

ARTICLE VIII
Special Permits and Site Plan Review

§ 190-42. Purpose and intent.

It is the purpose and intent of this article to provide the designation of the board or agency which shall act on the various special permits, the general and specific regulations governing special permits and the procedures by which special permits shall be granted.

§ 190-43. Designation of special permit granting authority. [Amended 4-8-2002 ATM by Arts. 37 and 39]

The Board of Appeals shall act as the special permit granting authority for all special permits required under this chapter, except where the Planning Board or other agency is specifically designated as the special permit granting authority by this chapter. See § 190-73 for the general submission requirements for applications to the Zoning Board of Appeals and the Planning Board.

- A. The Board of Selectmen and the Planning Board shall appoint an associate member of the Planning Board for a term of one year. When the Planning Board has been designated as a special permit granting authority by this chapter, the chairman of the Planning Board may designate the associate member to sit on the Planning Board in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Planning Board.

§ 190-44. General regulations.

Certain uses, structures or conditions are designated in Article IV, Use Regulations, as requiring a special permit. Upon submission of a written application duly made to the special permit granting authority, the special permit granting authority may, in appropriate cases, subject to the requirements of state law, applicable conditions contained herein and to all other reasonable conditions and safeguards, grant a special permit for such uses, structures or conditions.

- A. Before granting a special permit, the special permit granting authority, with due regard to the nature and condition of all adjacent structures and uses and the district within which the same is located, shall find all of the following general conditions to be fulfilled:
- (1) The use requested is listed in the Table of Use Regulations⁸ as requiring a special permit in the district for which application is made.
 - (2) The requested use is essential and/or desirable to the public convenience or welfare.
 - (3) The requested use will not create or add to undue traffic congestion or unduly impair pedestrian safety.

8. Editor's Note: See § 190-23.

- (4) The requested use will not overload any public water, drainage or sewer system or any other municipal system for such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or the general welfare.
 - (5) The requested use will not impair the integrity or character of the district or adjoining districts nor be detrimental to the public health, convenience or welfare.
 - (6) The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.
- B. The special permit granting authority shall also impose, in addition to any applicable conditions specified in this chapter, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purpose of this chapter, including but not limited to the following:
- (1) Front, side or rear yards greater than the minimum required by this chapter.
 - (2) Screening buffers or planting strips, fences or walls.
 - (3) Modification of the exterior appearance of the structures.
 - (4) Limitation upon the size, number of occupants, method and time of operating for the duration of the permit or extent of facilities.
 - (5) Regulation of the number and location of driveways or other traffic features.
 - (6) Off-street parking or loading or other special features beyond the minimum required by this chapter.
- C. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the special permit granting authority. Any special permit granted under this article shall lapse within 12 months if a substantial use thereof has not sooner commenced, except for good cause, or, in the case of a permit for construction, if construction has not begun by such date, except for good cause. Additionally, if construction or operations have not begun within 12 months or if construction is not continuing toward completion in as continuous or expeditious manner as is reasonable during the initial 12 months, then the construction or operations shall conform to any amendment to this chapter. (See MGL c. 40A, § 9.)

§ 190-45. Site plan review in conjunction with special permit application.

- A. In order that the special permit granting authority may determine that the aforementioned requirements are to be met, applications shall be submitted in accordance with § 190-73. **[Amended 4-8-2002 ATM by Art. 39]**
- B. Such site plan shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas and other open uses; all facilities for sewage, refuse and other waste disposal and for surface water

drainage; and all landscape features, such as fences, walls, planting areas and walks on the lot and tract.

- C. In addition to the above, the following information shall be provided:
- (1) A chart showing all required dimensional requirements in the district where the development is proposed and comparing them to the dimensions being proposed.
 - (2) Drainage calculations for all runoff within the site.
 - (3) Map showing existing and proposed two-foot contours. For sites which are relatively flat, one-foot contours may be required. Cross section(s) through the site may also be required.
 - (4) Map showing all outdoor lighting, including the direction and intensity of such lighting.
- D. The above features may all be shown on one site plan, if legibility allows.
- E. An applicant may, prior to submitting his application for a special permit to the granting authority, meet with the special permit granting authority and orally describe the project. The special permit granting authority may waive or modify the requirements for a detailed site plan, as described above, after such a meeting.
- F. Notwithstanding anything contained in this chapter to the contrary, the submission or distribution of site plans as herein set forth shall not be required in the following instances: **[Amended 6-7-1990 ATM by Art. 40; 4-8-2002 ATM by Art. 39]**
- (1) In special permit applications pursuant to § 190-22A(1)(f), Accessory apartments.
 - (2) In special permit applications pursuant to § 190-18, Home occupations.
- G. In reviewing a site plan, the special permit granting authority and the other applicable agencies shall consider, among other things, the following:
- (1) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements.
 - (2) Adequacy of the methods of disposal for sewage, refuse and other wastes and the methods for surface and storm water drainage.
 - (3) Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the lot or tract.⁹

§ 190-46. Site plan review where special permit is not required. [Added 6-5-1989 ATM by Art. 51]

All proposals which are located in an area of the Town zoned as a Neighborhood Business District, a Limited Business District, a Business District, a Limited Industrial District or an

9. Editor's Note: Former Subsection H, I and J, as amended, which immediately followed this subsection, were repealed 4-8-2002 ATM by Art. 39.

