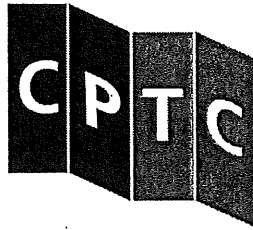


The Citizen Planner Training Collaborative



CITIZEN PLANNER

TRAINING COLLABORATIVE

HANDOUT

SITE PLAN REVIEW

The Citizen Planner Training Collaborative:

*University of Massachusetts Extension
Massachusetts Department of Housing and Community Development
American Planning Association, MA Chapter
Massachusetts Assn. of Regional Planning Agencies
Massachusetts Assn. of Planning Directors*

SITE PLAN REVIEW

by

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This outline is intended for reference purposes only and has been prepared for the Citizen Planner Training Collaborative's site plan review workshops under the auspices of a 1999 Municipal Incentives Grant from the Department of Housing & Community Development to the Martha's Vineyard Commission.

Edits and updates to this document have been made by DHCD and are indicated by an asterisk () preceding the text.*

SITE PLAN REVIEW*

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.

* Edits and updates to this document have been made by DHCD and are indicated by an asterisk (*) preceding the text.

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).

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 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

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.

version of the device and remains quite common.³ There are two possible variations:

1) 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."

2) 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.

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

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.

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).

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

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

The following aspects of the site plan should be closely scrutinized by the board and its agents:

- pedestrian and vehicular access to and egress from the site;
- parking and loading;
- landscaping, screening, and buffers;
- lighting;
- signage;
- stormwater management;
- architectural style and scale;
- water and wastewater systems;
- refuse disposal.

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). *Upon municipal acceptance of M.G. L. Chapter 39, Section 23D, a member may miss one session of a hearing and still vote on the petition provided that member certifies in writing that all evidence from the missed session was examined.

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.

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). * The court noted that since "the only decisions of the planning board are appealable to the courts directly are those in which planning board has acted as a 'special permit granting authority,' the planning board's disapproval of the site plan had to be run through the board of appeals."

Where site plan review is required in connection with the issuance of a building permit, the Appeals Court noted in *Osberg v. Planning Board of Sturbridge*, 44 Mass. App. Ct. 56 (1997), that unless the procedural framework of a municipal site plan review by-law permits direct appeal pursuant to Mass. Gen. L. ch. 40A, s. 17, *see *Quincy v. Planning Board of Tewksbury*, 39 Mass. App. Ct. 17, 20-22 (1995), "the requirement of exhaustion of administrative remedies may dictate that action by a planning board, if objected to, be appealed to the board of appeals before recourse to the pursuant to G.L. c.40A, s.17." 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 zoning bylaw did not specifically refer to appeals from the approval or denial of a site plan for uses as of right. The Appeals Court concluded that 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. *

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 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.

* Inserted by DHCD (8/16/06)

APPENDIX A
SAMPLE SITE PLAN REVIEW BY-LAW OR ORDINANCE

A. Applicability. Where no special permit is required by the by-law, the following types of activities and uses require site plan review by the Planning Board [OR OTHER BOARD]:

5411. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure with four or more dwelling units;

5412. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose.

B. Procedures. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the City Council, Board of Health, Board of Public Works, Building Inspector, City Engineer, and Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No building permit or certificate of occupancy shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.

a. Application for Building Permit. An application for a building permit to perform work as set forth in Section A available as of right shall be accompanied by an approved site plan.

b. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

c. No deviation from an approved site plan shall be permitted without modification thereof.

C. Preparation of Plans. Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Planning Board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=40'.

D. Contents of Plan. The contents of the site plan are as follows:

1. Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the planning board. The plans are as follows:

a. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the planning board.

b. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.

c. Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.

d. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.

e. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

2. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

3. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this ordinance.

4. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to City of New Bedford subdivision regulations.

5. The Planning Board may require a narrative statement detailing the impact of the proposed use on municipal services and the environment.

