

Site Plan Review

Permitting As-of-Right Development

MBTA Zoning Compliance Technical Assistance (“3A-TA”)



November 16, 2022



MBTA Communities "3A-TA" Program

- Everything you never wanted to know about ...

Site Plan Review

- What is Site Plan Review (SPR)?
- Purposes of SPR?
- Why is SPR so important for permitting developments in a 3A Multifamily District?
- Where does the authority for SPR come from?
- How does SPR work?
- Isn't SPR a lot like a Special Permit?
- What should the SPR bylaw include?

What is Site Plan Review?

A development review process in a Zoning Bylaw/Ordinance

An opportunity to review developments for **layout, scale, appearance, health and safety, and environmental impact**

Typically focuses on:

- Parking, traffic & circulation
- Drainage & roadway construction
- Signage & lighting
- Utilities & screening, etc.
- Design review



Source of authority

Home Rule

SPR has been upheld by the courts

- Reasonable regulation
- *Not a special permit*
- *Not a discretionary process to deny a permitted use*

“SPR is a creature of local government. Communities may use it to protect the public health, welfare, and safety.

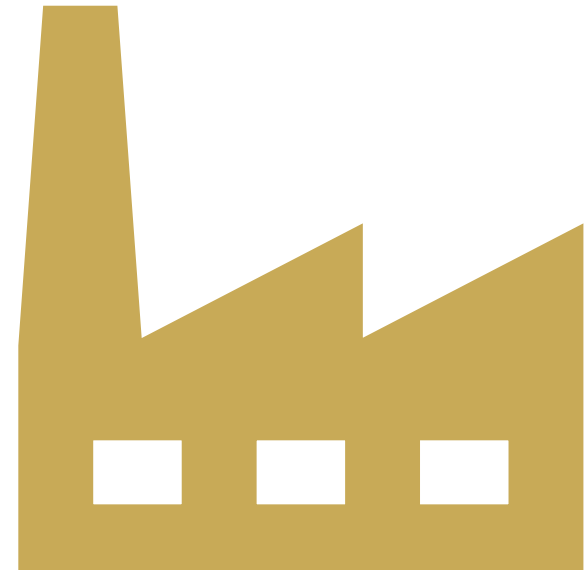
“There is great flexibility, with some limitation, to determine the process, timeline, hearing, review criteria, decision maker, and so on, by local bylaw/ordinance or rules & regulations.”

-Robert Mitchell, FAICP
APA-MA Guidebook (2021)

How, where, and when?

How is Site Plan Review used?

- Large or complex projects: usually commercial, industrial, mixed-use, multifamily, institutional
- To allow for a coordinated review process involving city and town departments
- Share information and determine compliance
- NOT used to deny a use



A few caveats

Do ...

- Plan on using Site Plan Review to *work with applicants*
- Focus on *getting the best project* you can for your community
- Create a Site Plan Review *process that's efficient, clear, and consistent* with the goals of Section 3A

Don't ...

- Assume you can deny a 3A project because of public opposition
- Impose conditions on a 3A project that would be tantamount to denial of the site plan
- Ask for submission requirements that go beyond the purposes or legal basis for site plan review

A hand with a red marker is pointing to a site plan. The site plan shows various property lines, dimensions, and labels such as 'PROPERTY LINE', 'GARAGE', and 'RIGHT-OF-WAY'. The hand is wearing a yellow wristband and a ring. The background is a warm, golden-brown color.

Legal Overview

Site Plan Review

“Reasonable regulation”

The Supreme Judicial Court defined Site Plan Review as a “regulation of a use rather than its prohibition . . . contemplating primarily . . . the imposition of reasonable terms and conditions.”

Y.D.Dugout v. Board of Appeals of Canton, 357 Mass. 25, 31 (1970).

SCIT

SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 105-106 explains the distinction between site plan review and special permits.

The Braintree case and *Prudential Ins. Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 , 282 (1986) reinforce that *site plan review is a process for regulating, not prohibiting, permitted uses.*

“Regulation, not Prohibition”

“Site plan review has to do with regulation of permitted uses, not their prohibition, as would be the case with a special permit or a variance.”

