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## Article 8 Site Plan Review

### § 120-801 **Purpose.**

The site plan review provisions set forth in this article are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

### § 120-802 **Applicability.**

**[Amended 12-14-2010 by Order 10-231; 6-12-2018 by Order 18-099]**

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site, including grubbing or grading:
  - (1) The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of 1,000 square feet or more measured cumulatively over a five-year period.
  - (2) The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five-year period by more than 20% of the existing total floor area or 1,000 square feet, whichever is greater.
  - (3) The conversion of an existing building in which 1,000 or more square feet of total floor area are converted from residential to nonresidential use.
  - (4) The establishment of a new nonresidential use, even if no buildings or structures are proposed, that involves the development of more than 25,000 square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural, nonresidential uses.
  - (5) The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in § **120-812** of this article.
  - (6) The construction of a residential building containing three or more dwelling units.
  - (7) The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three or more in any five-year period.
  - (8) The conversion of an existing nonresidential building or structure, in whole or in part, into three or more dwelling units within a five year period.
  - (9) The cumulative development of an area equal to, or greater than, one acre within any three-year period. The applicability of this subsection does not include the construction of streets that are reviewed as part of a subdivision application under the standards of Article 9 of this chapter. For developments of less

than one acre, the standards of Chapter **201**, Stormwater Management, Article **I**, Surface Water Protection, may apply.

- B. The following activities shall not require site plan approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
- (1) The construction, alteration, or enlargement of a single-family or two-family dwelling, including accessory buildings and structures.
  - (2) The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
  - (3) Agricultural activities, including agricultural buildings and structures, and farm enterprise. [**Amended 10-13-2020 by Order 20-211**]
  - (4) Timber harvesting and forest management activities.
  - (5) The establishment and modification of home occupations.
  - (6) Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this article.

**§ 120-803 Review and approval authority.**

- A. Application classification. The review and approval authority for site plans shall depend on the classification of the project:
- (1) Major developments. The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this article, the Planning Board may act to approve, disapprove, or approve the project with such conditions as are authorized by this article.
  - (2) Minor developments. The Staff Review Committee is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this article. In addition, the Committee may reclassify a minor development as a major development, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its recommendations for Planning Board action. (See § **120-805**, Classification of projects.)
- B. Staff Review Committee established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning (Planner), Director of Code Enforcement, Fire-Rescue Chief, Director of Public Works, or their designees, and a designee of the Town Manager.
- C. Operation of the Staff Review Committee. The Planner shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Planner or his/her designee, the Director of Code Enforcement shall serve as Chair Pro Tem.
- (1) Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.
  - (2) Meeting dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.
  - (3) Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.

- (4) Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.
- (5) Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three members.
- (6) Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with fewer than three voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.
- (7) Minutes. The Staff Review Committee shall keep a record of its proceedings.
- D. Attendance of applicant. The Planning Board or Staff Review Committee shall not review any site plan application unless the applicant, or his duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Planning Board or Staff Review Committee shall reschedule the review of the application to its next available meeting.
- E. No vote if violation exists. No site plan shall be approved by the Planning Board or Staff Review Committee as long as the applicant is in violation of the provisions of a previously approved site plan within the municipality.

#### § 120-804 **Joint application and hearing.**

If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews shall be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

#### § 120-805 **Classification of projects.**

- A. The Planner shall classify each project as a major or minor development. "Minor developments" are smaller-scale projects for which a minor review process is adequate to protect the Town's interest. "Major developments" are larger, more complex projects for which a more detailed review process and additional information are necessary. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.
  - (1) Minor developments shall include those projects involving: **[Amended 8-26-2014 by Order 14-313]**
    - (a) The cumulative construction or addition of fewer than 5,000 square feet of gross nonresidential floor area.
    - (b) Any individual or cumulative construction or addition of 5,000 square feet or more of gross nonresidential floor area within an approved subdivision.
    - (c) The establishment of a new nonresidential use, even if no buildings or structures are proposed, that involves the development of more than 25,000 square feet but less than one acre of land.
  - (2) Major developments shall include projects involving:
    - (a) The individual or cumulative construction or addition of 5,000 or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision;

- (b) Projects involving the creation of five or more dwelling units in a five-year period;
  - (c) The individual or cumulative development of one acre or more land, unless the development is part of a site plan application in an approved subdivision [see § 120-805A(1)(b) above];
  - (d) Projects that also require subdivision (see Article 9) or conditional use approval (see Article 5); or
  - (e) Other projects requiring review which are not classified as a minor development.
- (3) An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification. This request shall include the following information:
- (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
  - (b) The location of the project, including the Tax Map and lot number.
  - (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
  - (4) When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification. The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.
- B. Within 10 working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant and the Chair of the Planning Board of the classification of the project in writing.