6. Certification that the proposal is in compliance with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

E. Waiver of Technical Compliance. The Planning Board may, upon written request of the applicant, waive any of the requirements of this Section where the project involves relatively simple development plans or constitutes a minor site plan. An application for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2000 square feet, or an application which will not generate the need for more than 10 parking spaces shall be deemed a "minor site plan." For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans shall set forth all of the information required by Section 5440; provided, however, that the scale of the site plan may be 1' = 80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey.

F. Approval. Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

1. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;
2. Maximize pedestrian and vehicular safety both on the site and egressing from it;
3. Minimize obstruction of scenic views from publicly accessible locations;
4. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

5. Minimize glare from headlights and lighting intrusion;
6. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.
7. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;
8. Ensure compliance with the provisions of this Zoning Ordinance, including parking and landscaping.

G. Lapse. Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

H. Regulations. The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines.

I. Fee. The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

APPENDIX B

SAMPLE SITE PLAN DECISION

Town/City Clerk _____, 2011
Town/City Hall
Anytown, MA

RE: Application of XYZ Development Co. for Site Plan Review

Plan Entitled: "Warehouse/Distribution Facility, Main Street, _____, Massachusetts (hereinafter, the "Plan")

Prepared By: Engineering Consultants, Inc., 100 Central Road, _____, Massachusetts

Date/Revision: August 3, 2008; revised to _____.

Dear Sir/Madam:

At its meeting of _____, 2008, the Planning Board voted to approve the above-referenced site plan, subject to the following conditions:

General

1. During construction all local, state, and federal laws shall be followed regarding noise, vibration, dust, and blocking of town/city roads. The applicants shall at all times use all reasonable means to minimize inconvenience to residents in the general area. There shall be no construction of the proposed ways, structures, and services on any Sunday or federal legal holiday.

Truck Traffic

2. Trucks shall normally enter into and exit from the site between the hours of 6:00 A.M to 9:00 P.M. Monday through Saturday. On or about the first of every month, the applicant shall provide to the Planning Board a monthly register of the total number of trucks entering and exiting the

premises outside the times set forth above. In the event the registers indicate that truck traffic outside the times set forth above exceeds 10% of the total number of allowed trips in paragraph 7, herein, for three consecutive months, the Planning Board shall provide written notice to the applicant that this site plan approval is subject to reconsideration, and take appropriate action thereafter.

Notwithstanding the provisions of the above paragraph, truck traffic and/or loading or unloading on the westerly (hospital) side of the warehouse shall be permitted exclusively between the hours of 7:00 A.M to 5:00 P.M. Monday through Saturday.

3. Trucks shall enter into and exit from the site exclusively via Parker Street.
4. Trucks headed for entry to the site, and trucks exiting from the site, are prohibited from Flagg Street, Lawrence Marshall Street, and Greeley Street.
5. No truck traffic, except in the case of an emergency, shall be allowed behind 112 Flagg Street and 116 Flagg Street, for as long as such premises shall be occupied for residential purposes. A breakaway gate shall be installed to ensure compliance with this condition.
6. Truck engine idling time shall be restricted in accordance with applicable local, state, and federal laws.
7. It is anticipated that normal truck traffic for the facility shall not exceed two hundred (200) round trips per day. On or about the first of every month, the applicant shall provide to the Planning Board a monthly register of the total number of trucks entering and exiting the premises. In the event the registers indicate an increase over the anticipated truck traffic set forth above of 25% for three consecutive months, the Planning Board shall provide written notice to the applicant that this site plan approval is subject to reconsideration, and take appropriate action thereafter.

Signage

8. In accordance with the instructions of the Department of Public Works, signs regarding proper routes to enter and exit from the site, as set forth in conditions #3 and 4 above, shall be posted, at the applicant's expense, at various locations, including, but not limited to, the corner of Water and Chestnut Streets, Lewis Street and the driveway to the warehouse. Such signs may include, but are not limited to, the message "No Through Trucks."