Bowen v. Board of Appeals of Franklin, 36 Mass. App. Ct. 954, 955 (1994)

“Aesthetics and environmental impact”

In *Osberg v. Planning Bd. of Sturbridge*, 44 Mass. App. Ct. 56, 57 (1997), the Court determined that “site plan review has been found to be a permissible regulatory tool for controlling the aesthetics and environmental impacts of land use.”

Vested Rights

- In *Towermarc Canton Limited Partnership v. Town of Canton*, Misc. Case No. 13947 (Land Court 1989), the Land Court determined that the freeze protections of G.L. c. 40A, § 6, are not triggered by a site plan approval decision.

Constructive Approval?

In *Board of Aldermen of Newton v. Maniace*, 429 Mass. 726 (1999), the Court left open the possibility of a constructive approval where the site plan approval is linked to a special permit. However, the Court did not address whether constructive approval could occur from a site plan review process not directly linked to a special permit.

* * *

Word to the wise: make sure your Site Plan Review bylaw specifically addresses the conditions under which constructive approval could occur. See *Cumberland Farms v. Planning Board of Bourne*, 56 Mass. App. Ct. 605 (2002)

Site Plan Review Process

How does it work? How is it *supposed* to work?



The background of the slide features a close-up of a book with the title 'ARTO NIEVERA' visible on its spine. To the right of the book is a technical drawing, likely a site plan, showing a rectangular area with various internal divisions, a compass rose, and several circular features that could represent ponds or landscaped areas. The drawing is rendered in a sepia or aged tone.

Authority to approve site plans

- Up to the city or town to decide
- *Usually* the Planning Board
- Many other groups may have review and advisory responsibilities
- “Reviewing parties” may include city or town staff, other boards and commissions
- Site plan review can also be handled administratively, i.e., by professional staff



SPR is used to . .

- Examine project impacts
- Determine compliance with zoning, other applicable requirements
- Determine conditions of approval, when needed



SPR is NOT used to . . .

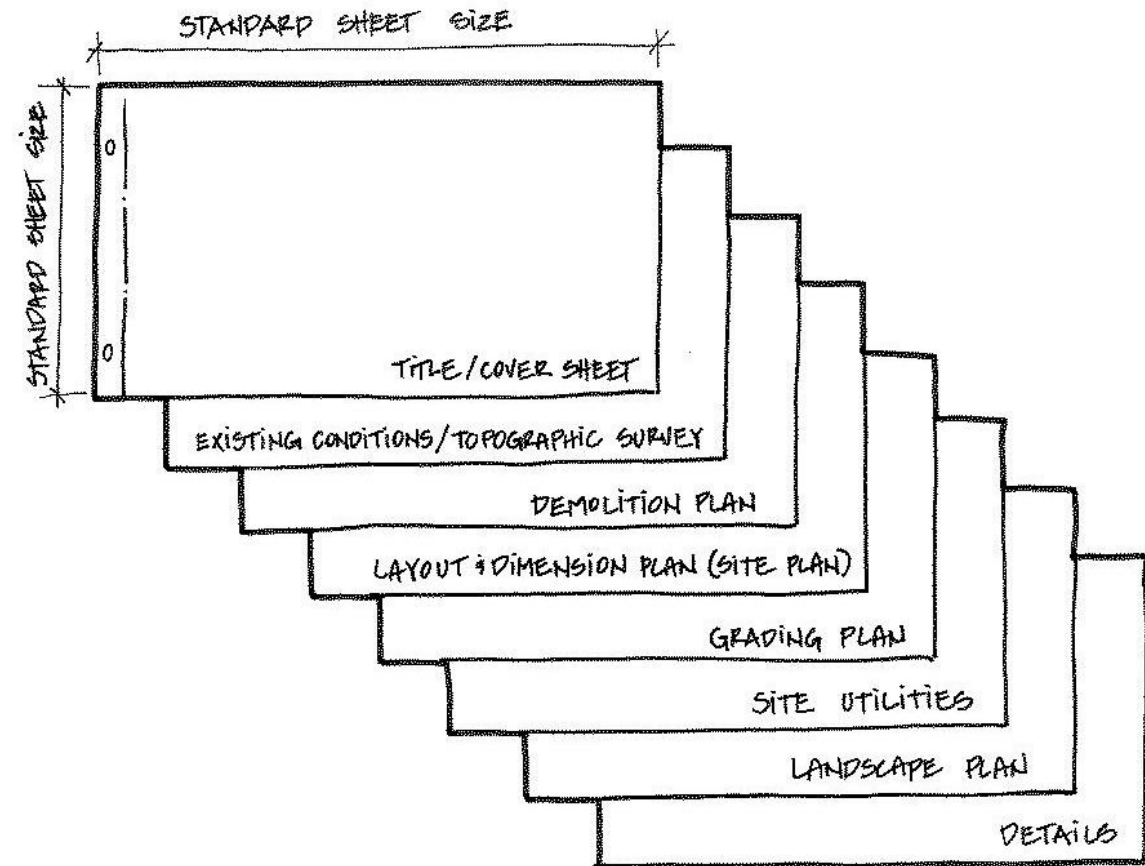
- Determine if a use is allowed
- Make discretionary decisions
- Impose requirements outside of zoning
- Impose “unreasonable” binding conditions

