

Report on Site Plan Review For the Town of Tyngsborough

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Site Plan Review – Introduction

Site Plan Review (SPR), sometimes referred to as Site Plan Approval (SPA) or other similar names, is a land use tool long used by municipalities throughout Massachusetts and the country. It is a method of examining development proposals within the community.

It is important to note that SPR is not found in M.G.L., Chapter 40A, the Zoning Act or in any other state statute. Communities may use this procedure based on their home rule power to protect the public health, welfare, and safety. Thus, local communities have flexibility, with some limitation, to determine the process, timeline, hearing, review criteria, etc. by local bylaw/ordinance and/or rules & regulations.

SPR is traditionally used for by-right uses to review site and design issues. In the customary situation, a site plan review approval procedure is required prior to the issuance of a building permit. However, there may be circumstances – such as SPR for parking lot construction or modification – where no building permit would be required.

The reviewing authority has the ability to impose reasonable conditions to further the purposes established in the bylaw/ordinance, but generally cannot deny the application, with some exceptions. This process is most effective when a community has a clear and specific purpose, objective site and design guidelines and criteria as well as comprehensive standards and regulations for those issues the community wishes to address by SPR.

Purpose

The purpose behind SPR is for a community to have an administrative review process that serves as a site and design review mechanism; but, unlike special permits, it is not discretionary in nature. The focus of a SPR procedure is on building and site design and land use impact considerations. That process can be broad in nature as to what aspects of development the community chooses to review.

In the case of *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.*”

Adoption & Procedures

Whether and how a municipality adopts SPR is entirely a local choice, there being no governing state statutory provisions. That said, the courts have recognized this land use tool by providing legal guidance, explaining what SPR is and what it is not

The procedures to be used by the city or town for the SPR process are for the city or town to determine. Procedures should specify the board, committee, or staff responsible for review and approval, the scope of the review, and the degree of public participation.

The administrative procedures (application forms and plan requirements etc.) may be adopted into either the zoning bylaw or into the board’s rules & regulations (which is recommended).

Administration of Site Plan Review

A by-right SPR procedure is traditionally administered by a planning board. However, some communities have a tiered set of SPR requirements. The tiers generally work in one of two ways.

- The first is a distinction between a Major SPR and a Minor SPR with both applications going to the planning board for a decision. The distinctions generally are based on size of project and/or amount of parking required or some other similar threshold factor. The Major SPR might require a public hearing where the Minor SPR might only require a decision at a public meeting.
- The second is a distinction between a planning board SPR and an “administrative” SPR. In this case the administrative SPR is reviewed and acted upon by the planning staff. The administrative review is for small projects for uses that are allowed in a specific zoning category (for example, a small addition to a retail store in a business district).

In either case, the town would need to determine the appropriate thresholds to make any distinctions between separate SPR procedures.

SPR Review Criteria and Standards

A municipality should consider how it intends to use the SPR procedure. SPR can be an effective tool to improve the quality of the design and site characteristics of a proposed development while eliminating or minimizing its impacts. Therefore, any substantial use of this regulatory procedure warrants a set of well-written and comprehensive standards and criteria that reflect the goals of the community in adopting the procedure.

The following criteria, at a minimum, are generally those that SPR regulations are well adapted to address:

• siting of buildings	• signs
• building design	• landscaping/screening/buffers
• architectural compatibility & scale	• lighting
• protection of adjacent properties	• sidewalks
• hours of operation	• on-site open space
• driveways and access	• stormwater management
• parking and vehicular circulation	• utilities & infrastructure
• relationship of buildings & parking	• drainage
• convenience & safety of vehicular, bicycling, and pedestrian traffic	• adequacy of wastewater disposal
• traffic impacts	• loading facilities
• trash & recycling facilities	• noise

SPR Uses and Thresholds

Towns have adopted various zoning provisions to identify those uses that require a Site Plan Review approval. In many communities, the zoning bylaw table of uses identifies particular uses requiring a SPR, similar to how uses are identified as permitted uses, prohibited uses, and special permit uses.

