



Memorandum

TOWN OF SOMERSET

ECONOMIC DEVELOPMENT SELF-ASSESSMENT

EXECUTIVE SUMMARY

VHB, a multidisciplinary planning and engineering firm headquartered in Watertown, MA, facilitated an Economic Development Self-Assessment Workshop with the Town of Somerset, taking place over two virtual sessions held on July 13, and August 11, 2020. The purpose of the Workshop was to examine the Town's current planning practices and process with regards to economic development and identify areas of critical concern that may be addressed within the broader zoning update process that is currently underway.

The following people attended the Workshop:

- Steve Cadorette, Zoning Board of Appeals, Chairman
- Kathy Maiato, Assistance Town Clerk, Somerset
- Paula Ramos, Assistant to the Town Administrator, Somerset
- Paul Boucher, Building Commissioner, Somerset
- Tom Killoran, Attorney
- Gary Simons, Planning Board, Chairman
- Nancy Durfee, Town Planner, Somerset

The constructive dialogue that took place during the Workshop was open-ended, and a variety of topics were covered. Among other things, the group discussed the function of the Planning Board and the Zoning Board, Planning Department staffing, zoning application procedures, and site plan review procedures. This workshop was followed by several rounds of staff input that was helpful in further exploring the issues that the Town hopes to address.

Relative to our experience in towns throughout New England, it was clear that Somerset is challenged by certain structural and procedural inefficiencies with a high potential for slowing down economic development. This memorandum provides a high-level summary of VHB's review and recommendations for addressing these inefficiencies. We believe that these recommendations can and should be accomplished in the short term of one to two years.



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KEY ISSUES

Although the group shared many ideas, there were a few themes that resonated consistently throughout both sessions. The following is a list of key issues that the group identified.

1. There may be a need to re-align the functions of the Planning Board relative to the functions of the Zoning Board. This point was discussed briefly but warrants further exploration. It was stated by participants that the approval process as shared by the two boards is inefficient, and that the boards' respective roles and responsibilities need to be better defined to ensure that the review process is consistent, and that the approval authority and standard procedures are properly understood and executed.
2. The Town is short-staffed. Currently, the Town Staff has an outmoded application and approval process that could be streamlined and improved. There would be significant value in hiring a dedicated administrative staff position to support the needs of the two boards and the Town Planner. There is currently no direct support staff for the Town Planner, and as such, the current application and filing process requires support and administrative duties that are being performed by the Town Clerk and others. This leads to complications because there is no staff redundancy.
3. The zoning application process requires a procedural overhaul. It has been identified that the zoning application process is beset by inefficiencies. Applicants and petitioners are often confused by the process, which leads to frustration and delays. None of the application process takes place online, and electronic copies are not currently required, which would make it easier to share plans between department heads.
4. Currently, materials on the zoning process that could address the needs of a typical applicant, and save time and resources in offering these services to the development community, are not readily available. Materials that would be effective in this regard could include development checklists, samples of how to complete zoning application forms, Special Permit forms, and Variance guides. Without these resources at hand, there is a significant amount of time spent addressing an applicant's questions and requests for information. Furthermore, the zoning application process is not well-understood by the public. The group commented that many of the applicant's voice frustration with the process, and many of them appear to lack an understanding of what they are required to do. This could be due, in part, to a lack of publicly available documents that explain the process. Fees are another common point of confusion.
5. The "Planned Development" tool is poorly defined in the zoning bylaws. Somerset's zoning bylaws feature a project designation called "Planned Development" that is defined poorly and ambiguously.



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It is not clear how this tool should be applied, and it is not apparent that it allows the Town to advance its planning goals in a reliable way. This type of tool can be re-framed as site plan review – and requirements for format and content of documentation can be clarified. The process for site plan review can also be made clearer.

6. Writing Legal Zoning Decisions. Currently the writing of Zoning Decisions is a function of the Town Planner. It is common for many Municipalities and their Zoning Boards to engage legal counsel in writing zoning decisions. There was concern the Zoning Decisions that were being put forth would benefit from legal review to ensure their interpretation of the law and standing.

RECOMMENDATIONS

VHB submits the following recommendations for the Town's review.

1. Clarify the functions and requirements of the Planning Board and the Zoning Board of Appeals and update each board's Rules and Regulations. The Planning Board's Rules and Regulations were last updated in 2004, and the Zoning Board of Appeals Rules and Regulations were last updated in 2014. The Board of Appeals and the Planning Board should adopt rules, consistent with the provisions of the zoning ordinance or by-law for the conduct of its business (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section12>). Per the recommendations contained in this memorandum, various adjustments should be made to each of the boards' Rules and Regulations. The Planning Board's Rules and Regulations should be revised for clarity regarding the requirements of board members, compliance with state regulations, and communication protocols. The Zoning Board's Rules and Regulations should be expanded for clarity (currently it is only 1.5 pages) and should define fees in a way that can be easily updated over time. Further, the Rules and Regulations should be required reading for the board members on a regular basis. It is evident that board members may not currently be aware of what the Rules and Regulations currently specify.
2. Create a new position to provide administrative support to the Zoning Board of Appeals and the Planning Board. The Town is short-staffed. Administrative duties have been ineffective due to staff shortages. It has been reported that the Planning Board and Zoning Board of Appeals have both suffered from a lack of consistency, documents have been lost, deadlines have passed, and open meeting laws are not always followed. The Town should create a new position, wherein a part-time clerk can fulfill the administrative needs of both the Planning Board and the Zoning Board of Appeals. This will enhance the functionality of both boards and moreover, will provide residents and/or businesses submitting petitions or applications with a "one-stop shop" and alleviate the inconsistencies and inefficiencies.



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3. Train and equip the board members. The Planning Board and Zoning Board members should be required to take regular training sessions, to ensure they are performing their duties as required. These training sessions should cover various subjects, including, but not limited to:

- Roles and responsibilities
- Protocol for preparation and distribution of meeting minutes
- Attendance requirements
- Compliance and Ethics
- Open meeting laws
- Site plan review fundamentals

Various resources are available at the regional and state level for effective training sessions, including legal counsel.

Further, the board members should have checklists during hearings to ensure there is consistency and clarity in carrying out board functions. The checklists can include process reminders, intended sequence of events, flowcharts, and any other information relevant to how the meetings should be run procedurally.

4. Streamline and clarify the application and board review processes. Currently, the process of applying for planned development approval, a variance and/or permit is bogged down by structural and procedural inefficiencies. Various challenges should be addressed, as follows:

Applicants need to visit too many different departments during the application process. Once a clerical support staff for the boards is engaged, this will help to eliminate some of these inefficiencies, as they can help move the application from one reviewer to the next.

The application process is not well-understood by the public. Many applicants appear to lack an understanding of what's required of them, and often voice frustration in this regard. This is due, in part, to a lack of publicly available documents that explain the process, for instance, transparent engineering review fees, checklists or workflow diagrams would assist in clarifying the process. The Town should prepare workflow diagrams and checklists that provide 100% clarity on what is required of each type of applicant and publish these materials both online and in printed form in public offices. In some cases, the materials already exist (e.g. Special Permit and Variance guide, mock application, site plan checklist) – and they just need to be made available. Additionally, fees aren't collected upfront, leading to frustration further along in the process.



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The application process is not efficient. Once the Town has identified the preferred division of responsibilities between the Planning Board and Zoning Board, the Town should update the application process itself. This should include key outcomes for the first Planning Board meeting (including open hearing, introduction by the Chairman on procedure, presentation by the applicant, engineering consultant's review, PB questions, public questions, and site walk requirements), the site walk if required, fee's associated with consultant review, the applicant's submission of a revised application, and the second Planning Board meeting during which the application should be approved, denied, or subject to continued review.

It is evident that there are procedural challenges within the application process, including the collection and accounting of fees, and the timely distribution of applications to board members and key department heads. Creating the "one-stop shop" for both the Planning Board and Zoning Board, with a workflow diagram and revised Rules and Regulations to include process and fee collection, would simplify these issues and streamline the process for all.

There is a lack of coordination between the department heads. The Town should create a review committee check list for either the Planning Development approval or the Site Plan Review process in connection with development review. The review committee check list would include department heads (e.g. Town Planner, Conservation Agent, Building Official, Fire Chief, Highway/DPW, and Health Agent) and Planning Board consultants as needed.

