

**TOWN OF SOUTHBRIDGE
PLANNING BOARD
RULES & REGULATIONS FOR SPECIAL PERMITS & SITE PLAN REVIEW
G.L. c. 40A, § 9 and Southbridge Zoning Bylaw Secs. 2.4 – 2.6**

ARTICLE I. GENERAL

1.01 Section 1. Purpose and Scope

These Rules and Regulations (“Rules”) are adopted and may be amended from time to time by majority vote of the Southbridge Planning Board (the “Board”) to establish uniform procedures for special permits and site plan review. These Rules shall be retained in the Planning Department and a copy shall be on file with the Town Clerk.

1.02 Powers and Duties of the Board

- (a) Prepare, adopt, amend, and implement a Master Plan for the Town under G.L. c. 41, Section 81D;
- (b) Prepare and submit zoning amendments for consideration by the Town Council;
- (c) Adopt, administer, and amend from time to time the Southbridge Rules & Regulations of the Subdivision of Lands;
- (d) Serve as a Special Permit Granting Authority when designated as such in the Southbridge Zoning Bylaw (“Zoning Bylaw” or “Bylaw”);
- (e) Review and approve Site Plans, when applicable; and
- (f) Recommend Scenic Roads designations and hold public hearings requested under the Scenic Roads Act.

ARTICLE II. ORGANIZATION

2.01 Elections

At the first regular meeting following the Town Council’s annual appointments, the Board shall elect a Chair, vice-Chair, and clerk. Each shall serve until a successor is duly elected.

2.02 Chair

- (a) The Chair shall preside over all hearings and meetings of the Board. Subject to these Rules and Regulations, the Chair shall decide all points of order unless overruled by a majority of the Board in session at the time. The Chair shall appoint such committees as may be deemed necessary or desirable from time to time.
- (b) In addition to powers granted by Massachusetts General Laws and the Zoning Bylaw, and subject to these Rules and Regulations and further instructions of the Board, the Chair shall coordinate with the Town Planner to meet the needs of the Board and exercise general supervision over the Board’s activities.

2.03 Vice-Chair

The vice-Chair shall preside over hearings and meetings and perform the duties of the Chair during the absence or unavailability of the Chair.

2.04 Clerk

The clerk shall ensure that records are kept, as required by state law, of the hearings conducted by the Board. If the Clerk is absent, the Chair shall appoint an acting Clerk. The Chair may delegate administrative duties of the Clerk to the Town Planner.

2.05 Alternate Member

The chairperson of the Planning Board shall designate an Alternate Member to substitute for a Member when such Member is absent or unable to participate on an application or matter before the Planning Board. When so designated, the Alternate Member shall possess all powers and responsibilities of such Member. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.

2.06 Quorum

For conducting public hearings and transacting other business except voting on special permits, a quorum shall consist of four members. (See also, Section 5.01, "Voting Requirements".)

2.07 Regular Meetings

Regular meetings of the Board shall be held as necessary at 6:30 P.M. on the first and third Wednesday of each month, or at other times as determined by the Board at a place specified in the meeting notice.

2.08 Special Meetings

Special meetings may be called by the Chair or at the request of two members. Written notice thereof shall be given to each member at least 48 hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law.

2.09 Absences

Pursuant to Town Council's acceptance of G.L. c. 39, § 23D(1) no member of the Board shall be disqualified from voting on any matter solely due to said member's absence from no more than a single session of the hearing at which testimony or other evidence is received; provided, however, that before any such vote, said member shall certify in writing that he/she has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof, such certification to be part of the record of the hearing.

2.10 Site Visits

The Board or its members may conduct a site visit of property that is the subject of a petition, application or appeal. During a site visit, no deliberations or decisions shall be made by the Board that would conflict with the Open Meeting Law.

ARTICLE III. APPLICATION REQUIREMENTS AND PROCEDURES

3.01 Applicant

Application to the Board may be brought by a property owner, a tenant, a licensee, a prospective purchaser, or other Applicant if documentation from the owner certifying the Applicant's legal interest and right to file accompanies the petition or application. It is recommended that all new applications be reviewed by the Town Planner prior to filing to assure their correctness, completeness, and clarity.

3.02 Application Form

Every application to the Board shall be made on an official application form, which shall be furnished by the Planning Department upon request. Any communication purporting to be an application shall be treated as mere notice of intention to seek Board action until it is made on the official application form and filed with the Town Clerk, and the applicable filing fee has been paid. To be a complete application, all information called for by the form shall be furnished by the Applicant as prescribed in the form and in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature of the application, and the Planning Board has determined that the application is substantially complete. The application form shall require, at minimum, a description of the proposed project, a list of all requirements of the Zoning Bylaw that the proposed project must meet, a narrative and supporting data that show how the proposed project meets those requirements, an analysis of why the Board should grant approval, and payment of filing fees. Additional requirements as may apply to particular special permits based on requirements in the Zoning Bylaw.