Purposes

Contents

*Our advice:
create a site plan review
application checklist.*

- The applicant will submit a plan, typically on 24" x 36" sheets, with 11" x 17" copies for distribution and a complete digital submission as well
- The plan is typically prepared by
 - Registered Professional Engineer,
 - Registered Architect,
 - Registered Landscape Architect, or
 - Registered Land Surveyor
- The site plan submission may also include reports such as a traffic study or drainage calculations.

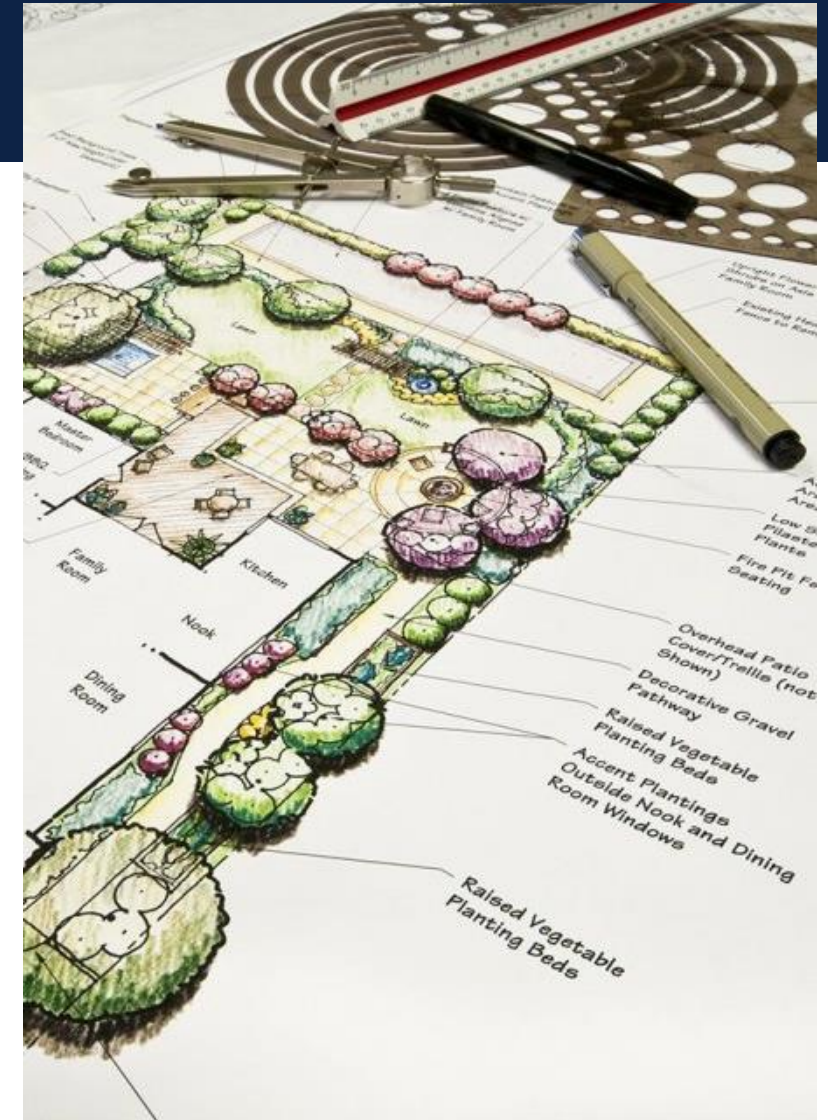


Questions the Site Plan Application should answer

- What are the boundaries of the site proposed for development?
- What is on the property now? Is it vacant or already developed? Are there existing buildings? Roadways? Wetlands? Water?
- What easements currently exist?
