

G. Mello Disposal Corp. — Carleton Drive

Comments Report

25 August 2021

LOCATION: Northside terminus of Carleton Drive — Map 15, Lot 46.

ZONING: CC (minimum lot size 80,000 sf/200 ft. frontage)

PURPOSE OF PETITION: Site Plan application, calling for the construction of a 15,000 sf transfer station and ancillary facilities at the terminus of Carleton Drive, abutting to the west of 1-95 SB.

SUBMITTED PLAN ENTITLED: Site Plan of land in Georgetown, Massachusetts Off Carleton Drive (Assessor's Map 15, Lot 46), prepared by The Morin-Cameron Group, Inc., dated 9 OCT 19, revised thru 12 MAY 2020 and consisting of Sheets C-1 thru C-4, L1 thru L3, D-1 thru D-4 and DS 4.01, 4.02 & 4.03 (said Mello Site Plans and all other data and plans associated with this project can be referenced by clicking-on the following dropbox link and by going on the Planning Board's webpage to access the same link information:

https://www.dropbox.com/sh/ovwnpcav8t13kxx/AABxbnchdq7Si_Mm2TAd8mika?dl=0

ATTACHMENTS:

- 1) Public Hearing Notice for this Proposed Transfer Station – “A”.
- 2) Letter authored by Atty. Nancy McCann, dated 17 AUG 2021, “B”. Note: this letter includes letters of support for this project, included as “B-1 & B-2” of this report.
- 3) Letter from Scott Cameron, Project Eng., dated 19 JUL 21, which is included in the body of this Comments Report as “C”.
- 4) Letter from Kirsten Braun, dated 22 JUL 21, RE: Response to the below-cited Mello traffic doc attachments – “D”.
- 5) § 9.08 Site Plan Review Excerpt, as copied from Atty. Mark Bobrowski's “Handbook of Massachusetts Land Use and Planning Law, Fourth Edition (most recent) – “E”.
- 6) Chapter 165. Zoning, Article V. Water Resource District and Article XII. Special Permits and Site Plan Review “F”.
- 7) Mello Exhibit A – GPI “3-A”
- 8) Mello Exhibit B Radner Design Associates “3-B”
- 9) Miller Engineering & Testing, RE: Carleton Dr. Core Sample Report, dated 21 MAY 21 - “3-C”.

APPLICATION TRACKING:

13 JAN 21 - Initial public hearing scheduled, continued date specific to the 24 MAR 21 meeting.

24 MAR 21 - 2d public hearing and continued date specific to the 28 APR 21 meeting and Form H executed thru 30 JUN 2021.

28 APR 21 – 3d public hearing, continued date specific to the 9 JUN 21 meeting.

9 JUN 21 - 4th public hearing, cont. date specific to the 28 JUL 21 meeting and a new Form H

executed thru 30 SEPT 21.

28 JUL 21 - Public Hearing cancelled and rescheduled/re-noticed for 25 AUG 21.

REQUESTED WAIVERS: N/A

TOWN PLANNER: This hearing pertains to the Planning Board reviewing and taking action on a Site Plan Review application, as required by Article V. Water Resource District and Article XII. Special Permits and Site Plan Review of the Zoning Ordinance, as most recently adopted. Said sections are attached herewith as attachment “**3-E**”. This hearing was continued date specific from the 9 JUN 21 meeting to the 28 July 21 meeting, but, as cited-above, the latter hearing was cancelled and rescheduled/re-noticed to Wed., 25 AUG 21.

At the 9 JUN meeting the board sought to conclude the traffic peer review phase of this application. This was not accomplished, however, and to this effect, and in preparation for Wed. night’s hearing, please read Atty. McCann’s attached letter “**B**”, together with separate E-Packet attachments “**3-A**” – Mello Exhibit A – GPI & “**3-B**” – Mello Exhibit B Radner Design Associates, i.e., as these 3 documents address all of the outstanding traffic review issues for this proposed project, resulting from the 9 JUN 21 meeting. In addition to the foregoing, Atty. McCann’s attached letter also describes the applicant’s position on all of the on and off-site issues pertaining to this Site Plan Review application, and as the applicant has presented to the board in previous hearings and what the applicant is willing to concede to as conditions of approval for this application.

NOTE: the outstanding items from the 9 JUN 21 meeting include: (i) providing Bruce Fried’s requested amendment correlation table for traffic counts of applicable transfer stations, and matching same with the projected Carleton Dr. facility, (ii) documentation disputing the validity of the abutter produced video of traffic movements at the intersection of Carleton Dr. and E. Main St. and (iii) results of the Carleton Dr. core sampling data.

Please note, Kristen Braun’s (Ron Muller Associates) response report letter to the aforementioned GPI produced traffic docs is attached, herewith, as “**D**”. In it, Ms. Braun provides two final recommendations for the board to consider, leading to final action for this Site Plan Review:

- (i) how to best monitor and calculate post-occupancy traffic counts, which includes factoring daily tonnage received and factoring up from 200 tons to 500 tons, relative to determining a close approximation as to traffic volumes and associated roadway impacts for the later sum; and
- (ii) Determine the applicant’s “...level of participation in the cost...” to improve Carleton Dr.

NOTE: No RMA representative will be in attendance at Wed. night’s hearing. On the other hand, Larry Graham will be, relative to answering any outstanding onsite and Carleton Dr. improvement concerns, especially in regard commenting on the core sampling results and stormwater control issues associated with Carleton Dr. and its potential improvements. This latter subject is extensively cited in Atty. McCann’s attached letter “**B**”. Of further concern in regard to the review of this Site Plan application, is the potential for the proposed driveway being constructed as either a private or public street, with two proposed lots

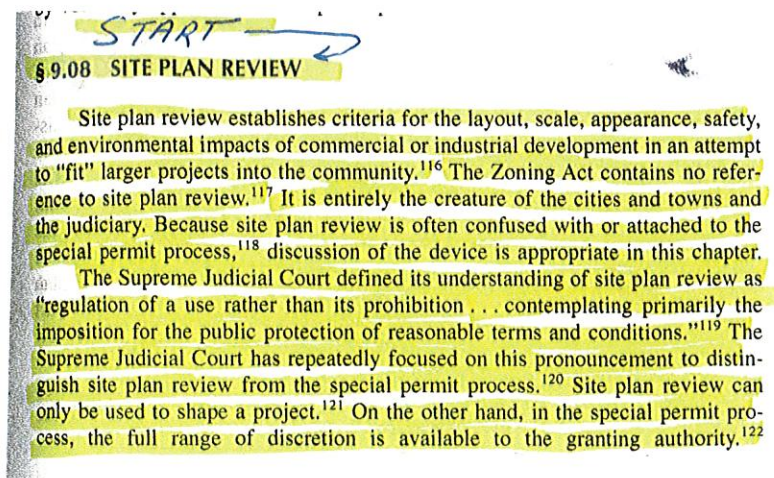
associated with the Site Plan use, i.e., via the board's 23 JUN 21 approval of the Preliminary Subdivision Plan for this subject site.

In regard to outstanding onsite development issues, Atty. McCann, in her letter, cites all of the issues in a comprehensive manner, and also addresses the status of all criteria for which the board is obligated to analyze Site Plan applications prior to making a decision on same. Atty. McCann further includes in her letter provisions for phasing the tonnage build-up for the transfer station, spread over 5 yrs., as well as information involving a public-private partnership to improve Carleton Dr., i.e., between the Town and Mr. Mello. Finally, in Scott Cameron's letter, "C", he cites that the Site Plan will be further revised to reflect the most recently adopted Stormwater Control Bylaws/Regs.

One final matter this author would like to include in this report, i.e., for the board's reference in regard to taking action on this application, please see attached items:

- § 9.08 Site Plan Review Excerpt, as copied from Atty. Mark Bobrowski's "Handbook of Massachusetts Land Use and Planning Law, Fourth Edition (most recent) – "E".
- Chapter 165. Zoning, Article V. Water Resource District and Article XII. Special Permits and Site Plan Review "F".

The above "E & F" are included as part of this report, relative to providing reference information to board members as to MGL and local bylaw provisions that pertain to Site Plan Review, and for the board to better understand the complexity of properly interpreting said laws and bylaws, so that ultimately the board takes the action called for within the provisions of said laws and bylaws. Note: in both the excerpt of Atty. Bobrowski's book, as well as attached Sections of the Town's Zoning Bylaws, much of the contents of each have been highlighted by this author, because all are important to understand, relative to helping the board make the final decision on this application, with, perhaps, the most important excerpt highlighted in the 1st paragraph of §9.08 Site Plan Review of Bobrowski's book, which reads:



SUGGESTED ACTION: At the conclusion of Wed night's hearing, the board may want to consider either continuing it or moving to take conditional or final action on this Site Plan Review application. In regard to the former, the board has an executed Form H Extension thru 30 SEPT 21. In regard to the later scenario, i.e., if the board does decide to take conditional or final action next Wed. night, a written decision will have to be drafted, causing the need for another meeting date to finalize the language of such a decision, e.g., the 1st meeting in September. Thus, leaving the option to use the 22 SEPT meeting date to finalize board action, and still providing sufficient time to ratify the decision and delivered it, as well as the Plan-of-Record, to the required parties. To the effect of the foregoing possible choices for the board to decide on Wed. night, DRAFT MOTIONS are provided below for the board's consideration.

DRAFT MOTIONS:

I move to reopen and the public hearing, which was continued date specific from the 9 JUN 21 meeting.

Motion: _____ Second: _____ Carried/Failed: _____.

Roll call vote: BF _____, BW: _____ JL: _____ GC: _____ HL: _____

I move to continue the Mello Transfer Station public hearing date specific to the 8 SEPT 21 Planning Board meeting.

