

COMMENTS BY K. BUBAR AND R. MOWER
TOWN OF DURHAM, NEW HAMPSHIRE



DRAFT

SITE PLAN REGULATIONS—PART II

September 17, 2014

Adopted by the Durham Planning Board: DATE

Most Recently Amended:

PART II. SITE PLAN REVIEW PROCESS

Article 1	Application Procedures
Article 2	Application Submission Requirements
Article 3	Fees
Article 4	Construction Guarantee
Article 5	Independent Studies and Investigations
Article 6	Post Construction Requirements

Article 1. Application Procedures

In accordance with RSA 676:4. II (a), an individual who anticipates submitting a formal application for Site Plan approval has the option of informally consulting with the Board prior to formal submission. There are two levels of Pre-Application Review: the Preliminary Conceptual Consultation and the Design Review. An applicant may elect to engage in or forgo either phase thereof.

Section 1.1 Preliminary Conceptual Consultation Phase

1.1.1 The applicant may request a meeting with the Board to discuss a proposal in conceptual form and in general terms. Such preapplication consultation shall be informal and directed toward:

- a) reviewing the basic concepts of the proposal,
- b) reviewing the proposal with regard to the Master Plan and Zoning Ordinance,
- c) explaining the local regulations that may apply to the proposal, and
- d) guiding the applicant relative to state and local requirements.

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1.1.2 Limits of the Review

- a) The Board shall conduct the preliminary conceptual consultation at a regularly scheduled meeting of the Board. The applicant ~~shall~~ make a presentation defining the general scope and concept of the Site Plan.
- b) Such consultation shall not bind either the applicant or the Board, and statements made by the Board members shall not be the basis for disqualifying those members or invalidating any action taken. The Board and the applicant may discuss proposals in conceptual form only and in general terms such as the desirability of types of development and proposals under the Town's Master Plan.

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- 1.1.3 Project Description. In order to facilitate discussion, the potential applicant is requested to prepare, and show as part of his presentation, a base map of the site to be developed. The map should be drawn to scale, and may be drawn in pencil. The proposed site should be drawn on the base map and show the relationship to surrounding structures and topography. Dimensions may be approximate. The data may be tentative, but all information should be sufficiently clear to illustrate conditions on the proposed site.

Section 1.2 Design Review Phase

- 1.2.1 The applicant may request to meet with the Board for nonbinding discussions of a potential application that involve more specific design and engineering details than in the preliminary conceptual consultation phase, i.e., a Design Review, in accordance with RSA 676:4. II – (b).
- 1.2.2 The Design Review phase may proceed only after identification of and notice to abutters, holders of conservation, preservation, or agricultural preservation restrictions, and the general public, as required by RSA 676:4. I – (d).
- 1.2.3 The Planning Board shall hold a public hearing on Design Review applications as laid out in the Board’s Rules of Procedure. Statements made by the Board members shall not be the basis for disqualifying said members or invalidating any action taken.
- 1.2.4 An application for Design Review shall be submitted to the Planning Department not less than 21 calendar days before the regularly scheduled meeting of the Board. The request shall be accompanied by 12 copies of all plans and exhibits, along with digital copies of the documents and exhibits in Portable Document Format (PDF). The application shall include:
- a) a completed application form, as prepared by the Planning Department
 - b) drawings depicting the site and proposed improvements, in a level of detail as described herein
 - c) a list of abutters and their addresses from municipal records collected not more than five days before submission,
 - d) a list of all holders of conservation, preservation, or agricultural preservation restrictions on the subject property, and
 - e) applicable fees including fees to cover mailing and advertising costs.
- 1.2.5 The application for Design Review shall include enough of the requirements listed in Article 2 so that the Board is able to review the project. Detailed

engineering of infrastructure and utilities is not required at the Design Review phase, but the information and preliminary plan shall be displayed in sufficient detail to enable the Board to understand the proposed project and identify potential issues.