- What is around the site? What are the surrounding streets?
- Where are the nearby intersections? What is currently located on abutting land?
- Is the land flat? Sloped?
- What does the applicant propose to build on the site, and where will the buildings be located?

Questions the Site Plan Application should answer

- What zoning district(s) is the site located within?
- What are the minimum dimensional requirements of the district(s)?
- How many parking spaces are required? Where will parking spaces be located? How will traffic move in and out of the site?
- Where will pedestrians walk on the site? Are there suitable places for bicycle parking, too?



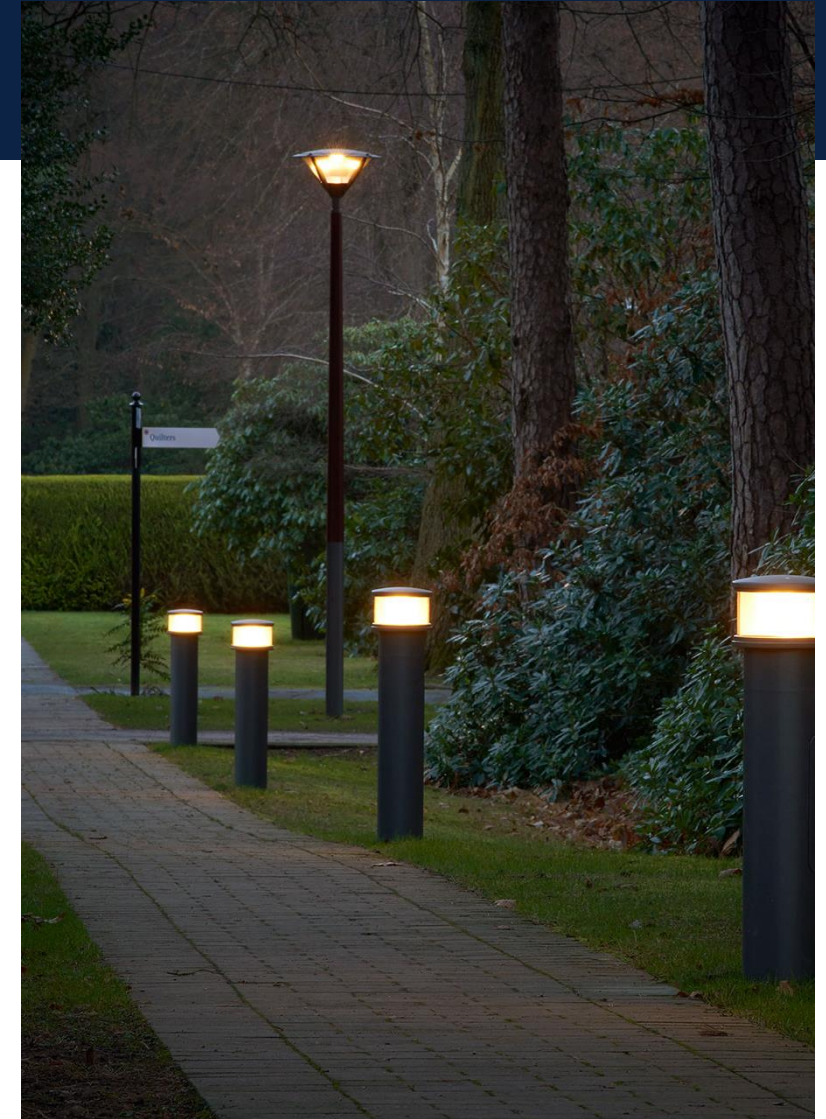
Questions the Site Plan Application should answer

What utilities serve the site today? Water? Sewer? Other? What are the proposed utilities for this project?