Motion: _____ Second: _____ Carried/Failed: _____

Roll call vote: BF _____, BW: _____ JL: _____ GC: _____ HL: _____

I move to take conditional or final action on the Mello Transfer Station, located on the north side terminus of Carleton Dr. , shown as Lot 46 Map 15, and for this action to consist of :

Motion: _____ Second: _____ Carried/Failed: _____

Roll call vote: BF _____, BW: _____ JL: _____ GC: _____ HL: _____

PUBLIC HEARING NOTICE
GEORGETOWN PLANNING BOARD

"A"

In accordance with the provisions of §165-83 - Site Plan Approval - of the Town of Georgetown Zoning Ordinance, the Planning Board will hold a public hearing in regard to a petition calling for the construction of a new solid waste transfer station, capable of processing and transferring up to 500 tons of solid waste materials per day, to be located off the northside terminus of Carleton Drive, shown on the Town's Assessor Map 15 as Lot 46, consisting of 14.6 acres. The applicant is G. Mello Disposal Corp., 95 Tenney St., Georgetown, MA 01833. Said public hearing shall be held on August 25, 2021, starting at 7:00 P.M., and be conducted by the Georgetown Planning Board virtually in accordance with Chapter 20 of the Acts of 2021, which extends certain Covid-19 measures adopted during the State of Emergency. Interested persons are invited to participate in the above-cited hearing, via computer, tablet or smartphone by connecting to the following Zoom link: <https://us02web.zoom.us/j/88603162803>; Zoom Meeting ID# 886 0316 2803. Interested parties can also participate via telephone by calling 1 - 929-205-6099 and using Meeting ID 886 0316 2803.

The above-cited remote meeting connection information will be included on the 25 August 2021 meeting agenda, which will be posted on the Town of Georgetown website no less than 48 hours prior to the meeting. Further, the meeting will be broadcast live on the Georgetown Local Access Cable TV Channel 9. Video recordings of this meeting, and all Georgetown Planning Board meetings may be found at www.georgetownma.gov, by choosing Cable TV option.

Full and complete copies of the above-cited Site Plan application, together with the associated Plans, are available upon request by emailing the Town Planner at jcashell@georgetownma.gov or by calling the Planning Office at 978-352-5713. Any person interested in being heard on this application should appear at the time and place designated, herein. Please note, written correspondence will be accepted and read into the record of the hearing. Persons needing special accommodations should contact the Georgetown Planning Department at (978) 352- 5713.

John Cashell
Town Planner for Town of Georgetown

Bill To: Planning Board
 Town of Georgetown
 1 Library St.
 Georgetown, MA 01833

Publish: In the Lawrence Eagle Tribune on 10 August and 17 August, 2021.

"B"

McCann & McCann, P.C.

Attorneys AT LAW

89 Newbury Street, Suite 302

DANVERS, MASSACHUSETTS 01923

TELEPHONE: 978-739-8484

FACSIMILE: 978-739-8455

E-MAIL: NMCCANN@MCCANNLAW.COM

August 17, 2021

Georgetown Planning Board
Town Hall
One Library Street
Georgetown, MA 01833
Attn: John Cashell, Planner

Re: G. Mello Disposal Corp. – Site Plan Approval
Carleton Drive

Dear Board Members:

In anticipation of the our August 25, 2021 Planning Board Meeting relative to the above-reference matter, reference is made to my letter to the Planning Board dated July 19, 2021.

As a confirmation, the Site Plan before the Planning Board for review and action is the Site Plan entitled "G. Mello Disposal Corp. Solid Waste Transfer Station, Carleton Drive, Georgetown Massachusetts" dated October 8, 2019, revised through May 12, 2020, (the Site Plan"), and found on the Planning Board's website for this project. We have discussed during the course of the hearing the Applicant's willingness to add additional landscaping should the Board determine that such additional landscaping would be necessary to address the landscaping, screening and buffering criteria under Section 165 – 83. Should the Board make such a determination regarding additional screening, which determination has not been made as of this date, that item would be included as a condition of approval in the Planning Board's decision. Further, the Planning Board's peer review consultant Ronald Mueller Associates has reviewed the Site Plan as submitted and has not recommended any changes to the site plan as submitted, or adjacent intersections.

The Applicant has met with Peter Durkee, Georgetown Highway Superintendent and Surveyor for the Georgetown Highway Department regarding the Carleton Drive roadway improvements suggested as a result of core samples taken within the existing roadway. As this is a public road serving industrial uses, the Town's Highway Superintendent will determine the required upgrade to the meet the needs of existing and

/

proposed uses, and will undertake the work to Town roadway standards on behalf of the Town. The Applicant will participate in the costs of those improvements and will provide engineering services relative to the Carleton Drive improvements to the Town's Highway Department as the Superintendent deems necessary.

Also included with this submission please find 34 additional LETTERS OF SUPPORT for the proposed G. Mello Disposal Corp. Transfer Station on Carleton Drive submitted by residents of the Town of Georgetown; **the total number of Letters of Support from Georgetown residents submitted to date total 407.**

The Applicant's team submitted a thorough and complete Site Plan Approval Application package to the Planning Board on October 9, 2019. Subsequent submissions in response to comments and in response to the Planning Board's Civil Engineering Peer Review and the Planning Board's Traffic Engineer's Peer Review, together with revisions of the Site Plan through May 12, 2020, have been submitted throughout the hearing process. The Board has received the final peer review letters from civil peer review engineer Larry Graham, P.E. and traffic peer review engineer Ronald Mueller Associates.

The Applicant submits that (1) responses have been provided to all of the Board's comments; (2) the purposes of a site plan approval to protect the health, safety, convenience, and welfare of the inhabitants of the Town of Georgetown have been satisfied; and (3) the Site Plan review criteria under Section 165 - 83 have been met, and well exceeded through the detailed information provided by the Applicant and its development team.

The Site Plan Application Package and supplemental filings support the following:

- (1) The location of buildings, uses and other site development are properly located on a site.
- (2) Adjacent properties are protected from nuisance caused by noise, fumes and glare of lights, and from detracting visual features.
- (3) Unique man-made features, such as stone walls, and significant natural features on a site are preserved as much as possible (i.e., hills, water bodies, wetlands, trees, tree groves, wooded areas, rock outcrops, native plants, wildlife habitats and other areas of aesthetic and ecological interest).
- (4) Adequate parking, loading facilities, drainage and methods of solid waste disposal are provided on-site, and confirmed by the Planning Board's hired peer review professionals.
- (5) Pedestrian ways, access driveways, loading and parking facilities are properly designed and operated for public convenience and safety and confirmed by the Planning Board's hired peer review professionals.
- (6) To maintain the village-like character of the Town by considering the architectural style and its relation to the prevailing character and scale of buildings in the neighborhood, proposed buildings shall relate harmoniously with the surrounding area.

(7) Water resources are protected from depletion and contamination, including drinking water supplies, watershed protection land, aquifers and the Parker River and its tributaries.

The Site Plan set dated October 8, 2019, revised through May 12, 2020, and supporting documents including reports, data and materials submitted and presented during the course of the hearing demonstrate reasonable fulfillment of the Site Plan Review objectives (Section 165-83.P):

- (1) Legal: conformance with the provisions of the applicable Bylaws of the Town, the General Laws of Massachusetts, and all applicable rules and regulations of state and federal agencies.
- (2) Traffic.
- (3) Parking.
- (4) Town services.
- (5) Pollution control.
- (6) Nuisance.
- (7) Existing vegetation.
- (8) Landscaping, screening and buffering.
- (9) Town character.
- (10) Drainage and watershed protection.

The proposed use of the Carleton Drive property by the Applicant for a transfer station providing a needed public service to the Town and its residents is a use permitted by Special Permit issued by the Georgetown Board of Appeals. The issue before the Planning Board is an administrative Site Plan Review under Section 165-83 relative to the previously approved transfer station use.

The Applicant reiterates conditions for the Site Plan Approval for the Planning Board's consideration as follows, none of which require a modification to the Site Plan as submitted:

- 1. The Applicant shall conduct a noise study six months after commencement of operations to determine if additional mitigation measures are needed in the form of plantings or buffering to mitigate noise impacts on residential uses.
- 2. The Applicant shall conduct a view study during the month of February following the commencement of operations to determine if view mitigation is needed in the form of additional plantings along the Rte. 95 corridor.
- 3. The Applicant shall provide a traffic detail during peak periods for the first 60 days of operations,
- 4. The Applicant shall conduct a post-occupancy traffic monitoring study of the transfer station's trip generation within 6 months of the commencement of operations; the study shall be submitted to Ron Mueller Associates, the

Georgetown Planning Board
August 17, 2021

Planning Board's traffic peer review consultant, for review to determine if any additional mitigation measures such as traffic details are required.

5. The Applicant shall limit and phase in the maximum daily tonnage accepted at the G. Mello Carleton Drive Transfer Station during years 1-5 of initial operation as follows:

Year 1	200 tons per day
Year 2	200 tons per day
Year 3	300 tons per day
Year 4	400 tons per day
Year 5	500 tons per day.

We request that the Planning Board take favorable action on the pending Site Plan Approval application and grant Site Plan Approval for the G. Mello Disposal Corp. transfer station project on Carleton Drive.

Thank you for your consideration.

Very truly yours,

Nancy A.S. McCann

Nancy A.S. McCann, Esq.
Attorney for G. Mello Disposal Corp.

NASM/kjl
Enclosures



h C h

July 19, 2021

Town of Georgetown
Planning Board
1 Library Street
Georgetown, MA 01833

Attn: John Cashell
Town Planner

**RE: Response to Board Question Re: Stormwater
Carleton Drive – G. Mello Disposal Corporation**

Dear Members of the Board:

At the Planning Board meeting of June 9, 2021, a question was asked by the Board regarding the storm intensity that was used for the stormwater management design. I want to clarify for the record that the project was originally designed in October 2019 and reviewed by the town's civil engineering consultant, H.L. Graham Associates and subsequently revised on May 12, 2020. The design implemented the SCS TR-20, Type III 24-hour Rainfall intensities. To the best of our knowledge, the project was designed in accordance with the stormwater regulations and bylaw (May 24, 1993) in place at the time it was reviewed.

We are in receipt of new stormwater regulations that were issued on June 23, 2021, more than a year after the project stormwater design was reviewed by H.L. Graham. To the extent that the new regulations are applicable to this project, the design will be updated.

We trust this information adequately clarifies the record regarding the stormwater management design.

If you have any questions, please do not hesitate to contact our office at (978) 373-0310.

Sincerely,

THE MORIN-CAMERON GROUP, INC.