- 1.2.6 At a regular meeting of the Planning Board, the Board shall determine if the Design Review includes sufficient information to allow the Board to understand the project and identify potential issues. If the Board determines that the request does not describe the proposed project in sufficient detail, it may request additional information.
- 1.2.7 At any public meeting of the Planning Board, the Board may close the Design Review process of an application. It shall inform the applicant in writing within 10 days of such determination.
- 1.2.8 In accordance with RSA 676.12, an applicant is subject to the regulations in place as of the date that public notice of the start of the Design Review is published in a local newspaper. Those regulations adhere for up to 12 months following the end of the Design Review only if the applicant then submits a complete, formal application before the expiration of that 12-month period.

Section 1.3 Formal Application

- 1.3.1 A formal application shall consist of the forms, information, and documentation as shown in these regulations along with application fees and any fees for notices.
- 1.3.2 Upon receipt of a formal application, the Planning Director will review it using the Site Plan Application Checklist. If this review discloses that all requirements specified on the Site Plan Application Checklist have not been met, the applicant will be notified what specific items are still needed. If the application is not complete, then it may be treated as a preliminary conceptual application or Design Review application, as appropriate, or it may be held/taled by the Planning Board until the outstanding items are submitted and it is accepted as complete.
- 1.3.3 A formal application shall only be submitted to the Planning Board at a regular meeting. Within 30 days of receipt of the application, the Planning Board shall accept the application as complete or make a finding that the application is not complete, noting the outstanding items on the Site Plan Application Checklist, which shall have been provided to the Board. If the Board determines that the application is not complete it may continue the application to another specific meeting or table the application, to provide time for the applicant to submit the outstanding items.

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- 1.3.4 The Planning Director shall arrange for the application to be presented to the Technical Review Group, at appropriate times during the review process to obtain input from the various departments and boards/commissions that are represented on the Technical Review Group (TRG).

*Comments from Bubar and Mower: The TRG has not been defined in this document. While the zoning ordinance references a Technical Review Committee in Section 175-17, the Technical Review Group is a different entity. If the Technical Review Committee *morphed* into the TRG, then the zoning ordinance should be amended.*

Section 1.4 Action on a Formal Application

- 1.4.1 The Planning Board must take final action on a formal application – to approve, approve with conditions, or deny - within 65 days after a determination of completeness by the Board. The Board shall consider the application at its regular meetings, or at workshop meetings if needed. The Board will schedule a site visit if determined to be useful. Additional reports or studies may be required by the Board, at its reasonable discretion, including but not limited to, a high intensity soil survey and traffic, school, fiscal, and environmental impact analyses, to allow the Board to make an informed and educated decision concerning the application.
- 1.4.2 Prior to the approval of a site plan application, a public hearing shall be held as required by RSA 676:4 I(d) with notice given to the applicant; holders of conservation, preservation, or agricultural preservation restrictions; every engineer, architect, land surveyor, or soil scientist whose professional seal appears on the plan submitted to the Board; abutters, and the public.
- 1.4.3 The Board may apply to the Town Council for an extension of the 65-day time period, not to exceed an additional 65 days, before taking acting to approve, conditionally approve, or deny an application. An applicant may waive the requirement for Board action within the time period specified in these regulations and consent to such an extension as may be mutually agreeable.
- 1.4.4 If the Board has not taken action on the formal application within 65 days after receipt of the completed application by the Board or its designee, and the Board has not obtained an extension, the applicant may obtain from the Town Council an order directing the Planning Board to act within 15 days. Failure of the Board to act on the order shall constitute grounds for the applicant to petition the Superior Court as provided in RSA 676:4,I(c).
- 1.4.5 Conditions of approval shall be stated in a Notice of Approval or Notice of Decision to be sent to the applicant.
- Comments from Bubar and Mower: What is the distinction? Should this be defined, or should only one term be used?*
- 1.4.7 A financial surety, adequate to cover the construction of all infrastructure improvements approved as part of the site plan application, as determined appropriate by the Planning Board, shall be posted with the Town prior to

signing the plan. The following financial sureties are acceptable to the Town: cash, passbook savings account in the Town's name, letter of credit, or a bond.

