioned that often commercial amusements, instead of being treated as special exceptions, come under the licensing powers of the council or selectmen.

The garage or filling station is often surrounded by numerous conditions. It may have to be removed a certain distance from the boundary of the business district, and it may have to be located a certain distance away from parks, schools, churches, and municipal buildings. Set-back requirements are frequent, as are the conditions that all cars must be serviced on the property, and that there must be no outside storage of vehicles.

The majority of planners felt that both these uses

were valid special exceptions, because of the community-wide effects they might have upon traffic, noise and appearance. Most concluded that there should be well-defined limits in the zoning ordinance upon the granting of both these uses, particularly the case of the filling station, which should have set-back requirements, and review of the safety of access and egress. The latter suggestion does not at present appear in most of the Massachusetts by-laws and ordinances reviewed. In general, most of the consultants seemed to feel that the body granting special exceptions should have as many guides for the permission of gas stations as for almost any other special permit.

VIII Industrial uses

These uses are junk yards and the common nuisance industries, such as abattoirs, chemical plants, and drop forges. They are usually permitted by special exception only in industrial districts. When not special exceptions, these uses are usually prohibited by the zoning ordinance, or are permitted by right only in heavy industrial districts. In some zoning ordinances, light manufacturing of any kind is provided for in business districts by special exception. (Where this occurs, the community generally does not have a specific industrial district delineated in its ordinance or by-law.)

Junk yards are commonly required to be a certain distance from a public way. For the other industrial uses mentioned, few limiting clauses occur, the local ordinances relying only on the judgment of the granting board.

Most consultants questioned felt that the junk yard should be a special exception, if permitted at all within the community. All favored heavy limits within the by-law in order to prevent undue nuisance. Such safeguards as proper screening, set-back requirements, and minimum area were suggested.

With regard to making nuisance industries special exceptions, and allowing industrial uses in business districts by special exception, most planners felt that these might better be included within the zoning ordinance by right, or specifically excluded. They felt that a special district should be provided for industrial uses if they were to be permitted at all, and that any industrial nuisance might better be excluded altogether than placed under the jurisdiction of a local board of review.

It is interesting to note that although the majority of planners felt that these nuisance industries should not be permitted by special exception, none mentioned the possible alternative of permitting them under a system of performance standards. Performance standards for industrial uses have been growing in favor and in

publicity.¹ It seems possible that nuisance industries of the types mentioned might be permitted by right in certain industrial districts provided their nuisance value was under the standards set for nuisance qualities, as measured by performance zoning.

IX Nonconforming uses

Where nonconforming uses are treated by special exception in Massachusetts zoning by-laws, provisions apply to any nonconforming use in any district. The most common situations requiring special permit are: any change in a nonconforming use, extension of a nonconforming use, restoration of a nonconforming use after damage, and continuation of a nonconforming use after abandonment.

Where change or extension are provided for by special exception, the board is usually required to find that the use will not be more detrimental to the neighborhood and community and will not be different in character than it was before. A limit is often placed on the amount a use may be extended, based upon a percentage of its present land area, floor area, or bulk. It is common to require that a nonconforming use may not be restored if it has been damaged beyond a certain percentage (75% is usual),

¹For example, see Dennis O'Harrow, Performance Standards in Industrial Zoning, National Industrial Zoning Commission. 1953. 16 pp.

and in this case, the board of appeals is given the power to make the finding of fact. Often the number of years within which a nonconforming use may be rebuilt is limited, two years being the common duration.

It is apparent that the last two instances are not really cases of special exception action by the local board. In fact, some local ordinances state that in all cases requiring permission for alteration or restoration of nonconforming uses, the board must make a finding of hardship. Some ordinances, too, do not allow any change in nonconforming uses, unless a variance is granted. In any event, the question of how to treat nonconforming uses is a moot one.

Some consultants felt that since such uses are prohibited by the terms of the zoning by-law, there should be no leniency granted to them except through the variance, where they must prove hardship. Others felt that a certain amount of clemency in cases of damage and abandonment might be necessary, but that this could be handled directly in the zoning by-law. Still other planners considered nonconforming uses elements of great importance to the general character of the community, and for this reason advocated use of the special exception in order to have such uses reviewed in the light of their possible detriment. In order to analyze the basic philosophies of

zoning which underlie these opinions, one would need to launch extensive study into the problems of nonconforming uses. Such study was not considered within the scope of this thesis.

X Earth removal

Provisions stating that removal of loam, sand, gravel, and stone may not take place except by permission of the board of appeals or other local body, appear in most zoning by-laws in Massachusetts. Earth removal by special exception seems to have the distinction of being not only the most common use of the special permit, but also the most heavily limited. (This is probably largely due to the informative activities of the planning division of the Massachusetts Department of Commerce.)

Many earth removal provisions require site plan approval, either by the granting board itself, or by the planning board. Most of these state that grades and depths of removal, distances from public ways, and plans for re-grading and re-planting should appear on the plan. The local board must often find that the earth removal in question will take place a certain distance from public ways and lot lines. Frequently there must be no excavation beyond the angle of repose of the material which is to be removed. The granting body is usually allowed within the

by-law to attach conditions upon the applicant such as the following: requirements as to regrading and reseed-
ing, time limit on operations, maximum depth of excava-
tion, and method of transport of materials. A perfor-
mance bond may often be required of the applicant, to in-
sure the fulfillment of these conditions. Most of these
limitations are more concerned with how the permittee will
operate the use, than with whether or not the board should
grant it.

Most of the consultants felt that earth removal, be-
cause of its possible long-term effects upon the communi-
ty, is a proper use of the special exception. All stated
that such guides as the above should be placed in the
zoning ordinance. A suggestion was made in one case that
these limits, since they are primarily concerned with how
the operations are to be carried on, and not with whether
or not the use should be allowed, should be placed in the
ordinance to fall directly upon the excavator.

XI Accessory uses

Into this category fall the following special excep-
tions: a private garage for more than three cars in a
residence district, a customary indoor or outdoor home
occupation in a residence district, and signs larger than
ordinarily permitted, in any district. The first two of

these uses are usually permitted by right in residence districts, where not allowed by special exception. Signs any larger than specifically allowed are usually prohibited in any district, unless the special exception provision is used.