Scott P. Cameron, P.E.
Vice-President

cc: Attorney Nancy McCann
G. Mello Disposal Corporation

X:\Mello\3794\Docs\Site Plan Review\Response to Board Question 7-19-2021.docx

CIVIL ENGINEERS • LAND SURVEYORS • ENVIRONMENTAL CONSULTANTS • LAND USE PLANNERS

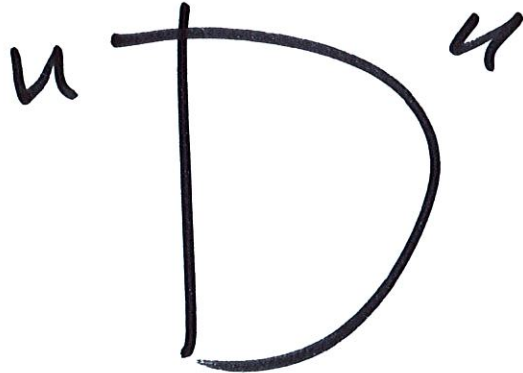
25 Kenoza Avenue, Haverhill, MA 01830 978.373.0310

Providing Professional Services Since 1978

www.morincameron.com

Ron Müller & Associates
Traffic Engineering and Consulting Services

56 Teresa Road
Hopkinton, MA 01748
Tel.: (508) 395-1576 Fax: (508)
435-2481
www.RonMullerAssociates.com



Ref.: ¹

July 22, 2021

Mr. John Cashell, Town Planner
Town of Georgetown Planning Board
1 Liberty Street
Georgetown, MA 01833

Reg.: Final Traffic Review
G. Mello Transfer Station, Georgetown, MA

Dear John:

Ron Müller & Associates (RMA) is in receipt of the supplemental information submitted by the applicant for the above-referenced project in response to the last Planning Board meeting on June 9, 2021. The following additional documents were reviewed as part of our peer review services to the Town of Georgetown:

- July 20, 2021 Response to Planning Board Comments letter from Greenman-Pedersen, Inc. (GPI), Inc. to Mr. John Cashell, Town Planner.
- July 20, 2021 Proposed Transfer Station Truck Turning Movements from Greenman-Pedersen, Inc. (GPI), Inc.

Based on review of the supplied information all traffic comments have been addressed. We do have some recommendations listed below:

1. The post-occupancy traffic monitoring study should include a summary of the waste processed on each day of the counts. Furthermore, since the amount of waste processed within the first two years of opening is limited to 200 tons, the counted volumes should

¹ Final Review Letter 072121

be factored up to represent a 500-ton processing capacity. Similar adjustments should be made with capacity analyses if the trip thresholds are exceeded.

Mr. John Cashell

July 22, 2021

Page 2 of 2

2. The applicant has agreed to participate in the cost of the Carleton Drive improvements. It is recommended that the Planning Board make a determination on the Applicant's level of participation in the cost of those improvements.

Please feel free to contact me if you have any questions regarding this review.

Sincerely,

Ron Müller & Associates

A handwritten signature in black ink, appearing to read "Kirsten Braun".

Kirsten Braun, P.E.
Associate

“E”

Excerpt from Atty. Mark Bobrowski's:

“Handbook of Massachusetts Land Use and
Planning Law, Fourth Edition (most recent) –

“§9.08 Site Plan Review”

Mass. Gen. L. ch. 40A, § 9A allows adult bookstores¹⁰⁸ or adult motion picture theatres¹⁰⁹ to be regulated by special permit.¹¹⁰ Such a zoning ordinance or bylaw may state the specific improvements, amenities, or locations of proposed uses for which such a permit may be granted; it may also provide that the proposed use be a specific distance from any district designated by zoning ordinance or bylaw for any residential use or from any other adult bookstore or adult motion picture theatre or from any establishment licensed under the provisions of Mass. Gen. L. ch. 138, § 12.¹¹¹ This type of special permit is subject to the same procedural requirements as an orthodox application governed by § 9.¹¹²

§ 9.07 STATUTORILY PROHIBITED SPECIAL PERMITS

In *Wall Street Development Corp. v. Planning Board of Westwood*,¹¹³ the Appeals Court ruled that a provision of the town's zoning bylaw which required a special permit for any subdivision with four or more lots was inconsistent with the Subdivision Control Law.¹¹⁴ The "Major Residential Development" ("MRD") bylaw required the submittal of two plans—one conventional and the other alternative—after which the board approved one or the other. The Appeals Court noted the inconsistency with Mass. Gen. L. ch. 41, § 81M:

In our view the by-law and the power it gives to the board to reject so-called "conventional plans" (i.e., plans in total compliance with applicable laws and regulations) may be more easily seen as presenting a conflict with the subdivision control law, specifically with G. L. c. 41, § 81M. . . .

¹⁰⁸ The statute defines "adult bookstore" as "an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in [Mass. Gen. L. ch. 272, § 31]."

¹⁰⁹ The statute defines "adult motion picture theatre" as "an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in [Mass. Gen. L. ch. 272, § 31]."

¹¹⁰ By 1994 Mass. Acts 60, §§ 69-71, the Legislature added "adult paraphernalia stores" and adult video stores to Mass. Gen. L. ch. 40A, § 9A. Furthermore, all existing adult uses were required to apply for a special permit within 90 days following the adoption of a zoning bylaw or ordinance by a municipality. In *Escapade Enters., Inc. v. City of New Bedford*, C.A. No. B95-00678 (Bristol Sup. Ct. 1995), the city was permanently enjoined from enforcing its ordinance regulating existing adult bookstores. The trial court ruled that 1994 Mass. Acts 60, § 67, as it pertained to lawful, pre-existing adult uses, was a violation of the Fourteenth Amendment's equal protection clause and the First Amendment's guarantee of free speech.

By 1996 Mass. Acts 345, the Legislature made minor changes to Mass. Gen. L. ch. 40A, § 9A, regarding "establishments which display live nudity for its patrons."

¹¹¹ See § 2.05[D][1] for a discussion of First Amendment rights in this context.

¹¹² No reported decisions interpret § 9A.

¹¹³ 72 Mass. App. Ct. 844 (2008).

¹¹⁴ Mass. Gen. L. ch. 41, §§ 81K-81GG. See **Chapters 14 and 15**.

It is the intent of the subdivision filed with the planning board shall require such plan conforms to the recommendations to the reasonable rules and regulations of the to the subdivisions of land. . . .

For a generation, the MRD model has been pervasive. . . . cluster development or to exact affordable housing. Any municipality . . . finance of . . . bylaw requiring subdivisions of a certain number of lots to obtain a special permit for these purposes is suspect after *Wall Street*. However, regulations offering "increases in the permissible density of population or intensity of a particular use" by voluntary application for a special permit are unaffected by *Wall Street*.¹¹⁵

§ 9.08 SITE PLAN REVIEW

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.¹¹⁶ The Zoning Act contains no reference to site plan review.¹¹⁷ It is entirely the creature of the cities and towns and the judiciary. Because site plan review is often confused with or attached to the special permit process,¹¹⁸ discussion of the device is appropriate in this chapter. The Supreme Judicial Court defined its understanding of 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."¹¹⁹ The Supreme Judicial Court has repeatedly focused on this pronouncement to distinguish site plan review from the special permit process.¹²⁰ Site plan review can only be used to shape a project.¹²¹ On the other hand, in the special permit process, the full range of discretion is available to the granting authority.¹²²

¹¹⁵ See § 9.06.

¹¹⁶ Site plan approval 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 format, site plan approval must be obtained before the building or special permit is issued. For a more detailed discussion of site plan review, see Mark Bobrowski, *Recent Developments in Community Growth Control*, 73 Mass. L. Rev. 36 (1988).

¹¹⁷ However, the concept is endorsed in the DCA Report.

¹¹⁸ See, e.g., *Bruno v. Bd. of Appeals of Wrentham*, 62 Mass. App. Ct. 527, 534-535 (2004).

¹¹⁹ *Y. D. Dugout v. Bd. of Appeals of Canton*, 357 Mass. 25, 31 (1970).

¹²⁰ See *Prudential Ins. Co. of Am. v. Bd. of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Auburn v. Planning Bd. of Dover*, 12 Mass. App. Ct. 998 (1981).

¹²¹ However, this power does not extend to "issues of density" which were previously resolved "in a legislative sense" when the city or town enacted the ordinance or bylaw permitting a certain density by right. *Castle Hill Apts. Ltd. P'ship v. Planning Bd. of Holyoke*, 65 Mass. App. Ct. 840, 847 (2006).

¹²² See § 9.04.

Conceptually, uses or structures must be authorized by either a special permit or a building permit.¹²³ Site plan review operates in conjunction with one of these two devices. It is important to identify the link between site plan review and one of these mechanisms because the nexus determines the procedures for appeal or adverse decisions.

Site plan review in conjunction with a special permit application is the earliest version of the device and remains quite common.¹²⁴ Generally, any use requiring a special permit also requires review of a site plan. The site plan ostensibly serves to provide detailed information to the granting authority on aspects of the proposed development. The leading case of *Y. D. Dugout v. Board of Appeals of Canton*¹²⁵ found the process "in substance, . . . equivalent to permitting any commercial building construction . . . only upon special permit."¹²⁶ In *Auburn v. Planning Board of Dover*,¹²⁷ a bylaw provision required site plan approval for all buildings to be erected in a business district through issuance of a special permit.¹²⁸ The Appeals 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."¹²⁹

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*,¹³⁰ the Appeals Court examined such a case.¹³¹ Even though the plaintiff's proposed office buildings were a permitted use, the board of appeals denied site plan approval primarily because of traffic concerns raised by the project. The 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."¹³²

The Appeals Court has ruled that, unless the local ordinance or bylaw so requires, no written decision is required of the site plan review board,¹³³ and the

¹²³ See Mass. Gen. L. ch. 40A, §§ 7, 9. The variance procedure is not applicable, because it applies only to otherwise disallowed uses or structures. See Mass. Gen. L. ch. 40A, § 10.

¹²⁴ See *Woods v. City of Newton*, 351 Mass. 98 (1966); *Coolidge v. Planning Bd. of N. Andover*, 337 Mass. 648 (1958).