Certain permits should be eliminated. Some permits that are currently required, for instance the Home Occupation applications, could potentially be eliminated and/or streamlined.

Electronic submissions should be required. Consider requiring electronic submissions as well as hard copies to make things easier for the applicants and staff, this would allow for the various board members to share documents among themselves and with department heads and consultants more fluidly.

5. Redefine the process of requesting, collecting, and managing application and consulting fees. Currently, the Zoning Board Rules and Regulations include a brief section on collecting fees and setting up accounts, but in practice, this does not always occur. The Town itself has been taking on costs relating to mailing, advertising, and paying legal consultants. The Town should clarify the language in the Rules and Regulations, and establish a system wherein the following events take place in sequence:
 1. The applicant submits an application and the Town (with assistance from their consultant) determines a fee, based on the level of project complexity,



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2. The applicant pays the fee upfront,
3. The Town sets up a dedicated, project-specific consultant fund
4. Money is drawn down as needed, and
5. If and when the fund is expended to say, 50% of its original value, the applicant may be required to refill it.

Ideally, the application review process would be self-supporting; i.e. the fees collected should cover all expenses. Further, at the beginning of the process, each applicant should be educated on the potential range of fees, and the reasoning that goes into how the fees are determined. A reporting back to the applicant and returning the balance would be required.

6. Eliminate the Planned Development tool from the zoning bylaws and transfer the site plan review process from the ZBA to the PB.

Currently, the Zoning Board is performing site plan review for all planned developments. This duty should be transferred to the Planning Board, which is a more typical condition in towns throughout Massachusetts. For additional information refer to section Massachusetts General Law, chapter 41, section 81A for the role of the Planning Board.

Somerset's zoning bylaws feature a project designation called "Planned Development" that is defined poorly and ambiguously. It is not clear how this tool should be applied, and it is not apparent that it allows the Town to advance its planning goals in a reliable way. This type of tool can be re-framed as site plan review – and requirements for format and content of documentation can be clarified. The process for site plan review can also be made clearer. This section should be eliminated from the bylaws, and replaced with a more broadly applicable site plan review process that will allow the Town to provide substantive input on land use, site planning, and design.



To: Nancy Durfee, Town Planner
Town of Somerset

Date: October 7, 2020

Memorandum

Project #: 14336.02

From: VHB

Re: Bylaw Review Summary

EXECUTIVE SUMMARY

In March, 2020, the Town of Somerset engaged VHB to prepare zoning recommendations to advance the planning goals established in the Somerset Master Plan (2019) and Economic Development Plan (2019). As part of this effort, VHB conducted a review of the existing zoning bylaws to identify regulations that the Town should consider modifying, expanding, or eliminating.

The following memo includes a list of notes and recommendations coming out of the review process. We look forward to further discussion of these findings with the Town and with the Town's Legal Consultant.

GENERAL NOTES AND RECOMMENDATIONS

The following observations on Somerset's existing zoning bylaws are organized by topic of concern.

1. Mixed-Use Development

- Although the zoning bylaws describes a mixed-use overlay district, the current version of the zoning map doesn't actually show any such districts.
- It is assumed that the map should show mixed-used districts in at least two or three high-density areas.
- The bulk requirements seem overly restrictive: maximum three dwelling units per acre, and minimum two parking spaces per unit. To achieve greater density, the ideal adjustment would be for more units, and fewer parking spaces, depending on the specific needs of the district.
- Height limitations also seem overly restrictive at 35' across all categories. This height limitation prohibits anything other than low-rise buildings. This could be reconsidered, specifically by each district.
- Similarly, the maximum lot coverage, ranging from 25% to 35%, seems overly restrictive. This could be reconsidered, specifically by each district.

2. Parking Requirements

- Shared parking is a common tool of dense, mixed-use development. According to our review, there is no reference to shared parking in the bylaws, with the exception of the Slade's Ferry section.
- There is little in the bylaws that provides guidance on the best use of curb cuts.

101 Walnut Street
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Watertown, MA 02472-4026
P 617.924.1770

- It is stated in the bylaws that the space between parking bays should be 22'. The Town could consider reducing this to 20' to save space.

3. Economic Development

- The zoning bylaws come across as very supportive of retail and restaurants. This is good for promoting the quality of life in Somerset. However, there is less attention given to non-retail commercial activity like industrial and research & development uses. This type of activity is critical to elevating local employment levels and increasing tax revenues.
- There is no mention in the bylaws of business incubators or startup centers.
- The Economic Development plan recommends a focus on health care jobs and marine-dependent businesses. The zoning bylaws could reflect this type of goal by providing sector-specific zoning overlays, or providing incentive zoning that gives some form of zoning relief for specific categories of business use.
- The Economic Development plan also recommends improving the town's visual appeal. The zoning bylaws do not currently contain, for instance, any incentives for public art projects. The town could consider adding language to this effect.
- In general, there is very little in the bylaws or the zoning map that distinguishes between the different businesses districts in town. Each of these districts is very unique and should be given a specific set of regulations that highlights its strengths and addresses its challenges.

4. Potential Map Updates

- Most of the town is zoned residential. In order to encourage greater economic development, some of this land could be considered for a mixed-use development overlay.
- There is only one category of business district – applied to very different types of commercial corridors. These should be differentiated.
- There is a lack of clarity on the "Open Recreational District." It is unclear from the bylaws and the map if this is a zone, or an overlay district.
- The section describing the "Planned Development" tool is confusing and seems redundant in many ways with the section describing site plan review. This should be clarified.

DETAILED NOTES AND RECOMMENDATIONS

The following observations on Somerset's existing zoning bylaws are organized by bylaw chapter.

1. Chapter 1: Purpose

- Section 1.1 could potentially be re-written to reflect the spirit of the revisions being made. For instance, "to avoid undue concentration of population" could be eliminated or modified.

2. Chapter 2: Definitions

- The Bylaw would benefit from definitions for the following:
 - i. Lot Coverage
 - ii. Mixed Use
 - iii. Bonus Incentives
 - iv. Green Infrastructure /LID
 - v. Smart Growth
 - vi. Shared Parking
 - vii. Building Envelop
 - viii. Terms from Standards Sections
 - ix. Terms related to Climate Change and Resiliency
 - x. Terms related to Building standards
 1. E.g. Façade, Storefronts, etc.

3. Chapter 3: Districts and Boundaries

- Section 3.1 lists the types of special districts – but it doesn't include Slade's Ferry Crossing District, Mixed Use Overlay District, or Business Industrial Overlay District.

4. Chapter 4: Use Regulations

- Conversion of a single fam dwelling into a 2-fam dwelling is by special permit only (page 11). If greater density becomes desirable, this could be converted from a "SP" to a "Yes".
- Shared housing for the elderly is by special permit only (page 12). If greater density becomes desirable, along with greater access to housing for seniors, this could be converted from a "SP" to a "Yes".
- Same for Customary Home Occupations, Professional Offices in a Dwelling, and Accessory Units. Can all of these be switched to yes?
- Agricultural uses are fully allowed in all zones. Shouldn't this be restricted to SP only? (p 12)
- Vertical mixed use, commercial on ground floor and residential or office above, is not allowed in residential zones, limited business, or open rec districts, and only in certain business districts. To encourage greater mix of uses, could this be converted from "No" to "SP"?

- Research and development labs and facilities (page 16) are prohibited in all but industrial zones. This seems overly restrictive. Can this be allowed in business districts – especially since many office and retail establishments will be closing given current trends?
- Same comment for Genetic Engineering Laboratories.

5. Chapter 5: Dimensional Requirements

- Much of the requirements appear to be overly restrictive.
- No buildings higher than 35' are allowed anywhere.
- Lot coverage is 35% at most, usually less (possibly excluding hardscape).
- Building height could be a good opportunity for incentive zoning – for instance, if a proposed development fulfills Goal XYZ, the building can be 45' tall.