The accessory residential garage is not usually subject to any guides for its permission. Home occupations are frequently limited in the number and size of signs they may display, and on the percentage of floor area which may be used for the purpose. A frequent limitation on outdoor occupations is that there be no outside storage.

Most of the zoning practitioners interviewed considered these accessory uses cases for outright prohibition, or for permission, with limits stated directly on the use in the ordinance. The majority felt that limits on signs should be emphatic in the by-law, and that any change in such limits should be due only to hardship factors. A number suggested that a parking ratio as well as the usual limitations, be set in the by-law for home occupations. The general feeling on accessory uses seemed to be that since they affect only the immediate environment, there is no need for them to go to an administrative body for approval as long as conditions can be placed in the by-law to prevent them from being a detriment to their surroundings.

XII Miscellaneous

Since these uses defied classification, the aspects of each will be discussed individually.

A frequent occurrence in Massachusetts zoning by-laws is the special exception for a temporary use which does not conform to the requirements of its zone. This applies primarily to temporary sheds and trailers incidental to construction operations. Many by-laws state a time limit for the use of these temporary structures. Most consultants felt that the inclusion of this type of use as a special exception was unnecessary. It was expressed that such situations could be handled by direct permission in the by-law, subject to time limitations.

Some zoning ordinances provide for any use in a light industrial district or in any industrial district, to be permitted by special exception. In such cases site plan approval is sometimes required, with the local board required to see that the use is properly within set-back and parking standards, and that the use is a certain distance away from any residential structure. All the consultants interviewed were in agreement that this type of provision indicated poor zoning practice. Many indicated that in drafting a zoning ordinance, the types of uses to be permitted and prohibited within industrial districts should be spelled out, with limitations directly on the builder.

They felt that the practice of leaving basic decisions on all the types of land use within a zoning district to the board of appeals was "sloppy" zoning.

This review of the most common special exceptions in Massachusetts local ordinances and by-laws reveals that there is wide use of the special exception in zoning. Most of the planners interviewed were appalled at the number and variety of types of special exceptions being employed. In fact, there are many more uses of the special exception which, because of their infrequency, have not been discussed in this text.¹ The consultants all seemed to feel that the special exception should be sparingly used, only for those planning purposes for which it is best suited. All decried the use of the special exception simply as a repository for any use about which the author of the zoning ordinance found it difficult to make a decision.

Review of individual special exceptions indicates also that there is room for many more specific limitations within the zoning by-law, both upon the administrator of the exception, and upon the applicant. Many of the special exceptions discussed appear to have less limits upon their approval than trained planners feel should be the case. This calls for suggestions as to what criteria should be used to determine these limits and guides, and suggestions as to what these limits should be.

¹For all special exceptions in Massachusetts, and the frequency of their occurrence, see Appendix A.

Summary

The reasons for using the special exception as a planning tool are, in general, to provide safeguards for uses where factors of design or nuisance are important, to establish location, to define the use, in terms of its particular characteristics, and over all, to provide sensitivity of zoning regulation. Most Massachusetts zoning ordinances employ some special exceptions and many use a large number. Most frequently, the special exception is administered by the board of appeals, but the selectmen or city council and the planning board are also administrators in some communities. Planning consultants appear to favor the use of the planning board as an administrator, or at least, as a referral agency for special exceptions, because it is informed in planning purposes. The administrators of the special exception are limited in most ordinances or by-laws by a general admonishing clause which expresses the broad purposes of zoning. They may also be limited with regard to each individual special exception, but review of the common special exceptions in Massachusetts shows that there are far fewer specific limits and guides than trained planners would like to see. Furthermore, the special exception is being used in many more areas than those advocated to fulfill planning goals by the consultants interviewed.

Conclusions

This examination of the use of special exceptions in Massachusetts and the safeguards and limitations upon their administration has led the author to believe that there needs to be reappraisal of the special exception at both state and local levels of government.

I Statutory Limits and Guides in the Enabling Act:

1. The definition of the special exception needs to be more clearly stated in the enabling act, so that both the courts and the local boards will be able to distinguish its use and its administration from that of the variance. The act should also spell out the broad limitations governing the administration of the special exception in the section of the act which deals with exceptions, so as to provide a more obvious guide to local boards. It should also be made clear that more specific limitations than those mentioned may be imposed by the local zoning ordinance. This latter statement might encourage greater use of the more specific limits.
2. The enabling act should specifically allow for the planning board to be an administrator of the special exception. The planning board is considered by the author to be the local administrative agency best

sued to applying to special exception administration the planning goals expressed in the zoning map and the comprehensive plan. Its qualifications are particularly applicable in cases where review of site plan, design, and over-all effect upon the community are called for.

By allowing greater use of the planning board as an administrator, new uses for the special exception might be possible. For example, the planning board might be authorized by the local ordinance to allow "special development plans," over-all subdivision layouts on large tracts, with certain design features that do not comply with specific regulations, but which add to the general amenity of the development.¹ This kind of use of the special exception could promote both visual and physical advantages, but could only be adequately administered by a body familiar with the broad planning goals of the community.

The author feels that planning board administration of the special exception is not only desirable in these specialized cases, but for all other

¹For an example of such a provision see Proposed Revision of Zoning By-Law for Amherst, Massachusetts. Prepared Sept. 1, 1957, p. 18.

special exceptions as well. Although a number of the consultants interviewed felt that this practice might involve the planning board in too much administrative detail, it seems unlikely to the author that small or medium-sized communities would find this a burden. In larger cities, the greater portion of the administrative detail might be circumvented by providing for a zoning administrator, as in Los Angeles, to decide the bulk of special exception cases, leaving to the planning board only those of the greatest community importance. The enabling act, as well as allowing for the planning board to administrate special exceptions, should also allow for such a zoning administrator.