Landscaping and Improvements

9. Prior to the issuance of any certificate of occupancy or use for the premises, the applicant shall complete all landscaping as shown on the Plan to the satisfaction of the Planning Board and the Department of Public Works or provide adequate security therefore as set forth in paragraph 12.

10. Prior to the issuance of any certificate of occupancy or use for the premises, the applicant shall demonstrate that suitable access for fire and emergency medical vehicles has been provided in accordance with the instructions of the Fire Chief. Such access way may include, at the applicant's expense, breakaway gates, fencing and/or barriers, as shown on the Plan.

11. Within thirty days of receipt of written notice from the Department of Public Works that the Town/City is prepared to widen the existing pavement of Main Street, the applicant shall provide the sum of Twenty Thousand (\$20,000.00) Dollars to the Town/City for the purpose of establishing an interest-bearing escrow account to fund such work. Such funds may also be used to widen the intersection of Main Street with Broadway; provided, however, that the Town/City shall return any unexpended funds within five (5) years from the date of receipt.

12. The landscaping shown on the Plan shall be secured by a performance bond in an amount to be determined by the Planning Board. Such bond shall be posted with the Town/City Treasurer and shall be released upon certification by the Planning Board that all required landscaping has been installed. In the event that such required landscaping is not installed within two (2) years from the date of this approval, or does not survive, the Planning Board may use the performance bond to install such landscaping.

13. Violation of any condition contained herein or failure to comply with the site plan shall subject the applicant to a zoning enforcement action in accordance with the remedies set forth in G.L. c. 40A.

By vote of the Planning Board:

Clerk

APPENDIX C

MODEL FEE RULES

CITY PLANNING BOARD REGULATIONS GOVERNING FEES AND FEE SCHEDULES

Adopted _____, 2011

SECTION 1. INTRODUCTION.

1.1 Procedural History. On _____, 2011 the Planning Board held a public hearing, pursuant to G.L. C. 41, s. 81Q and G.L. c. 40A, s. 9, to consider proposed regulations governing fees. At the close of the public hearing, the Planning Board voted to adopt regulations governing fees and a new schedule of fees for review conducted by the Planning Board and its consultants on the various types of applications which come before it. This document, subject to revision from time to time in a manner spelled out herein, constitutes the Planning Board's rules governing the imposition of fees and its current fee schedules.

1.2 Purpose. These regulations and fee schedules have been adopted to produce a more equitable schedule of fees which more accurately reflects the costs of technical and legal review of applications to the Planning Board; to take advantage of the procedures offered by G.L. c. 44, s. 53G; to establish a review procedure in the selection of consultants; and to promote more informed decision-making by the Planning Board.

SECTION 2. FEE STRUCTURES AND REGULATIONS.

2.1 General. The Planning Board shall impose reasonable fees for the review of applications which come before it. The Planning Board may impose Administrative Fees and Project Review Fees as may be applicable to the types of applications set forth below.

SECTION 3. ADMINISTRATIVE FEES.

3.1 Applicability. An Administrative Fee shall be assessed to offset the expense of review by the Planning Board and its office with regard to all applications set forth in Section 3.3, below.

3.2 Submittal. Administrative Fees shall be submitted at the time of the submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

3.3 Schedule of Administrative Fees. The following schedule applies to the types of applications to the Planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the City Zoning Ordinance, the Rules and Regulations for the Subdivision of Land, and any listings which may have been compiled from time to time for the benefit of applicants.

- A. Approval Not Required (ANR) Plans - \$70.00.
- B. Preliminary Plans - \$500.00 and \$60.00 per lot for each lot after the first six (6).
- C. Definitive Plans - \$600.00 and \$60.00 per lot; and \$120.00 per lot if no preliminary plan was submitted.
- D. Modification of a Preliminary Plan - \$200.00 plus \$50.00 for each lot affected and for each new building lot created. In addition, a fee of \$50.00 shall be required for the modification of a drainage structure. The

total fee required shall be the addition of all fees outlined above.