**§ 120-806 Review procedures for minor developments.**

**[Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223]**

- A. Preapplication conference. Applicants for site plan review of a minor development are encouraged to schedule a preapplication conference with the Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.
- (1) Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
  - (2) To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.
- B. Application procedure.
- (1) All minor site plan submission requirements shall be submitted to the Planning Department at least 21 days prior to the meeting at which the applicant wishes to be heard by the Staff Review Committee.
  - (2) Within 30 working days of receipt of an application for a minor site plan, the Planner shall review the material to determine whether or not the submission is complete.
  - (a) If submission requirement waivers are requested, the Planner shall review the requests and make a recommendation to the Staff Review Committee.

- (b) The Planner shall notify the applicant and the Chair of the Planning Board, in writing, of the finding of completeness. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be considered by the Staff Review Committee until the application is complete.
- (c) If the application is determined to be complete, the Planner shall:
  - [1] Notify members of the Staff Review Committee that the application is complete.
  - [2] Notify the Chair of the Planning Board that the application is complete.
  - [3] Place the item on the agenda for review by the Staff Review Committee.
  - [4] Notify the owners of property within 500 feet of the property under review at least seven days prior to the first meeting at which the project is to be reviewed. Notices shall be sent, at a minimum, via first-class mail.
    - [a] The notice shall:
      - [i] Contain a brief description of the proposed activity and the name of the applicant;
      - [ii] Advise the party that a copy of the application is available for inspection and that written comments on the application will be received and considered by the Staff Review Committee; and
      - [iii] Provide the date, time, and place of the Committee meeting at which the application will be considered.
    - [b] Failure of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.
- (d) A determination of completeness under this subsection does not preclude the Staff Review Committee from requiring the submission of additional materials that it finds are necessary for review of the project.
- C. Site walk determination. The Planner may schedule a site walk to familiarize the Staff Review Committee with the project site.
  - (1) The site walk shall be scheduled by the Planner and shall be attended by the applicant and/or the applicant's representative and members of the Staff Review Committee.
  - (2) All property owners within 500 feet of the property under review shall be notified, in writing, of the time and date of the site walk.
  - (3) The applicant shall stake the center line of the access drive and the corners of any proposed structures and provide a sketch plan (on a sheet 11 inches by 17 inches) of the project for each member of the Staff Review Committee at the site walk.
- D. Staff Review Committee meeting.
  - (1) The applicant and/or his/her representatives shall be allowed to make a presentation on the application, address any comments made by the staff or public, and present any proposed revisions to address these issues.
  - (2) The Staff Review Committee shall determine whether to hold a public hearing on the application. If a hearing is not scheduled, the Committee may choose to accept comment on the application during any scheduled meeting.

- (3) If the Committee decides to hold a public hearing, notice of the time, place and date of such hearing shall be sent not less than seven days before the hearing to the applicant and to owners of all properties within 500 feet of the property(s) involved. Owners of properties within 500 feet of the property under review shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing. Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two times, and the first date of publication shall be at least seven days prior to the public hearing.
- (4) The Staff Review Committee shall make findings of fact on the application and approve, approve with conditions, or deny the application. The Committee shall specify, in writing, its findings of fact and reasons for any conditions or denial. The applicant, Chair of the Planning Board, and any abutters who commented on the application or attended the Committee meeting shall be notified, in writing, of the Committee's action. An approval letter from the Planning Department shall constitute adequate notification.
- (5) The Staff Review Committee shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in § **120-812E, F, H, J, and K** of this chapter. The review shall include attendance at any scheduled Staff Review Committee site walk. **[Amended 3-26-2019 by Order 19-020]**

E. Appeal to the Planning Board.

- (1) Any party aggrieved by the decisions of the Staff Review Committee may seek an appellate review by the Planning Board. The appellant shall have 10 days in which to file such an appeal with the Chair of the Planning Board. The appeal shall be submitted, in writing, to the Planning Department and shall specify why the appellant believes the action of the Staff Review Committee was in error.
- (2) If an appeal is filed, the application shall be placed on the agenda in accordance with the most current rules of the Planning Board.
  - (a) The appeal shall be placed on the agenda in the order it was received in relation to other applications filed with the Board.
  - (b) The appellant, applicant, and any interested parties who provided written comments or attended a Committee meeting shall be notified, in writing, of the Board meeting.
  - (c) The Planner shall provide members of the Board with copies of the application, supporting material, any staff review comments, abutters' comments, and minutes of the Staff Review Committee meeting at which the application was considered.
- (3) The Board shall review the existing record of materials on an appellate basis and shall determine if the application conforms to the approval criteria and standards.
  - (a) If the Board finds that the application conforms to the standards, it shall approve the application; otherwise, it shall deny the same.
  - (b) The Planner shall give notice of the Planning Board's action to the appellant, applicant, and any interested parties who participated in the review.