3. Although use of the planning board as administrator is the author's recommended practice, the door should be left open for use of the planning board as a referral agency. This type of administration may be almost as desirable as the former, for mandatory referral makes it possible for the planning approach to be brought to bear, although not as directly. Some communities may not wish to exclude the use of the board of appeals in special exception administration, and for these the use of the planning board as a referral agency should be stressed. The enabling

act should clearly state that it is possible to use the board in this manner. Although this practice is legally acceptable in Massachusetts, the infrequency of planning board referral seems to indicate that some advertising is necessary.

II General Limits and Guides in the Local Zoning Ordinance or By-Law:

1. Local ordinances and by-laws should clearly define what the special exception is. Even the Massachusetts courts do not always seem to know whether they are considering a special exception or a variance case, and it is likely that this confusion is even more evident on the level of local administration. In its definition, the ordinance should make it clear that the special exception is not decided on the basis of individual hardship, but rather on the basis that certain conditions are present or will be complied with.
2. The general conditions or characteristics which the administering board must consider in making its decisions on special exceptions should be stated along with the definition. These general guides are not only important in admonishing the administrator, but they are also necessary in order to give the applicant an idea of where he stands. Such general

guides as the following should be set forth:

- a. The board must find that the premises are reasonably adapted to the proposed use.
- b. There must be no detriment to health, safety, general amenity, or neighborhood character in amounts sufficient to devalue neighboring property or to seriously inconvenience neighboring inhabitants.
- c. In all cases, the general influence of the use upon the community as a whole should be considered. Such questions as traffic load upon public streets, load upon the municipal water and sewage systems, and possible detriment to general community amenity should be considered.

III Specific Limits and Guides in the Local Zoning

Ordinance or By-Law:

1. One of the best ways to prevent over-abundance in the number of special exceptions is to limit the number of special exceptions possible. The special exception can only be a useful planning tool if it is applied to those situations where it can be of real service, instead of being used as a means of disposing of uses about which no planning decision has been made. Valid reasons for using the special exception are: to apply individual controls in instances where design, nuisance factors, definition, or community-wide effect are important, and to fix location in instances where advance planning is not possible. In line with these

purposes, airports, cemeteries, the sale of farm produce, garden apartments, motels, trailers, funeral parlors, private clubs, commercial amusements, commercial garages and filling stations, junk yards, and earth removal need to be permitted by special exception. On the other hand, many uses to which the special exception is now being applied, such as the neighborhood store in the residence district, the keeping of livestock in agricultural districts, and hotels in business districts, can better be dealt with by outright permission or prohibition. Many of the uses which lie in the "twilight zone" between these two alternatives, such as open recreational activities, conversions, and accessory uses, could be permitted in certain districts subject to limits set forth in the ordinance directly on the landowner.

2. Once a number of special exceptions have been decided upon, these should be surrounded by enough limits and guides to effectively bring them up to the level of other uses in the districts in which they are to be permitted. The author suggests the following specific limits and guides for the special exceptions recommended above:

- a. Airports: Regulation of distance from densely-populated areas, some method of sound screening such as densely planted tree barriers, parking requirements, and adequate access and egress.
- b. Cemeteries: Screening and set-back requirements.
- c. Sale of farm produce: The requirement that produce must be grown on the premises, set-back requirements, and adequate access and egress.
- d. Garden apartments: Lot area and coverage requirements, set-back requirements, minimum space between buildings, parking requirements, adequate access and egress, and over-all site plan approval. (Density and height limits can be handled, respectively, by the building code and directly in the zoning by-law.)
- e. Motels: The same general limitations as above, with stress on over-all site plan approval.
- f. Trailers: Minimum lot area, set-back requirements, minimum space between trailers and maximum number of trailers to be allowed in trailer camps, adequate disposal of wastes and provision for utilities, and over-all site plan review for trailer camps.
- g. Funeral parlors: Minimum lot area, coverage, and set-back requirements, limits on size of signs and exterior changes in the structure, parking requirements, and adequate access and egress.
- h. Private clubs: The requirement that the club cannot be conducted for profit if allowed in a residence district, a limit on the number of sleeping rooms, parking requirements, and adequate access and egress. (Sale of alcoholic beverages can be handled outside the zoning ordinance.)
- i. Commercial amusements: An adequate size of tract or screening to prevent undue noise, set-back requirements, parking requirements,

adequate access and egress, and definition of the types of amusements intended to be covered by the by-law.

- j. Commercial garages and filling stations: Set-back requirements, adequate access and egress, inside storage and repair or adequate screening of outside repair, and the requirement that all vehicles must be serviced on private property.
 - k. Junk yards: A minimum distance from residential neighborhoods, set-back requirements, and adequate screening and fencing.
 - l. Earth removal: The requirement of a plan to show grades and depths of removal, soil types to be removed, and proposed regrading and re-planting, a minimum distance from property lines and public ways, safe transporting of materials, a time limit on operations, and the requirement of a performance bond.
3. Since the administering board may attach further conditions upon the applicant as it sees fit, it may be helpful, particularly if the administrator is not the planning agency, to make available to it, outside the zoning ordinance, some kind of "training manual." This could state the problems which occur with each type of land use, and the types of safeguards which might be imposed to meet these problems.

Summary

In essence, the conclusions of the author are that in order to increase the effectiveness of the special exception in Massachusetts, its definition and possible administrators need to be more clearly spelled out in the enabling act. On the local level, the special exception should again be defined, and the broad guides for its administration clearly stated. The special exception can be of more value if its use is limited to those cases where the administrative review it provides is most needed. For these uses, a number of specific guides and limits to the board's judgment need to be provided in the ordinance, and greater use should be made of the planning board as administrator. The special exception helps to apply to zoning a certain measure of delicate judgment. Without this attention to detail in individual cases, zoning might become too much a legal monolith, unadaptable to human needs. But without adequate checks against the misuse of human judgment, a tool such as the special exception could turn zoning too far toward "a rule of men."

