

CPTC Guidebook
SITE PLAN REVIEW
Module 6



Citizen Planner Training Collaborative

A collaboration of citizens, nonprofits and government agencies dedicated to providing essential and advanced training to citizens involved in municipal planning and land use.

Citizen Planner Training Collaborative
Planning and Land Use Training Modules

Module 1. Roles and Responsibilities of Planning and Zoning Boards

Module 2. Introduction to the Zoning Act

Module 3. Special Permits and Variances

Module 4. Introduction to Subdivision Control and ANR

Module 5. Reading a Subdivision Plan

Module 6. Site Plan Review

Module 7. Vested Rights and Nonconforming Uses and Structures

Module 8. Zoning Exemptions

Module 9. Fair, Defensible Land Use Decisions

Module 10. Creating Master Plans

Module 11. Planning with Community Support

Module 12. Adopting and Revising Rules and Regulations

Module 13. Design Review

Module 14. Drafting Zoning Amendments

Module 15. Fair Housing Laws

Module 16. Zoning with Overlay Districts

Curriculum content last revised June 30, 2019 by the Citizen Planner Training Collaborative, the team of Barrett Planning Group LLC, Freeman Law Group LLC, and Horsley Witten Group, and Attorney Adam Costa. The following people contributed to Module 6, Site Plan Review: Judi Barrett, Barrett Planning Group, and Nathan Kelly AICP and Jeff Davis AICP, Horsley Witten Group.

Table of Contents

INTRODUCTION	3
Mission Statement	5
Course Objective	6
Overview.....	7
SITE PLAN REVIEW PROCESS.....	9
Authority and Purpose.....	11
Site Plan Contents	12
NAVIGATING SITE PLAN REVIEW	13
Board Powers and Authority	15
Decisions and Appeals	16
Exemptions and Vested Rights.....	18
Site Plan Review vs. Special Permit Process.....	19
WRITING A SITE PLAN REVIEW BYLAW	21
Big Questions	23
Hiring Peer Review Consultants	27
ADDITIONAL RESOURCES.....	29
Sample Site Plan Review Bylaw.....	31
Further Support.....	40

Introduction

Site Plan Review

Mission Statement

The Citizen Planner Training Collaborative's mission is to:

- Empower local land use officials, particularly planning and zoning board members, to make effective and judicious decisions;
- Provide educational opportunities to such officials;
- Provide access to information, tools and resources to assist them in doing their work; and
- Encourage cooperation and collaboration among land use boards.

The CPTC provides training workshops around the state in the fall; an annual spring conference in Worcester; internet access to training modules, best practices, sample bylaws and regulations; and links to a variety of planning resources.

CTPC is itself a collaboration, combining the resources and expertise of the University of Massachusetts Extension, the Massachusetts Executive Office of Livable Communities, the Massachusetts Chapter of the American Planning Association, the Massachusetts Association of Planning Directors, the Massachusetts Association of Regional Planning Agencies, and Mass Audubon.

www.masscptc.org

Course Objective

By the end of this course, you will be able to answer the following:

- What is the purpose of Site Plan Review?
- Where does the authority for Site Plan Review come from?
- What steps are involved in Site Plan Review?
- How is Site Plan Review similar to and different from the Special Permit process?
- How do you write a site plan review bylaw and what should it include?

Overview

WHAT IS SITE PLAN REVIEW?

Site Plan Review is a development proposal review process that communities establish in their zoning bylaw or ordinance. The process gives applicants and local officials an opportunity to review the layout, appearance, safety, and environmental impacts of commercial, industrial and large-scale residential projects, and sometimes public or private non-profit projects such as schools and municipal buildings. Site plan review typically focuses on parking, traffic, circulation, drainage, roadway construction, signage, utilities, screening, lighting, and other aspects of a project to create the best possible design. In some communities, site plan review also includes design review.

The Zoning Act (Chapter 40A) does not specifically provide for or even mention Site Plan Review, but remember: Massachusetts is a home rule state. In several judicial decisions, the courts have upheld Site Plan Review as a reasonable way to regulate development proposals.

Site Plan Review is often triggered by certain **types** of uses (e.g., restaurants, multi-family housing, etc.), or certain **scales** of uses (e.g., commercial uses over 5,000 square feet, any use that requires more than 10 parking spaces, etc.). Communities usually require Site Plan Review for development projects that are more complex than “by-right” proposals requiring only a building permit from the Building Official. For example, construction of a new single-family home would only require a building permit, but construction of new commercial development probably requires and may benefit from Site Plan Review. Even where the use is allowed by-right, Site Plan Review gives the community a chance to review the parking layout, landscaping, drainage, circulation, and other features of a new development before the applicant receives a building permit. It can help your town work with applicants to get the best possible projects for the community.

Site Plan Review

Site Plan Review Process

Site Plan Review

Authority and Purpose

Authority to review and approve a Site Plan differs from one municipality to another precisely because the Zoning Act does not impose uniform Site Plan Review procedures on cities and towns. In most places, the Planning Board administers Site Plan Review, but other models exist

and will be discussed below. Regardless of who has authority to approve a site plan, a common feature of Site Plan Review is distributing plans to local departments for comment (e.g., fire department, DPW, etc.) before a decision is made.

**An important reminder about . . .
THE PURPOSE OF SITE PLAN REVIEW**

Site Plan Review is primarily a *technical* review; it is not a process for reviewing and approving or disapproving a proposed *land use*.

WHAT IS (AND IS **NOT**) THE PURPOSE OF SITE PLAN REVIEW?

✓ **A stand-alone Site Plan Review process (i.e., not associated with a Special Permit) is used as:**

- A platform for discussion and information sharing between municipal officials and an applicant.
- A means to determine compliance with all local zoning requirements for site development.