3.03 Submissions

(a) The Applicant for a special permit or site plan review shall submit the following to the Board:

- (i) Special Permit or Site Plan Application Form; 3 copies.
- (ii) Filing fee, with check made payable to the Town of Southbridge.
- (iii) Drainage calculations and supplement plans (if applicable); 3 copies.
- (iv) Certified abutters list and map.
- (v) Cover letter and supporting narrative.
- (vi) Site Plans: 12 copies, including 3 of the full-size site plan and 9 copies of a reduced 11"x17" size site plan. A DXF format of the site plan shall be submitted on disk. Site plan specifications are listed in the Application Form.
- (vii) All other information in plan, map, tabular, report, or other formats as may be required in the Application Form or any of the supplements thereto; 3 copies.
- (viii) Any photos, if necessary; 1 set provided digitally
- (ix) One electronic (PDF) copy of the complete Application, including full-size and reduced-size plans.

- (b) Applicant may submit written materials until one week before the hearing and one week before any subsequent continuance of the hearing. The Board shall not be obligated to review written materials received less than one week before the hearing or continuance thereof. The Applicant may submit a proposed decision to the Board.
- (c) In the case of a special permit, the following points, based on G.L. c. 40A and Section 2.5 the Southbridge Zoning Bylaw must be clearly identified and factually supported in the Application:
- (i) The use proposed for the land or structure, if any;
 - (ii) The conditions and character of operations of the proposed uses which show that it will be in harmony with the general purpose and intent of the district and the Zoning Bylaw;
 - (iii) The nature of the proposed use in relation to both the general and specific provisions of the Zoning Bylaw governing that use and the district in which it is located; and
 - (iv) Satisfaction of the specific criteria and objectives set forth in Section 2.5 and any other section of the Zoning Bylaw that applies to the special permit being sought by the Applicant. It is the Applicant's responsibility to identify all applicable provisions and associated special permit granting criteria, which may be found in more than one section of the Zoning Bylaw.
- (d) If the proposed project requires the filing of an application for additional special permits or other permits in which the Planning Board is the approval authority, many of the requirements of these Rules may be waived in view of equivalent information required to be submitted for the additional applications. In this case, the Applicant may combine the required information and plans for the various permits, provided that all information required as part of these Rules is included, and the Applicant shall provide a written statement to that effect. All application fees for the various special permits or other permits shall be required unless otherwise authorized by the Board.

3.04 Filing Fees and Cost of Public Notice

- (a) An application for a special permit or site plan review shall be accompanied by a check payable to the Town of Southbridge in the amount listed in Appendix A of these Rules.
- (i) A petition for a special permit shall be accompanied with payment to the Town of Southbridge in the amount of \$500.
 - (ii) An application for major site plan review shall be accompanied with payment to the Town of Southbridge in the amount of \$250.
 - (iii) An application for minor site plan review shall be accompanied with payment to the Town of Southbridge for \$150.
 - (iv) An application for a home occupation special permit or site plan shall

be accompanied with payment to the Town of Southbridge for \$100.

- (v) An application for an earth removal special permit shall be accompanied with payment to the Town of Southbridge for \$300.
 - (vi) An application for a special permit or site plan for agriculture, not-exempt, subject to the requirements of Section 8.8 of the Southbridge Zoning Bylaws shall be accompanied with payment to the Town of Southbridge for \$5.
- (b) All fees are established to cover the cost of and to otherwise defray reasonable expenses incurred by the Board in processing applications filed with the Board.
 - (c) No application shall be deemed complete until the applicable filing fee has been paid to the Planning Department.
 - (d) In addition to the above stated filing fees, the Applicant shall pay the cost of publishing the public notice of any hearing in a newspaper. The Board shall prepare the notice, arrange for publication, and submit the notice to the newspaper. The Board will provide an invoice and proof to the Applicant. The invoice will reflect mailing costs and newspaper advertisement costs. The Applicant shall pay any such invoice promptly upon receipt. Failure to make timely payment shall be grounds for the Board to withhold a decision or deny an application.

3.05 Project Review Fees: Hiring of Outside Consultants

- (a) When reviewing a special permit or site plan application, the Board may determine that the assistance of outside consultants is warranted because the necessary expertise is unavailable from municipal employees. In hiring outside consultants, the Board may engage engineers, planners, lawyers, architects, landscape architects, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, bylaws and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulation, or inspecting a project during construction or implementation.
- (b) The Board may, in its sole discretion, require that the Applicant pay a reasonable project review fee sufficient to enable the Board to retain consultants of its choice. The Board shall inform the Applicant no later than the second hearing date that project review fees will be required. If the Applicant fails to submit the required fee, the application shall be deemed incomplete and may be considered adequate grounds to deny an application. No review work by a consultant shall commence until the fee has been paid in full.
- (c) The project review fee shall be deposited in a special account established pursuant to G.L. c. 44, § 53G ("53G Account"). The funds from said account and any accrued interest thereon may be expended at the direction of the Board without further appropriation, with any excess amount remaining in the account upon completion of the Board's review to be repaid to the Applicant or to the Applicant's successor in interest.
- (d) When the balance in an Applicant's 53G Account falls below 25 percent of the

initial project review fee, the Applicant shall pay an additional project review fee to replenish the account. The Board shall notify the Applicant of the requirement to pay an additional fee, and payment shall be made within 15 days.