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7. John T. Howard, Adams, Howard and Greeley, Planning Consultants, Cambridge, Mass.
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Appendix A

Special Exceptions in Massachusetts Zoning Ordinances and By-laws

ZONES IN WHICH PERMITTED

USES PERMITTED	AGRIC.	SING. RES.	2-FAM. RES.	GEN. RES.	ANY. RES.	RE-LOC. G.N. BUS.	GEN. BUS.	ANY. BUS.	LT. IND.	H.Y. IND.	INY. IND.	ANY. DIST.
FARM		A1, M12, N6	M12	N6	L10, M19, W8							
NURSERY, GREENHOUSE		A1, A4, H11, L5, L7, M9, M12, N9, N11, W2, W4, W23, W24	B1, M12, W2, W4	W2, W24	A8, A9, A10, H10, D9, F5, H1, H8, L1, L2, L4, L6, L10, L11, M11, M19, N8, M14, O2, P6, S3, S6, T3, W4, W15, W17, W20, W22, Y1		S3	P6				C8, L13
SMALL LIVESTOCK, KENNEL, VET.	S15, W2	A1, D1, D3, D5, H1, L5, L9, M6, M8, M9, N11, S5, S17, W2, W4, W24	B1, M6, P5, W2	D1, M6, S4, W2, W24	A2, A7, B6, D3, F5, H8, H9, L1, L2, L10, M11, M14, M15, M18, N14, O2, P1, P3, P6, P9, S5, S10, W9, W10, W14, W15, W20, W22		W4	A2, P6	C4			B6, L13, S2, S19
LARGE LIVESTOCK, STABLE	H13	A1, A4, A8, B3, B5, B8, D3, D5, F7, G2, L5, M9, N6, N11, S5, S17, W6, W24	B1	N2, N6, W24	A7, A9, A10, B2, B10, D6, H1, H1, L6, L10, L11, M7, M15, N7, N14, O2, P1, P2, P3, S3, S5, S6, T3, W10, W17, W20, W22		S3	A4, A5, B2				L13, L14, M10, P8
SALE OF FARM PRODUCE	S15	A1, D1, D5, L14, M8, S5, S15, W6		B1, H15, T4	B8, M15, P6, S3, S5, W21	L14	L14, S3	P6				A5, L7, P3
ICEHOUSE, CIDER-MILL, SAWMILL		H11, L5, N9, N11, W4		N2	A2, A7, D6, F5, H8, H1, L1, L2, L6, M7, M11, M18, N14, O2, P6, P9, W14, W15, W22			A2, P6				F3, M10
GOLF CLUB, BOATHOUSE, SKI TOW, PUB. BEACH	S15, W2	B5, D1, D3, D5, H2, H11, L5, L14, M9, M9, N11, O1, S15, W2, W4, W6, W24	W2	D1, D3, N2, T4, W2, W4, W24	A7, A9, A10, B2, B10, D6, F5, G6, H6, H8, H1, L1, L2, L4, L6, M11, M14, M15, M18, W20, P1, P3, P5, P7, P9, S3, S6, S10, T3, W10, W14, W15, W20, Y1	H13, S13, S16	L14	L14, S3	P6, P7	C4		C8
CHILDREN'S CAMP		L14, W4	W4		A7, B6, W7, M15, O2, S6, S10, Y1	S16						
CEMETERY	L3, N5, S15, W2	A4, A5, B3, B6, D1, D3, D5, F5, G2, H2, L5, L8, M2, M8, M9, N9, N11, S15, S17, S19, W1, W4, W5, W19, W23, W24		D1, D3, N2, T4, W4, W24	A9, B2, B10, D3, D6, O4, O6, H6, H8, H1, L4, L6, L10, W7, W11, M13, M15, M18, M19, N14, O2, P1, P2, P3, P6, P7, P9, S3, S6, S10, S11, T2, T3, W9, W10, W14, W20, W22, Y1		S3	L8, P6, P7				L13, M10, N1, N3, P8, S2
AVIATION	F3, N5, L3, S15, W2	A1, A8, D3, D5, H1, H11, L5, L7, M9, N11, W4	P5	H7, N2, T4	A7, A9, A10, B2, D3, D6, F3, G6, H8, H1, L1, L4, L6, L11, L11, M7, M11, M13, M14, M15, M18, N20, N7, N14, O2, P1, P6, P9, S3, S10, S11, S16, T3, W10, W14, W20, W22, Y1		S3	P6	C4			B6, C8
ANY DWELLING								H3	D1, L7, W2	D1	H3	
GARDEN APTS. OR ROWHOUSES		C8, L7	F4, M6, N6, W13	A8, F4, N6, P5, W24	N6							
APARTMENTS		A4, N17	B1	C4, L3, M8, W24	A10, O6, H6, L6, O2, R4, W22			F3, H8, L9				M10
LODGING HOUSE	S15	A5, A8, F3, F7, L8, L14, S15	B1	D1, N6, W2	A2, A10, B8, C7, G4, O4, L6, L10, L18, M15, S3, S16, T2, T3, W22, Y1	L14	L14, S3					C8, N1

OPEN AND AGRICULTURAL

RESIDENTIAL

Special Exceptions in Massachusetts Zoning Ordinances and By-laws
(Continued)