⊘ **A stand-alone Site Plan Review process is not used as:**

- A tool to determine whether a particular use should be allowed on a site. Whether something is allowed or not has already been determined in the Zoning Ordinance or Zoning Bylaw (e.g., Table of Uses).
- A discretionary review tool that provides an opportunity for the municipality to shape a development proposal. This is done with Special Permits.
- An opportunity for the city or town to impose requirements that are not regulated by the Zoning Ordinance or Zoning Bylaw.
- An opportunity to impose binding conditions that go beyond “reasonable regulation.”

Site Plan Contents

This packet includes a sample Site Plan Review bylaw, but in simple terms, here is what you should expect to see in a site plan from an applicant whose project triggers your Site Plan Review ordinance or bylaw. The applicant will submit a plan, typically on a set of 24" x 36" sheets, prepared by the Registered Professional Engineer, Registered Architect, Registered Landscape Architect, or Registered Land Surveyor. The sheets will include information that will answer such questions as:

ProTip! - Create an Application Checklist

In almost all communities, there is a Site Plan Review application form and checklist that applicants have to fill out and submit with their plans. The application form can be a very important way for you to communicate to applicants the information you need to receive in order to review and act on their plans in a timely way.

- ⇒ What are the boundaries of the site proposed for development?
- ⇒ What are the existing conditions on the site? What easements currently exist?
- ⇒ What is on the property now? Is it vacant or already developed? Are there existing buildings? Roadways? Wetlands? Water?
- ⇒ Is the land flat? Sloped?
- ⇒ What is around the site? What are the surrounding streets? Where are the nearby intersections? What is currently located on abutting land?
- ⇒ What zoning district(s) is the site located within?
- ⇒ What does the applicant propose to build on the site, and where will the buildings be located?
- ⇒ What are the minimum dimensional requirements of the district(s)?
- ⇒ How many parking spaces are required? Where will parking spaces be located? How will traffic move in and out of the site?
- ⇒ Where will pedestrians walk on the site? Are there suitable places for bicycle parking, too?
- ⇒ What utilities serve the site today? Water? Sewer? Other? What are the proposed utilities for this project?
- ⇒ Where does the applicant plan to put signs? Outdoor lighting? Fire hydrants?
- ⇒ What does the applicant plan to provide for landscaping to serve the development?
- ⇒ What will the proposed buildings look like?

The applicant may also submit reports to accompany the site plan, such as a traffic study or drainage calculations.

Navigating Site Plan Review

Site Plan Review

Since Site Plan Review is not provided for by statute, it has evolved through drafting work done at the local level and judicial decisions made on numerous challenges. This imperfect evolution has created some uncertainty for communities looking to implement Site Plan Review or facing a legal challenge against an existing bylaw or ordinance. You should always talk to your Town Counsel or City Solicitor before you try to draft and adopt Site Plan Review. Below is an overview of judicial decisions resulting from appeals of Site Plan Review in a few Massachusetts towns.

Board Powers and Authority

A number of court cases have helped to define the powers and authority for Site Plan Review.

Y.D. Dugout v. Board of Appeals of Canton, 357 Mass. 25 (1970)

The court held that that Site Plan Review should be understood as “regulation of a use rather than its prohibition . . . contemplating primarily the imposition for the public protection of reasonable terms and conditions.” This language sets one of the most important principles of Site Plan Review: where it is attached to a by-right use, it is a tool to share information and determine compliance. *It is not a tool used to shape development in a discretionary manner or deny a use.*

Prudential Insurance Co. of America v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278

The Appeals Court defined the powers of Site Plan Review boards and noted that site plan approval authorities can act in three ways on an application:

1. Deny an application that does not provide the information required by the bylaw or ordinance.
2. Impose reasonable conditions to site plan approval, even at the expense of the applicant. Importantly, appeals cases where conditions have been challenged as “unreasonable” have more often been decided in favor of the applicant. The courts have historically taken a very narrow view over what will be viewed as “reasonable.”
3. Deny site plans where “although proper in form, (the site plan) may be so intrusive on the needs of the public in one regulated aspect or another that rejection by the board would be tenable. . . . This would typically be a case in which, despite best efforts, no form of reasonable conditions could be devised to satisfy the problem with the plan... ” There has not yet been a case at the appellate level where a city or town board found that a denial of this type would be warranted. If a site plan authority denies an application, its decision should clearly explain the changes that would be needed for the project to qualify for approval.

Decisions and Appeals

REACHING A SITE PLAN REVIEW DECISION

Bowen v. Board of Appeals of Franklin, 36 Mass. App. Ct. 954 (1994)

The Appeals Court ruled that **a written decision is not even required by the approving authority** and, further, **a simple majority is sufficient for a decision**. (Remember: special permits and variances require a super-majority – or, for a small three-person ZBA, a unanimous vote.) The ruling that a written decision is not required only serves to complicate things for municipalities, leaving them to wonder how far they must go, or should go, to document their decisions. In general, communities have chosen to take a formal vote and record the vote with the city or town clerk, at which point an appeal period begins.

APPEALING A SITE PLAN REVIEW DECISION

Case law has also complicated the issue of appealing a Site Plan Review decision. Until recently, many municipalities attempting to be consistent with case law have followed this process:

- The approving authority (such as the Planning Board) took a formal vote and recorded the decision.
- If the Board denied the Site Plan, the Town would then require the proponent to apply for a building permit, knowing it would be denied.
- With the building permit denied, the applicant would be able to appeal to the Zoning Board of Appeals (ZBA) under G.L. c. 40A, §§ 8 and 15.

McDonald's Corp. v. Town of Seekonk, 12 Mass. App. Ct. 351 (1981)

A decision was reversed because the plaintiff failed to appeal a decision to the board of appeals before bringing their appeal to the Superior Court.

Quincy v. Planning Board of Tewksbury, 39 Mass. App. Ct. 17 (1995)

Under the provisions of a town's zoning by-law, the planning board's denial of a site plan application constituted a decision by the special permit granting authority that was directly applicable to the Land Court under G. L. c. 40A, Section 17.