In addition some communities also use a threshold mechanisms as an additional measure for determining when a particular use must go through the SPR process. Examples of this include size of the building or addition (square feet), the number of parking spaces required, the acres of land disturbed, the number of vehicle trips generated, and similar measure.

Issues to be Considered

Listed below are a number of issues that should be considered, and decided, prior to the adoption of a SPR procedure.

- Voting requirements (Generally, a majority vote is required rather than a two-thirds or unanimous vote.)
- Information required to be filed with the application
- The filing fee
- Public hearing - required or not
- The timeline for a public hearing (if any) and a decision
- Notice requirements (abutters, legal ads etc.)
- Decision filing with the city/town clerk and in the Registry of Deeds – required or not
- Inclusion of language for waiver provisions – either for a waiver for filing a SPR application, or waivers from particular requirements of the SPR application process and plans
- Inclusion of language as to the process to amend a SPR decision
- Inclusion of language regarding the appeal procedure; if the community desires to allow a direct appeal from an SPR decision to the courts pursuant to G.L. c. 40A, § 17, that must be specified in the bylaw

Decisions, Conditions & Denials

Decisions - Best practice would suggest that cities and towns adopt comprehensive, clear, and reasonable bylaws and regulations as to the procedure, review criteria, and decision-making standards for a SPR process.

Conditions – A site plan may be approved with reasonable conditions. Just as with any other land use permit, courts are deferential to a community's site plan approval requirements and conditions imposed pursuant to them.

The Appeals Court in *Prudential Insurance Company of America. v. Board of Appeals of Westwood*, (1986) stated that “A board also possesses discretion to impose reasonable conditions under a by-law's requirements in connection with approval of a site plan, even if the conditions are objected to by the owner or are the cause of added expense to the owner.”

Denials - There are limited circumstances where a board may deny a SPR application. The Appeals Court in the *Prudential Insurance Company of America* case determined the circumstances whereby a SPR could be denied. They are:

- “A board may lawfully reject a site plan that fails to furnish adequate information on the various considerations imposed by the by-law as conditions of the approval of the plan.
- “In some cases, the site plan, although proper in form, may be so intrusive on the interests of the public in one regulated aspect or another that rejection by the board would be tenable. This would typically be a case in which, despite best efforts, no form of reasonable conditions could be devised to satisfy the problem with the plan.

A denial must state what changes are needed to be made to the proposal that would receive favorable consideration in a refiling of the application.

SPR Benefits

There are a number of potential benefits to the town, property owners, and the business community that can result from the use of the by-right site plan review process. These include the following:

- Communities, potential applicants, land owners, small businesses and abutters can be well-served by having a clear list of what uses are allowed by SPR instead of the uncertainty of uses that might, or might not, be allowed by special permit.
- Communities that used the SPR process have experienced a number of benefits, for the community, and for the businesses in those communities. If the town has already zoned land for certain business, commercial or offices uses, then with some exceptions where a special permit process is appropriate, the SPR process is most appropriate. Businesses that wish to locate within those districts with the type of uses that would be expected in those districts, and that are not likely to present any significant impacts, should be able to do so without having to face a discretionary decision process and timeline.
- One of the main reasons for using a by-right SPR process to begin with, and to use a tiered process, is to not unduly burden small business owners or start-up businesses with financial costs and longer time periods to receive a permit in order to open a store or small restaurant or other business that would be very appropriate in the zoning district.
- Site Plan Review brings a degree of certainty to a project which makes it more attractive to owners/applicants. The uncertainty of the special permit can make it more difficult for a small business owner or someone looking to start up a business to obtain financing. In addition, since a SPR process is generally shorter than a special permit process, this minimizes the time a business may have to pay for a monthly lease on a space without being able to open their business and thereby start a flow of revenue.
- It has been the experience of communities that use the SPR process and its focus on the design and impacts of building or development, that the process results in improved building and site design with fewer impacts on the town, neighborhood, or corridor. It is often more in line with the goals of the town for improved development design, business operation, better site function (parking, pedestrian access, landscaping, lighting etc.) and with fewer negative impacts.
- The ability to modify and amend a special permit decision and its conditions is extremely limited without a board going through the entire special permit process again. With the site plan review process, since it is a creation of local government, a community can include specific language in the SPR bylaw that determines under what circumstances and with what process the planning board can modify a decision and the conditions imposed on that decision.
- M.G. L. Chapter 40A, § 3, provides certain exemptions from zoning for selected uses. For many of those uses the town may not deny or unduly restrict the use. The courts have determined that “unduly restrict” includes the requirement to obtain a special permit. This is particularly applicable to religious and non-profit educational uses. However, these uses may be subject to reasonable regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage requirements.