¹²⁵ 357 Mass. 25 (1970).

¹²⁶ *Y. D. Dugout*, 357 Mass. at 31.

¹²⁷ 12 Mass. App. Ct. 998 (1981).

¹²⁸ *Id.* Site plan approval was required "in order to ensure the most advantageous use of all properties within the . . . district and for the reasonable protection of the legitimate interests of adjoining property owners." Submitted site plans must satisfy nine criteria that are all concerned with proper and safe use of land.

¹²⁹ *Auburn*, 12 Mass. App. Ct. at 998.

¹³⁰ 23 Mass. App. Ct. 278 (1986).

¹³¹ 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. Bd. of Appeals of Canton*, 2 Mass. App. Ct. 488 (1974).

¹³² *Prudential*, 23 Mass. App. Ct. at 282.

¹³³ *Bowen v. Bd. of Appeals of Franklin*, 36 Mass. App. Ct. 954, 955 (1994).

decision of the board may be made by simple majority vote, not the supermajority required for the issuance of a special permit.¹³⁴ The powers of site plan review board were described by the Appeals Court in *Prudential*.¹³⁵ The Court held that such boards may: (1) reject a site plan that fails to furnish adequate information required by the bylaw; (2) impose reasonable conditions in connection with site plan approval (even at the expense of the applicant); and (3) reject a site plan that "although proper in form, may be so intrusive on the needs of the public in or regulated aspect or another that rejection by the board would be tenable."¹³⁶

In *Jewish Cemetery Ass'n v. Board of Appeals of Wayland*,¹³⁷ the Land Court ushered in a new era of site plan review for religious, educational, and child care uses otherwise exempt pursuant to Mass. Gen. L. ch. 40A, § 3 "as long as such review is limited to reasonable regulations." A long line of appellate cases, including *Bible Speaks v. Board of Appeals of Lenox*,¹³⁸ *Trustees of Tufts College v. City of Medford*,¹³⁹ and *Petrucchi v. Board of Appeals of Westwood*,¹⁴⁰ held that site plan review could not be applied against a use protected by § 3.¹⁴¹

The Land Court's position makes practical sense. If site plan review is limited to the imposition of "reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements" as per § 3, the heavy lifting otherwise required of the building inspector as initial intake officer can be shifted to a board. When a building inspector denies a § 3 use (as so often happens), the zoning board of appeals could reverse only with a supermajority. Limited site plan review would allow the matter to proceed by simple majority vote.

¹³⁴ *Osberg v. Planning Bd. of Sturbridge*, 44 Mass. App. Ct. 56, 59 (1997).

¹³⁵ *Prudential*, 21 Mass. App. Ct. at 283-284 n.9. For a particularly instructive application of these standards, see *Gutierrez v. Town of Framingham*, Misc. Case No. 218849 (Land Ct. 1996).

¹³⁶ "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. . . ." *Id.* There has never been a case under this clause at the appellate level. However, the trial court has seen some action under clause (3) of *Prudential*. See, e.g., *New York Cellular v. Brugnoti*, Misc. Case Nos. 217445 and 263705 (Land Ct. 1999); *Wolcott-Marshall, Inc. v. Town of Rutland*, Misc. Case Nos. 246745 and 248309 (Land Ct. 1999). The Court found in either case no problem "so intractable that it could admit of no reasonable solution." A site plan may be denied where the use is not available as of right or by special permit under the local ordinance or bylaw. *Balzotti Corp. v. Baldassini*, Misc. Case No. 260128 (Land Ct. 2002). A site plan may be denied when the granting authority incorrectly interprets the requirements of the local bylaw. *Lee v. Winchester Bd. of Appeals*, 13 MISC 479814 (JCC) (Land Ct. 2017).

¹³⁷ 8 MISC 386750 (Land Ct. 2010).

¹³⁸ 8 Mass. App. Ct. 19 (1979).

¹³⁹ 415 Mass. 753 (1993).

¹⁴⁰ 45 Mass. App. Ct. 818 (1998).

¹⁴¹ See also *Bay Farm Montessori Acad., Inc. v. Town of Duxbury*, 08 MISC 329566 (Land Ct. 2008).

[A] Problems

Notwithstanding *Prudential's* clear statement of powers, site plan review remains a minefield for the unwary board or applicant.¹⁴² Several problems persist and deserve the immediate attention of the Legislature.¹⁴³

First, there has been no decision detailing minimum procedural safeguards for site plan review. Virtually every decision has involved a bylaw that described minimum procedures or incorporated special permit procedures under Mass. Gen. L. ch. 40A, § 9.¹⁴⁴ Communities using site plan to shape as-of-right uses have sometimes relied on an informal process roughly equivalent to preliminary plan review under the Subdivision Control Act.¹⁴⁵ The review board conducts plan evaluation at a regular business meeting; notice is limited to observance of the Open Meeting Law.¹⁴⁶

Since site plan review has been consistently characterized as functionally less than a special permit decision,¹⁴⁷ the courts are likely to find that the same intricate procedural safeguards are unnecessary. Under *Prudential*, site plan review has been confirmed as regulation of a use, rather than its prohibition; a review board has only limited, if quasi-discretionary, powers. In effect, site plan review should not present such risks to the property rights of an applicant or abutters as to necessitate formal pre-deprivation hearings.¹⁴⁸

¹⁴² For a thorough discussion of these problems, see Mark Bobrowski, *Reform of the Zoning Act: An Open Letter to the Legislature*, 34 Suffolk U. L. Rev. 19 (2000).

¹⁴³ The Appeals Court has on two occasions, suggested that the Legislature ought to address the statutory silence regarding site plan review. See *Dufault v. Millenium Power Partners, L.P.*, 49 Mass. App. Ct. 137, 143 n.15 (2000); *Osberg*, 44 Mass. App. Ct. 56, 59 n.5.

¹⁴⁴ 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.

¹⁴⁵ See Mass. Gen. L. ch. 41, § 81S, for preliminary plan procedures under the Subdivision Control Law.

¹⁴⁶ 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.

¹⁴⁷ See *Y.D. Dugout*, 357 Mass. at 31: "The 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. . . .'" See also *Prudential*, 23 Mass. App. Ct. at 282-283 (alteration in original): "Thus, the judge was not required, as he would have been if a special permit had been in issue, simply to ascertain whether there was 'sufficient basis to warrant [the board's] decision.'"

¹⁴⁸ See *Mathews v. Eldridge*, 424 U.S. 319 (1976). See also Mass. Outdoor Advert. Council v. Outdoor Advert. Bd., 9 Mass. App. Ct. 775, 789-792 (1980); *Am. Sign & Indicator Corp. v. Town of Framingham*, 9 Mass. App. Ct. 66, 71 (1980). Both decisions discuss due process concepts in decisions involving the licensing of signs. But see *Fairbairn v. Planning Bd. of Barnstable*, 5 Mass. App. Ct. 171 (1977).

Second, how should a court reconcile conditions imposed in the course of site plan review with those imposed by the special permit-granting authority? Where the special permit-granting authority also serves as site plan review board this result cannot occur. But where, hypothetically, the board of appeals serves as special permit-granting authority and the planning board sits in review of site plans,¹⁴⁹ there is a potential for conflict. 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,¹⁵⁰ 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.

Third, does a site plan approval vest rights in light of zoning changes subsequently adopted by Town Meeting? In *Towermarc Canton Limited Partnership v. Town of Canton*,¹⁵¹ a zoning amendment set a height limitation that seriously affected 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.¹⁵² The absence of any reference to site plan approval in the freeze paragraphs of the statute was fatal to plaintiff's claim. Note, however, that this result is from a lower court.

Fourth, what is the effect of a constructive grant of site plan approval? Is the approval subject to modification, as in the case of a definitive subdivision plan?¹⁵³ There are no reported cases on this point.

Fifth, the lack of a clear appellate route is particularly troublesome. Mass. Gen. L. ch. 40A, § 17 establishes the appeal mechanism for all adjudicatory decisions made pursuant to the Zoning Act. Thus, the procedures for the appeal of a variance or a special permit are uniform. The spurned applicant or aggrieved person takes the matter directly to a court of competent jurisdiction, as set forth in the statute.¹⁵⁴

¹⁴⁹ 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.

¹⁵⁰ See § 9.08[B] for a discussion of Prudential Ins. Co. of Am. v. Bd. of Appeals of Westwood, 23 Mass. App. Ct. 278 (1986).

¹⁵¹ Misc. Case No. 131947 (Land Ct. 1989).

¹⁵² See § 5.02 for a discussion of freeze provisions.

¹⁵³ See § 5.04.

¹⁵⁴ Mass. Gen. L. ch. 40A, § 17 states that appeals may be filed in Land Court, Superior Court (in which the land concerned is situated), Housing Court, if in Hampden County, or District Court (in which the land concerned is situated), if in a county other than Hampden County, subject to the right of any party to file a claim for trial in Superior Court within 25 days after service of the appeal is completed.

The appeal of a site plan review decision is not so predictable.¹⁵⁵ Several earlier decisions—notably, *Prudential, Auburn*, and *Y.D. Dugout*—mention, without comment, site plan decisions appealed directly to a § 17 Court.¹⁵⁶ However, in *McDonald's Corp. v. Town of Seekonk*,¹⁵⁷ the Appeals Court reconfigured the appellate procedure for uses available as of right. The plaintiff was denied site plan approval by the planning board for a restaurant. Subsequently, the building inspector refused to issue the building permit, citing the action of the planning board. McDonald's appealed the planning board decision to the board of appeals but did not pursue that route, instead opting to appeal the site plan denial directly to Superior Court. The Appeals Court held that the proper appellate route was an appeal of the denied building permit to the board of appeals under Mass. Gen. L. ch. 40A, §§ 8 and 15, and dismissed the action for failure to exhaust administrative remedies.