- 1.4.8 If any application is denied, the grounds for such denial shall be clearly stated in the records of the Board and in written notice given to the applicant. Applications may be denied by the Board without public hearing on the grounds of failure by the applicant to supply information or to pay fees as required by these regulations.

ADD NEW SECTION: CONDITIONAL APPROVALS

Comments from Bubar and Mower: The article "Attaching 'Conditions' to Approvals in Land Use Boards," by Paul Sanderson in New Hampshire Town and City, November / December 2013 lays out arguments for including this section. [<http://www.nhmunipal.org/TownAndCity/Article/541>>] The Town of Exeter includes a section that could be used either in its entirety or as a base. That section is inserted below (new numbering required).

NEW NUMBER Conditional Approval

- 1.x.1. In accordance with RSA §676:4, I, (1), the Board may grant conditional approval of a plan or application, which approval shall become final without further public hearing, upon certification to the Board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. The plan will not be signed or recorded until all of the conditions have been met. Final approval of a plan or application may occur in the foregoing manner only when the conditions are:
1. Minor plan changes whether or not imposed by the Board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment; or
 2. Conditions which are themselves administrative and which involve no discretionary judgment on the part of the Board; or
 3. Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies or approvals granted by other boards or agencies.
- 1.x.2. All other conditions shall require a hearing, and notice shall be provided in accordance with Section 6.3 Public Hearing and Notices of these regulations; except that additional notice shall not be required of an adjourned session of a hearing with proper notice of the date, time and place of the adjourned session made known at the prior hearing.
- 1.x.3. The applicant shall have 1 (one) year to comply with the conditions of approval and have the plan signed by the Board. If the conditions are not met within 1 (one) year, the conditional approval shall lapse, unless the Board has granted a mutually agreeable extension. The Board for conditional approval shall grant only two 1-year extensions. Extensions shall be granted only if there have been no amendments to the Zoning Ordinance, these regulations, or any other ordinance or regulations which would render the Site Plan/Subdivision non-conforming, and if all required permits are still valid.

Section 1.5 Notices

- 1.5.1 Notice of a Design Review, submission of a formal application, or a public hearing shall be given by the Planning Department to the abutters; holders of conservation, preservation, or agricultural preservation restrictions; every engineer, architect, land surveyor, or soil scientist whose professional seal appears on the plan submitted to the Board; and the applicant. The notice shall be provided by certified mail, and mailed at least ten (10) days prior to the meeting.
- 1.5.2 The public shall be given notice at the same time, by posting in two public places and in a paper of general circulation in the Town.
- 1.5.3 The notice shall give the date, time, and place of the Planning Board meeting at which the application will be submitted to the Board, shall include a general description of the proposal which is to be considered, and shall identify the applicant and the location of the proposal.
- 1.5.4 If the notice for the public hearing was included in the notice of submission or any prior notice, additional notice of a continued public hearing is not required. Additional notice is not required of an adjourned session of a public hearing provided that the date, time and place of the adjourned session was made known at the prior public hearing.

Article 2. Application Submission Requirements

Section 2.1

A Formal Application shall be filed with the Planning Board or its designated agent at least twenty-one (21) calendar days prior to a regularly scheduled meeting of the Board.

Section 2.2 Formal Application Content

A Formal Application shall consist of the following items:

- A. A completed application on a form provided by the Planning Department;
- B. A letter of intent detailing the proposal, including the maximum number of [residents/occupants/tenants] if the proposal includes one or more multi-unit dwellings;

Bubar and Mower comment: If this is not the appropriate location for this requirement, please identify one.