USES PERMITTED	ZONES IN WHICH PERMITTED												
	AGRIC.	SING. RES.	2-FAM. RES.	GEN. RES.	ANY RES.	RE-C'N	LOG BUS.	GEN. BUS.	ANY BUS.	LT. IND.	H'Y IND.	ANY IND.	ANY DIST.
HOTEL	R8,S15	A4,A5,F3,G2,L7,O1,S15	R1,L7	C4,S21	A10,G4,G6,H6,L6,O2,S16,T3,W22,Y1			S3	S19,T4			N10	L3,M0,N1
	R5,N8	G2,N9		D1	K1,L2,O2,P2,P3,P6,W22,Y1		T2	S3,W14	D6,K1,P1,P6,R9,S19,W14	C4,H7,P5		N10,S19	R5,R8,H10,M7,M10
		A4,R1,G2,N9			D5,F5,K1,L2,M7,M14,W20,W7,F6,S10,W15,Y1			W4	B2,D6,F1,P6,R9,S19,W10,W14	C4,H7,P5		S19	A1,A4,R6,C7,G3,H4,M5,M7,N3,P8,W,W27
CONVERSION 1 FAM. - 2 FAM.	R3,F4,W12	A3,A6,A8,B1,C4,G8,DI,F2,F4,F7,H2,I7,I8,L14,M1,N6,N9,O1,S1,S14,S17,S19,W3,W12,W23,W24	R1,S12,W3	D1,H7,L3,N6,W24	H8,D6,F4,H1,H8,M6,M14,M15,M19,M20,N7,F7,R9,S8,S10,W14,W21		L14,W23	L14,W23	P7				A5,O2,G3,O4,H10,L13,M4,M10,N3,P2,R5,S16,W6
	B8	A4	A1,K1,W12		S16								
	W2	F3,M8,S17,W1,W2,W7	L12,N9,W2,W13	A8,F7,L5,P5,S1,W2,W3	A2,A10,B10,C7,G6,H13,L6,L9,M17,O2,W9,W10,W20,W22				W2				B4,F1,H4,P3,P4,S2
PRIVATE EDUCATION	S15,W2	A4,A8,B13,C4,DI,F7,H7,I7,L8,L14,M8,N6,N5,S15,S19,W2,W7,W19,W23,W24	R13,W2	D1,N6,W2,W24	C7,H5,I10,M7,M8,N8,P1,F7,S2,S5,S10,W14		L14	L14	L8,P7				L3,N3
		M8,O1											
RELIGIOUS INST.	S15	A4,A5,A8,B3,DI,D3,D5,G2,H2,I5,I7,I8,L14,M6,N9,M12,N6,N9,N11,N17,S5,S15,W1,W5,W7,W19,W23,W24	R1,M12,P5	D1,D3,N2,N6,N17,T4,W24	A6,A9,A10,B2,R10,C7,D3,D6,G4,G6,H6,H8,K1,L4,L6,L10,M6,M7,M14,N8,O2,P2,P1,R1,S6,S10,S16,T2,T3,W8,W14,W17,W20,W22,Y1		L14	L14,S3	L8,P6,P7				C8,I13,M10,N3,R3,R5,S2
	S15,W2	A4,A5,A8,B3,DI,D3,D5,N3,P3,F4,F7,G2,H2,H7,I5,I7,I8,L14,M2,N9,N6,N9,N11,N17,S5,S15,W1,W2,W4,W5,W7,W12,W19,W23,W24	R1,P5,W2,W16	D1,D3,N2,N6,N17,T4,W24	A6,A9,B2,C7,D3,D6,G6,H6,H8,I3,L4,L6,L10,M7,M13,M15,M19,N14,P1,P2,P6,P7,R9,S3,S5,S6,S10,S11,S16,T3,W8,W17,W20,W22,W25,Y1		L14,W23	L14,S3,W23	L8,P6,P7				L13,M10,P8,R3,R5,S2
HOSPITAL OR MEDICAL INST.	S15,W2	A4,A5,A8,B3,DI,D3,D5,N3,P3,F4,F7,G2,H2,H7,I5,I7,I8,L14,M2,N9,N6,N9,N11,N17,S5,S15,W1,W2,W4,W5,W7,W12,W19,W23,W24	R1,P5,W2,W16	D1,D3,N2,N6,N17,T4,W24	A6,A9,B2,C7,D3,D6,G6,H6,H8,I3,L4,L6,L10,M7,M13,M15,M19,N14,P1,P2,P6,P7,R9,S3,S5,S6,S10,S11,S16,T3,W8,W17,W20,W22,W25,Y1		L14,W23	L14,S3,W23	L8,P6,P7				L13,M10,P8,R3,R5,S2
	W2	D1,D3,D5,H2,I5,L7,I14,N11,W2,W23,W24	R1,W2	D1,D3,W2,W4,W24	A9,A10,B10,D3,D6,G6,L4,I10,M15,N5,N14,O2,P2,R9,T3,W20,W25,Y1								A10,C8,I3
PHILANTHROPIC INST.	S15,W2	A4,A5,A8,B3,DI,D3,D5,N3,P3,F4,F7,G2,H2,H7,I5,I7,I8,L14,M2,N9,N6,N9,N11,N17,S5,S15,W1,W2,W4,W5,W7,W12,W19,W23,W24	R1,P5,W2,W16	D1,D3,N2,N6,N17,T4,W24	A6,A9,B2,C7,D3,D6,G6,H6,H8,I3,L4,L6,L10,M7,M13,M15,M19,N14,P1,P2,P6,P7,R9,S3,S5,S6,S10,S11,S16,T3,W8,W17,W20,W22,W25,Y1		L14,W23	L14,S3,W23	L8,P6,P7				L13,M10,P8,R3,R5,S2
MUNICIPAL USE	W2	D1,D3,D5,H2,I5,L7,I14,N11,W2,W23,W24	R1,W2	D1,D3,W2,W4,W24	A9,A10,B10,D3,D6,G6,L4,I10,M15,N5,N14,O2,P2,R9,T3,W20,W25,Y1								A10,C8,I3
TELEPHONE EXCHANGE	M3	A8,C2,F7,G2,G4,H2,I5,I7,M3,N9,S5,W1,W7,W23	R1	R13,C3,D3	A10,B10,G6,L6,M14,O2,S5,T3,W21,W22,Y1								L13
ANY PUBLIC UTILITY		R5,L8,M2,M8,O1,S15,S17,W4	W4		M13,P6,P7,S10,S11,W20				R2,H13,L8,P6				A10
OFFICE OR BANK		P5	R7		L4		B3,W6		T4				A10
NEIGHBORHOOD STORE	A5,B8	N9,W4	W4	T4	A9,F5,L4,M16,S16,T2		L14	L14	T4			N10	
REST HOME		G4,I14			A2								
MORTICIAN	S15	L14,M12,S15,W19	M12,N7	W15,W2	A2,C7,H8,L13,M15,M16,P6,S16,W20		L14,S21	L14	A2,A4,P6,W19				N1
PRIVATE CLUB	S15,W2	A5,B13,C4,DI,L7,L8,M2,M8,M12,N4,N6,S15,W2,W5,W23	R13,M12,W2	R13,DI,N6	A10,C7,G6,H1,H8,L6,L10,M7,M14,M19,M20,O2,P6,P7,R4,S10,T3,W15,W17,W20,W22,W25,Y1				L8,L10,P6,T4				N3