St. Botolph Citizens Committee v. Boston Redevelopment Authority, 429 Mass. 1 (1999)

The plaintiffs opposed a preliminary adequacy decision by the BRA and attempted to appeal. However, the court stated that certiorari (i.e., appeal) is a limited procedure which may not be used to appeal administrative, political, or legislative decisions and that "Certiorari cannot be requested where administrative remedies terminating in judicial review are available and unexhausted."

Wildstar Farm, LLC, & others v. Planning Board of Westwood, Rule 1.28 Unpublished Decision, No. 11-P-142 (2012).

In 2012, the Appeals Court brought some clarity to the matter of Site Plan Review appeals when it concluded that an aggrieved applicant can appeal directly to court if allowed by the local Site Plan Review bylaw provides for appeal under G.L. c. 40A, § 17 – that is, the same appeal process available to people aggrieved by a special permit decision.

As a result, there are really two ways that communities can address Site Plan Review appeals:

- The “old” way – by requiring the aggrieved SPR applicant to seek a building permit first and then appeal the denial of the building permit to the Board of Appeals, invoking the process laid out in G.L. c. 40A, §§ 8 and 15; or

An important note . . .

The legal principle behind this arduous process is that an applicant must exhaust all local options of appeal before moving to court. Unfortunately, the procedure described in the above court cases created many problems at the local level. First, having an appeal of a Planning Board decision end up at the ZBA pits “board against board,” which is obviously a fraught situation and carries the perception of conflict. Second, the process of making the applicant apply for a building permit that will just be denied benefits no one.

Communities should consider adopting specific bylaw or ordinance language that directs Site Plan Review appeals to court. It is cleaner, more efficient, and unlikely to create friction between the Planning Board and Board of Appeals.

- The “new” way – by installing specific language in the zoning bylaw or ordinance, directing SPR appeals to the Land Court or Superior Court under G.L. c. 40A, § 17.

Where a site plan is approved with conditions and the decision is appealed, the courts will usually defer to the Site Plan Review authority. However, when a site plan for uses allowed by-right is denied, the court will provide a full review.

Prudential Insurance Co. of America v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278 (1986).

In exercising its power under a town's zoning by-law to approve the site plan for a proposed office building in a zoning district in which office use was permitted as of right, a board of appeals did not have discretionary power to deny approval, so long as the specific area and use criteria stated in the by-law were satisfied. The board of appeals did, however, have the authority to impose reasonable terms and conditions on the proposed use.

Exemptions and Vested Rights

EXEMPT USES

Communities often ask if Site Plan Review can be applied to uses protected under G.L. c. 40A, § 3 (e.g., educational and religious uses). Since Site Plan Review cannot be used to deny an allowed use, the best answer is “Yes, but with limits.”

Section 3 provides, in part:

No zoning ordinance or by law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes . . . provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

In reviews of recently adopted zoning amendments in Rutland, Stoughton, and other communities, the Attorney General has cautioned against going too far with Site Plan Review when an application involves an exempt use. Make sure your site plan submission standards for exempt uses limit the required information to matters your board can reasonably regulate.

VESTED RIGHTS

Towermarc Canton Limited Partnership v. Town of Canton, Misc. Case No. 131947, Land Ct. (1989)

The Land Court held that the zoning “freeze” provision of G.L. c. 40A, § 6 does not apply to Site Plan Approval. (However, providing local language that spells out the vesting of rights will help the municipality provide clear boundaries for time limits related to construction.)

Site Plan Review vs. Special Permit Process

There is often confusion about the differences between Site Plan Review (as a formal process) and Special Permit review. Further, if a municipality is going to use both processes, there are questions about how they fit together, if at all.

Special Permits: The Special Permit granting authority has significant discretion whether to approve the application and to impose reasonable conditions on the approval. This authority is well established in case law. (See, for example, *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635 (1970), also known as “*MacGibbon II.*”)

Site Plan Review: Approving authorities do not have broad discretion to deny, and case law has shown the power to impose reasonable conditions is fairly narrow.

There can be (and often are) differences in the procedures that apply to Special Permits and Site Plan Review. At the most basic level, Special Permit procedures are determined by state law, e.g., review and decision timelines and public hearing notice requirements. Site Plan Review uncoupled from the Special Permit is not bound by the Special Permit procedures in the Zoning Act. Some communities adopt the same framework of a Special Permit even for Site Plan Review for as-of-right uses, but many communities do not. This table illustrates key differences between Special Permits and Site Plan Review.

Key Element	Special Permit	Site Plan Review*
State Legislation	G.L. c. 9 and 11	N/A
Granting Authority	Planning Board, Zoning Board of Appeals, Board of Selectmen, or City Council	At the discretion of the municipality. Most often the Planning Board.
Procedures and Abutter Notification	Set by statute	At the discretion of the municipality.
Voting	Two-thirds majority required.	At the discretion of the municipality. Simple majority is adequate.
Recording of Decision	Set by statute	Not required, at discretion of the municipality.
Appeals	Appeals are to a court of competent jurisdiction	More than one option as discussed earlier.
*Many of these key elements are determined at the discretion of the municipality for Site Plan Review. Crafting a Site Plan review Bylaw/Ordinance discusses some of the important considerations for a municipality on these elements.		

Site Plan Review

ProTip! - Keep Processes Separate

It is important to distinguish between Site Plan Review **as a standalone process** versus “the review of site plans” that occurs **as part of** Special Permit review. Each process includes a review of plans, but they are different in almost all other aspects. Drawing a clear line between what is reviewed by Special Permit versus Site Plan Review allows a community to keep the two permit review processes completely separate from one another, thereby avoiding confusion regarding who is making the final decision, which procedures are followed, how will it be recorded, etc.

Combining the two processes has caused confusion, as some communities have tried to “nest” Site Plan Review within the Special Permit review process. Some communities have gone as far as naming their process “Site Plan Special Permit,” creating considerable confusion for both applicants and board members.