- C. A list of the names and addresses of all the abutters, as shown in Town records collected not more than five (5) days before the day of filing, and a list of all holders

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of conservation, preservation, or agricultural preservation restrictions on the subject property;

- D. Additional documents, as requested by the Planning Department; and
- E. Three (3) copies, measuring 24"x 36" and fifteen (15) copies measuring 11" x 17" of the plan. However, the Planning Board may require additional copies measuring 24" x 36", as deemed necessary. The plan shall be prepared by a land surveyor, using a scale of 1 inch equals 100 feet or larger (e.g. 1 inch equals 50 feet) and shall include the following items, which may be more specifically delineated in the checklist prepared by the Planning Department:
1. A Title Block, including:
 - a) Title of plan;
 - b) Owner's name and address, and name of agent, if any
 - c) The date the plan was prepared and date of subsequent revisions;
 - d) Scale of the plan; and
 - e) Name, address and seal of the preparer of the plan.
 2. North arrow and bar scale.
 3. A location plan at a minimum scale of one (1) inch equals one thousand (1,000) feet, showing:
 - a) Property lines of the parcel being developed in relation to the surrounding area within a radius of two thousand (2,000) feet.
 - b) Names and locations of existing town streets including the nearest intersection of said streets;
 - c) Names and locations of streets within the proposed development;
 - d) Names and location of watercourses and water bodies on and adjacent to the site;
 - e) Area of entire parcel in acres and square feet.
 4. The plan of the site itself shall show:
 - a) Surveyed property lines of the parcel showing their bearings;
 - b) Names of all abutting property owners;
 - c) Location and layout of existing and proposed structures and buildings;
 - d) Existing and proposed contours at two (2) foot intervals for the entire site. Where a change in grade is proposed, existing contours shall be dotted lines and finished elevations solid;
 - e) Area of entire parcel in acres and square feet;
 - f) Zoning and special district boundaries;
 - g) Deed reference and tax map number;
 - h) Location width, curbing and paving of access ways, egress ways and streets within the site;
 - i) Location and layout of all on-site parking and loading facilities;

- j) Location and size of all municipal and non-municipal utilities and appurtenances including: water, sewer, electric, telephone, gas lines and fire alarm connections, indicating whether overhead or underground, and the location of wells and septic systems;
- k) Type and location of solid waste disposal facilities;
- l) Location, elevation and layout of catch basin and other surface drainage features;
- m) Location of all physical/natural features including: water bodies, watercourses, wetlands, vegetation/foilage lines, soil types, railroads, rock outcroppings and stone walls;
- n) Dimensions and area of all property to be dedicated for public use of common ownership;
- o) Location of 100 year flood hazard boundaries and minimum flood elevations;
- p) Date and permit numbers of all required state and federal permits.
- q) Location of all buildings, wells and leach fields within one hundred and fifty (150) feet of the parcel;
- r) Dimensions, area and minimum setback requirements on all existing and proposed lots;
- s) Proposed landscaping plan including size and type of plant material;
- s2) Delineation of "save islands," critical root zone (or root save area), or the driplines of individual specimen trees; or entire stands of trees.

Comments from Bubar and Mower: Recommendation from National Arbor Day Foundation "Tree City Bulletin USA No. 31. See definitions in Part III, Article 5. Landscaping and Screening

- t) Pedestrian walks providing circulation through the site;
- u) Location and size of proposed and existing signs, walls and fences;
- v) Location and type of lighting for outdoor activities;
- w) Location, widths and purposes of any easements or rights-of-way. and
- x) Total on-site square footage of impervious surfaces.

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5. The following features required on the plan itself, as above, shall be delineated in color on at least one digital and one printed copy:

- a) Surveyed property lines of the parcel showing their bearings;
- b) Zoning and special district boundaries;
- c) Access ways, egress ways and streets within the site;
- d) Waterbodies, watercourses, wetlands, railroads, rock outcroppings and stone walls;
- e) Property to be dedicated for public use of common ownership;
- f) Pedestrian walks providing circulation through the site;
- g) Location and widths of any easements or rights-of-way; and
- h) Features unique to the site that should be brought to the attention of the Board.

Comments from Bubar and Mower: As recommended by Exeter Town Planner Sylvia Von Aulock in her site plan reading workshops, highlighting can help focus attention on constraints and opportunities easily overlooked.