In *Quincy v. Planning Board of Tewksbury*,¹⁵⁸ the Appeals Court attempted a reconciliation of these alternatives. The local bylaw allowed certain retail uses as of right, subject to a site plan special permit issued by the planning board. The planning board denied the site plan special permit and the decision was appealed directly to Land Court. The jurisdictional question was raised for the first time at the Appeals Court. The Court observed that:

Since the only decisions of the planning board that are appealable to the courts directly are those in which the planning board has acted as a special permit granting authority, the planning boards disapproval of the site plan had to be run through the board of appeals.¹⁵⁹

However, the Court further ruled that the “procedural framework [of the local bylaw], including the designation of the planning board as a special permit-granting authority, survived the . . . judgment intact.”¹⁶⁰ Hence, the Court ruled that the “denial of [this] site plan application constitutes a decision by the special permit-granting authority, which is directly appealable under G.L. c. 40A, § 17.”¹⁶¹ Accordingly, when the local ordinance or bylaw makes the mistake of

¹⁵⁵ The Appeals Court has ruled, however, that certiorari pursuant to Mass. Gen. L. ch. 249, § 4 was not the appropriate avenue for review when recourse was available under Mass. Gen. L. ch. 40A, § 17. See *Cumberland Farms, Inc. v. Planning Bd. of Bourne*, 56 Mass. App. Ct. 605 (2002).

¹⁵⁶ Nor was the direct appeal of a site plan decision to a § 17 Court an issue in *Osberg*, 44 Mass. App. Ct. 56, where the shopping center was available as of right.

¹⁵⁷ 12 Mass. App. Ct. 351, 353 (1981).

¹⁵⁸ 39 Mass. App. Ct. 17 (1995).

¹⁵⁹ *Id.* at 20-21 (footnote omitted).

¹⁶⁰ *Id.* at 21.

¹⁶¹ *Id.* at 22. In so ruling the Appeals Court guts the special permit granting authority. “[W]here the proposed use is one permitted by right the planning board may only apply substantive criteria consistent with *Prudential* . . . (i.e., it may impose reasonable terms and conditions on the proposed use, but it does not have discretion to deny the use.)”

creating a site plan special permit, the review board should be treated as a special permit-granting authority for the purposes of appeal, and the matter should proceed to a § 17 Court. If the local ordinance or bylaw does not equate site plan review with a special permit, *Quincy* directs the appeal to the board of appeals.

The timing of this latter appeal to the board of appeals was established in *St. Botolph Citizens Committee, Inc. v. Boston Redevelopment Authority*.¹⁶² The Supreme Judicial Court reviewed an “adequacy determination” by the Boston Redevelopment Authority, a process it equated to site plan review. The Court addressed the timing of an appeal for a use available as of right:

An approval after site plan review, 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 permit. The Appeals Court has said, we think correctly, that the right of an aggrieved person to appeal a local planning board's site plan decision arises only when the building permit for the proposed project is issued or denied by the building inspector.¹⁶³

In *Dufault v. Millenium Power Partners, L.P.*,¹⁶⁴ the Appeals Court ruled that the logic of *St. Botolph* applied to cities and towns governed by Chapter 40A.

Unfortunately, these decisions—*Quincy*, *St. Botolph*, and *Dufault*—only complicate the picture.¹⁶⁵ *Quincy* is limited to those circumstances in which the municipality has codified its misinterpretation of site plan review by equating it with special permitting. A better result would have been to establish uniform procedures for site plan review, without regard to the vagaries of local draftsmanship. In ruling, when the use is as of right, that the planning board decision is appealable to the board of appeals, *St. Botolph* and *Dufault* have invented political and practical quagmires. The appellate route does not take into account the effect it will have on the intramural relations of these boards, particularly when the planning board's superior expertise in site design and layout are considered. Moreover, if the planning board decision is only appealable when the building permit is issued or denied by the building inspector, there are consequences for all sides. The applicant whose plan is denied or unreasonably conditioned must apply for a building permit with the knowledge that it will be denied; this is an expensive exercise in frustration. The person aggrieved by the approval of a site

type of reduced special permit power the Appeals Court created in *Willard v. Bd. of Appeals of Orleans*, 25 Mass. App. Ct. 15, 21-22 (1987), in the review of proposed alterations to nonconforming single family homes, also with confusing results. See discussion in § 6.06.

¹⁶² 429 Mass. 1 (1999).

¹⁶³ *Id.* at 9.

¹⁶⁴ 49 Mass. App. Ct. 137, 142 (2000).

¹⁶⁵ For more proof of the problem, see *Cumberland Farms Inc. v. Planning Bd. of Bourne*, 67

plan must monitor the building inspectors' office for the approval of the building permit, a task the Appeals Court has already ruled unfair.¹⁶⁶

In *Rehabilitation Services, Inc. v. Planning Board of Sturbridge*,¹⁶⁷ the Appeals Court ruled that when the local bylaw provided for a direct appeal to Superior Court or Land Court, this result was not inconsistent with the ruling in *St. Botolph*.¹⁶⁸ In *Wildstar Farm, LLC v. Planning Board of Westwood*,¹⁶⁹ the Appeals Court examined a local bylaw providing that an appeal of a site plan decision for an as of right use "shall be appealed in accordance with G.L. c. 40A, [§] 17[,] to a court of competent jurisdiction." The Court ruled this as a proper exercise of local authority because the "town has expressly instructed through its by-law that exhaustion will not be required."

The Legislature should address these deficiencies by taking, at a minimum, the following steps. First, site plan review should be defined in the Zoning Act in a manner consistent with the ruling in *Prudential*. Second, all site plan decisions should be reduced to a written form, and filed within 14 days in the office of the city or town clerk. Finally, appeals of site plan decisions should be taken, pursuant to Mass. Gen. L. ch. 40A, § 17, directly to a court of competent jurisdiction.¹⁷⁰

[B] Scope of Review

In *Prudential*, 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

¹⁶⁶ *Vokes v. Avery W. Lovell, Inc.*, 18 Mass. App. Ct. 471, 482 n.17 (1984);

The problems arising out of an aggrieved party's being unaware of the issuance of a building permit still exist. The holder of a building permit has up to six months from the date of its issuance to commence work under the permit. *See* 780 Code of Mass. Regs. § 114.3 (1980) There is no public notice of the issuance of a building permit. A permit holder could keep the fact of the permit's issuance secret, refrain from beginning construction under the permit for the thirty-day period established by § 15, and thereby foreclose any further direct review of the legality of the permit's issuance.

¹⁶⁷ 61 Mass. App. Ct. 1122, Case No. 03-P-233 (unpublished disposition 2004).

¹⁶⁸ *See also* *Castle Hill Apts. Ltd. P'ship v. Planning Bd. of Holyoke*, 65 Mass. App. Ct. 840, 346 (2006).

¹⁶⁹ 81 Mass. App. Ct. 1114 (unpublished disposition 2012).

¹⁷⁰ *See also* *M&K Partners LLC v. Planning Bd. of Stoughton*, 14 MISC 481559 (Land Ct. 2014) (appeal directly to court); *Pandya v. Brushwood Nominee Trust*, 14 MISC 481861 (Land Ct. 2014) (same). *See also* *Bourne v. Sudbury Zoning Bd. of Appeals*, 10 MISC 434334 (Land Ct. 2014) (appeal of site plan decision by board of selectmen directly to zoning board of appeals as per local bylaw consistent with *Wildstar*).

approval is denied, "[t]he judge . . . examine[s] the proposal to see 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."¹⁷¹

END!

¹⁷¹ *Prudential Ins. Co. of Am. v. Bd. of Appeals of Westwood*, 23 Mass. App. Ct. 278, 283 (1986).



Town of Georgetown, MA
Tuesday, August 17, 2021

Chapter 165. Zoning

Article V. Water Resource District

[Added 11-4-1985 STM, Art. 24 (Amdt. No. 66)]

§ 165-29. Purpose.

The purpose of the Water Resource Districts are to protect the public health by preventing contamination and degradation of surface water and groundwater resources providing water supply for the Town, including other Towns which exchange water with this Town or may do so, namely Groveland, Newbury and Rowley.

§ 165-30. Creation; applicability of underlying district.

Water Resource Districts (WR) are hereby created as shown on the map entitled "Map 22 Water Resource Districts Map. May 6, 1985," and described in § 165-36. Said districts shall be considered to be superimposed over any other districts established in this chapter. Land in a Water Resource District may be used for any purpose otherwise permitted in the underlying district, subject to the following additional restrictions. In case of conflict, the greater restriction shall apply.

§ 165-31. Prohibited uses.

The following uses are prohibited in a Water Resource District: commercial car washes, road salt stockpiles, subsurface hazardous chemical, gasoline and oil storage in corrodible containers, coin-operated or commercial laundries and any other use which involves as a principal activity the manufacture, storage, use transportation or disposal of toxic or hazardous materials as defined in § 165-7.

§ 165-32. Special permit uses.

The following shall be allowed only if granted a special permit as provided in §§ 165-33, 165-34 and 165-35:

- A. Any principal use involving the sale, storage or transportation of fuel oil or gasoline.
- B. Any use involving the retention of less than 30% of lot area in its natural state with no more than minor removal of existing trees and ground vegetation, or rendering impervious more than 40% of lot area.
- C. Any use involving on-site disposal of process wastes from operations other than personal hygiene and food for residents, patrons and employees.
- D. Any use, other than a single-family dwelling, with a sewage flow, as determined by Title 5 of the State Environmental Code, exceeding 110 gallons per day per 10,000 square feet of lot area or

exceeding 15,000 gallons per day regardless of lot area.

- E. Any use involving the generation of toxic or hazardous waste materials in quantities greater than associated with normal household use.
- F. Sanitary landfills and transfer stations, junkyards and Class Two motor vehicle licenses, dry-cleaning establishments, motor boat and motor vehicle service and repair.

§ 165-33. Application information.

[Amended 6-26-1995 ATM, Art. 8 (Amdt. No. 93)]

A special permit may be granted by the special permit granting authority, or SPGA, which shall consist of the members of the Zoning Board of Appeals. The applicant shall submit the information listed below, together with any other information listed in a regulation issued by said SPGA, which regulation and others appropriate to carry out the purpose of this are hereby authorized.

- A. A complete list of all chemicals, pesticides, fuels and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers or facilities from vandalism, corrosion and leakage and to provide for control of spills.
- B. A description of potentially toxic or hazardous wastes to be generated indicating storage and disposal methods.
- C. Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) of any industrial waste treatment or disposal system or any wastewater treatment system over 15,000 gallons per day capacity.
- D. For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system, design and installation.
- E. Analysis certifying compliance with § 165-34, such analysis to be done by a technically qualified expert.