Where does the applicant plan to put signs? Outdoor lighting? Fire hydrants?

What does the applicant plan to provide for landscaping to serve the development?

What will the proposed buildings look like?





Navigating Site Plan Review

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Navigating Site Plan Review

- Not “enabled” through state law, so submission requirements and procedures are determined locally – and they vary from place to place
- Look to examples from other communities:
 - Amherst
 - Barnstable
 - Northampton
 - Lexington
- Seek professional legal guidance and be mindful of past legal decisions about challenges to site plan review

Keep in Mind:

- The site plan ***bylaw*** exists in zoning; site plan ***regulations*** are adopted administratively by the site plan approval authority
- Example:
 - Site plan ***bylaw*** lays out permitting timeline from application to decision
 - Site plan ***regulations*** explain what the applicant needs to submit in order to file a complete application

Prudential Insurance Co. of America v. Board of Appeals of Westwood:

SPR can be acted upon in 3 ways:

1. **Deny:** If all required info is not provided.
2. **Approve:** With “Reasonable” Conditions if needed.
3. **Deny:** If no “reasonable” conditions can satisfy the problems of the plan.

If a site plan authority denies an application, the decision should clearly explain the changes that will be needed for the project to qualify for approval.

Navigating Site Plan Review

Navigating Site Plan Review

Written decisions are NOT required. (*Bowen v. Board of Appeals of Franklin*)

But, written decisions are a good idea!

For simple approval decisions with no particular conditions imposed, communities often use a simple majority vote recorded with the Clerk.

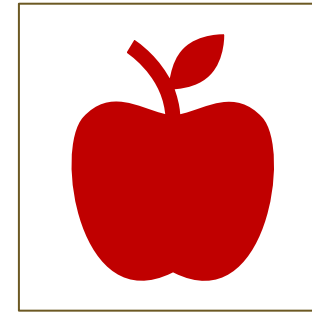


Decisions and Appeals



- Zoning bylaw/ordinance can direct site plan appeals to the Land Court or Superior Court under G.L. c. 40A, § 17.
- Avoids pitting Planning Board against ZBA (please!).
- Otherwise, an applicant wishing to appeal a site plan decision would have to apply for a building permit knowing it would be denied.
- Courts defer to site plan authority when an approval with conditions is appealed.
- **Exception:** If a site plan for uses allowed by right is denied, the court will review

Special Permits v. Site Plan Review



Special Permit Process

- Significant discretion about whether to approve and applying any conditions.
- There is no right to a Special Permit.
- Special permit authority is not compelled to grant them.

Site Plan Review

- Limited discretion about whether to approve and narrow ability to set conditions

Special Permits v. Site Plan Review

Key Element	Special Permit	Site Plan Review
Basis in Law	Ch. 40A § 9 and 11	Home Rule
Granting Authority	Planning Board, Zoning Board of Appeals, Board of Selectmen	At the discretion of the municipality. Most often the Planning Board.
Procedures and Abutter Notification	Set by statute	At the discretion of the municipality
Voting	Two-thirds majority required	Simple majority is adequate
Recording of Decision	Set by statute	Not required, at discretion of the municipality
Appeals	Appeals to a court of competent jurisdiction	More than one option

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Special Permits v. Site Plan Review

You may require abutter notification of site plan review hearings, but it is not required by law.

Keep these processes separate!

SPR should be a distinct process from “the review of site plans” as part of a Special Permit review.

Draw a clear line between what is permitted through site plan review vs. Special Permit.