F. At its option, the Planning Board may accept an application as complete that does not include a limited number of the items herein, where the Board determines that there is

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sufficient information to commence a detailed substantive review, and where it states that the outstanding items must be received in a timely fashion in order to review those items thoroughly prior to taking final action.

Comments from Bubar and Mower: Whether to adopt the power to "waive" completion should be discussed by the Board. It is a significant option.

- G. Copies of the current deed, purchase and sale agreement (if applicable), and copies of all easements, deed restrictions, rights-of-ways, or other encumbrances currently affecting the property.
- H. A completed Energy Considerations Checklist. The applicant is not required to comply with the items on the checklist but is encouraged to meet as many considerations as possible. Note that some items on the checklist, such as the standards under Chapter 38 Building Construction of the Town of Durham Code of Ordinances, are required.
- I. For new buildings and additions to existing buildings, *in areas that are not subject to the Architectural Design Standards*, herein, the items listed under Elevation Drawings, below, related to the proposed architectural design of the exterior of buildings. The final architectural design is considered part of the site plan approval, and must be implemented in detail specifically as approved. In areas that are subject to the Architectural Design Standards, the Standards delineate the submission and other requirements.
- J. Elevation Drawings. The elevation drawings shall be prepared by an architect, landscape architect, engineer, or architectural designer (Use of an architect for larger projects is strongly encouraged), but the Planning Board may waive this requirement for smaller structures, or those less prominently located, or as it deems appropriate.

- 1. Three (3) 24" x 36" copies and fifteen (15) 11" x 17" copies of elevation drawings of each pertinent façade, drawn to scale. One 11' x 17 copy of the elevation drawings in color.

1b. One set of drawings shall be provided to show elevations without landscaping elements.

Comments from Bubar and Mower: Drawings of trees and other landscaping elements detract attention from the features of the structures themselves. In addition, frequently these drawings show plantings at a maturity that is years into the future and may be unrealistic or misleading.

- 2. A color board may be required at the option of the Planning Board showing actual color samples.
- 3. A material sample if required by the Planning Board, such as the type of brick that is proposed.
- 4. Information on any proposed building illumination.
- 5. Any other items related to the architectural design as deemed necessary by the Planning Board.

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Section 2.3 Additional Application Submission Requirements, All Personal Wireless Service Facilities

2.3.1 General Filing Requirements

1. Written statement signed by the landowner and carrier that the lease between the carrier and the landowner of the subject property contains a provision that the landowner or carrier can enter into leases with other carriers for co-location.
2. A written and signed statement from the landowner and applicant that he/she agrees that the Town may enter the subject property to obtain RFR measurements, to ensure conformance with the FCC Guidelines, and to obtain noise measurements, all at the expense of the applicant, but not necessarily accompanied by, the applicant and/or landowner.

2.3.2 Location Plan Filing Requirements

1. A town-wide map showing the other existing personal wireless service facilities in the Town and outside the Town within one (1) mile of its corporate limits.
2. A town-wide map that shows all existing and reasonably foreseen or contemplated personal wireless service facilities operated by the carrier in the Town.
3. Proof by the carrier of adequate comprehensive general public liability insurance for the proposed personal wireless service facility that provides coverage for damage or injury to persons or property caused by the carrier or its facility.

2.3.3 Site plans for all personal wireless service facilities shall indicate:

1. Outlines of all existing buildings, including their purpose (e.g., residential buildings, garages, accessory structures, etc.) on the subject property and within three hundred (300) feet from the subject property boundary on adjacent properties.
2. Proposed location of antenna(s), mount(s), and equipment shelter(s).
3. Proposed security barrier, indicating type and extent as well as point of controlled entry.
4. The proposed lease area for the personal wireless service facility.
5. Location and type of electrical and telephone service. Underground service shall be provided, unless waived by the Planning Board.