§ 165-34. Design and operations guidelines.

Except for single-family dwellings, the following design and operations guidelines shall be observed within the Water Resource Districts:

- A. Safeguards. Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through such measures as spill control provisions in the vicinity of chemical or fuel delivery points; secure storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
- B. Location. Where the premises are partially outside the Water Resource District, potential pollution sources such as on-site waste disposal systems shall be located outside the district to the extent feasible.
- C. Disposal. For any toxic or hazardous waste to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with MGL C. 21C.
- D. Drainage. All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used

only where other methods are infeasible and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.

§ 165-35. Conditions for granting special permit.

Upon filing an application on a form approved as to design by the special permit granting authority (SPGA) and payment of a filing fee payable to the Town in an amount set by regulation of the SPGA, and posting of a notice in the Town Office Building and with the Town Clerk, and advertising in a newspaper as provided in MGL C. 40A, § 11, and compliance with said section, and delivery of the application and other information as requested to the Conservation Commission, Fire Chief, Hazardous Waste Coordinator, Building Inspector and any other board or officer listed in a regulation of the SPGA and as required by state law, and after a site plan review has been held by the Boards as provided in § 165-83 and notice to abutters as provided in MGL. C. 40A, § 11, and after a public hearing is held by the SPGA, the SPGA may grant a special permit if it makes the following determination as well as those in § 165-29 of this Article, namely: that the applicant has proved that any proposed use will not result in the degradation or the potential degradation of any ground and of any surface water resources provided water supply to the Town as defined above, including potential water supply to the Town or any other Town.

§ 165-36. Delineation of district.

Water Resource Districts are defined as any area within 1,000 feet of the following brooks or any tributary thereto: Parker, Penn, Bulford, Lufkins, Muddy, Wheeler, Jackman, Great Sweep and Plough Brooks. Also any area in or flowing into Floodplain Districts described in § 165-28. Said brooks are shown on a map on file in the office of the Selectmen entitled "Map 22, Water Resource Districts, May 6, 1985," and Appendix, pages 15 and 16.

§ 165-37. Recovery of penalty for violation.

The penalty for violation of this article may be recovered by the Hazardous Waste Coordinator or any person designated in writing by the Selectmen as well as the Building Inspector as provided in § 165-99 of this chapter.

§ 165-38. Violations and penalties.

The provisions as to withholding of permits contained in §§ 165-95 and 165-96 this chapter shall apply to violations of this Article.

1" F " cont.
Town of Georgetown, MA
Tuesday, August 17, 2021

Chapter 165. Zoning

Article XIII. Special Permits and Site Plan Review

§ 165-83. Site plan approval.

[Added 5-2-1977 ATM, Art. 13 (Amdt. No. 50); 5-4-1981 ATM, Art. 18 (Amdt. No. 58); 5-6-1985 ATM, Art. 21 (Amdt. No. 64); 6-15-1998 ATM, Art. 26 (Amdt. No. 125)]

A. Purpose and conditions of approval. The purposes of a site plan approval are to protect the health, safety, convenience, and welfare of the inhabitants of the Town of Georgetown as well as the natural resources that people depend upon by providing a comprehensive review of land use and development plans to insure that the following conditions have been met:
[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]

- (1) The location of buildings, uses and other site development are properly located on a site.
- (2) Adjacent properties are protected from nuisance caused by noise, fumes and glare of lights, and from detracting visual features.
- (3) Unique man-made features, such as stone walls, and significant natural features on a site are preserved as much as possible (i.e., hills, water bodies, wetlands, trees, tree groves, wooded areas, rock outcrops, native plants, wildlife habitats and other areas of aesthetic and ecological interest).
- (4) Adequate parking, loading facilities, drainage and methods of solid waste disposal are provided on-site.
- (5) Pedestrianways, access driveways, loading and parking facilities are properly designed and operated for public convenience and safety.
- (6) To maintain the village-like character of the Town by considering the architectural style and its relation to the prevailing character and scale of buildings in the neighborhood, proposed buildings shall relate harmoniously with the surrounding area.
- (7) Water resources are protected from depletion and contamination, including drinking water supplies, watershed protection land, aquifers and the Parker River and its tributaries.

B. Projects requiring site plan approval.

- (1) Applicability. Except as otherwise exempted in accordance with Subsection C, no building permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be permitted and no new or existing use(s) shall be established or expanded in off-street parking or floor area except in conformity with a site plan approved by the Planning Board. Required approval includes, but is not limited to, proposals for commercial, industrial, office, multiple-family dwelling residential developments, municipal, institutional, utility, fraternal or recreational uses.

[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]

- (2) Site plan approval shall also be required for the resumption of any use discontinued or not used for more than two years, or for the expansion of any existing use. "Expansion" shall include a total floor area increase of more than 500 square feet or the introduction of new materials or processes not previously associated with the existing use.
[Amended 10-25-1999 STM, Art. 17 (Amdt. No. 141)]

C. Exemptions from site plan approval. Site plan approval shall not be required for:

- (1) The construction or enlargement of any single-family or two-family dwelling, or building accessory to such use;
- (2) The construction or alteration of any building used exclusively for agriculture, horticulture, or floriculture;
- (3) Construction or alteration providing for not more than 500 square feet total floor area after construction;
- (4) Customary home occupations as defined in the Zoning Bylaws.
- (5) Construction of single-family residential subdivisions;
[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]
- (6) Construction of any passive recreational trails or pathways; and
[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]
- (7) Addition or expansion of up to three off-street parking spaces.
[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]

D. Procedure.

(1) Pre-filing review; filing of application.

- (a) Any person desiring approval of a site plan shall first obtain an application for site plan approval. Prior to filing a site plan application, the applicant is encouraged to review the proposed site plan with the Town departments, boards and commissions listed on the application. The purpose of this pre-filing review is to review with the applicant the requirements and criteria for site plan approval and address questions in order to give the applicant advice and comments prior to submitting a site plan application and thus avoid unnecessary time and costs to the applicant due to unforeseen problems and issues with a submitted site plan.
- (b) At the time of filing, the applicant must submit 16 copies of a completed site plan application and 16 copies of the site plan, conforming to all requirements listed in the section, along with all pre-filing comments received, to the Planning Board. The site plan application and plans will be date stamped by the Planning Board and forwarded to all the Town departments, boards and commissions listed on the application form for their review and comment. Two copies of drainage calculations must be submitted to the Planning Board. The applicant must file a copy of the site plan application with the Town Clerk. Every effort shall be made to have all Town comments submitted to the Planning Board within 30 days of receipt of a site plan approval application and these comments shall be available to the applicant and to the public.

(2) Site plan application and site plan shall be forwarded to:

- (a) Board of Health.
- (b) Building Inspector.
- (c) Conservation Commission.
- (d) Highway Surveyor.

- (e) Police Chief.
- (f) Fire Chief.
- (g) Light Department.
- (h) Water Department.
- (i) Water Conservation Committee.

[Added 5-2-2011 ATM, Art. 40 (Amdt. No. 177)^[1]

[1] *Editor's Note: This article also redesignated former Subsection D(2)(i) as Subsection D(2)(j).*

- (j) Eight copies to Planning Board.

[1] Five copies for members.

[2] One copy for Planner.

[3] One copy for technical review agent.

[4] One copy for file.

- (3) An application for site plan approval shall also be accompanied by the following:

- (a) An abutters list of names and addresses of all property owners of record who share a common property line with any portion of the property specified on the site plan approval application and plan.
- (b) One copy of all applicable permits prior to the issuance of a building permit, approvals, variances and applications applied for and obtained for the project and property. If a variance or special permit is required for a project, it shall be obtained prior to the application for site plan approval described in § **165-83B**. The Zoning Board of Appeals or special permit granting authority may request a site plan approval prior to making its decision.
- (c) Written permission from the owner of the property to apply for site plan approval if the applicant is not the owner.

- (4) At least seven days prior to the date of the public hearing, the Planning Board shall advertise the public hearing in a newspaper of local circulation and shall send written notice by first class mail to all abutters. The legal advertisement and abutter notification shall include, at a minimum, the following information:

- (a) The name and, if applicable, the business name and address of the applicant.
- (b) The street address and the assessor's map and lot number of the property as specified on the site plan application on which construction or expansion is planned.
- (c) A brief description of the type of construction or expansion planned.
- (d) The designated Town office where the site plan application can be reviewed.
- (e) The date, time and place of the public hearing.

- (5) Decision by Planning Board; failure to act; forwarding of approved site plan to Building Inspector.

- (a) Final vote and decision on the site plan shall be taken by the Planning Board after a public hearing has been held and within 60 days of its submission to the Planning Board.
- (b) Failure of the Planning Board to act within the above-prescribed 60 days shall be deemed as approval and it shall forthwith make such endorsement on said plan and, on

its failure to do so, the Town Clerk shall issue a certificate to the same effect. The applicant may request an extension for decision which may be granted by the Planning Board.

- (c) The Planning Board shall forward one copy of the approved site plan, signed by the Planning Board, to the Building Inspector within five days of final Planning Board action.

(6) Occupancy permits.

- (a) No occupancy permits shall be issued for any building or structure, or portion(s) thereof, until:

[1] The Planning Board receives an as-built plan and certification from a registered architect, engineer and/or land surveyor, as appropriate, that all construction (including utilities) has been done in accordance with the approved site plan.

[2] The Planning Board agent verifies that all conditions of the approved site plan have been met with notice to the Building Inspector.

[Amended 5-1-2006 ATM, Art. 38 (Amdt. No. 161)]

- (b) However, occupancy permits may be issued for a portion of any building or structure, upon approval by the Planning Board, if the only work left incomplete is the driveway top course and landscaping; and surety, the amount to be set by the Planning Board, is posted with the Town to ensure that the incomplete landscaping and/or driveway top course is completed within a reasonable time.

- (7) The Planning Board may require peer review by outside consultants and the expense shall be borne by the applicant. Peer review may be required on any aspect of the plan.