6. Chapter 6: General Provisions

- 6.2.1 Lots on Subdivision Plans. This section requires extensive revision for clarity.
- 6.4.2. accessory units can't be greater than 25% of the gross floor area. This seems overly restrictive.
- 6.5.10. Strike the language "because of location off an expressway... or obstruction by other signs or structures" – this language seems arbitrary.
- 6.7.1 Parking. Most of the quantities required seem agreeable. But the mixed-use developments require 2 spaces per dwelling unit. Could this be reduced to 1.25 or 1.5?
- 6.7.1. Parking. There is nothing in here about shared parking. It states that all off street parking must be accommodated on the same lot as the building (except by special permit from Board of Appeals). If shared parking is a goal, then the zoning code should state that explicitly.
- 6.7.1 It is stated that parking spaces must be 20' long, and that separate bays of parking must be 22' apart. Could the bays be shrunk to 20' long to save space?
- 6.10 Planned Developments. This section requires extensive revision for clarity

7. Chapter 7: Administration

- 7.1 Enforcement. It is unclear if the enforcement of, for instance, signage, has been effective. Consider strengthening this provision.
- 7.2 Penalty for Violation. Is this penalty frequently administered?
- 7.6 It is stated that accessory use for scientific research or development is prohibited everywhere. It is unclear what purpose this serves and the town should consider eliminating this.
- 7.6 Conversion of single family home to a two-family home. It's good that this is possible. But why only for homes built before March 11, 1963?

8. Chapter 8: Open Space Community

- This section is written in a confusing tone. The purpose of having this type of area is not clear.
- The phrase "Open Space Community" is hard to distinguish from the zone category called "Open Recreation District" (which is also referred to as "Open Residential District" more than once). This language should all be clarified.
- Is this a floating zone or a fixed zone? The map would suggest it's fixed but its not clear within the bylaws.

9. Chapter 9: Special Districts

- 9.4 Mixed Use Development Overlay District. The purpose of this district is to encourage a mix of commercial and residential uses in Business Districts as shown on the Official Zoning Map. But the current version of the zoning map contains no instances of such an overlay. Is it meant as a floating zone? If so, that should be stated explicitly.
- It is stated that residences require 2 spaces per unit (9.4.5). Could this be reduced? The Slade's Ferry Crossing district requires 1.25-1.5.
- 9.4.6: Residential density in a mixed-use development is limited to 3 per acre. Why so few? The Slade's Ferry Crossing District allows up to 8 per acre.
- 9.5 Slade's Ferry Crossing District is written well and some of these provisions should be applied to other business districts as well. It allows for mix of uses, and higher density, and less parking requirements, than anywhere else.
- 9.6 Business Industrial Overlay. Why is this so small? It's only the size of one parcel, as it appears on the map. Can it be enlarged to cover the whole industrial area? Or other industrial areas?

10. Chapter 10: Shared Housing for the Elderly

- No comments.

11. Chapter 11: Large-Scale Ground Mounted Solar Installations

- No comments.

RULES AND REGULATIONS OF THE SOMERSET ZONING BOARD OF APPEALS
(Updated through 9/18/14)

Pursuant to the authority granted by Massachusetts General Laws chapter 40A, chapter 40B, and chapter 44, section 53G, the Somerset Zoning By-law, and municipal home rule powers, the Somerset Zoning Board of Appeals adopts the following rules and regulations regarding the submission of petitions and applications, effective September 1, 2004:

1. All petitions and applications to the Board shall be submitted on a form approved by the Board. In order to be considered, the form utilized must be completely filled out and all information required must be submitted prior to filing.
2. A petition or application shall be considered submitted on the date a completed form, with all required submissions, is filed with the Town Clerk's Office. **An original and five copies (6 total)** of all required forms and submissions, **including plans**, must be submitted at the time a petition or application is filed.
3. Each petition or application shall be accompanied by a to-scale plan showing the land which is the subject of the petition or application and, where applicable, the exact location on the land of each present and proposed structure, road, driveway, and parking area or space. Each petition for approval of a site plan for a planned development shall be accompanied by a to-scale plan signed and stamped by the registered engineer or land surveyor who made the plan and meeting the requirements of the Zoning By-law for planned development approval. All notations on plans submitted shall be easily legible.
4. In any case where an easement or other written authorization may be necessary to carry out the object of a petition or application, a copy of the written instrument creating the easement or authorization must be furnished to the Board in advance or at the hearing on the application or petition.
5. In accordance with applicable law, the Board will cause notice of hearings to be published twice in a newspaper of general circulation in the Town of Somerset and mailed to all persons and entities to whom such notice is required to be given by law. Such notice will include the date, time and place for hearing, the name(s) of the applicant(s), the name(s) of the owner(s) of the property, a description of subject location, including street address, if any, and assessor's map and lot number, the subject matter of the hearing, and the nature of the action requested.
6. Any interested party appearing before the Board may be represented by an agent or attorney.
7. Each application or petition filed with the Town Clerk's office must be accompanied by a filing fee in the amount of \$100.00 per application or petition for residential properties and \$300.00 per application or petition for commercial and industrial properties, or as otherwise specified in fee schedules which may be adopted from time to time by vote of the Board. Effective August 24, 2014, said fees shall not apply to applicants who are non-profit, non-governmental organizations occupying Town-owned facilities.
8. a. Where specific conditions arising from the land or the nature of the proposal necessitate the assistance of planning, engineering, traffic, soil, hydrologic, or other consultants, the Zoning Board may engage such outside consultant services as it deems necessary to assist the Board in analyzing the project to ensure compliance with all relevant laws, by-laws, regulations, good

design and engineering principals, and state-of-the-art technology. The Board may require that applicants pay a "review fee" consisting of the reasonable costs estimated by the Board to be incurred for the employment of such consultants to assist in review of the application.

b. Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer, who shall establish a special account in the municipal treasury and shall be kept separate and apart from other monies. Expenditures from this special account, including accrued interest, may be made at the direction of the Board, without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay all review fees shall be grounds for denial of the application or permit.

c. At the completion of the Board's review of a project, any excess amount in the account, including any interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor-in-interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor-in-interest shall provide the Board with the documentation establishing such succession-in-interest.

d. Any applicant may take an administrative appeal from the selection of an outside consultation to the Board of Selectmen, providing such appeal is taken within 14 days of notification of the Board's appointment of the consultant. The grounds for such an appeal shall be limited to claims that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a closely-related field. Minimum qualifications may be changed at the Board's discretion depending upon the complexity and/or importance of the proposed project. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

9. With regard to applications for a comprehensive permit under chapter 40B, the Board adopts the "Model Local Rules" promulgated by the Massachusetts Department of Housing and Community Development.

Duly adopted by vote of the Somerset Zoning Board of Appeals on August 5, 2004, and August 19, 2004, as amended by vote on September 18, 2014.

TOWN OF SOMERSET, MASSACHUSETTS
PETITION TO ZONING BOARD OF APPEALS

NOTE: The applicable fee **MUST** be submitted with this application. (Checks made payable to the Town of Somerset)
PLEASE REFER TO ATTACHED RULES AND REGULATIONS OF THE SOMERSET ZONING BOARD OF APPEALS

FILING FEE: \$100 RESIDENTIAL, \$300 COMMERCIAL

TO: ZONING BOARD OF APPEALS

Date: _____

APPLICANT: **Applicants Name and Address**

NAME ADDRESS

ALL PROPERTY OWNER(S): **Property Owners Name and Address**

NAME ADDRESS

DAYTIME TELEPHONE #: _____

TENANT (if any): _____

NAME ADDRESS

(From the Assessor's Office see link below #2)

1. Location of Premises: **Street Address** Assessor's Map #: _____ Lot #: _____

(From the Assessor's Office: <http://epas.csc-ma.us/PublicAccess/Pages/SearchParcel.aspx?town=Somerset>)

2. Dimensions of lot: _____

Frontage Depth Square Feet

(From the Zoning Map https://www.townofsomerset.org/sites/somersetma/files/uploads/officialzoningmay_2015_0.pdf)

3. Zoning District in which premises are located: _____

(From the Assessor's Office, Property Card, see above link #2)

4. How long has owner owned premises: _____

(Number of buildings)

5. How many buildings now on lot: _____

(From the Assessor's Office, Property Card, see above link #2)

6. Size of existing buildings: _____

(From the Assessor's Office, Property Card, see above link #2)