Some communities may still want very complex development proposals to go through Site Plan Review as a formal process, and **subsequently** go through a Special Permit procedure that uses the Site Plan Review process to inform the deliberation. While this approach may be viable, it does raise important

due process considerations. Communities that employ this approach should use the same abutter notification process for the Site Plan Review phase as they do for the Special Permit phase. This ensures that abutters will be adequately informed throughout the entire process. If decisions are made during Site Plan Review without abutter input, those abutters may attend the Special Permit hearing and complain that important decisions were made without their input.

For more information about Special Permits, see Module 3, Special Permits and Variances.

Writing a Site Plan Review Bylaw

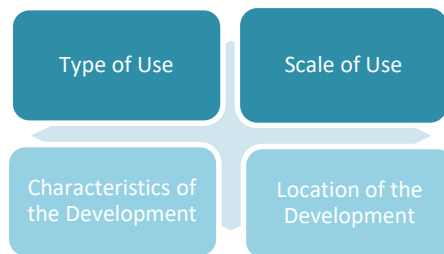
Site Plan Review

Big Questions

Despite the legal issues associated with Site Plan Review, well over 100 communities use this process and it is widely regarded as a powerful tool for plan review. The widespread use of Site Plan Review throughout the state means that a variety of models exist for communities to compare against their goals for development and capacity for permit review. In crafting a local bylaw or ordinance, municipalities should consider the following policy questions.

WHAT SHOULD TRIGGER SITE PLAN REVIEW?

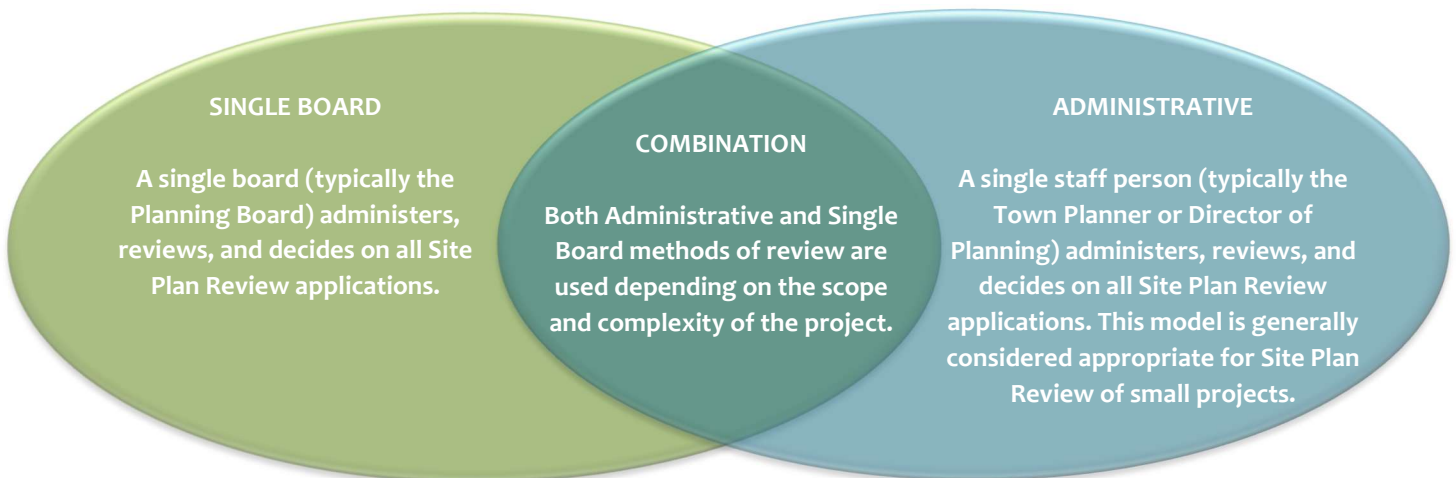
The answers to this question will most directly affect the review thresholds applied in the bylaw/ordinance. Examples of thresholds commonly found in the Commonwealth include:



Examples of these thresholds are provided in the Sample Bylaw at the end of this handout.

WHO WILL ADMINISTER AND MAKE DECISIONS?

Several models have emerged in Massachusetts for administering Site Plan Review. Here are some common examples:



Site Plan Review

When a municipality employs a combination of both models, generally a tiered set of thresholds is used to determine which authority will receive an application. Administrative Site Plan Review might apply to commercial buildings with a gross floor area between 2,000 and 10,000 square feet. The Board-level review would then apply to commercial buildings 10,000 square feet or more. Local zoning provisions sometimes refer to these processes as “Minor” and “Major” Site Plan Review, or “Administrative” and “Full” Site Plan Review.

Regardless of the model applied, Site Plan Review typically includes opportunities for other municipal staff or boards to review the application and provide comment to the approving authority. Plans are distributed to these reviewing parties and they can submit written comments within a specified amount of time. If they do not submit comments, the approving authority should interpret this “as a lack of opposition to the application as submitted.” If they do submit comments, these are considered “advisory” to the approving authority. Staff members or boards typically called to serve in this advisory role include but are not limited to:

- Public Safety (e.g., Police, Fire)
- Public Works (e.g., DPW, Highway, Municipal Engineer)
- Utilities (e.g., Water Superintendent, Wastewater Superintendent)
- Board of Health
- Conservation Agent or Conservation Commission
- Design Review Board/Committee

WHAT PROCEDURAL REQUIREMENTS WILL BE APPLIED?

Procedural requirements are critical for a successful and legally defensible Site Plan Review process. The bylaw or ordinance should be clear enough that an applicant can visualize the movement of the Site Plan Review application from the moment it enters Town/City Hall to the moment the decision is filed. The applicant should also know exactly what her responsibilities are relative to public notice (if any). Typical procedural requirements address:

- Who receives the plan in Town/City Hall, how is receipt acknowledged, and when does the review timeline commence (i.e., when does the clock start ticking)?
- The number of plans required and to whom they will be distributed.
- The amount of time available for staff/boards serving in an advisory role to provide comments.
- If a hearing is included, the amount of time the authority has to open and close the hearing.
- If a hearing is not included, a description of how the authority will convene any necessary discussion and deliberate.
- The type of public notification that is required (if any) and who is responsible for it.
- Whether the hearing (or other deadlines) can be extended through mutual agreement between the municipality and the applicant.