Writing (or Updating) a Site Plan Review Bylaw/Ordinance

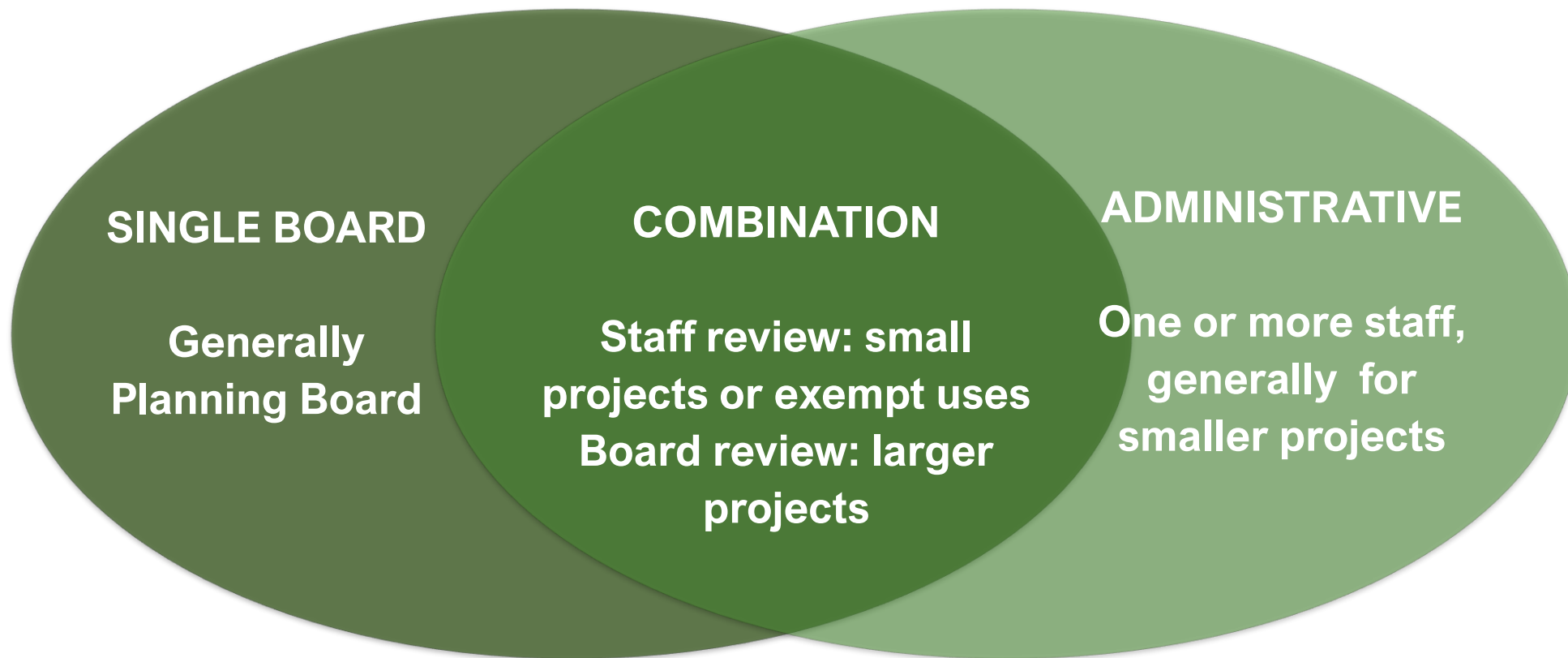
Applicability

When will site plan review be required?

- Type of Use
- Scale of Use
- Characteristics of the Development
- Location of the Development



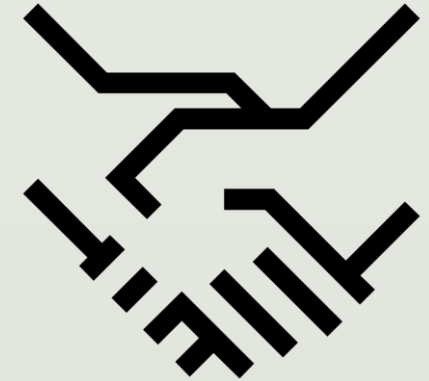
Site Plan Review Authority



Reviewing Parties

Use site plan review to seek advisory review from other municipal staff or boards such as . .