7. From whom was land purchased: _____

(From the Assessor's Office, Property Card, see above link #2)

8. Size of proposed buildings: _____

(Provided by Applicant)

9. Present use of premises: _____

(From the Applicants Project's Plans)

10. Proposed use of premises: _____

(Provided by the Applicant)

11. Extent of proposed alterations: _____

(Provided by the Applicant)

12. Number of families or uses in this building: _____

(Provided by the Applicant)

13. Have plans been submitted to Building Inspector: _____

(Provided by the Applicant)

14. Has permit been refused: Yes _____ No _____

(Provided by the Applicant based on the Town of Somerset Zoning Bylaws)

15. This petition seeks (check one or more):

a. SPECIAL PERMIT _____ b. VARIANCE _____ c. SIGN PERMIT _____

d. PLANNED DEVELOPMENT PERMIT _____, (Please note when applying for a PLANNED DEVELOPMENT you must contact the Planning Board for their recommendation before your hearing with the Zoning Board of Appeals).

e. OTHER _____

(Provided by the Applicant based on the Town of Somerset Zoning Bylaws)

16. What section of the Zoning By-law does applicant wish to be varied if seeking a Variance:

ARTICLE: _____ SECTION: _____

(Provided by the Applicant based on the Town of Somerset Zoning Bylaws)

17. State specific purpose for this petition: _____

Signature of Applicant: _____

NOTE: A DETAILED TO-SCALE PLAN OF LAND ACCURATELY DEPICTING THE LOCATION OF THE LOT LINES AND ALL STRUCTURES ON THE LOT, WITH SET-BACK DISTANCES, AS WELL AS ALL PROPOSED CHANGES, IF ANY, MUST BE FILED WITH THIS APPLICATION IN ORDER FOR THE BOARD TO CONSIDER THE PETITION. ALSO: THE FOLLOWING INFORMATION IS REQUIRED BEFORE APPLICATION CAN BE FILED WITH THE ZONING BOARD OF APPEALS:

DEED TO PREMISES ABOVE DESCRIBED IS RECORDED THE FALL RIVER DISTRICT REGISTRY OF DEEDS IN BOOK: _____ PAGE: _____

(From the Assessor's Office, Property Card, see above link #2)

Please be advised that applicants and/or their designee must be present at the scheduled hearing for this matter to be considered, otherwise petition will be denied.

All decisions granted by the Zoning Appeal Board **MUST** be recorded at the Fall River Office of the Bristol County Registry of Deeds.

What Is A Special Permit?

Some land uses in a zoning district are permitted as a property owner's right. Other uses, and certain proposed changes to a site or building, warrant greater review because of their potential impact on the town or the neighborhood. These uses require Special Permits. The ZBA reviews and makes a decision on applications for Special Permits after receiving a recommendation from the Planning Board and report from Town Boards/Departments.

In its review, the ZBA considers such factors as: compliance and consistency with the standards and purposes set forth in the zoning ordinance as well as compatibility with surrounding uses, public input, and neighborhood-specific issues. The ZBA may grant a Special Permit with conditions that are attached to its decision to mitigate the expected impact of the proposal upon the surrounding neighborhood. The ZBA may also deny a Special Permit petition.

What Is A Site Plan Review?

Certain petitions may require Site Plan Review by the Planning Board of the design of the site's physical elements. Commercial, industrial multi-family, and institutional developments are likely to have sizable impacts, so they require review of such features as site layout and building siting, landscaping, circulation & access, and surface runoff. Projects that require this type of

review are those which are over 500 sq. ft. in gross floor area and generate new parking spaces.

What Is A Variance?

A Variance can grant relief from provisions set forth in the zoning ordinance such as dimensional requirements or signage requirements.

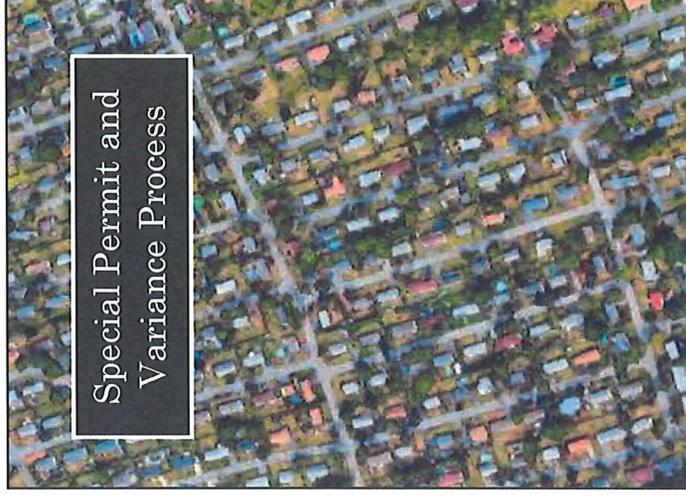
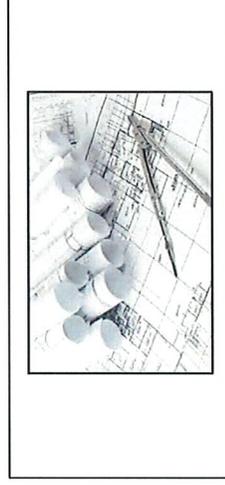
Variations may be authorized only where the ZBA finds that the following conditions apply:

The Variance is sought because of soil conditions, shape, or topography of the land or structure and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

A literal enforcement of the ordinance would involve a substantial hardship, financial or otherwise, to the Petitioner;

Desirable relief may be granted without substantial detriment to the public good; and

Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.



TOWN OF SOMERSET



140 Wood Street
Somerset, Massachusetts 02726
<https://www.townofsomerset.org/>

SPECIAL PERMIT & VARIANCE PROCESS

STEP ONE

If you choose to seek the required zoning relief, **obtain a Special Permit and/or Variance Petition or both** from the Town Clerk. **Complete the application and provide the required copies of the application, narratives, pictures, assessor card, plans, abutters list and payment to the Town Clerk's office.** If your application is complete, the Clerk will stamp your Petition, and coordinate with you so that the documents are distributed to the Town Departments and boards as required.

Your case will be scheduled to be heard by the appropriate Board(s). **Agenda deadlines are usually three to four weeks prior to scheduled meetings.** The Zoning Board of Appeals (ZBA) generally meets the third

STEP FOUR

Appeals must be filed with the Town Clerk within twenty days of the decision filing. After the appeal period, you can either obtain a certified copy of the decision at the Town Clerk's office or have them mail it to you directly. **You must then file this certified decision at the Bristol County Registry of Deeds to finalize the zoning approval.** The ZBA and Building Inspector will require you to present evidence that this decision was recorded.

STEP FIVE

Your application is now ready to proceed through the building permit or Certificate of Occupancy (C.O.) process. It is your responsibility to ensure that all conditions attached to the Special Permit and or Variance have been met. Once the zoning process is completed, you may continue the building permit process with the Building Department and other Town Departments, as applicable.

NOTE: The permit process is applicant driven, and it is the applicant's responsibility to submit all required information, to attend all meetings, and to complete each step of the development process.

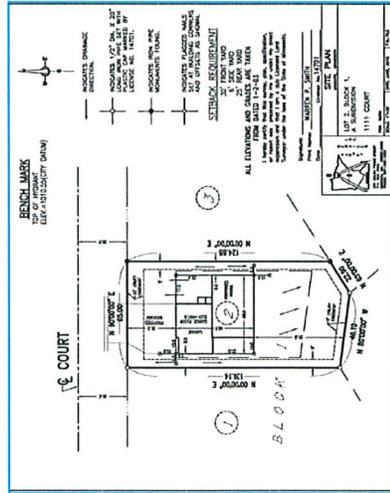
Thursday of every month and the Planning Board generally meets the fourth Thursday of every month. ZBA meetings are held at 7:00 p.m. and the Planning Board meetings are held at 6:00 p.m. in the Hearing Room at the Town Hall, there are occasions when they meet in other locations.

STEP TWO

You, the Petitioner, and abutters will be notified by mail of the public hearing to be held by the ZBA. For Special Permit Petitioners, you will also attend a separate public meeting before the Planning Board which will make a recommendation to the ZBA to approve, approve with conditions, or deny your proposal. You may present your case to these Boards, or allow an attorney, architect or other designated person to present for you.

