



**PLANNING BOARD**

**Report to Town Meeting**

**Article 15. Zoning – Site Plan Review Applicability  
(Planning Board)**

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A. To see if the Town will amend Article 11, Administration and Enforcement, by replacing Section 11.21, Applicability, in its entirety and replacing it with the following new language:

~ SEE WARRANT ~

B. To see if the Town will amend Section 3.3 by deleting the lined out language, as follows:

~ SEE WARRANT ~

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Recommendation

The Planning Board voted 7-0-0 with one member absent, to recommend that Town Meeting adopt Article \_\_\_\_.

Background and Purpose

One of the primary functions of the Planning Board is the conducting of hearings for and subsequent permitting of a wide range of land use projects that are subject to what the Zoning Bylaw calls Site Plan Review (SPR). This happens for uses that the Town has chosen to allow or encourage in one zoning district or another but which could potentially have impacts on their surroundings that warrant prior review by a public body. (There are also some uses that cannot be denied according to state law, but which may be reviewed by the Planning Board.) For such uses the permitting body may "judge the appropriateness and impacts of the site development characteristics" and impose conditions about such things as landscaping, design, management, or parking to ameliorate potential negative impacts on neighbors and the town in general. It may also require expert analysis of potential impacts to inform its decision.

Because of the way that the Zoning Bylaw currently reads, many projects for which no change to a site is being requested or for which the change is practically inconsequential still have to come before the Planning Board for review. Recently, for example, an existing nonresidential use permitted by SPR proposed relocating playground equipment in an area of the property not

visible from the street and in fact not visible from any neighboring property due to vegetation and topography. However, the fact that it involved a change to the property owner's site plan necessitated an appearance before the Planning Board. Other examples of projects regulated by SPR that would be affected if this amendment were adopted include: changes in the design or color of exterior signs, installation of venting apparatus for interior cooking equipment, and replacement of an exterior door.

These kinds of hearings entail the preparation and production (not just for the Planning Board but for members of the public who might attend the Planning Board meeting at which the hearing is held) of numerous reports, diagrams, and maps detailing and analyzing the project by members of town staff; coordination of and attendance at a site visit by members of the Planning Board and Planning Department staff; and time spent holding a public hearing at a Planning Board meeting. At the meeting, the applicant often has to sit through one or more other hearings or other business of the Planning Board before his or her project is taken up. Before coming to a decision, the Planning Board must verify that the project conforms to a list of standards encoded in the Zoning Bylaw (Section 11.24). After the meeting, Planning Department staff prepares a record of the decision, which must then be signed by the Planning Board at a subsequent meeting.

For many projects, the hearing itself comprises discussion of design and other issues; making connections to the town's Master Plan and other planning issues; consideration of questions and concerns raised by abutters and other interested citizens; the crafting of conditions to regulate aspects of the site or the use; and finally evaluation of the proposal to confirm that it meets Site Plan Review criteria. But for the minor projects that are the subject of this amendment, there are no salient issues to discuss, no connections to make, no public comment to receive, and no conditions that could usefully improve the project. For these projects, the Planning Board's decision generally amounts to a routine approval. This amendment provides a way to accelerate that process with an objective checklist for projects that many people likely don't even realize are regulated by SPR.

### Mechanics

#### *Part A*

This amendment establishes conditions for certain low-impact SPR projects that, if met, could be approved administratively by the Building Commissioner/Zoning Enforcement Officer rather than by the Planning Board after a hearing that effectively would be limited to a review of those conditions anyway.

The existing language under Section 11.21, Applicability reads in its entirety (emphasis added):

"Notwithstanding anything contained in this Bylaw to the contrary, **no building permit for construction, exterior alteration, relocation, or change in use except where noted, shall be granted for any use requiring Site Plan Review** under Section 3.3, until the provisions of this section have been fulfilled and an application approved by the Planning Board.

"Site Plan Review shall be used to judge the appropriateness and impacts of the site

development characteristics of a proposed project. Uses for which site plan review is required are permitted uses in accordance with Section 3.3, Table of Uses."

The proposed language retains the general requirement for a Planning Board review process for uses permitted by SPR, but adds a series of circumstances in which that process can be waived or handled administratively by the Building Commissioner:

1. When no physical change to the building or site is proposed.
2. When the use changes, but there will be no physical change to the building or site and no traffic or parking impacts.
3. When only signs are being installed or changed and those signs conform to the Zoning Bylaw without need for modification.
4. When minor changes to existing SPR permits are proposed and several conditions are met.
5. When a proposed alteration to an already approved site plan is minor.

In each case, the Building Commissioner would be empowered to determine whether the proposal falls under one of the circumstances listed and could request assistance from other members of town staff, the Design Review Board, or the Historical Commission to evaluate the proposal. If it doesn't conform to the conditions proposed in this amendment, or if the Building Commissioner believes it would benefit from Planning Board oversight, then it would go through the usual process.