Site Plan Review

- The amount of time the authority has to render a final decision.
- The number of votes required for approval.
- Procedures for appeal and recording.

Importantly, the procedures for Site Plan Review are not prescribed by statute as with a Special Permit. It is appropriate for communities to consider a less robust public notification processes, or even no notification at all. For example:

- A municipality that uses Administrative Site Plan Review may decide that these by-right uses do not require further public input, in which case approval can be completed within a very short time by staff (just like a Building Permit).
- Moving to a more complex level, a community may decide that Planning Board Site Plan Review should have a public process, but it may require less robust notice and shorter review timelines when compared with a Special Permit.
- Finally, if Site Plan Review is required in advance of a Special Permit, the same notification and procedural requirements should be applied as those for a Special Permit.

WHAT ARE THE STANDARDS FOR APPROVAL?

This could be considered a trick question. The standards for approval for Site Plan Review with a by-right use are, simply, all the applicable standards in the Zoning Bylaw/Ordinance. However, another reason to ask this question is that it deals with the information required in the Site Plan Review submittal. It is critical that the information required of the applicant provides what is needed to determine compliance with all applicable zoning standards. For example, if a Zoning Bylaw has extensive landscaping requirements, a detailed Landscaping Plan should be required and the bylaw should list the information provided on that plan. Plans that may be needed, depending on standards within the bylaw/ordinance include:

- Existing Conditions Plan
- General Development Layout Plan
- Erosion and Sediment Control Plan
- Utilities Plan
- Grading and Drainage Plan
- Circulation Plan
- Landscaping and Lighting Plan
- Signage and Wayfinding Plan

The best bylaws/ordinances will have an application checklist for all of the plans that need to be submitted. These checklists can be placed in the body of the bylaw/ordinance, but often they are better suited as an appendix to the bylaw/ordinance or, better yet, as part of Rules and Regulations adopted separately by the Site Plan Review authority.

HOW DO WE INVOLVE THE APPLICANT?

An important benefit to Site Plan Review is having the opportunity for an applicant and several representatives from a municipality to discuss an application. On the applicant's side, this provides an opportunity to talk about the development challenges on the site and the thought process behind different design choices. From the Town's side, it is an opportunity to bring forward information the applicant may not have (e.g., sewer line capacity, future utility improvement plans, etc.) or suggest alternative design choices. Municipalities should ensure there is time built into the process for this type of discussion. Where a formal hearing is held, the opportunity for discussion is fairly obvious. Where an Administrative Site Plan Review process is designed to be very fast, municipalities should think through the issue of where the dialogue between developer and review authority can occur.

WHAT IS CONSTRUCTIVE APPROVAL?

Constructive approval is a term that describes the situation where a board failed to act on an application in a prescribed amount of time, in which case the application is approved. This is meant to protect the rights and investment of the applicant. There are no court decisions to provide guidance as to the constructive approval in Site Plan Review. Furthermore, there are no decisions or unpublished opinions indicating whether a constructive approval may be amended, modified, or rescinded upon a motion of the board. However, it is good practice to state specifically in zoning that plans not acted upon within a fixed period are constructively approved so that applicants are not faced with delay. Zoning should also state that the time period for a decision may be extended upon written agreement of the parties.

Hiring Peer Review Consultants

Fortunately, you can get help to review a site plan if you think a project is too large or complicated for your board to review on its own. Under G.L. c. 40A, § 53G, your board can impose reasonable fees on the applicant so you can hire qualified “peer review” consultants to review the project and give you advice. This opportunity has existed for many years for reviewing special permits, but in 2016, the legislature expanded “53G” to include a wider variety of permits and approvals, including an umbrella provision covering any “rules promulgated by any municipal permit or license granting officer or board when implementing authority conferred under any statute, ordinance or by-law.” As a result, you can rely on G.L. c. 40A, § 53G to hire outside consultants for Site Plan Review, but there are some additional requirements to consider. (See below.)

HOW DOES IT WORK?

The applicant provides funding to cover the cost of independent reviews of the application and plans, and your board hires the peer review consultants of your choice – within reason. The fees have to be reasonable, and the review must be confined to plans and studies the applicant submitted as part of Site Plan Review. This means you cannot require the applicant to pay for new studies that your board may want but are not required under your Site Plan Review bylaw.

REQUIREMENTS

- The local ordinance or bylaw needs to provide for the allowance of hiring outside consultants for Site Plan Review, and the Site Plan Review board needs to adopt regulations for peer review fees.
- Your regulations need to provide for an administrative appeal to the city council or board of selectmen if the applicant objects to the consultants you want to hire. The applicant’s appeal rights are limited to claims that the consultant has a conflict of interest or is not qualified to perform the review.
- Your city or town treasurer needs to create a special account for the applicant’s funds. The peer review consultants will be paid from this account, and if there is money left over at the end of the process, it must be repaid to the applicant, including accrued interest.

Site Plan Review

Additional Resources

Site Plan Review

Sample Site Plan Review Bylaw

Site Plan Review

- A. Intent of Site Plan Review Process. The Site Plan Review process provides a mechanism for the coordinated review of an applicant's compliance with the Zoning Ordinance for projects that may cause a variety of impacts to the natural and built environment and the character of surrounding neighborhoods. It is the intent of Site Plan Review to create a dialogue with an applicant so as to enhance the design of a project and reduce adverse impacts on the Town and its residents.

Commentary: The "Intent" section provided here, as opposed to the "Purposes" is used to highlight the benefit of the municipality and the applicant having an opportunity to communicate about plans.