STEP THREE

After the ZBA closed the public hearing on your Special Permit or Variance Petition, the ZBA will render its decision (denied or approved with/without conditions). ZBA requires a unanimous three-member vote to approve a Petition. **The ZBA will file the written decision with the Town Clerk.**



ZBA Process Flow Chart, March 2021

| <i>Action</i> | <i>Responsible Staff/Board</i> | <i>Supplementary Information</i> |
|--|--|--|
| Distribute Application | Town Clerks Office | Provide Special Permit, Variance Brochure, Frequently Asked Questions, and Mock Application. |
| Accept Application | Town Clerks Office | Required by law |
| Distribute Applications Submitted to Board | Town Clerks Office | 4 hard copies and 1 electronic copy |
| Prepare the abutter notification list | Prepared by the Assessor's Office, for a \$25.00 fee | |
| Prepare abutter notice and mailing | Town Clerk's Office | Mailing will become a requirement of the applicant and Town Clerk's office will create the abutter notification. |
| Mail abutter notice | Town Clerk's Office | Mailing will become a requirement of the applicant |
| Prepare Notice | Town Clerk's Office | |
| Submit Notice to Spectator | Town Clerk's Office | Check required by Applicant for legal notice |
| Post Notice | Town Clerk's Office | |
| Prepare box of meeting materials to ZBA prior to hearing | Town Clerk's Office | |
| Provide application materials to board members prior to meeting | Town Clerk/Town Planner | Electronically |
| Provide meeting materials to ZBA at the time of the meeting | Town Clerk | |
| Review and research applications prior to public hearing | Planner, Building Inspector, Chairman, Town Attorney, Engineer | |
| Collect box after meeting | Town Clerk | |
| Prepare draft decisions | Town Attorney | |
| Distribute draft decisions to ZBA, Town Clerk | Town Attorney | |
| Revise draft decisions | Town Attorney | |
| Submit final decisions in hard copy, single sided to Town Clerk's office for ZBA signature | Town Attorney | Electronically |
| Minutes, with vote of each member and reason for its decision | ZBA Secretary/Chairman | Required by law |
| Make decisions available to ZBA's signature if not completed at meeting | Town Clerk's Office | |
| Issue the final decisions to the Petitioner | Town Clerk's Office | Required by law |

- b. The ZBA can require both hard copies (4 hard copies) and electronic copies (1 electronic copy).
 - c. Scan and forward petitions to Town Planner and ZBA members
- 3. Prepare abutters list – Applicant
 - a. The applicant should provide the abutters list with their application
 - b. Proposed Regulation Change for Mailing Abutters Notice:
NOTICE:
The applicant is responsible for preparing stamped/certified envelopes to abutter which shall be delivered to the Town Clerk’s office for review and mailing. Return receipts should be addressed to the Zoning Board of Appeals for further verification. The prepared certified mailing shall be delivered to the Town Clerk’s or its agent not less than (15) days before the date of the hearing. All other expenses including, without limitation, certified postage, recording fees and filing fees for documents, and costs for engineering required by the Board or its agent shall be paid solely by the applicant.

/or

The applicant is responsible for preparing stamped/certified envelopes to abutter at time of filing application. The Town Clerk accepts a check made out to the Postmaster for the determined amount for the cost of the mailing.
- 4. Prepare notice – Town Clerk
 - a. Prepare the notice for the Spectator and submit it.
 - b. When the newspaper sends back the proof which also includes the cost, notify the applicant a payment is required before the hearing takes place
 - c. Prepare meeting notice and post it
- 5. Distribute application materials to the ZBA, Engineer and Town Attorney
- 6. Prepare draft decision – Town Attorney
- 7. Distribute draft decision to the ZBA and Town Clerk for review
- 8. Finalize decisions and submit to the Town Clerk’s office, memorialized and signed by ZBA
- 9. Issue the final decision to the Petitioner – Town Clerk’s office
- 10. File the decisions in the Town records – Town Clerk’s office
- 11. Accept and distribute any appeals – Town Clerk’s office
- 12. ZBA Budget Oversight – Town Clerk’s office

ZONING BOARD OF APPEALS #176

FY 2021 BUDGET REQUEST

Attached is a copy of a memo prepared prior to FY20 Budget requests. After providing the attached information last year, nothing has changed in the Town Clerk's office relevant to the demands placed in regards to Zoning work.

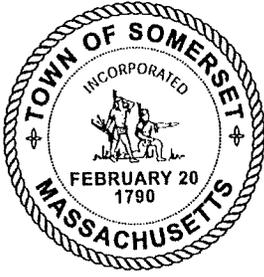
It has become a severe burden on our office, taking valuable time away from the statutorily required duties related to elections and Town Clerk office duties. As you are well aware, Kathy has been required to do work for the Zoning Board that is well above and beyond the statutory duties required of the Town Clerk's office related to Zoning. It has become necessary for her to stay in the Office 3-4 days a week after hours to complete work required of her as the Assistant Town Clerk because zoning work has consumed many hours during the day when we are open to the public. The "filing clerk" of the Zoning Board has historically received a \$600 per year stipend to do the work that is required of our office. With all the additional work forced upon her after the retirement of our Town Counsel, this stipend comes out to approximately less than \$.07 per petition filed for Zoning over the course of 12 months. In addition, all of the extra work she is doing is of a LEGAL nature, that she should not be responsible for.

I respectfully ask that the burden of all the extra work be taken out of the Office of the Town Clerk. I feel that our office is being taken advantage of and causing a great deal of stress on myself and Kathy. With the ever changing laws related to Town Clerk's in the Commonwealth that we are required to comply with, such as Automatic Voter Registrations (effective 1/1/20), Early voting requirements, Vitals records processing due to the implementation of the Vitals Records Partnership, Uniformed and Overseas Citizens election compliance laws, and US Census Bureau Liaison office, just to name a few. The Office of the Town Clerk is also responsible for the Annual Town Census, Compliance with the US Federal Census Laws, Dog Licenses, Raffle & Bazaar Permits, Marriage Licenses, Vital Records, State and Local Elections, Town Meetings, Cemeteries, Pole Petitions, Business Certificates, State Ethics Compliance, Open Meeting Law Compliance, Planning Board filings, Attorney General filings, Sporting Licenses, Public Records, Voter Registration records, Gasoline Storage Permits, posting of all public meetings, maintain the website, and most importantly the central hub for every citizen in our Town to get information on every function of the Town.

In researching what other communities do when it comes to zoning, the Town Clerk's Office's only do what is statutorily required. Almost every community has a Planning/Zoning Department or clerk specifically hired to handle duties related to filings for the Planning and Zoning Boards.

Our office is understaffed as compared to other communities our size as it is. I have asked for a part time clerical position to be added to my office staff which would help the burden of our regular required duties, but to no avail.

Again, I respectfully ask for a resolution to this problem and request the opportunity to meet with the Board of Selectman and the Town Administrator.



Town Planner

**Town Office Building
140 Wood Street
Somerset, MA 02726
(508) 646-2809 phone
(508) 646-2802 fax**

MEMO

February 16, 2021

Steve Cadorette, Chairman
Zoning Board of Appeals
140 Wood Street
Somerset, MA

RE: Legal Consulting Fees

The Zoning Board of Appeals should consider imposing a consultant fee requirement when attorneys are used by the Board for consideration and review of applications and assistance in drafting conditions and decisions. However, the use of attorneys in defense of decisions or enforcement matters would not be subject to such a requirement. Presently, the Somerset tax payers have been absorbing the cost of the attorney fees to assist the Board. Furthermore, in the event of an appeal, decisions would most likely be defensible in court.

The provisions of G.L. c. 44, sec. 53G provide an accounting mechanism for consultant fees, allowing the Town to place developer funds into a separate account for such use without need for further appropriations. Such mechanisms are addressed in the Zoning Boards Rules and Regulations. Currently those regulations do not specifically list the consultants for whom such a process applies, meaning that arguably the existing regulations would extend to attorneys assisting the Board. The Board may wish to consider amending its regulations to provide a broad and non-exclusive listing of consultants and a statutory reference. Consideration may be given to the following provisions:

In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers or other appropriate professionals, who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, standards and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, evaluating documents submitted in connection with an application or as a condition of approval, or inspecting a project during construction or implementation.

Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer, who shall establish a special account for this purpose, consistent with the

terms and provisions of G.L. c. 44, §53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the application. Alternatively, approval of such application may be conditioned upon payment of any outstanding review fees.

At the completion of the Board's review of a project, including any post-approval inspections, evaluations, and reviews deemed appropriate by the Board to ensure compliance with such approval, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest upon request. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation reasonably satisfactory to the Board and/or its counsel, establishing such succession in interest.

This language may be inserted in the Zoning Board of Appeals Rules and Regulations by a vote of the Board in place of the existing Section 8 of the Board's regulations. In my opinion, the Board may include fees for attorney consultation under its existing regulations; however, the proposed language included above makes that requirement clear.

Estimates for each project, including the rate to be applied, would be determined on a case-by-case basis.

Sincerely,

Nancy Durfee

Cc: Richard Brown
Mark Reich
Jonathan Eichman

SITE PLAN REVIEW

- I. DEFINITION
- II. COMPARISON TO SPECIAL PERMIT
- III. SITE PLAN REVIEW BOARD
- IV. FUNCTION OF SITE PLAN REVIEW
- V. POWERS OF THE SITE PLAN REVIEW BOARD
- VI. PROCEDURES FOR SITE PLAN REVIEW
- VII. REVIEW OF THE SITE PLAN
- VIII. DECISION
- IX. CONSTRUCTIVE APPROVAL OF SITE PLAN
- X. SITE PLAN REVIEW AND VESTED RIGHTS
- XI. APPEAL OF SITE PLAN DECISIONS
- XII. JUDICIAL REVIEW OF SITE PLAN DECISIONS
- XIII. CONCLUSION

I. DEFINITION

Site plan review establishes criteria for the layout, scale, appearance, safety, and environmental impacts of commercial or industrial development, in an attempt to "fit" larger projects into the community. Site plan review usually focuses on parking, traffic, drainage, roadway construction, signage, utilities, screening, lighting, and other aspects of the proposal to arrive at the best possible design for the location. In the usual situation, site plan approval must be obtained before the building or special permit is issued.

Mass. Gen. L. ch. 40A, the Zoning Act, contains no reference to site plan review. Site plan review is entirely the creature of the cities and towns that use it, and the courts that have endorsed it.

II. COMPARISON TO SPECIAL PERMIT

In the special permit process, the full range of discretion is available to the special permit granting authority.

Neither the Zoning Enabling Act nor the town zoning by-law gives . . . an absolute right to the special permit . . . The board is not compelled to grant the permit. It has discretionary power in acting thereon. *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638-639

(1970).

On the other hand, the Supreme Judicial Court has defined site plan review as "regulation of a use rather than its prohibition . . . contemplating primarily the imposition for the public protection of reasonable terms and conditions." *Y.D. Dugout v. Board of Appeals of Canton*, 357 Mass. 25, 31 (1970). The Supreme Judicial Court has repeatedly distinguished site plan review from the special permit process in this manner.¹ In sum, site plan review can only be used to shape a project; it cannot be used to deny a project, except in rare circumstances.

III. SITE PLAN REVIEW BOARD

Site plan review is not defined in the Zoning Act. As a result, various boards or officials may exercise this authority. These include:

- * Planning Board: Probably the most common site plan review board, the planning board brings its experience with design issues from the subdivision arena.
- * Board of Selectmen/City Council: In some towns, notably Sudbury, the executive board sits as site plan review board.
- * Zoning Board of Appeals: Probably rare, but the Board of Appeals may sit in this capacity.
- * Building Inspector: Older site plan review models had the building official serving in this capacity, usually in a ministerial manner.
- * Hybrid board: Some towns, particularly on Cape Cod, have hybrid boards composed of members of the community, designees of other boards, or technical experts.

IV. FUNCTION OF SITE PLAN REVIEW

The Zoning Act establishes a system of permits to authorize uses or structures: variances, special permits and building permits. Site plan review, unmentioned in the Zoning Act, cannot operate alone to authorize a use or structure. Accordingly, site plan review usually operates in conjunction with one of these other devices.² The only exception to this rule is site plan review to

¹ See *Prudential Ins. Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Auburn v. Planning Bd. of Dover*, 12 Mass. App. Ct. 998 (1981).

² Site plan review is rarely attached to the variance mechanism, although there is good reason to do so. Uses authorized by a variance need to fit into their neighborhoods; dimensional variances may necessitate an even greater need for screening and landscaping, always issues in site plan review.

alter a site in a manner that does not require another permit: parking lot expansion or site clearing are good examples.

Where site plan review is connected to another permitting process, it is important to identify the link because it will determine the procedure for appeal of adverse decisions.

1. Use or Structure also Requires Special Permit

Site plan review in conjunction with a special permit application is the earliest version of the device and remains quite common.³ There are two possible variations:

* Same Special Permit Granting Authority (SPGA)

Generally, this system operates by requiring both a special permit and site plan review for the same proposal before the same board serving as SPGA and site plan review board. In this case, the site plan ostensibly serves to provide detailed information to the SPGA on aspects of the proposed development. The leading case of *Y.D. Dugout v. Board of Appeals of Canton*, 357 Mass. 25, 31 (1970), found the process "in substance, . . . equivalent to permitting any commercial building construction . . . only upon special permit." In *Auburn v. Planning Board of Dover*, 12 Mass. App. Ct. 998 (1981), a by-law provision required site plan approval for all buildings to be erected in a business district through issuance of a special permit. The court held that the "requirement that a site plan be approved before the issuance of a special permit does not impose impermissible restrictions on the allowed use."

* Different Special Permit Granting Authority

Where, hypothetically, the board of appeals serves as SPGA and the planning board sits in review of site plans, there is a potential for conflict.⁴ Conditions imposed in the approval of the project by one board may run counter to those attached by the other. No appellate level decision reviews such a circumstance. Since site plan review powers have been clearly delineated to include the imposition of conditions, it is unlikely that the special permit decision would supersede its counterpart. Given the usual tension between these two boards, the prospects for eventual judicial review of this quagmire are quite promising. In the meantime, the model site plan by-law

³ See *Woods v. City of Newton*, 351 Mass. 98 (1966); *Coolidge v. Planning Bd. of North Andover*, 337 Mass. 648 (1958).

⁴ This occurs fairly often. The reason may stem from the fact that planning boards were excluded from special permit granting authority until at least 1975, when amendments to Mass. Gen. L. ch. 40A first opened this door.

[ordinance], Appendix A, attempts to coordinate review under this circumstance.

2. Use or Structure Requires Only Building Permit

Site plan review may also be attached to as-of-right uses. The process is used to impose reasonable conditions before the issuance of the building permit. In *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 282 (1986), the court examined such a case.⁵ Even though the plaintiff's proposed office buildings were a permitted use, the board of appeals denied site plan approval, primarily because of traffic concerns raised by the project. The appeals court held that this result was contrary to *Y.D. Dugout*, which limited site plan review to "regulation of a use rather than its prohibition." Thus, site plan review attached to a use available as of right cannot be used to deny the use. This limitation is described in Section V, below, in detail.

V. POWERS OF THE SITE PLAN REVIEW BOARD

In *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283-284 n.9 (1986), the Appeals Court defined the powers of site plan review boards. The court held that such boards may:

- * Reject a site plan that fails to furnish adequate information required by the by-law;
- * Impose reasonable conditions in connection with site plan approval, even at the expense of the applicant; and
- * Reject 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."

As to the last clause, the Appeals Court commented that "[t]his 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 never been a case under this clause of *Prudential* at the appellate level, and none are known in the lower courts. Boards are strongly advised to resist the temptation to deny site plans under this prong of the test unless the proposed use dwarfs the community's capacity to handle it.

VI. PROCEDURES FOR SITE PLAN REVIEW

⁵ See also *Hallenborg v. Town Clerk of Billerica*, 360 Mass. 513 (1971); *Richardson v. Zoning Bd. of Appeals of Framingham*, 351 Mass. 372 (1966); *Salah v. Board of Appeals of Canton*, 2 Mass. App. Ct. 488 (1974).