As a result, towns have incorporated language into their by-right SPR procedures that specifically addresses those aspects of religious and non-profit educational institutions. As

long as those requirements are reasonable the town may require the institution to go through a SPR process.

- A number of communities include non-building development in their SPR requirements. For example, a SPR may be required for additional parking, new driveways, installation of outdoor recreational equipment, land disturbance, or similar activities that do not include buildings.

Site Plan Review and Special Permits

There has long been some confusion in Massachusetts between the site plan review procedure and the special permit procedure. The Massachusetts Appeals Court in *SCIT, Inc. v. Planning Bd. of Braintree*, 19 Mass. App. Ct. 101, 105-106 n.12 (1984), explained the distinction between site plan review and special permits. As that case and the decision in *Prudential Ins. Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278, 282 (1986), have determined, 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.

SP/SPR – A number of communities have combined the site plan review process with a special permit process. It is important to know that whatever a community may call this combined process, it is, in fact, a special permit matter that requires adherence to all of the provisions related to special permits (procedures, timelines, hearings, decisions, appeals etc.) found in G.L. c. 40A § 9 and § 11.

If a site plan review procedure follows all of the process requirements of a special permit procedure (filing, notice, public hearing, decision, super-majority vote, filing of decision with municipal clerk, 65 day/90 day procedural timeline, right of appeal etc.) then it is, in fact, a special permit and not a site plan review.

SPR PLUS SP – Other communities have adopted both a site plan review process and a special permit process and apply both to certain uses. Thus, a particular use is required to obtain both a SPR approval and a special permit approval. It is sometimes the case that one board, usually the planning board, will act on the SPR and another board, such as the zoning board of appeals, will act on the special permit. In those instances, the community should strive to have similar criteria and standards apply to the use for both of the permit processes in order to avoid confusion and to offer a degree of fairness to the applicant. In addition, the community should have a clear purpose as to why a single development proposal would need to go through two separate land use permitting processes and identify only those limited uses that might require such extra scrutiny.

Town of Tyngsborough Site Plan Review Procedure

The Tyngsborough Site Plan review requirements are found in section 1.16.21 of the Zoning Bylaw. It is referred to as a “Site Plan Special Permit” (SPSP), and requires all of the special permit procedures, thus making the process a special permit process. This appears to be a very unusual application of the site plan review process.

It is not clear from the language of Section 1.16.21 what the purpose is for this procedure and why it is any different from a regular special permit process. The information required under the SPSP is no different from that which should be required for any special permit application (written statement, site plan by a professional engineer, landscape plan, building elevation plan). Outwardly, it appears to be a duplicative process of a special permit process.

Section 1.16.21 raises a number of questions:

- What is the purpose of this “add-on” procedure?
- What is it trying to accomplish?

- Why is this additional burden being placed on land owners and applicants?
- How is the process actually used by the town?
- Why are there no standards and criteria that the boards can use in a review of these applications to guide both the applicants and the boards?
- Why are certain uses singled out for having to obtain a site plan special permit in addition to a regular special permit?
- Why are do so many uses in the table of uses require a special permit or a site plan special permit? For example, there is only one use listed in the Business Uses category that is allowed by right in the B-1 District. Business Districts are created with the intent of actually allowing businesses.
- Why would a professional office of 15,000 square feet or less require a special permit? What is the “threat” that this use poses to the Town?

For example, a traditional by-right Site Plan review process, that focuses on the site and building design, would be a very good option for the Town to use for the 15,000 square foot or less professional office use rather than a special permit requirement.