- B. Purposes of Site Plan Review. To protect the health, safety, and general welfare of residents, this Section addresses the following purposes:
- (1) Traffic, Parking, and Access. To promote sound on-site circulation patterns for pedestrians and motorists. To promote roadway traffic safety and traffic calming, efficient loading, unloading, and deliveries, and to ensure the capability of State and local roads to conduct vehicular, bicycle, and pedestrian traffic safely and efficiently. To demonstrate compliance with any required parking.
 - (2) Public Utilities and Infrastructure. To minimize or prevent adverse impacts to existing public utilities and infrastructure resources, including, but not limited to, sewers, storm drains, streets, and electric.
 - (3) Open Space and Environmental Protection. To preserve open space and public access, and to protect natural features and other environmentally sensitive areas. To prevent erosion and adverse drainage impacts. To minimize the loss of wildlife habitat and other vegetation that has substantial aesthetic and ecological value to the Town.
 - (4) Neighborhood Impacts. To ensure that development on site does not have unintended negative consequences on neighboring properties by locating structures, driveways, parking areas, utilities or other features in a manner that causes nuisance or hazards.
 - (5) Health. To minimize or prevent adverse impacts from air quality, light, glare, and odors.
 - (6) Regulatory Compliance. To ensure development complies with the applicable provisions of the Zoning Ordinance, and other regulations such as the Town's Rules and Regulations for Signs, to potentially make applicants aware of

Site Plan Review

situations where there might be compliance issues with other applicable regulations.

Commentary: These six purposes cover the basic function of zoning, which could be organized and articulated many different ways. With that said, a well-crafted bylaw/ordinance will have similar language mirrored in the beginning of the document that describes the purpose of zoning in general. Also note that these six purposes are used to organize the decision-making criteria in subsection G below.

- C. Applicability. The following criteria shall be used to determine if a proposed project will be exempt from review, reviewed as part of an Administrative (reviewed by staff), or Full (reviewed by the Planning Board) Site Plan Review process:
- (1) Specific Exemptions. The following activities shall be exempt from either Administrative or Full Site Plan Review:
 - (a) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and G.L. c. 40A, § 3;
 - (b) Emergency projects conducted by a governmental entity or public utility necessary for the protection of the public health or safety;
 - (c) Emergency repairs conducted by a governmental entity or public utility to existing utilities;
 - (d) Applications for residential subdivision plans under G.L. Ch. 41, §§ 81K through 81GG, the Subdivision Control Law;
 - (e) Any other uses or activities specifically exempted from Site Plan Review in other sections of the Zoning Bylaw.

Commentary: These exemptions are typical of what might be decided at the local level. Note that while subdivision applications are exempt, there is no exemption in here for work done on an existing residence.

- (2) Relationship to G.L. c. 40A, §3. With the exception of Subsection (1)(a) above, Site Plan Review shall apply to uses protected under G.L. c. 40A, §3 in accordance with the review thresholds established herein. Site Plan Review shall not be used to prohibit, unreasonably regulate, or restrict use of land for these purposes in a manner that would violate state law.
- (3) Administrative Site Plan Review. Any development, redevelopment, expansion, alteration, reoccupation (only where physical alteration will occur) or change of use of a building or site that involves one or more of the following elements shall be subject to Administrative Site Plan Review.

Site Plan Review

- (a) Disturbance of land surface area containing more than 2,500 square feet but less than 6,000 square feet.
- (b) Expansions, to existing non-residential structures or development of new non-residential structures, that have a gross floor area (GFA) of at least 500 square feet, but less than 1,000 square feet.
- (c) The development or addition of at least ten (10) but fewer than twenty (20) off-street parking spaces.
- (d) Reoccupation (only where physical alteration will occur) or change in use of an existing non-residential building that has less than 10,000 square feet of gross floor area.
- (e) Net export and import of fill exceeds 150 cubic yards, but is less than 300 cubic yards, excluding the earthen material imported and/or excavated for a foundation.
- (f) Any existing non-residential building where the number of tenant spaces inside the building will be increased.
- (g) Any vertical change in grade of between two (2) feet and four (4) feet measured across a distance of ten (10) horizontal feet or more.

Commentary: These thresholds will be one of the more challenging issues faced when crafting a bylaw/ordinance. Not all of the seven issues identified need to be used, and other thresholds may be better suited to an individual community.

- (4) Full Site Plan Review. Any development, redevelopment, expansion, alteration or reoccupation (only where physical alteration will occur) that involves one or more of the following elements shall be subject to Full Site Plan Review.
 - (a) Disturbance of a land area containing 6,000 square feet or more;
 - (b) Expansions, to existing structures or development of new structures, of a gross floor area (GFA) of 1,000 square feet or more.
 - (c) The development or addition of twenty (20) or more off-street parking spaces;
 - (d) Reoccupation (only where physical alteration will occur) or change of use of an existing non-residential building that has 10,000 square feet of gross floor area or more.
 - (e) Net export and import of fill is 300 cubic yards or more, excluding the earthen material imported and/or excavated for a foundation.
 - (f) The addition or relocation of a vehicular access or egress way from a previously developed site.
 - (g) Any application designated for Administrative Site Plan Review may be considered for Full Site Plan Review at the request of the applicant and/or the Director of the Planning and Community Development (PCD).

Site Plan Review

- (5) Pre-Application Meeting. Prior to the submittal of any Site Plan Review application, the applicant is strongly encouraged to schedule a Pre-Application Meeting with PCD staff. The purpose of this Pre-Application Meeting shall be to confirm whether Site Plan Review will be Administrative or Full, to afford the applicant input from staff during the formative stages of the concept design, and to highlight areas where the applicant may need to give additional attention prior to filing a formal application. Pre-Application Meetings are intended to encourage discussion and to provide guidance to the applicant. However, any opinions or advice offered by the reviewing authority shall not constitute or imply an approval or a denial of a project.