- (e) Minimum qualifications for outside consultants shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or in a related field. The Board's selection of an outside consultant may be appealed by the Applicant to the Town Council, which may disqualify such consultant only because the he/she has a conflict of interest and/or does not possess the minimum qualifications specified by the Board. The required time limits for action upon an application by the Board shall be extended by the duration of the administrative appeal.

3.06 Dismissal of Incomplete Filings

The Board may deny an application if the application form is not complete or the submissions required by Section 3.03 of these Rules are not made. For minor site plan review, dismissal may be made without a hearing on the merits and shall be deemed a withdrawal without prejudice to refile when the application and submissions are complete. In the case of a special permit, the Board shall open the public hearing as required under G.L. c. 40A, §§ 9 and 11 and may, in its discretion, deny the application or permit the Applicant to withdraw without prejudice.

3.07 Names and Addresses of Abutters

As part of the application process, the Applicant shall request from the Assessor a list of the names and addresses of all parties in interest, including the Applicant, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the Applicant, as they appear on the most recent applicable tax list, all as required by G.L. c. 40A, § 11, and the Zoning Bylaw. The Assessor will send the certified abutter list to the Planning Department.

3.08 Modification of an Approved Plan

- (a) Where it is not otherwise inconsistent with these Rules or with the Zoning Bylaw, or with any Special Permit(s) granted in conjunction with an approved site plan, the Board may hear a modification to a previously approved site plan.
- (b) The Applicant shall apply for Site Plan Modification together with the requirements identified on the form.

ARTICLE IV. HEARINGS

4.01 Notice

Notice of hearings shall be advertised as required by the provisions of G.L. c. 40A and the Zoning Bylaw. In addition, a copy of the advertised notice shall be sent by mail, at least ten days prior to the date of the hearing, postage prepaid, or delivered, to all parties in interest and to applicable boards, commissions, and departments as determined by the Board. The Board will prepare the mailing of the public notices and create an invoice for the Applicant, which then the Applicant is responsible for the payment of the mailing.

4.02 Hearings to be Public

All hearings shall be open to the public and shall be conducted in accordance with the G.L. c. 30A, §§ 18 - 25.

4.03 Representation and Absence

An Applicant may appear in his/her own behalf or be represented by an agent or attorney. In the absence of an appearance without due cause indicated by the Applicant, the Board shall decide on the matter either using the information it has otherwise received or dismissing the petition, at its discretion, with or without prejudice.

4.04 Continuances

A continuance may be requested by an Applicant by written request submitted to the clerk in advance of a hearing or orally at a hearing. The Board may, in its discretion, allow or deny any request for a continuance. Unless notified in writing that a continuance has been granted, an Applicant must appear at a scheduled hearing. Any continuance granted upon request of an Applicant shall constitute an agreement by the Applicant to extend the time limits for actions by the Board by the duration of the continuance and such agreement, at the request of the Board, shall be set forth in writing and filed with the Town Clerk.

4.05 Hearing Procedure

- (a) Hearings will start at the time stated in the notice unless delayed because of prior hearings. After the opening of the public hearing, the order of business will generally proceed as follows:
 - (i) The Chair or Chair's designee shall read the legal notice and the Chair shall present any materials received in response to the application.
 - (ii) Presentation by the Applicant, which may be limited at the discretion of the Chair. Each plan or other item used as part of the presentation shall be identified by its proper title and date. Each item shall be identified as either part of the application or a copy shall be provided for the file.
 - (iii) Questions or comments by the members of the Board. At the direction of the Chair, responses shall be made by either Town staff or the Applicant.
 - (iv) Questions or comments by Town staff, followed by responses by the Applicant.
 - (v) Questions or comments by members of other Town Boards. At the direction of the Chair, responses shall be made by either Town staff or the Applicant.
 - (vi) Questions by members of the public seeking information. Persons wishing to be heard must be recognized by the Chair and must state their name and address prior to asking a question. At the direction of the Chair, responses shall be made by either Town staff or the Applicant.