- Public Safety (Police, Fire, etc.)
- Public Works (DPW, Municipal Engineer, etc.)
- Utilities
- Board of Health
- Conservation Agent
- Design Review Board



*Or anyone else
whose advice and
coordination can be
helpful.*

Procedures

- Who receives the plan, how receipt is verified, and when the “clock starts ticking”
- Where to find submission requirements (e.g., Planning Board Site Plan Regulations)
- Time frame for comments
- Timing for deliberation
- Public notification
- Process for extensions
- Time to render a decision
- Number of votes required
- Procedures for appeal/recording
- Procedures for modifying an approved site plan



Connecting Review Criteria with Submission Requirements

Depending on local zoning, the following types of plans may be needed:

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



Site Plan Review submission requirements should not include

Matters that are outside the approving authority's purview, such as:

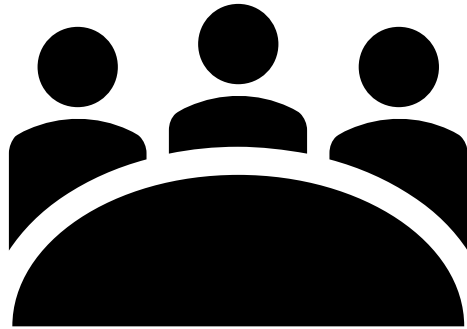
- A fiscal impact analysis
- A tenant selection plan
- A pro forma

Avoid asking for information that is unrelated to the approving authority's jurisdiction



Public hearing ... meeting ... ?

- Notice, Hearing v. Public Meeting
 - Administrative site plan review may not require any public notice.
 - Full site plan review (with the Board) may not require public notice but must be on the Board's posted agenda.
 - Board's review should provide for shorter review and decision timelines than a Special Permit.
 - *Connect the process you design with the scope, purposes, and allowable outcomes of Site Plan Review.*



Writing a Site Plan Review Bylaw/Ordinance

Benefits of SPR Discussions

- **Applicant:** Gets to share any development challenges and explain design choices.
- **Municipality:** Gets to share new information or suggest alternative design choices.

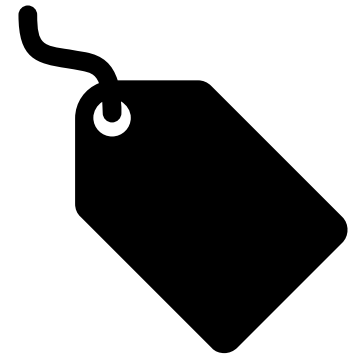
Build in enough time in the review process for these conversations!

Getting Help with Plan Review Process

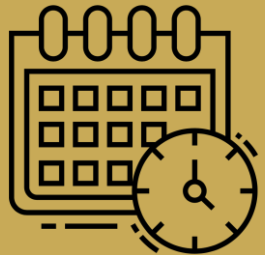
G.L. c. 44, §53G does not explicitly allow peer review fees for SPR.

Communities may charge reasonable review fees if necessary for the site plan review authority to perform a technical review, typically:

- Site civil
- Traffic safety
- Lighting
- Possibly architectural design, if building design is among the site plan review criteria and your community has adopted design guidelines



Constructive Approval



- Constructive approval occurs when a board fails to act within the time allowed in a bylaw, thereby causing an application to be approved by default.
- There are no court decisions to provide guidance as to the constructive approval in Site Plan Review.
- It is good practice to state in your zoning bylaw or ordinance that:
 - Plans not acted upon within a fixed period are constructively approved so that applicants are not faced with delay.
 - The time period for a decision may be extended upon written agreement of the parties.

Useful Resources

APA-MA Guidebook to Massachusetts Land Use

<https://www.apa-ma.org/resources/guidebook/>

APA PAS Quick Notes: Site Plan Review

<https://planning-org-uploaded-media.s3.amazonaws.com/document/PASQuickNotes10.pdf>

Citizen Planner Training Collaborative

Module 6, Site Plan Review

Questions?

Site Plan Review for Multifamily Development
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