Commentary: The language for a pre-application meeting is optional. Importantly, having a pre-application meeting as a mandatory requirement may be illegal.

- (6) Segmentation. In an effort to prevent segmentation, the Site Plan Review thresholds listed in § 1.1.C. above shall apply to individual parcels or more than one contiguous parcel that may be in common ownership or otherwise developed as a site in a coordinated manner through a common applicant at the time of application. Further, the build-out of phased projects or expansions that are applied for within a two-year period shall be considered cumulatively when determining whether an application should be reviewed as an Administrative or Full Site Plan Review project.

D. Administration and Authority

- (1) Administrative Site Plan Review. Administrative Site Plan Review shall be performed by PCD staff, in conjunction with the Building Inspector, Department of Public Works, Fire, and Police (the Site Plan Review Committee), as established herein and subject to the procedural and submittal requirements listed in this Section. PCD may, from time to time, add other departments, offices or committees, as needed, to the Site Plan Review Committee. The form, contents, and number of sets of plans of the application and other required information shall be as specified in this Zoning Bylaw.
- (2) Full Site Plan Review. Full Site Plan Review shall be administered by the Planning Board, and shall require a public hearing, subject to the procedural and submittal requirements listed in this Zoning Bylaw.

Commentary: This sample bylaw sets up a tiered approach with an “Administrative” (staff level) and “Full” (Planning Board) review. Each has its own thresholds, which are complementary (i.e., one picks up where the other left off). Municipalities do not need to opt for a tiered approach and can also alter the thresholds in a manner that best suits their environment and development goals.

Site Plan Review

E. Procedures for Administrative Site Plan Review

- (1) Submittal. Applications for Administrative Site Plan Review shall be submitted to the Town Clerk, who must then certify the date and time of filing. A copy of the application must be filed forthwith by the petitioner with PCD. The form, contents, and number of sets of plans of the application and other required information shall be as specified in this Zoning Bylaw.
- (2) Determination. Within 10 days of the filing of the application, PCD shall determine if the application is complete (determination of completeness). Initial determination that an application is complete does not imply that the information provided is accurate or adequate and shall not preclude PCD from requesting or considering new information during the course of the review process that will have direct bearing on the purposes of Site Plan Review. Where PCD determines that the application is incomplete, the applicant shall be informed in writing within 15 days of the original application date. The notification shall include an explanation of the determinations.
- (3) Advisory Review. Within 15 days of the filing of the Administrative Site Plan Review application, where there is a positive determination of completeness, the PCD shall distribute copies of the application to the Site Plan Review Committee. The PCD shall schedule a meeting of the Site Plan Review Committee to discuss any comments within 30 days of the original application date. Failure of any Site Plan Review Committee member to attend this meeting or submit comments to PCD within this timeframe shall be interpreted by PCD as lack of opposition to the application as submitted. Approval of any Administrative Site Plan Review application shall require a majority vote of the Site Plan Review Committee.
- (4) Recording the Decision. PCD shall make a final decision on the application within 55 days of the original application submittal date. If the PCD fails to act within this time frame, the application will be deemed approved. The PCD shall file its decision in writing with the Town Clerk. The applicant shall file this decision prior to exercising it (and pay the recording fee) with the Registry of Deeds within 60 days of the original application date and shall provide evidence of recording to the Building Inspector prior to the issuance of any permits.
- (5) Appeals. Within 10 days of the filing of the final decision, the applicant may appeal any decision to the Zoning Board of Appeals.

Commentary: The procedures for Administrative Site Plan Review provided here set up a review schedule with a maximum review time of 55 days. Because of the administrative nature of the decision, this sample bylaw names the Zoning Board of Appeals as the appeal authority.

Site Plan Review

F. Procedures for Full Site Plan Review

- (1) Submittal. Applications for Full Site Plan Review shall be submitted to the Town Clerk, who must then certify the date and time of filing. A copy of the application must be filed forthwith by the petitioner with the Planning Board through PCD. The form, contents, and number of sets of plans of the application and other required information shall be as specified in this Zoning Bylaw.
- (2) Determination. Within 10 days of the filing of the application, PCD shall determine if the application is complete (determination of completeness). Initial determination that an application is complete does not imply that the information provided is accurate or adequate and shall not preclude PCD or the Planning Board from requesting or considering new information during the course of the review process that will have direct bearing on the purposes of Site Plan Review as listed in § 1.1.B.
- (3) Advisory Review. Within 15 days of the filing of the Full Site Plan Review application, where there is a positive determination of completeness, the PCD shall distribute copies of the application to Town departments. These departments shall submit comments to the Planning Board within 35 days of the original application date. Failure of any party to submit comments to the Planning Board within this timeframe shall be interpreted by the Planning Board as lack of opposition to the application as submitted.
- (4) Public Hearing. The Planning Board shall conduct a Site Plan Review Public Hearing within 65 days of the original application date. The notification requirements of the public hearing shall comply with the following:
 - (a) Notice shall be given by publication in a newspaper of general circulation in the Town at least 14 days prior to the opening of the Public Site Plan Review Meeting and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of the meeting.
 - (b) Notice shall be sent by mail by the Planning Board through the use of the abutter materials prepared and certified by the Tax Assessor and submitted as part of the application. Abutters shall be considered: direct abutters, owners of land directly opposite from the subject premises on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the applicant as they appear on the most recent applicable tax list.
- (5) Decision. The hearing shall be closed and a decision shall be made within ninety days (90) from the close of the hearing. Approval of a Full Site Plan Review application shall require at least three affirmative votes of the Planning Board

Site Plan Review

at the close of the public hearing. The Planning Board shall then file a written decision with the Town Clerk within 90 days of the close of the public hearing. The applicant shall file this decision (and pay the recording fee) with the Registry of Deeds within 30 days of the end of the appeal period and shall provide evidence of recording to the PCD prior to the issuance of any permits.