6. Location of all roads, public and private, on the subject property including driveways proposed to serve the personal wireless service facility and the type of surface proposed for the driveway.
7. Distances, at grade, from the proposed personal wireless service facility to each building shown on the site plan.
8. All proposed changes to the existing property, including but not limited to grading, vegetation removal, and temporary or permanent roads and driveways.
9. Representations, dimensioned and to scale, of the proposed mount(s), antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the personal wireless service facility.

Section 2.4 Additional Site Plan Submission Requirements—Ground Mounted Personal Wireless Service Facilities

Excluding the reconstruction of existing facilities, the following shall be shown on a site plan for all ground mounted personal wireless service facilities, in addition to other items required herein:

- A. Tree cover by forest type and approximate height on the subject property and within three hundred (300) feet from the subject property boundary on adjacent properties.
- B. Average tree canopy height within a one hundred and fifty (150) foot perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
- C. Any proposed landscape easement that includes the bearings and distances of the easement and general conditions of the easement.

Article 3. Fees

Section 3.1

A formal application for site plan approval shall be accompanied by an initial filing fee.

Section 3.2

Pursuant to RSA 676:4 I(g), it shall be the responsibility of the applicant, if the Board deems it necessary, to pay reasonable fees for special investigative studies, environmental assessments, legal review of documents, administrative expenses, and other matters which may be required to make an informed decision on a particular application.

Section 3.3

The application submittal fees are adopted by reference as part of these regulations.

Comments from Bubbar and Mower: The Board should discuss the procedure for and adoption of the relevant fees into the Master Fee Schedule.

Article 4. Construction Guarantee

Section 4.1 Financial surety

4.1.1 The applicant shall post an acceptable financial surety in an amount sufficient to ensure the completion of all roads (public or private), water service, sewage disposal, drainage, landscaping and/or any other improvements required by the Town, or as specified by the Planning Board in the Conditions of Approval. The financial surety shall be effective for a period of time specified by the Planning Board.

4.1.2 The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney.

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Section 4.2 Release of guarantee

The construction guarantee shall be released in phases, if requested by the applicant, as portions of the secured improvements or installations are final in accordance with the plan approved by the Board.

Article 5. Independent Studies and Investigations

Section 5.1 Additional studies

The Planning Board reserves the right to require additional studies to determine the potential impact of the proposed site development. Studies may include, but are not limited to, a(n) Traffic Impact Analysis, Fiscal Impact Analysis, and Environmental Impact Analysis.

1. All Traffic Impact Analyses shall be presented in accordance with the "Strafford Regional Planning Commission's Guidelines for Traffic Impact Analysis 1986," incorporated into these regulations by reference, or in accordance with other best practices for a traffic impact analysis. The Planning Board reserves the right to retain the services of an outside agency for the purposes of reviewing any traffic impact analysis submitted.
2. All Fiscal Impact Analyses shall be presented in accordance with the "Strafford Regional Planning Commission's Guidelines for Fiscal Impact Analysis 1988," incorporated into these regulations by reference, or in

accordance with other best practices for a fiscal impact analysis. The Planning Board reserves the right to retain the services of an outside agency for the purposes of reviewing any fiscal impact analysis submitted.

3. All Environmental Impact Statements shall be presented in accordance with best practices for environmental impact statements.

Comments from Bubar and Mower: Please check whether NHDES provides relevant best practices.

Section 5.2 Public street improvements

Wherever, in the opinion of the Board, traffic generated by a development will adversely impact existing public streets, the Board may require improvements to be made to such streets and intersections in an effort to mitigate such impacts.

Article 6. Post Construction Requirements

Section 6.1 Deeds

All deeds to the Town conveying land to be used for public purposes, easements, and right-of-ways over property to remain in private ownership, and rights of drainage across private property shall be submitted in a form satisfactory to the Town Attorney.

Section 6.2 As-Built Drawings

As-built construction drawings, plans and profiles, of all on-site and off-site improvements shall be drawn at a scale of 1" to 20', including, but not limited to:

- a) Above ground and underground Utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.)
- b) Drainage ways, ditching, impoundments, swales, etc.
- c) Road construction.

Section 6.3 Maintenance Guarantee

A financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.