#### *Part B*

There is an existing footnote at the beginning of the Use Chart (Section 3.3 of the Zoning Bylaw) that addresses SPR applicability, rendering it not required in "instances where a use change is proposed and no substantial physical changes . . . will occur" – similar to one of the circumstances proposed in this amendment. Since it would be rendered unnecessary by the language proposed in Part A of the amendment, that footnote would be deleted in Part B, along with some imprecise language about how an SPR use is "permitted". Here, the word "permitted" does not stand in for the word "allowed" but for "regulated", and the Use Chart key implies that an SPR use is regulated in two ways: "by right" and "with Site Plan Review", which is contradictory. Deleting the words "by right" from the Use Chart key entry for SPR does not change anything about how the Use Chart works or what it means; it is being proposed simply for clarity.

#### Benefits

Adopting this amendment would streamline the permitting process for most projects for which little or no change is proposed to the exterior of a building or site, avoiding the waste of time and paper that currently accompanies such projects. For sign applications and minor changes to existing site plans, the possibility of bypassing the step of having to go to a Planning Board hearing could motivate applicants to tailor proposals closely to the letter of the Bylaw.

Reducing the routine workload of the Planning Board and Planning Department staff should enable more time for careful consideration of Site Plan Review projects of a more consequential nature, or to engage in other important planning work that sometimes does not get its due, such

as master planning.

### Risks

There is a slight chance that a project qualifying for administrative review under the proposed amendment might be one that the Planning Board or the public would appreciate having an opportunity to review and that might be improved by such oversight. However, there are almost certainly very few potential instances of that, and even then the missed opportunity is unlikely to have much of an impact on the town, since the projects in question are necessarily minor.

The Building Commissioner's judgment about what might be an "insubstantial" change in lot coverage or "minor" revision to a previously approved site plan might differ from that of others, resulting in the occasional project that perhaps could have or should have been heard by the Planning Board being administratively approved instead. On the other hand, the responsibilities of a Building Commissioner mean that he or she accrues a lot of experience evaluating building and site plans and is likely more qualified than most to determine when a project warrants extra oversight. The amended Bylaw authorizes the Building Commissioner to direct an application to the Planning Board if he or she deems it appropriate to do so.

### Process

The Planning Board has been discussing the revision of SPR applicability rules for many years and finally set to work on it this past spring. With the assistance of the Building Commissioner and other members of the Planning and Inspections staff, the Zoning Subcommittee developed a framework for the kinds of projects the Planning Board had indicated it wanted covered by this amendment, and then drafted language to enact it.

A public hearing on this article was held on October 5, 2016. Members of the public raised some concerns about how the proposed language would be interpreted, specifically mentioning Section 11.212, which would affect an SPR involving a change of use; and Section 11.2143, which contains the somewhat fuzzy term "substantial change". The former is important because the very fact of a new use taking place in an existing building is something that could be argued warrants public discussion and review. However, in order for this section to be invoked, no physical changes to the exterior of a building or site may occur *and* the Building Commissioner must determine that "the proposed use will not result in the need for further review under Section 11.243", which has to do with traffic and parking issues, including driveways, loading zones, bicycle racks, and sidewalks.

The possible consequence of leaving the word "substantial" undefined is limited to changes in lot coverage. An example of the kind of application this provision would cover is the resurfacing of a parking lot that needs a few additional square feet of paving to accommodate a handicap-accessible space without changing the number of existing parking spaces. While people may have different ideas about just how many square feet is "substantial", the Planning Board believes that few would object to the scenario described. Beyond that, it is not in the Building Commissioner's interest to invite second guessing about administrative processes and decisions, so we should expect any potentially noteworthy proposal to be sent to the Planning Board.

In both cases, the proposed language states that the authorized action (waiver of SPR or

administrative approval) *may* – rather than *shall* – take place. The Building Commissioner is within his or her rights to refer any project falling under the SPR permitting standard to the Planning Board, and it is in his interest to do so if there is any possibility of controversy or interest by abutters or the general public. The fact is, virtually all of the projects that would have been affected by this amendment during the tenure of any of the current members of the Planning Board, or the current Building Commissioner, have had absolutely no public comment and most have been disposed of by the Planning Board fairly quickly.

Before making its recommendation on this article, the Planning Board discussed the appropriateness of deleting the phrase "by right" from the description of the use permitting standard for SPR in the Use Chart key. While SPR *uses* cannot be denied, the existing language appears to conflate the "by right" regulation standard with Site Plan Review, which is inaccurate. Unlike by-right uses, SPR uses are subject to a hearing and possible conditions from the Planning Board. While state law doesn't explicitly establish an SPR process, judicial rulings have acknowledged that municipalities may adopt such a process and that it is theoretically possible for a site plan to be denied.

After further discussion, the Planning Board voted 7-0-0 with one member absent to recommend the article as presented.