- (6) Appeals. Appeals of site plan review decisions may be made to a court of competent jurisdiction in accordance with the procedures set forth in G.L. c. 40A, § 17.

Commentary: The procedures for Full Site Plan Review are adapted from the Special Permit procedures in Chapter 40A. Additional language is added for the determination of completeness and the timelines for advisory review. Because the Planning Board is the review authority, this sample bylaw sends appeals to court for Full Site Plan Review. Note that many communities use an abbreviated timeframe for Site Plan Review by the Planning Board; the 65 day/90 day deadlines required for a Special Permit are optional.

- G. Administrative and Full Site Plan Review Criteria. In reviewing and evaluating any application for Site Plan Review, the Site Plan Review Committee or Planning Board shall require that the Site Plan(s) promote the purposes in §1.1.B. These purposes, established to protect the health, safety, and general welfare of residents, are addressed through the following criteria for the proposed development:

- (1) Traffic, Parking, and Access:

- (a) Ensure adjacent highways or roads have the capacity to absorb potential traffic impacts and that all possible measures are taken to mitigate potential impacts.
- (b) Provide for adequate parking and loading for all uses on site.
- (c) Maximize the convenience and safety of vehicular, bicycle, and pedestrian movement within the neighborhood and site and on adjacent roadways, including sidewalks and bike/pedestrian paths.

- (2) Public Utilities:

- (a) Provide suitable water, sewer, electric, and stormwater management systems and maintenance.
- (b) Develop within the capacity of the Town's public infrastructure as determined by municipal officials.

- (3) Open Space and Environmental Protection:

Site Plan Review

- (a) Demonstrate that any adverse impacts to open space and sensitive areas such as wetlands, floodplains, surface water, and groundwater can be mitigated.
 - (b) Include measures to prevent pollution of surface or groundwater, minimize erosion and sedimentation, and limit the potential for flooding.
 - (c) Ensure that topography and grading is appropriate for the proposed uses, and that landscape design is attractive and appropriate for the environment.
- (4) Neighborhood Impacts:
- (a) Screen objectionable features, including, but not limited to large blank walls, open dumpsters, and loading or storage areas from neighboring properties and roadways.
 - (b) Implement, enhance or maintain buffers between uses of different intensities and types.
 - (c) Develop buildings and sites appropriately with regard to the size, shape, and design in relation to the land area upon which the building or structure is situated and to the adjacent buildings and structures within the neighborhood.
- (5) Health:
- (a) Minimize adverse impacts from air-quality, lighting/glare, and odors.
 - (b) Provide for proper disposal of trash and recycling.
- (6) Regulatory Compliance:
- (a) Comply with all applicable standards in the Zoning Ordinance.

Commentary: The six categories of criteria listed above mirror the Purposes of the bylaw.

- H. Final Action for Administrative and Full Site Plan Review. Final action shall include one of the following:
- (1) Approval as Submitted. Approval based on a determination that the application complies with the criteria set forth in this Section.
 - (2) Approval with Conditions. Approval of the application subject to any reasonable conditions, modifications, and restrictions the Site Plan Review Committee or the Planning Board may deem necessary to ensure the health, safety, and general welfare of the community.

Site Plan Review

- (3) Disapproval. A disapproval of the application for the reasons of violations of provisions in the Zoning Ordinance, or determination that the Site Plan(s), although proper in form, is so intrusive on the interests of the public in one or more aspects regulated by the Zoning Ordinance, that no reasonable terms or conditions can be devised to adequately protect the interests of the public.

Commentary: These actions mirror case law language on what local review authorities have the power to do with Site Plan Review.

- I. Expiration. Any approval granted under Site Plan Review shall lapse after three years from its issuance if substantial use or construction has not commenced within the three-year period, except for good cause. Upon written application by the grantee, the Site Plan Review Committee or the Planning Board (as applicable), in its discretion, may extend the rights to exercise the site plan review approval for a period not to exceed one year. The application for such extension shall be filed with the Site Plan Review Committee or the Planning Board (as applicable) prior to the expiration of the three-year period with enough time to provide proper notice of the requested extension at a regularly scheduled Planning Board meeting or with enough time to convene the committee for Administrative Site Plan Review as applicable. The rights to an expired site plan review approval may only be reestablished after the filing of a new application and the holding of a new public hearing (as applicable).

Commentary: This language provides an example of how a municipality can address the issue of vesting, an issue on which the courts have not provided direction specific to Site Plan Review.

Further Support

American Planning Association: www.planning.org

American Planning Association-Massachusetts Chapter: www.APA-MA.org

Citizen Planner Training Collaborative: www.masscptc.org

Executive Office of Housing and Livable Communities: www.mass.gov/eohlc/

Massachusetts Association of Planning Directors: www.massplanning.org

Massachusetts Housing Partnership: www.mhp.net

Mass Planners List Serve: https://masscptc.org/mailman/listinfo/massplanners_masscptc.org

Planetizen: www.planetizen.com

Massachusetts Regional Planning Agencies:

Berkshire Regional Planning Commission: www.berkshireplanning.org

Boston Region Metropolitan Planning Organization: www.bostonmpo.org

Cape Cod Commission: www.capecodcommission.org

Central Massachusetts Regional Planning Commission: www.cmrpc.org

Franklin Regional Council of Governments: www.frcog.org

Martha's Vineyard Commission: www.mvcommission.org

Merrimack Valley Planning Commission: www.mvpc.org

Metropolitan Area Planning Council: www.mapc.org

Montachusett Regional Planning Commission: www.mrpc.org

Nantucket Planning and Economic Development Commission:
www.nantucket-ma.gov/departments/npedc/npedc.html

Northern Middlesex Council of Governments: www.nmcog.org

Pioneer Valley Planning Commission: www.pvpc.org

Old Colony Planning Council: www.ocpcrpa.org

Southeastern Regional Planning and Economic Development District: www.srpedd.org