Special Exceptions in Massachusetts Zoning Ordinances and By-laws
(Continued)

		ZONES IN WHICH PERMITTED													
USES		AORIG.	SING. RES.	2-FAM. RES.	GEN. RES.	ANY RES.	RE-GEN.	LOC. BUS.	GEN. BUS.	ANY BUS.	LT. IND.	HY IND.	ANY IND.	ANY DIST.	
COMMERCIAL	RESTAURANT	B8	A4,S15			P6,M15		O8		E1,T4			M10	A10,L13,S16	
	NEWSPAPER									B8				A10	
	PLACE OF ASSEMBLY							B3		L10,S13,S19			S19	A10	
	COMMERCIAL AMUSEMENT	B8,B2	A4,B2,W5 W23		H15	P6,W22	H13, S13	B3,T2	M17,W23	E1,F1,H2 H10,L8,L10 M10,M14,M16 S10,S13,S15 T4,W2,W19	H7		M10	B8,L13,R3 S2,S16	
	RADIO STATION	L7	H10,M6,M9			F1				N2					
	DRIVE-IN MOVIE		H9			M14		W23	H8,W23		P5		S13		
	COMMERCIAL GARAGE, FILLING STATION	A5,B8,M5	H1,F7,O2	H1	H15,T4	A7,F5,L11		A6,B3 B5,B6 L7 M17 H10 P5 S21 T2 W25	D1,N6,S3 W12	A4,A5,B2 H10,D3,D6 F1,O5,H2,B8 H13,K1,L5 L6,L8,L10 M7,M9,M15 N2,N11,H14 F1,F7,H4,H9 S4,S10,S13 S15,W2,W5 W14,W19,W20 W22,W23,T1			G6,M10	A4,B4,C2,C8 L3,L13,M10 N3,R5,S2 S13,S16	
	ANY BUSINESS USE		A4	H1		B3,M6,M15		B3,L7 M15 W7 W23	W23	A5,H11,H13 L1,L2,L3,M6	L7		B5	A10,M6,P4	
	FRIGHT TERMINAL		L7								F2				
	WHOLESALE OR WAREHOUSE							S21 W6			A2,H13,L3				A10
INDUSTRIAL	OPEN STORAGE		A4,M9		H5	M16		M15 W6	S21	H1,M9,S10 W2,W20			W19	M10,R5,S2	
	JUNK YARD		O2,M6		H15			H15 H6	W4	H1,D6,K1,P3 W21			A3,G6,M4 H2,M6,W18 W19	B8,L13,M10	
	COMMERCIAL PARK- ING LOT		L7,M12	M12					H6	H6	M11			G4,W18	
	ANY LIGHT MANUF.				H15	H3,I3,M16		M15 W3,W6	L14,S3	A4,H1,C7,E1 F5,O6,H6,L2 L8,M7,M18 F2,P6,R4,R6 S15,T3,W7 W10,W22	D1,H7 W2,W6	C4,D1 H7	B2,B10,C2 C3,O6,M6,M7 R9,S10,M10 W14,W19,W23	A10,D4,M6	
	ANY HUISANCE INDUSTRY								A6,L12		W2	F3	A3,B4,C6,E3 E4,H12,L3 L12,M5,M6 H9,O1,S4 S12,S14,M5	B8,S9	
	ANY HEAVY MANUF.													E7,W21	
	NONCONFORMING	CHANGE NONCON- FORMING USE													A4,A5,A7,A8 A9,A10,B1 B2,B4,B8, B10,B11,C1 C4,C7,D1,D3 D4,E2,E3,E4 E5,F4,F7,G1 O3,O6,E2,E5 H6,H10,H11 L1,L5,L6,L9 L13,L14,M2 M4,M7,M8,M9 M13,M15,M17 M18,M4,M5 N7,N8,N9 N10,N11,N14 O1,O2,P1,P3 P6,P8,R3,S3 S9,S11,S15 S16,S18,S19 T3,W2,W5,W4 W6,W7,W9 W10,W11,W14 W15,W18,W20 W22,W23,W25 T1

Special Exceptions in Massachusetts Zoning Ordinances and By-laws
(Continued)