The procedures for variances, special permits, and administrative appeals are set forth in the Zoning Act. Site plan review is unmentioned in the statute, so boards have had to guess at procedural minima. This has not been helped by the fact that no decision at the appellate (or trial) level details minimum procedural safeguards for site plan review.

Section 9 requires special permit determinations to be made after a public hearing, duly advertised for two weeks prior to the hearing, with notice to abutters; the statute also requires a formal decision within 90 days of the hearing, with written findings. Many communities incorporate these procedures by reference for site plan review.

However, there is no need, statutory or constitutional, to use this level of formality. Some communities rely on an informal process roughly equivalent to preliminary plan review under the Subdivision Control Act. The review board conducts plan evaluation at a regular business meeting; notice is limited to observance of the Open Meeting Law. Interested parties make their views clear to the board through informal comments, written or oral, delivered at the meeting. The applicant interprets the site plan with the board, and notes the board's criticism and suggested modifications. The applicant and board may negotiate terms or conditions that might be imposed on the plan.

This practice is consistent with the expectations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Site plan review has always been characterized as functionally less than a special permit decision. Simply put, a site plan cannot be denied. Thus, Due Process expectations are lower - absolute denial of a property interest is unlikely. For example, in *Y.D. Dugout*, 357 Mass. at 31, the court stated that "[t]he board's authority to enforce compliance with (site plan review) is only to 'assure' protection of the public interest 'to a degree consistent with a reasonable use of the site for the purposes permitted or permissible by the regulations of the district.'" Site plan review does not threaten deprivation of the property interest, except to the extent that conditions cost the applicant money to conform.

Thus, the Appeals Court's ruling in *Fairbairn v. Planning Board of Barnstable*, 5 Mass. App. Ct. 171, 181-182 (1977)(regarding board of health review of definitive subdivision plans), probably describes minimal procedural safeguards:

- * An applicant filing a site plan may also request, in writing, a hearing;
- * If, after studying the plan, the board is disposed to disapprove the plan or subject it to conditions which have not been approved by the developer, the board must honor the request for a hearing.
- * The board must give the developer reasonable notice of the time and place of the hearing.

- * The developer must be advised of all of the facts and other material in the possession of the board on which it intends to rely, and she must be given the opportunity to produce all relevant evidence, to cross examine witnesses, and to present argument.
- * A board "runs a serious risk of having its [decision] annulled by a court if the board fails to maintain a complete record of the proceedings complained of, including a record of the evidence adduced before the board."

Note that *Fairbairn* did not require notice to abutters or newspaper notice. To the extent this, and other formalities, are required, the city or town has stated a political, rather than a legal, requirement. Every town will have to make its own decision as to the scope of procedures accompanying site plan review.

VII. REVIEW OF THE SITE PLAN

Certain local boards, including the planning board and board of appeals, have been authorized by Mass. Gen. L. ch. 44, s. 53G to adopt technical review fees. Use of this device enables the board to establish an escrow account to review a particular project and to use the services of technical consultants, including, but not limited to, acoustical engineers, architects, attorneys, civil engineers, hydrogeologists, landscape architects, planners, preservationists, soil scientists, traffic engineers, and wetland botanists.

Site plan review boards are strongly encouraged to use the provisions of the statute to review site plans and to promote more informed decision-making. The system works especially well in small towns without staff: Sterling, Berkley, Dighton, and Clinton, for example, have used the statute to good advantage. Large towns with overworked staff can free up time for planning studies by "farming out" technical reviews to outside consultants. Franklin and Framingham have taken this approach.

The following aspects of the site plan should be closely scrutinized by the board and its agents. These features are depicted on Appendix D (Existing Conditions Plan) and Appendix E (Proposed Landscape Plan), as numbered below:

- * pedestrian and vehicular access to and egress from the site (1);
- * parking (2) and loading (3);
- * landscaping, screening, and buffers (4);
- * lighting (5);

- * signage (6);
- * stormwater management (7);
- * architectural style and scale (8);
- * water and wastewater systems (9);
- * refuse disposal (10).

Obviously, many of these issues are highly technical. Unless the board has a special expertise (i.e., a member is a civil engineer willing to take on review), a 53G account should be implemented for the project. A sample 53G rule for a planning board is set forth as Appendix C.

VIII. DECISION

The decision of the site plan review board must comport with the standards established by the court in *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283-284 n.9 (1986). The court held that such boards may:

- * Reject a site plan that fails to furnish adequate information required by the by-law;
- * Impose reasonable conditions in connection with site plan approval, even at the expense of the applicant; and
- * Reject 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."

Consequently, most, if not all, site plan decisions should end up approving the proposed use subject to conditions. These conditions may include:

- * private disposal of solid waste;
- * deadline to commence construction;
- * possession or use of hazardous substances;
- * limitations on signage;

- * alarm system;
- * limits on vehicles;
- * limit as to number of students or residents;
- * noise limits;
- * maintenance guarantees;
- * landscaping requirements;
- * parking spaces;
- * dust control;
- * sewer connection;
- * bond or other performance guarantee;
- * hours of operation;
- * police details during periods of heavy traffic.

All of these conditions are supported by case law regarding special permits and variances.

Unless otherwise provided in the local ordinance or by-law, site plan approval requires only a majority vote of those present at the meeting. *Osberg v. Planning Board of Sturbridge*, 44 Mass. App. Ct. 56, 59 (1997). It is advisable to observe the rule of *Mullin v. Planning Board of Brewster*, 17 Mass. App. Ct. 139 (1983), which holds that where the proceedings before the board are continued to various sessions, only those members who had attended all the public hearing sessions could vote.

The court has ruled that a board is not required to make detailed findings, in writing, to approve a site plan. *Bowen v. Board of Appeals of Franklin*, 36 Mass. App. Ct. 954 (1994). Nonetheless, it is good practice to provide the same level of detail as in special permit decisions. A sample decision is set forth as Appendix B.

IX. CONSTRUCTIVE APPROVAL OF SITE PLAN

There are no decisions to provide guidance as to the constructive approval of a site plan. Nor does any opinion indicate whether a constructively approved site plan may be amended, modified, or

rescinded upon a motion of the board. It is good practice to state in an ordinance or by-law that plans not acted upon within a fixed period are constructively approved so that applicants are not faced with delay. Ordinances and by-law should also state that the time period for a decision may be extended upon agreement of the parties.

X. SITE PLAN REVIEW AND VESTED RIGHTS

In *Towermarc Canton Limited Partnership v. Town of Canton*, Misc. Case No. 131947 (Land Ct. 1989), a zoning amendment set a height limitation that seriously impacted plaintiff's project, shown on an approved site plan. The land court held that the freeze provision of Mass. Gen. L. ch. 40A, §6 does not apply to site plan approval. The absence of any reference to site plan approval in the freeze paragraphs of the statute was fatal to plaintiff's claim that the site plan approval protected the property from subsequent zoning changes. Note, however, that this result is from a lower court.

XI. APPEAL OF SITE PLAN DECISIONS

There has been considerable confusion regarding the appeal of site plan decisions, no doubt fueled by the absence of any statutory directives.

Where the site plan is connected to a special permit issued by the same board, the Appeals Court has ruled that the site plan decision should be appealed directly to court in accordance with Mass. Gen. L. ch. 40A, §17. *Quincy v. Planning Board of Tewksbury*, 39 Mass. App. Ct. 17, 21-22 (1995).