- E. Modification of a Definitive Plan - \$300.00 plus \$100.00 for each lot affected and for each new building lot created. In addition, a fee of \$50.00 shall be required for the consideration of a modification of a road and a fee of \$50 shall be required for the modification of a drainage structure. The total fee required shall be the addition of all fees outlined above.
- F. Special Permit - \$300. Modification or extension of special permit shall also require of a fee of \$200.00.
- G. Site Plan Review - Review of Site Plans shall require the following application fees:
 - 1. \$300.00. for sites requiring or containing ten or fewer parking spaces.
 - 2. \$500.00 for sites requiring or containing more than ten parking spaces.
- H. Repetitive Petition - Consideration of a petition for a rehearing from the Zoning Board of Appeals - \$200.00.

3.4 Fees for Revised Applications. Where an Administrative Fee has been calculated by the number of lots or units proposed, and the application is revised after payment of said fee, the following rules shall apply:

- A. If the number of proposed lots or units increases, the applicant shall pay a fee equivalent to the difference between the fee originally paid and the fee that would have been paid had the original submission included these additional lots or units. No review of these additional lots or units shall take place until this additional fee is paid to the Planning Board office, and failure to make this payment after requesting additional lots shall be grounds for denial of the application.
- B. If the number of proposed lots or units decreases, a refund of that portion of the application fee predicated on those lots or units shall be granted only if, in the judgment of the planning Board, no cost associated with the review of those lots or units has been yet incurred.

3.5. Fee Waivers. The Planning Board may waive or reduce any Administrative Fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

3.6 Refund. Once the review process has been commenced, the Planning Board shall not refund Administrative Fees, including the case of withdrawal of the application by the applicant, except as provided in Section 3.4.B, above.

SECTION 4. PROJECT REVIEW FEES.

4.1 Applicability. In addition to an Administrative Fee, the Planning Board shall impose a Project Review Fee on those applications which require, in the judgment of the Planning Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the city lacks the necessary expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulations, or inspecting a project during construction or implementation.

4.2 Submittal. Project Review Fees shall be submitted at the time of the submittal of the application for deposit in an account established pursuant to G.L. c. 44, s. 53G (53G Account). Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

4.3 Schedule of Project Review Fees. The following schedule applies to the types of applications to the Planning Board set

forth below. This schedule supersedes all previous schedules as they may have appeared in the City Zoning Ordinance, the Rules and Regulations for the Subdivision of Land, and any listings which may have been compiled from time to time for the benefit of applicants. Where more than one type of application has been submitted for Planning Board action, only the largest of the applicable Project Review Fees shall be collected for deposit into the 53G Account, and not the sum of those fees.

A. Preliminary Plan, Modification of a Preliminary Plan, Modification of a Definitive Plan, or Modification of a Special Permit:

<u>Project Size</u>	<u>Fee</u>
2 - 15 Lots/Units	\$ 2,000
16 - 20 Lots/Units	\$ 3,000
21 - 25 Lots/Units	\$ 4,250
More than 25 Lots/Units	\$ 5,000
Ten or fewer Parking Spaces	\$ 1,000
Eleven or more Spaces	\$ 1,500

B. Initial Definitive Plan, Special Permit or Site Plan:

<u>Project Size</u>	<u>Fee</u>
2 - 15 Lots/Units	\$ 4,000
16 - 20 Lots/Units	\$ 6,000
21 - 25 Lots/Units	\$ 10,000
More than 25 Lots/Units	\$ 20,000
Ten or fewer Parking Spaces	\$ 2,500
Eleven or more Spaces	\$ 5,000

4.4 Replenishment. When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Project Review Fee, as imposed above, the Planning Board shall consider whether to require a supplemental Project Review Fee to cover the cost of the remaining project review.

4.5 Inspection Phase. After the granting of a Special Permit, site plan approval or Definitive Plan approval, the Planning Board may require a Supplemental Project Review Fee for the purpose of ensuring the availability of funds during the inspection phase of the review process.

4.6 Handling of Project Review Fees. The Project Review Fee is to be deposited into a special account as set forth in G.L. c. 44, s. 53G.