E. Contents of site plan.

- (1) The site plan shall contain the following:

- (a) Locus map.
- (b) Date.
- (c) North arrow.
- (d) Name, address, phone number of owner and of design engineer.
- (e) Location of all wetlands and buffer zones, and of floodplain.
- (f) Easements.
- (g) Coverage percentages of building and impervious area.
- (h) The location and name of all streets and indicate whether the street is a public or private way.
- (i) On-site and abutting lot lines.
- (j) Zoning lines.
- (k) Existing and proposed topography contour lines at one- or two-foot intervals.
- (l) Information on the location, size and type and number of existing and proposed landscape features. A proposed plant list containing species/common name, and size/caliper shall be included as well.
- (m) Information on the location, size and capacity of existing and proposed on-site and abutting utilities (water, sewer, drainage, electrical, cable, etc.).

- (n) Stormwater and infiltration facilities (detention areas, rain gardens, treatment swales, etc.) and water conservation measures (cisterns, rain barrels, etc.).

[Added 5-2-2011 ATM, Art. 40 (Amdt. No. 177)^[2]

[2] Editor's Note: This article also redesignated former Subsection E(1)(n) through (y) as Subsection E(1)(o) through (z), respectively.

- (o) The location and dimensions of all existing and proposed buildings and uses on site, including sheds, dumpsters, etc.
 - (p) Elevation and facade treatment plans of all proposed buildings. Color renderings are encouraged and may be required.
 - (q) Information on the location, size and type of parking, loading, storage and service areas.
 - (r) Zoning and other applicable setback distances.
 - (s) Zoning parking calculations.
 - (t) Fire lane.
 - (u) Details and specifications (if applicable) for proposed site amenities, including, but not limited to, fences, walls, other barrier materials; and special paving materials.
 - (v) Limit of work delineation.
 - (w) Maximum number of employees.
 - (x) Signature box for Planning Board's approval with five lines.
 - (y) Sight distance, measured as and in compliance with Chapter 365, Subdivision Regulations of the Town of Georgetown, § 365-37H, Clear sight distance.
 - (z) If any waivers are sought from the Planning Board from this section, they shall be clearly listed with their descriptions on the drawing.
- (2) The Planning Board reserves the right to request additional information or plan details during the review process.
 - (3) The plan shall be 24 inches by 36 inches in size. The scale shall be a minimum of one inch = 40 feet, except for elevation views which shall be at a scale of 1/8 inch = one foot or 1/4 inch = one foot.
- F. The plans shall be legible, include legends, and, if necessary for large or complex projects, the proposed layout, planting, utility and grading for the site shall be separated into their own respective drawings.
 - G. The Planning Board may require additional information, such as traffic impact and drainage design reports. The Planning Board shall also, in this case, request a community impact assessment from the applicant.
 - H. Traffic.
 - (1) When a traffic report is deemed necessary by the Planning Board, the study shall include the following:
 - (a) Internal traffic flow analyses.
 - (b) Existing average daily traffic and peak hour levels.
 - (c) An analysis of average daily traffic and peak hour levels resulting from the project.
 - (d) An analysis of existing and resulting intersection levels of service (LOS). (Please refer to the Manual of the Institute of Transportation Engineers for the definition of level of

service.)

- (e) Directional flows resulting from the proposed project.
 - (f) Proposed methods to mitigate the estimated traffic impact.
 - (g) Identification of any pedestrian crossing issues.
 - (h) The methodology and sources used to derive existing data and estimations.
- (2) In an instance where the proposed project will result in an intersection level of service below a rating of LOS D, the applicant shall provide detailed plans that, when implemented, would result in an intersection level of service rating of D or better. (Please refer to the Manual of the Institute of Transportation Engineers for the definition of level of service.)

I. Community impact assessment.

- (1) The purpose of a community impact assessment is to evaluate the visual impacts of a proposed development and its applicability to the environs.
- (2) The contents of the assessment shall include the following, at a minimum:
 - (a) Evaluation of the relationship of proposed new structures or alterations to nearby preexisting structures in terms of character and intensity of use (e.g., scale, materials, color, door and window size and locations, setbacks, roof and cornice lines, and other major design elements);
 - (b) An analysis of the visual impacts from the proposed development and viewshed alterations and of the location and configuration of proposed structures, parking areas, open space, and gradient changes and the effect they will have on neighboring properties.

J. Town character.

- (1) The Planning Board may require exterior finishes or building treatments in keeping with the character of the district. The building setbacks, area and location of parking, architectural compatibility, signage and landscaping of the development shall harmonize with the surrounding townscape and the natural landscape.
- (2) The site plan must be signed and stamped by a professional deemed appropriate by the Planning Board. This may include, but is not limited to, a registered civil engineer, architect, land surveyor or landscape architect.

K. Parking requirements. In reviewing the site plan as part of the approval process, the Planning Board shall ascertain that the site plan meets the following requirements:

- (1) Location of parking spaces.
 - (a) Parking spaces shall be located at least five feet from the building foundation walls of all occupied buildings and the street sideline.
 - (b) Accessible parking spaces shall be located near the primary and/or accessible building entrance.
- (2) Width of access drives and parking aisles. All access drives and parking lot aisles shall be at least 12 feet wide for one-way traffic and 24 feet wide for two-way traffic.

L. Site landscaping.

- (1) The following are the criteria used for landscape design evaluation:
 - (a) The development, through the use of landscape materials, shall be integrated into the surrounding landscape.

- (b) Landscape materials shall be used to protect abutting properties and enhance the aesthetic quality of the environs and the site. The type, size and caliper of proposed trees will be evaluated in its effectiveness of enhancing the site. The mixed use of shade trees for defining spaces and providing protection from the elements, evergreens for screening and reduction of noise pollution, as well as the use of ground covers, perennials/annuals/bulbs and shrubs are encouraged.
 - (c) Removal of mature trees and shrubs shall be minimized and shall not take place in the setbacks.
 - (d) Landscaping shall be provided in front, side and rear yards and along the perimeter of parking areas to provide separation from building and public ways. At a minimum, parking lots shall be enclosed by a landscaped area five feet in width.
 - (e) Maintenance. All landscaping and screening shall be maintained by the property owner.
 - (f) Objectionable features (such as dumpsters and utility boxes) on site shall be screened from neighboring properties and, if applicable, roadways.
 - (g) Parking lot areas proposed for a site must be adequately landscaped to give relief from the visual blight of an expanse of impervious surface.
- (2) The site plan shall provide for:
- (a) Foundation plantings at entry and at building facade facing roadways.
 - (b) Parking lot interior (such as planting islands).
 - (c) Screening parking areas, loading areas, rubbish removal bins, and outside storage, if applicable.
 - (d) Street line plantings and perimeter lot line plantings, if applicable.
- (3) The following other site amenities may be allowed as part of these landscape requirements, if deemed necessary and appropriate by the Planning Board for meeting the landscape criteria:
- (a) Walls, fences and other barrier material.
 - (b) Special paving materials.
- (4) The following are general guidelines to be used for developing landscape plans:
- (a) Parking lots with 20 or more spaces should be screened along the perimeter from abutting properties and the street.
 - (b) Parking lots with 40 or more spaces, an area equivalent to at least 15% of the area of the parking lot, should be constructed and landscaped in the interior of the parking lot. The landscaped area should be evenly distributed within the parking lot and should be at least 25 feet in area with no dimension less than five feet. One tree, at least three inches in caliper should be installed in each landscaped area. There should be at least one tree for each 10 parking spaces.
 - (c) A landscaping strip should be provided along foundation walls.

M. Exterior lighting.

[Amended 5-1-2006 ATM, Art. 37 (Amdt. No. 160)]

- (1) Purpose. The purpose of this section is to enhance public safety by providing for adequate and appropriate outdoor lighting, protect community character, promote energy conservation and protect against light trespass and glare.
- (2) Definitions. For the purposes of this section, the following terms shall be defined as indicated below.

FIXTURE

The assembly that houses a lamp or lamps, and which may include a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor, lens or diffuser lens.^[3]

GLARE

Light emitted from a luminaire with intensity great enough to produce annoyance, discomfort or a reduction in a viewer's ability to see.

LAMP

The component of a luminaire that produces the actual light.

LIGHT TRESPASS

The shining of direct light produced by a luminaire beyond the boundaries of the lot on which it is located.

LUMEN

A measure of light energy generated by a light source. One foot candle is one lumen per square foot. For purposes of this bylaw, the lumen output shall be the initial lumen output of a lamp, as rated by the manufacturer.

LUMINAIRE

A complete lighting system, including a lamp or lamps and a fixture.

[3] *Editor's Note: The former definition of "color rendering index (CRI) that immediately preceded this definition, was repealed 5-7-2007 ATM, Art. 32 (Amdt. No. 164).*

- (3) Applicability. Outdoor illumination by flood or spot luminaires rated at 900 lumens or more (which is approximately equal to one sixty-watt incandescent light bulb) or by any other luminaires rated at 1,800 lumens or more (which is approximately equal to one one-hundred-twenty watt incandescent light bulb) shall be subject to the provisions of this section, with the following exceptions: emergency lighting; hazard warning; temporary decorative or holiday lighting; public roadway illumination or other lighting required by or installed by governmental agencies. It shall also not apply to any luminaire intended solely to illuminate any freestanding sign, flag or the walls of any building but such luminaire shall be shielded so that its direct light is confined to the surface of such sign, flag or building.
- (a) The replacement of existing nonconforming lamps or fixtures with the same or lower output nonconforming lamps or fixtures is exempted from the application of this section.
- (b) The Planning Board may determine that special circumstances of the site, context or design make an alternative lighting design at least equally effective in meeting the purposes of this section and in such cases, may modify the requirements of this section. [Amended 5-7-2007 ATM, Art. 32 (Admt. No. 164)]
- (4) **Exterior Lighting Plan.** The lighting plan shall include the following information: [Amended 5-7-2007 ATM, Art. 32 (Admt. No. 164)]
- (a) Location, orientation and type of outdoor luminaire, including the height of the luminaire;
- (b) Luminaire manufacturer's specification data, including lumen output and photometric data showing cutoff angles;
- (c) Type of lamp such as metal halide, compact fluorescent, high pressure sodium;
- (d) Photometric plan showing the intensity of illumination expressed in footcandles at ground level within the interior of the property and at the property boundaries. The plan shall also include the following illumination information in a table format: minimum; maximum; average; average to minimum and maximum to minimum; and

- (e) Evidence that any light trespass does not exceed the limitations set forth in Chart IV herein.^[4]

[4] *Editor's Note: Chart IV is included in Subsection M(11).*

- (5) Flickering and flashing lights. No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.
- (6) Wall mounted fixtures. In nonresidential districts, a luminaire attached to the exterior of a building or structure for area lighting shall be mounted no higher than 15 feet above grade and shall be shielded to control glare.
- (7) Pole mounted fixtures. Pole mounted exterior lighting fixture types are defined and restricted as follows:
- (a) Type A. No light cutoff.
 - (b) Type B. Luminaire shielded such that peak candlepower is at an angle of 75 degrees or less from straight down, and essentially no light is emitted above the horizontal.
 - (c) Type C. Luminaire shielded such that total cutoff is at less than 90 degrees from straight down, and no light source is in direct view of an observer five feet above the ground at any point off the premises.
- (8) Pole mounted fixtures height limitation. Illustrations of pole mounted exterior lighting fixture types are shown in Chart I herein. Pole mounted fixtures shall not exceed the applicable pole mounted height limitation set forth in Chart II in any district. The Type A pole mounted exterior lighting fixture is prohibited in all nonresidential districts.