Industrial District and which do not require a special permit from the special permit granting authority must be approved by the Planning Board through site plan review prior to the issuance of a building permit.

- A. The Planning Board is hereby authorized to exercise the powers of site plan review over proposals not subject to a special permit application and located on parcels zoned or currently used as neighborhood business, limited business, business, limited industrial or industrial land uses.
- B. The site plan review regulations which the Planning Board adopts may:
- (1) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety or prosperity by reason of:
 - (a) Inadequate drainage or conditions conducive to flooding of the property or that of another.
 - (b) Inadequate protection for the quality of groundwater.
 - (c) Minimizing elements of pollution, such as noise, smoke, soot, particulates or any other discharge into the environment which might prove harmful to persons, structures or adjacent properties.
 - (d) Inadequate provision for firesafety, prevention and control.
 - (2) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.
 - (3) Provide for open spaces and green spaces of adequate proportions.
 - (4) Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the Official Map of Wakefield.
 - (5) Require suitably located access roads of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air and access for fire-fighting apparatus and equipment to buildings and coordinated so as to compose a convenient system.
 - (6) Require, in proper cases, that plans showing new access roads or narrowing or widening of such access roads be submitted to the Planning Board for approval.
 - (7) Require that the land indicated on plans submitted to the Planning Board shall be of such character that it can be used for building purposes without danger to health.
 - (8) Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity.
- C. The site plan review regulations which the Planning Board adopts shall:

- (1) Provide procedures which the Board shall follow in reviewing site plans.
 - (2) Define the purposes of site plan review.
 - (3) Specify the general standards and requirements with which the proposed development shall comply, including appropriate reference to accepted codes and standards for construction.
 - (4) Include provisions for guaranties of performance, including bonds or other security.
 - (5) Include provision for waiver of any portion of the regulations in such cases where, in the opinion of the Planning Board, strict conformity would pose an unnecessary hardship to the applicant, and provided that such waiver would not be contrary to the spirit and intent of the regulations.
- D. The site plan review regulations of the Planning Board may stipulate, as a condition precedent to the approval of the plan, the extent to which and the manner in which streets shall be graded and improved and to which water, sewer and other utility mains, piping, connections or other facilities shall be installed. The regulations or practice of the Planning Board:
- (1) May provide for the conditional approval of the plat before such improvements and installations have been constructed.
 - (2) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the Planning Board shall accept a performance bond, irrevocable letter of credit or other type or types of security as shall be specified in the site plan review regulations. The Planning Board shall have the discretion to prescribe the type and amount of the bond or other security and specify a period for completion of the improvements and utilities to be expressed in the bond or other security in order to secure the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.
- E. The Planning Board may, as part of its site plan review regulations, require an applicant to pay all costs for notification of abutters and may provide for the assessment of reasonable fees to cover the Board's administrative expenses and costs of special investigation and the review of documents and other matters which may be required by particular matters.
- F. Administration. When exercising its powers of site plan review, the Planning Board shall hold a public hearing pursuant to MGL c. 40A, § 11 on any complete site plan review application within 30 days of its submission. The Planning Board shall make a final decision regarding a site plan within 90 days after the date of its public hearing. The required time limits for public hearing and Planning Board action may be extended by written agreement between the applicant and the Planning Board. Failure of the Planning Board to act within said 90 days or extended time, if applicable, shall be deemed an approval of the site plan.

- G. Appeal of decision. Pursuant to MGL c. 40A, § 8, any party aggrieved by a decision by the Wakefield Planning Board to approve, conditionally approve or deny a commercial, industrial or multifamily site plan may appeal said decision by making application for an appeal from the terms of the decision to the Wakefield Zoning Board of Appeals.
- (1) Any such appeal must be filed within 20 days of the decision and must demonstrate all of the following:
 - (a) A significant diminution of surrounding property values will not occur.
 - (b) Granting the appeal will be of benefit to the public interest.
 - (c) The Planning Board's decision will result in an unnecessary hardship being imposed. (The physical or economic condition of an individual or firm is not sufficient grounds for hardship.)
 - (d) Granting the appeal would do substantial justice.
 - (e) The proposed use is not contrary to the spirit of this chapter.
 - (2) The failure of an applicant to demonstrate all of the foregoing shall result in the denial of the appeal by the Wakefield Zoning Board of Appeals.
 - (3) The satisfactory demonstration of all of the foregoing shall result in the approval of the appeal by the Wakefield Zoning Board of Appeals.

§ 190-47. Scientific research and development.

Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit, provided that the special permit granting authority finds that the proposed accessory use does not substantially derogate from the public good.

§ 190-48. Public hearing and review procedures.

The special permit granting authority shall follow the required public hearing and review procedures set forth in MGL c. 40A, § 9 and in § 190-68 hereof. The public hearing shall be held within 65 days of the filing of the petition, and a decision shall be made within 90 days of the public hearing.

ARTICLE IX
Nonconforming Uses

§ 190-49. Nonconforming use of structure.

Nonconforming use of a structure is herein defined as a use of a building, lot or structure that does not conform to a use regulation prescribed by this chapter for the district in which it is