ZONES IN WHICH PERMITTED

USES PERMITTED	AGRIC.	SING. RES.	2-FAM. RES.	GEN. RES.	ANY RES.	RE-COV.	LOC BUS.	GEN. BUS.	ANY BUS.	LT. IND.	H'Y IND.	ANY IND.	ANY DIST.
	EXTEND NONCONFORMING USE												
RESTORE NONCONFORMING USE AFTER DAMAGE													A3, A4, A5, A6 A8, A9, B2, B4 B5, B8, B10 H11, H14, C2 D1, D4, D5, E5 F7, H9, H12 H15, I3, I4, L3 L11, L12, M2 M12, M15, M19 M9, M10, M11 M14, M19, O1 O1, P1, R1, S17 S21, T3, T4, W4 W5, W10, W12 W14, W20
CONTINUE NONCONFORMING USE AFTER ABANDONMENT													A2, A3, A7, B1 B8, C2, I3, M8 M15, M19, M9 M11, M16, P2 P7, R1, S5, S8 S17, W9
EARTH REMOVAL	A5, E3, I10 I12, M3, M17 S5	A4, A8, D3, D5 E1, F7, G2, L5 L8, M11, N6, N9 N11, S5, S19 W4, W5, W7, W24		A16, T4, W24	A2, A7, A9, A10 B2, B10, D3, D6 F5, G6, H1, H8 I1, L1, L2, L4 L6, M11, M13 M14, M18, M19 M20, N7, N14 O2, P1, P2, P3 P6, P7, R9, S5 S11, T3, W14 W15, W22, T1		P2		A2, L8, W17 W24	D4		W2, W19, W24	A3, A4, A6, B4 B5, B8, B14, C2 C3, G6, G7, G8 H1, E5, G4, H7 L7, L14, M8 M10, M12, M10 M17, P5, P8, R3 R5, S1, S3, S6 S7, S9, S13 S17, S18, S19 S1, W2, W6, W12 W12, W19, W20 W21, W25
GARAGE OVER THREE CARS	W2	B3, B13, D1, D3 E5, H2, L5, M2 M9, N6, N11 N17, S5, S17, W1, W2, W5	H13, W2	H1, H13, D1 N6, N17, W2	A9, A10, B9 B10, D3, G6 H6, K1, L4, L6 L10, M7, M19 M14, R3, S3 S6, S10, T3 W20, T1								L13
COMMUNITY GARAGE (OVER TEN CARS)		S11	S11	P5, S11	F7, P2								G2, M10, R3 P2
INDOOR HOME OCCUPATION	S15, W2	L7, N9, S15 S19, W2, W5	W2	H11	A9, F5, H6, K1 L4, L10, M15 M19, N16, O2 P1, F3, W9 W10								F3
OUTDOOR HOME OCCUPATION		A5, E5, G2, M8 S5, S17, W5		H1, H15	G4, H13, S5 T2		H7, L7		A4, F3, L8, P2				L13, M10, N1 N3, R5
PROFESSIONAL OFFICE IN HOME		C8		D1, L3, N6, W2	L13, S6								
SIGNS LARGER THAN PERMITTED		E5, F6, L7 S17, W5		H13, W4	H6, G6, N7, P6 W4, W14	H13 S13 S16		L14, W4, W5	L10, P6, S13 W19, W23			B2	A4, L6, L9, M8 M10, M17, S18
LARGER FLOOR AREA FOR MFG. THAN PERMITTED									F2, W24				A5, N6

Special Exceptions in Massachusetts Zoning Ordinances and By-laws
(Continued)

USES PERMITTED		ZONES IN WHICH PERMITTED												
		AGRIC.	SING. RES.	2-FAM. RES.	GEN. RES.	ANY RES.	RE- C'	LOC. BUS.	GEN. BUS.	ANY BUS.	LT. IND.	H' IND.	ANY IND.	ANY DIST.
MISCELLANEOUS	USE NOT CONFORMING TO ZONING OF DISTRICT		M8, O1, S17			L3								A2, A5, A8, B3 B4, B6, B8, D1 D3, F1, F3, F6 F7, G2, G4, H2 H11, H13, L3 L7, L11, L13 L14, M4, M5 M6, M15, M3 M4, P2, P5, S2 S6, W1, W2, W11, W23
	ANY USE				L13		T2		A7, M1, F1	F3, L13 M10, R3 S16, T2	M10 S11 T2	A3, F1, B6 H11, M3, R3 S2, S8, W1		

Key

<u>Code No.</u>	<u>City or Town</u>	<u>Code No.</u>	<u>City or Town</u>
A1	Abington	E5	Easton
A2	Acton	E6	Essex *
A3	Agawam	E7	Everett
A4	Amherst	F1	Fairhaven
A5	Andover	F2	Fall River
A6	Arlington	F3	Falmouth
A7	Ashland	F4	Fitchburg
A8	Attleboro	F5	Foxborough
A9	Auburn	F6	Framingham
A10	Avon	F7	Franklin
B1	Barnstable	G1	Georgetown
B2	Bedford	G2	Gloucester
B3	Belmont	G3	Grafton
B4	Beverly	G4	Great Barrington
B5	Billerica	G5	Groton
B6	Boston	G6	Groveland
B7	Bourne *	H1	Hamilton
B8	Boxford	H2	Hampden
B9	Boylston	H3	Hanover
B10	Braintree	H4	Hanson
B11	Bridgewater	H5	Harvard
B12	Brockton *	H6	Harwich
B13	Brookline	H7	Haverhill
B14	Burlington	H8	Hingham
C1	Cambridge	H9	Holbrook
C2	Canton	H10	Holden
C3	Carlisle	H11	Holliston
C4	Chelmsford	H12	Holyoke
C5	Chelsea *	H13	Hopkinton
C6	Chicopee	H14	Hudson *
C7	Cohasset	H15	Hull
C8	Concord	K1	Kingston
D1	Dedham	L1	Lancaster
D2	Dennis	L2	Lanesborough
D3	Dover	L3	Lawrence
D4	Dracut	L4	Leicester
D5	Dunstable	L5	Leominster
D6	Duxbury	L6	Lenox
E1	East Bridgewater	L7	Lexington
E2	Eastham	L8	Lincoln
E3	Easthampton	L9	Littleton
E4	East Longmeadow	L10	Longmeadow

* No special exceptions: code no. does not appear on chart.

(Key (continued))

<u>Code No.</u>	<u>City or Town</u>	<u>Code No.</u>	<u>City or Town</u>
L11	Lowell	O2	Orleans
L12	Ludlow	O3	Oxford *
L13	Lynn	P1	Paxton
L14	Lynnfield	P2	Peabody
M1	Malden	P3	Pembroke
M2	Manchester	P4	Petersham
M3	Mansfield	P5	Pittsfield
M4	Marblehead	P6	Plymouth
M5	Marion	P7	Princeton
M6	Marlborough	P8	Provincetown
M7	Marshfield	Q1	Quincy
M8	Maynard	R1	Randolph
M9	Medfield	R2	Raynham *
M10	Medford	R3	Reading
M11	Medway	R4	Rehoboth
M12	Melrose	R5	Revere
M13	Methuen	R6	Richmond
M14	Middlefield	R7	Rockport
M15	Middleton	R8	Rowe
M16	Milford	R9	Russell
M17	Millbury	S1	Salem
M18	Millis	S2	Saugus
M19	Milton	S3	Scituate
M20	Montgomery	S4	Seekonk
N1	Nahant	S5	Sharon
N2	Natick	S6	Sherborn
N3	Needham	S7	Shrewsbury
N4	New Bedford	S8	Somerset
N5	Newburyport	S9	Southampton
N6	Newton	S10	Southborough
N7	Norfolk	S11	Southbridge
N8	North Adams	S12	South Hadley
N9	Northampton	S13	Southwick
N10	North Andover	S14	Springfield
N11	North Attleboro	S15	Sterling
N12	Northborough *	S16	Stockbridge
N13	Northbridge *	S17	Stoughton
N14	North Reading	S18	Stow
N15	Norton *	S19	Sudbury
N16	Norwell	S20	Sutton *
N17	Norwood	S21	Swampscott
O1	Oak Bluffs	T1	Taunton *

* No special exceptions: code no. does not appear on chart.