- (vii) Opponent's formal presentation (if applicable), which may be limited at the discretion of the Chair.
 - (viii) Applicant's rebuttal (if applicable), which shall be restricted to matters raised by opponents.
 - (ix) Rebuttals may only be allowed at the discretion of the Chair. Similarly, no cross-examination will be allowed, although questions seeking information and deemed relevant by the Board may be allowed at its discretion.
 - (x) Board members ask for any additional information needed to render a decision.
 - (xi) The Chair, upon majority vote of the Board, will continue the public hearing to a date, time, and place certain that is announced at the public hearing or close the public hearing if the Board feels they have received sufficient information to render a decision. Upon the close of a hearing, no additional information received by the Board may be used in the making of its decision. Members of the Board hearing the case may, at any time, direct appropriate questions during the hearing. All questions shall be directed through the Chair.
- (b) If requested by the Applicant, the Board shall make every reasonable effort to coordinate its review of special permit or site plan applications with the boards, commissions, or officials that have authority over other permits and approvals required for the project to proceed. Coordinated or joint public hearings may be conducted to the extent allowed by law, recognizing that each permitting authority is subject to a specific statutory decision period and not all such decision periods coincide.
- (c) At the hearing any party whether entitled to notice or not may appear in person or by agent or by attorney.
- (d) The Board shall retain any record which has been introduced in evidence, for reference in consideration of the case.
- (e) No person shall address a hearing of the Board without the Chair's permission, and all persons shall, at the request of the Chair, be silent. If a person, after warning from the Chair, persists in disorderly behavior, the Chair may order him/her to withdraw from the hearing, and, if he/she does not withdraw, may order a constable or any other person to remove him/her and confine him/her in some convenient place until the hearing is adjourned.
- (f) The Chair may close the hearing immediately if, in his/her opinion, these Rules are being violated and/or the hearing is becoming disorderly.
- (g) In the event an Applicant fails to appear at a scheduled hearing, the Board may continue the matter or, in its discretion, dismiss the matter. Unless the Board indicates otherwise in its decision, any such dismissal shall be deemed a withdrawal without prejudice to refiling the application.

ARTICLE V. ACTIONS BY THE BOARD

5.01 Voting Requirements

The concurring vote of five members of the Board shall be necessary to grant a special permit, but any four members may approve a site plan. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all of which shall be within 10 business days filed in the office of the Town Clerk and shall be a public record.

5.02 Withdrawal

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. After commencement of a hearing, an application may be withdrawn only with the consent of the Board, which shall determine whether the withdrawal is without prejudice to refile at any time or with prejudice, in which case the Applicant shall be subject to Section 5.4 below.

5.03 Extension of Time

An Applicant may request an extension to the statutory limits for the Planning Board to take action on an application in order to provide additional time to discuss issues related to an application filed pursuant to these Rules. The request shall be made in writing, giving a description of the application and plan, the date of filing, the statutory deadline for action, any previously approved extensions, the length of the requested extension and the proposed date for final action. A copy of the request for an extension together with the Board's approval for the extension shall be filed with the Town Clerk.

5.04 Reconsideration

When an application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

5.05 Repetitive Petition

To have any petition or application which has been unfavorably acted upon by the Board reconsidered by the Board within two years, the Applicant must follow the procedure outlined in G.L. c. 40A, § 16.

5.06 Decisions

- (a) The clerk of the Board will send notices of a decision forthwith to the Applicant, to parties in interest and to every person present at the hearing who requests that notice be sent to him/her and states the address to which such notice is to be sent.
- (b) The clerk of the Board will send copies of the decision of the Board to the Applicant, the Town Council, the Board of Assessors, the Town Clerk, the Building Commissioner, and where determined appropriate by the Board, other Town boards and departments.
- (c) A special permit, or any extension or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have

elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded with the Worcester Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 12-month periods provided under the second paragraph of G.L., c. 40A, § 6.

- (d) The Applicant is responsible for filing the certified decision with the Worcester Registry of Deeds and for paying the recording fees.
- (e) A certified copy of the decision and an affidavit from the Worcester Registry of Deeds stating that the decision has been recorded are necessary before a building permit dependent on the Board's decision can be issued by the Building Commissioner. The copy of the decision shall serve as an approval of the Planning Board through a signature on the building permit by the Town Planner.

5.07 Revocation of Special Permit

The Board may reconsider its decisions on the basis of fraud, serious mistake, and gross negligence, and with concurring-five vote majority, may revoke a Special Permit in a public hearing setting that follows G.L. c. 40A, § 11.

ARTICLE VI. POLICIES AND ADVICE

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is declared to be the policy of the Board to discourage any personal appeals or comments to members of the Board and that all communications outside a convened meeting of the Board concerning proposed or pending matters shall be submitted through the clerk.

ARTICLE VII. AMENDMENTS

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

ARTICLE VIII. EFFECTIVE DATE

These Rules were adopted at a regular meeting of the Board on February 20, 2019, and became effective immediately.