Where site plan review is required in connection with the issuance of a building permit, the Appeals Court ruled in *Osberg v. Planning Board of Sturbridge*, 44 Mass. App. Ct. 56 (1997), that unless the procedural framework of the local ordinance or by-law permits direct appeal pursuant to Mass. Gen. L. ch. 40A, s. 17, the requirement to exhaust administrative remedies may dictate that action by a planning board be appealed to the board of appeals. In *St. Botolph Citizens Committee, Inc. v. Boston Redevelopment Authority*, 429 Mass. 1 (1999), the Massachusetts Supreme Court noted that an approval of a site plan, when required in connection with the issuance of a building permit, is not a final action, but only a prerequisite to the grant of the building permit. The Court concluded that the right of an aggrieved person to appeal a local planning board's site plan review decision arises only when the building permit for the proposed project is issued or denied by the building inspector. *

In *Dufault v. Millennium Power Partners*, 49 Mass. App. Ct. 137 (2000), the Appeals Court reviewed the site plan approval provisions of the Charlton zoning by-law. Site plan approval for uses permitted as of right was linked to the building permit process. The bylaw required submission of a site plan to the planning board in order for the board to assure compliance with the

by-law. The zoning by-law also directed the planning board to inform the zoning enforcement officer and the inspector of buildings of the approval of the site plan. The Charlton zoning bylaw did not specify an appeal process from the approval or denial of a site plan. The Appeals Court concluded that where no provision in either Mass. Gen. L. ch. 40A, or the Charlton zoning bylaws specifically refer to appeals from the approval or denial of a site plan, the right of an aggrieved person to appeal the planning board's site plan review decision arises when the building permit for the proposed project is issued or denied by the building inspector. *

The *Botolph* and *Dufault* decisions have created a problem at the local level. Without guidance in the local zoning by-law, it is unclear whether an applicant aggrieved by a site plan decision must go through the exercise of applying for a building permit in order to commence the appeal period. Since abutters and parties in interest are not entitled to notice when a building permit is issued, how will they know when the 30-day appeal period commences? Ordinances and by-laws should address the appeal process for site plan approval. It is probably not good practice to pit one local board against another by authorizing appeals to the board of appeals. Communities may want to consider that site plan approval appeals be taken directly to court pursuant to Mass. Gen L. ch. 40A, s.17. *

XII. JUDICIAL REVIEW OF SITE PLAN DECISIONS

In *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283 (1986), the Appeals court announced the scope of judicial review for site plan decisions for uses available as of right. Where the site plan is approved with conditions, the usual deference is granted. However, where site plan approval is denied, "[t]he judge . . . examine[s] the proposal to see if the . . . problem was so intractable that it could admit of no reasonable solution. Short of independently finding that, he was not obliged to give deference to the board's decision."⁶

XIII. CONCLUSION

Too many cities and towns confuse site plan review and special permits. The award of a special permit is completely discretionary. In a special permit

[n]either the Zoning Enabling Act nor the town zoning by-law gives . . . an absolute right to the special permit The board is not compelled to grant the permit. It has discretionary power in acting thereon.

MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638-639 (1970). On the other hand, in site plan review a board is engaged in "regulation of a use rather than its prohibition . . . contemplating primarily the imposition for the public protection of reasonable terms and conditions." *Y.D. Dugout*

* Inserted by DHCD (9/14/00)

v. Board of Appeals of Canton, 357 Mass. 25, 31 (1970). The difference is not subtle. A site plan review board lacks the power to deny a project, absent extraordinary circumstances, the likes of which have not yet been seen by an appellate court.

Therefore, it is crucial to review ordinances and by-laws with this limitation in mind. Uses available as of right, subject only to site plan review, cannot be stopped. For a classic example, see *Osberg v. Planning Board of Sturbridge*, 44 Mass. App. Ct. 56 (1997), regarding the development of a Walmart. If the use allowed as of right might take a form unacceptable to the community, the voters at Town Meeting or on the City Council are well-advised to place the use on special permit status.



SOMERSET PLANNING BOARD & ZONING BOARD OF APPEALS

Affidavit of Plan Distribution

UNDER THE RULES AND REGULATIONS OF THE SOMERSET ZONING BYLAWS FOR THE ISSUANCE OF A **SITE PLAN REVIEW**

(To be submitted with all applications for Site Plan Review)

I hereby certify under the pains and penalties of perjury that I mailed by certified mail or hand delivered a copy of the Application and Plans to each of the following Departments on the date indicated for the following project:

Project Name: _____

Signature: _____ Print Name: _____

Date Application Submitted to Planning Board: _____

Applicant Name and Address:

Per the Rules and Regulations of the Somerset Planning Board, the applicant is required to deliver a copy of the submitted Application and Plan to each of the following Departments and return this form to the board within 5 days:

Notified By: (check one)

- | | | |
|-----------------------|--|---|
| Town Planner | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Water and Sewer Dept. | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Con. Comm. | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Board of Health | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Bldg. Inspector | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Fire Dept. | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Police Dept. | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Highway Dept. | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Town Engineer | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |
| Town Attorney | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Certified Mail |

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| Date: |
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If Certified Mail is checked, provide receipts for each Board or Department when submitting this form.



Town of Somerset

**Site Plan and Planned Development
Checklists**

For a Site Plan Review and Planned Development Submission.

| ITEM | COMPLETE | INCOMPLETE /INCORRECT | NOT REQUIRED |
|--|----------|--------------------------|-----------------|
| Application cover sheet and fee; notarized statement from property owner authorizing submission of land to development and land review procedures | | | |
| Sufficient number of plan copies (XX) | | | |
| Name of project; submission type and stage of submission | | | |
| Tax Assessor's Map and Lot Number | | | |
| Name and MA registration number of professional engineer or land surveyor responsible for the plan submitted | | | |
| Date of plan preparation, with revision date(s) (if any) | | | |
| Graphic scale and true north arrow | | | |
| Zoning District(s), including minimum area, dimensions and setbacks | | | |
| Existing and proposed property lines and building setbacks | | | |
| Location and size of existing buildings, structures, utilities and improvements on the lot(s). | | | |
| Plan scale shall be no smaller than 1 inch equals 40 feet. | | | |
| Illustrate other conditions such as ledge outcroppings and appropriate setback lines to all brooks, reservoirs, streams, ponds, lakes, wetland areas, drinking water supplies and other waterways within 200 feet of the | | | |

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| proposed project (if none, state on the Plan). | | | |
| Stormwater Management Plan, accommodate a 100-year storm event. | | | |
| Topographic contours at 2-foot intervals. Illustrate other conditions such as ledge outcroppings and appropriate setback lines to all brooks, reservoirs, streams, ponds, lakes, wetland areas, drinking water supplies and other waterways within 200 feet of the proposed project (if none, state on the Plan). | | | |
| Existing and proposed utilities (electric, gas, hydrants, wells, ISDA, water line, sewer line, easements, drainage line and all manholes, and catch basins; including location and dimensions of each and data that supports their sizing and design with supporting engineering plans prepared by registered engineer; written confirmation from the Somerset Water Department that the proposed water service is acceptable | | | |
| Existing and proposed curb lines and driveway openings and internal circulation patterns | | | |
| Location of existing and proposed permanent monuments | | | |
| A soil erosion and sedimentation control plan and landscaping plan showing all significant clearing of land and re-vegetation prepared by a registered Landscape Architect. | | | |
| Engineered centerline profiles of proposed streets containing, as appropriate: existing and proposed street grades, sewer mains, water mains, all other underground utilities, and drainage facilities. Profile scale shall have a horizontal scale of 1 inch | | | |

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| equals 40 feet and vertical scale of 1 inch equals 4 feet | | | |
| Numbers and dimensions of existing and proposed parking and handicapped parking spaces, including parking computations and supporting data | | | |
| If wetlands are located within the project area, a written determination from the Conservation Commission and/or MA DEP is necessary documenting either that the Wetlands Act does not apply, or that the proposal will result in an insignificant alteration as granted by evidence of a permit. Copies of Conservation plans and permits along with any conditions shall be submitted. Verification of wetland edge, (if no wetlands on property, state on plan) | | | |
| A street lighting plan, showing the location dimension and architecture style of proposed external lighting including type of illumination and illustration of foot candles in scale measurement equal to plan. | | | |
| Municipal lien certificate documenting that there are no taxes due on the property. | | | |
| Quitclaim deed conveying all street ROWs and other legal documents such as deed restrictions, covenants, and easements. | | | |
| Any conditions of approval or waivers/variances granted should be identified on the plan | | | |
| Provide an Affidavit and Plan Distribution document | | | |
| Proposed areas of be dedicated as open space and ownership/maintenance proposals (only in Open Space Design District) | | | |

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| Proposed street names/private ways (Names shall not be duplicated of, or closely resemble, existing street names) Street signs and traffic calming measures, as appropriate. | | | |
| Soil erosion and sedimentation control plan | | | |
| Identification of flood areas in accordance with the NFIP flood hazard regulations(If none, state on plan) | | | |