Key (continued)

<u>Code No.</u>	<u>City or Town</u>	<u>Code No.</u>	<u>City or Town</u>
T2	Tewksbury	W14	Westford
T3	Topsfield	W15	West Newbury
T4	Tyngsborough	W16	Westport *
W1	Wakefield	W17	Weston
W2	Walpole	W18	West Springfield
W3	Waltham	W19	Westwood
W4	Wareham	W20	Weymouth
W5	Watertown	W21	Wilbraham
W6	Wayland	W22	Williamstown
W7	Wellesley	W23	Wilmington
W8	Wellfleet *	W24	Winchester
W9	Wenham	W25	Woburn
W10	Westborough	W26	Worcester *
W11	West Boylston	W27	Wrentham
W12	West Bridgewater *	Y1	Yarmouth
W13	Westfield		

* No special exceptions: code no. does not appear on chart.

Appendix B

Appendix BChapter 40A, Massachusetts General Laws
Sections 3 and 4

Section 3. Zoning regulations and restrictions shall be designed among other purposes to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the city or town; and to preserve and increase its amenities.

Section 4. A zoning ordinance or by-law may provide that exceptions may be allowed to the regulations and restrictions contained therein, which shall be applicable to all of the districts of a particular class and of a character set forth in such ordinance or by-law. Such exceptions shall be in harmony with the general purpose and intent of the ordinance or by-law and may be subject to general or specific rules therein contained. The board of appeals established under section fourteen of such city or town, or the city council of such city or the selectmen of such town, as such ordinance or by-law may provide, may, in appropriate cases and subject to appropriate conditions and safeguards, grant to an applicant a special permit to make use of his land or to erect and maintain buildings or other structures thereon in accordance with such an exception. Before granting such a special permit the board of appeals, or the city council or the selectmen if the ordinance or by-law so provides, shall hold a public hearing thereon, notice of which shall be given in accordance with section seventeen.

APPENDIX C

Appendix C Sample Interview

Note: Interviews were conducted conversationally, with the exception of the list of common special exceptions which the consultant was asked to check and discuss. The following questions were covered in all interviews, but not necessarily in the order given.

1. Name
2. Which of the accompanying list of common special exceptions do you use in writing local zoning ordinances? To which do you specifically object?
 - a. For what purposes were these special exceptions used?
 - b. For what reasons do you not use certain special exceptions on the list?
3. With regard to the special exceptions which you would use, what guides or limits do you suggest be placed in the ordinance to guide the administering body?
 - a. Why are these chosen?
4. In what cases have you required referral to the planning agency regarding a special exception?
 - a. Why, in each case?
5. Do you make provision for the administering body to attach its own conditions upon the applicant?
 - a. What types of condition do you expect the Board to attach?
6. In general, what are your reasons for using the special exception as a zoning tool?
 - a. Can you suggest other "tools" in place of the special exception which might serve these purposes?
7. In general, should the board of appeals or other administering body have broad discretion, or should it be limited to a fact-finding role in granting or denying special exceptions?

Appendix C (continued)Common Special Exceptions in Massachusetts Zoning Ordinances

(To accompany interview)

I Open and agricultural uses

1. Nursery, greenhouse; in single res. or any res. dist.
2. Small livestock, kennel, vet.; sing. res. or any res. dist.
3. Large livestock, stable; sing. res. or any res.
4. Sale of farm produce; sing. res., or any res.
5. Ice harvesting, cider or sawmill; any res.
6. Golf club, boathouse, ski tow, bathing beach; sing. res., general res., any res.
7. Children's camp; any res.
8. Aviation; sing. res., any res.
9. Cemetery; sing. res., any res. any dist.

II Residential uses

1. Garden apts. or rows; any res.
2. Apts; any res.
3. Lodging houses; sing. res., any res.

III Transient residential uses

1. Hotels; sing. res., any res.
2. Motels or cabins; any res., any bus.
3. Trailer or trailer park; any res., any bus., any dist.

IV Conversion

1. 1 fam. to 2 fam.; sing. res., any res., any dist.
2. 1 or 2 fam. to multi-fam. or rooms; sing. res., general res., any res., any dist.

V Institutional uses and utilities

1. Private education; sing. res., any res.
2. Hospital or medical institution; sing. res., gen. res., any res.
3. Any philanthropic use; sing. res., gen. res., any res., any dist.
4. Municipal use; sing. res., any res.
5. Telephone exchange; sing. res., any res.
6. Any public utility; sing. res., any res.

VI Less intensive commercial uses

1. Neighborhood store; any res.
2. Mortician; any res.
3. Private club; sing. res., any res.

VII More intensive commercial uses

1. Commercial amusement; any bus.
2. Commercial garage or filling station; n'hood bus., any bus., any dist.
3. Any bus. use; any bus. dist.

VIII Industrial uses

1. Any light manufacturing; any bus., any dist.
2. Junk yard; any industrial dist.
3. Any nuisance industry; any ind. dist.

IX Nonconforming uses

1. Change nonconforming use; any dist.
2. Extend nonconforming use; any dist.
3. Restore nonconforming use after damage; any dist.
4. Restore nonconforming use after abandonment; any dist.

X Earth removal; any dist.

XI Accessory uses

1. Garage for over 3 private cars; sing. res., any res.
2. Indoor home occupation; sing. res., any res.
3. Outdoor home occupation; sing. res.
4. Signs larger than permitted; any res., any dist.

XII Miscellaneous

1. Temporary use that does not conform to zoning of district; any dist.
2. Any use; light ind. dist., any ind. dist.