Chart I
Illustrations

Chart I
Illustrations

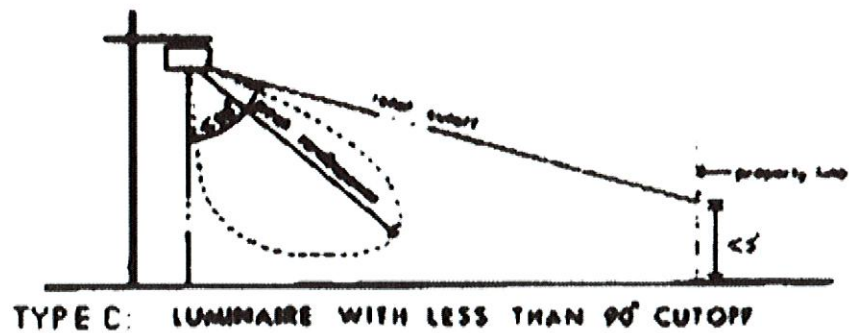
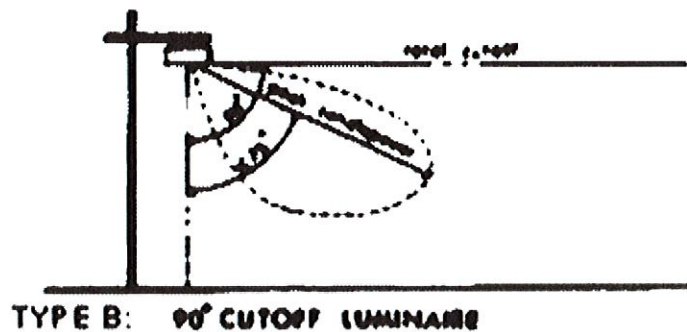
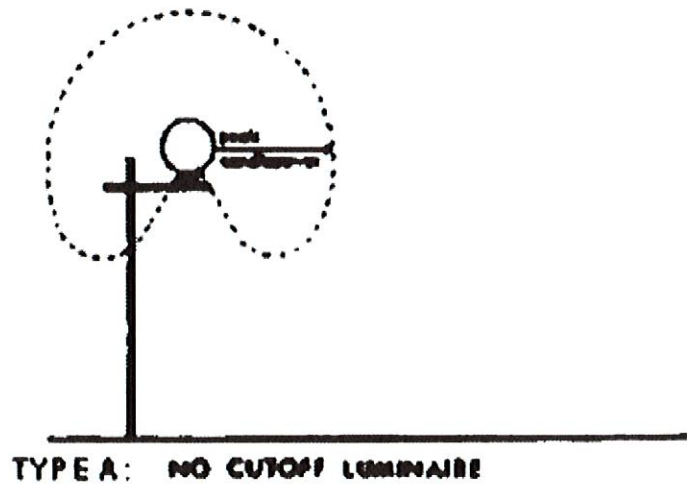


Chart II
Pole Mounting Height Limitations

	District	
	Residential	Nonresidential
	Maximum Luminaire Mounting Height (feet above grade) "District" is that in which fixtures are located.	
Fixture Type A	10	Not allowed
Fixture Type B	15	25
Fixture Type C	20	30

- (9) Ceiling Mounted Fixtures. In nonresidential districts, luminaires mounted on an exterior ceiling such as under a canopy shall be mounted with the refractor or lens flush with or recessed in the ceiling or fixture.

- (10) Lighting levels. In nonresidential districts, exterior lighting shall not exceed the following levels on the ground set forth in Chart III herein:

Chart III			
Lighting Levels			
(horizontal foot-candles)			
	Minimum*	Average*	Maximum*
Driveways and parking	0.5	5.0	10.0
Under building or canopy	1.0	25.0	40.0
All other nonresidential areas	0.5	1.0	3.0

*Applicable to the entire lighted area

- (11) Light trespass limitations. Light trespass in excess of the applicable limitation set forth in Chart IV herein is prohibited in all Districts.
[Amended 5-7-2007 ATM, Art. 33 (Amdt. No. 164)]

Chart IV		
Light Trespass Limitations		
	District	
	Residential	Nonresidential
Maximum light trespass (horizontal foot-candles)*		
"District" is that into which the light trespass occurs		
Fixture Type A	0	Not allowed
Fixture Type B	0	0.5
Fixture Type C	0	1.0

* Expect no limit within a street right-of-way

- N. Loading, waste disposal, and outdoor storage areas. Adequate loading and waste disposal areas shall be provided on site. Loading, waste disposal and outdoor storage areas shall be screened by landscaping, walls, fences, or barriers of sufficient height to conceal said areas from the street and abutting residential properties.
- O. Stormwater management, infiltration, and retention.
[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]
- (1) Adequate on-site drainage shall be provided to handle peak stormwater runoff and stormwater runoff for the one-hundred-year storm and shall not adversely affect abutting properties and the Town drainage system. Low-impact development stormwater management techniques are encouraged and preferred to enhance infiltration and better replicate pre-development watershed conditions. Low-impact development techniques shall meet the treatment and design standards outlined in the Department of Environmental Protection stormwater management standards [Massachusetts Stormwater Handbook (2008)], as amended from time to time. Examples of low-impact development stormwater management techniques include: permeable pavement, rain gardens, vegetated swales, etc.
 - (2) Stormwater retention is also strongly encouraged to capture and store rainwater for practical uses, including irrigation. Examples of stormwater retention facilities include rain barrels and cisterns. In-ground sprinkler systems shall be prohibited for all nonresidential uses unless

they are supplied by on-site stormwater retention and storage facilities and are approved by the Georgetown Water Commission. Drainage calculations and plans will be reviewed by an outside technical consultant at the applicant's expense.

P. Standards for review. The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below:

- (1) Legal: conformance with the provisions of the bylaws of the Town, the General Laws of Massachusetts, and all applicable rules and regulations of state and federal agencies.
- (2) Traffic.
- (3) Parking.
- (4) Town services.
- (5) Pollution control.
- (6) Nuisance.
- (7) Existing vegetation.
- (8) Landscaping, screening and buffering.
- (9) Town character.
- (10) Drainage and watershed protection.
[Amended 5-2-2011 ATM, Art. 40 (Amdt. No. 177)]

Q. Construction.

- (1) All access routes and parking areas shall be graded, paved, and drained to the satisfaction of the Planning Board.
- (2) Curbing, wheelstops, guardrails, and/or berms shall be placed at the edges of all surfaced parking areas.
- (3) All utility connections shall be constructed in accordance with the requirements of the Town and other utility owners.

R. Maintenance. All accessways, parking areas, fences, walls, landscaping, lighting, drainage, and waste disposal areas shall be adequately maintained and repaired or replaced wherever and whenever necessary to ensure continued compliance with the approved site plan.

S. Waivers. Waivers may be granted to any of the site plan requirements if it is determined that:

- (1) Literal compliance is impractical due to the nature of the use;
- (2) The location, size, width, depth, shape, or grade of the lot makes compliance impractical;
- (3) Such waivers would be in the public interest; and/or
- (4) Such waivers would protect natural features.

T. Enforcement and bonding.

- (1) Construction that does not comply with the site plan approved under this section shall be deemed to be in violation of this chapter and, as such, shall be subject to fines and legal processes so authorized. The Building Inspector shall take such action as may be necessary to enforce full compliance with the provisions of the chapter and of permits and variances issued hereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel.

- (2) The Planning Board may require the posting of a bond or other similar performance guarantee to ensure compliance with the plan and stated conditions of approval. It may suspend any permit or license when work is not performed as required.
- U. Inspections. Construction inspections in support of the purposes of site plan review shall be carried out by an agent designated by the Planning Board, and all such costs shall be borne by the applicant.
- V. Modifications to approved site plans.
 - (1) In the event a modification is made to an approved site plan, the applicant shall submit, to the Planning Board, a written description of the proposed modifications and 10 copies of a revised site plan showing such modification. Modified site plans will, in most instances, be subject to the same review and hearing procedures as was the original filing.
 - (2) However, for small and insignificant modifications, the Planning Board may determine that a particular modification does not warrant an additional public hearing. Such a determination shall be made only after written request and 10 copies of the plan showing the modification have been submitted to and reviewed by the Planning Board. A determination that a modification will not require a public hearing shall be made by the Planning Board within 21 days of receipt of the written request and plans, and only after the Planning Board has found that the proposed modification is not significant and is consistent with the previously approved site plan. A copy of the determination and revised plan shall be filed with the Town Clerk and Building Inspector. Failure by the Planning Board to act on the request for determination of a modification within 21 days shall be deemed as approval. The time frame may be extended by mutual agreement of both parties.
- W. Provisions for site plans. Any approval of a site plan which has been granted pursuant to this section shall lapse within one year from the grant thereof, 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.
- X. Severability. The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.