- A.** Outside consultants retained by the Planning Board to assist in the review of an application shall be paid from this account.
- B.** Project Review Fees shall be turned over to the City Treasurer by the Planning Board for deposit into a 53G Account.
- C.** A copy of the latest statement from the banking institution handling the 53G Account shall be forwarded from the office of the City Treasurer to the Planning Board office as soon as it is received for timely and accurate accounting.
- D.** The City Accountant shall prepare a report on activity in the 53G Account on an annual basis.

1. This report shall be submitted to the Mayor for his/her review.
 2. This report shall be printed in the Annual Report for the City.
- E. An accounting of an applicant's funds held in the 53G Account may be requested by the applicant at any time.
1. The Planning Board shall respond to the request in a timely fashion.
 2. This accounting shall include the following information:
 - a. The latest statement from the banking institution handling the account, which should include an accurate accumulated interest portion to the closing date of the statement if such statements are subdivided into individual applicants' accounts. Otherwise, a statement of principal and interest, prepared by the Planning Board office, based on the latest statement from the banking institution.
 - b. A report of all checks authorized for issuance since that last banking statement.
- F. An applicant may request an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced.
- G. Excess fees in the 53G Account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest, at the conclusion of the review process, as defined below. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
1. With the approval or disapproval of a Preliminary Subdivision Plan.
 2. With the disapproval of a Definitive Subdivision Plan.
 3. With the release of the performance bond at the end of construction of an approved Definitive Subdivision Plan.
 4. With the final inspection or the approval or disapproval on all other types of applications under the City Zoning Ordinance, whichever comes later.

4.7. **Appeal.** The choice of a consultant selected by the Planning Board for the review of an application may be appealed in writing to the City Council by the applicant, providing such appeal is initiated within two weeks of the initial selection.

- A. The City Council shall convene a formal hearing within twenty days of receiving a written appeal by an applicant.
- B. Two circumstances may disqualify the selected consultant. These conditions constitute the *only* grounds for an appeal.
 1. **Conflict of interest:** A consultant shall not have a financial interest in the project under review, or be in a position to financially benefit in some way from the outcome of the pending review process. Consultants must be in compliance with the Massachusetts Conflict of Interest Law, G.L. c. 268A.
 2. **Lack of appropriate qualifications:** A consultant shall possess the minimum required qualifications. The minimum qualifications shall consist of either 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 related field.

- C. The required time limits for action upon an application by the Planning Board shall be extended by duration of the appeal.
- D. If no decision is rendered by the City Council within one month following the filing of the appeal, the selection made by the Planning Board shall stand.
- E. This appeal shall not preclude further judicial review, if otherwise permitted by law, *on the grounds provided for in this section.*

SECTION 5. DELINQUENT ACCOUNTS. The following rules apply to fees owed to the Planning Board by applicants:

5.1 Monthly Interest Charge. All fees past due by one month from the date of invoice shall be subject to a monthly interest charge based upon an annual interest rate of 14%.

5.2 Costs of Collection. All costs of collection associate with past due accounts shall be borne by the applicant.

5.3. Current Delinquents. All applicants owing fees to the Planning Board at the time of any amendment to these provisions of the regulations shall be sent the following:

- A. A duplicate notice of the amount past due.
- B. A copy of the applicable sections of these regulations with all amendments clearly indicated.
- C. Notice of a 30 day grace period before the commencement of any changes in interest rates or charges.

SECTION 6. REVISION OF FEE SCHEDULES AND REGULATIONS GOVERNING FEES.

6.1 Amendment. The Planning Board may review and revise its regulations and fee schedules, from time to time, as it sees fit.

- A. Amendments shall be preceded by a public hearing.
- B. Any new regulations or alterations to the fee schedule shall take affect upon filing a copy of the amendments with the City Clerk.
- C. The Planning Board will review its regulations and fee schedule on an annual basis.
 - 1. The Board may waive this provision in any year with a motion carried by a majority of the Board members.