**§ 120-807 Review procedures for major developments.**

**[Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223]**

- A. Preapplication conference. Applicants for site plan review of a major development are required to schedule a preapplication conference. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Town with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
- B. Information required. To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
  - (1) The proposed site, including its location, size, and general characteristics;
  - (2) The nature of the proposed use and potential development;
  - (3) Any issues or questions about existing municipal regulations and their applicability to the project; and
  - (4) Any requests for waivers from the submission requirements in § **120-811**. (See also § **120-808**, Waivers.)
- C. Sketch plan. Applicants for projects classified as major developments shall submit a sketch plan for Planning Board review.
  - (1) The sketch plan shall be completed prior to the preparation and submission of a final site plan application and supporting documentation.
  - (2) The Planning Board shall review the sketch plan with the applicant and shall authorize the submission of the final plan application when the sketch plan review is complete.
- D. Sketch plan review procedures.
  - (1) All sketch plan submission requirements shall be submitted to the Planning Department at least 21 days prior to the meeting at which the applicant wishes to be heard by the Board.
  - (2) Site walk. The Planning Board may visit the site to observe existing conditions, generally confirm the information submitted, and assess the development proposal. (See "Rules of the Windham Planning Board.")
    - (a) The Board may schedule the site walk either before or after the first meeting at which the application is considered.
    - (b) The applicant shall prepare the property for the site walk by staking the center line of any proposed street or access points and the corners of all proposed buildings. The applicant shall also provide each Board member with a copy of the plan on a sheet 11 inches by 17 inches at the site walk.
    - (c) The Board may decide not to hold, or postpone, a site walk when the site is snow-covered.
    - (d) Notice of the site walk shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices shall be published and/or sent at least seven days prior to the site walk.
- E. Review of the sketch plan. The review of the sketch plan shall be informational and shall not result in

any formal approval or disapproval of the project by the Planning Board.

- (1) The applicant and property abutters shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed. The notice shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices shall be published and/or sent at least seven days prior to the meeting.
- (2) The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed.
- (3) The Board may consider any input from Town staff or Town consultants.
- (4) The Board may choose to accept public comment on any sketch plan. The Board's option to accept public comment shall be noted on the meeting agenda.
- (5) The outcome of the review process shall be the identification by the Board of the issues and constraints that shall be addressed in the final site plan review application.
- (6) The Board shall act on any requests for waivers from the final site plan submission requirements.

F. Final site plan review procedures.

- (1) Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations.
  - (a) Maine Department of Environmental Protection, under the Site Location of Development Act.
  - (b) Maine Department of Environmental Protection, under the Natural Resources Protection Act or Stormwater Law 06-096 CMR Ch. 500, Stormwater Management, or if an MEPDES wastewater discharge license is needed. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]
  - (c) Maine Department of Transportation, for a traffic movement permit and/or highway entrance/driveway access management permit outside of the Urban Compact.
  - (d) Town of Windham Public Works Department for a curb cut permit inside the Urban Compact (see § **120-522**, Curb cuts and driveway openings, in Article 5, Performance Standards).
  - (e) The Portland Water District if existing or proposed public water or sewer service is to be used.
  - (f) Maine Department of Health and Human Services if a central water supply system is to be used.
  - (g) A Maine licensed professional civil engineer if individual wells serving each building site are to be used. The Board may also require the applicant to submit the results of water quality tests as performed for, or by, the State of Maine Department of Health and Human Services. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]
  - (h) Maine Department of Health and Human Services if an engineered sewage collection and treatment system is to be utilized.
  - (i) The Plumbing Inspector if individual septic tanks are to be installed by the builder.

- (j) United States Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
- (k) Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
- (2) If the plan identifies any areas listed on or eligible to be listed on the National Register of Historic Places, the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission prior to submitting the final plan application.
- (3) All final plan submission requirements shall be submitted to the Planning Department at least 21 days prior to the meeting at which the applicant wishes to be heard by the Board. Upon receipt of a formal site plan review application, the Planner shall give a dated receipt to the applicant.
- (4) Within 30 days of the receipt of a formal development review application, the Planner shall review the material and determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board.
- (5) When the Planner determines that the application is complete, the Planner shall notify the Planning Board, provide Town staff and Town consultants with the final plan application material, and place the item on the Planning Board's agenda. A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
- (6) Town staff, including Town consultants, may review the application and make recommendations to the Board. The Planner shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards. The review shall also ensure compliance with performance standards contained in § **120-812E, F, H, J, and K** of this chapter. The review shall include attendance at any scheduled Planning Board site walk. **[Amended 3-26-2019 by Order 19-020]**
- (7) The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered to the applicant.
- (8) The Planning Board shall determine whether to hold a public hearing on the final plan.

G. Final site plan; public hearing procedures.

- (1) The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this chapter or other municipal ordinances.
- (2) Notice of the public hearing shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices shall be published and/or sent at least seven days prior to the public hearing.

- (3) The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.

H. Final site plan; vote on application.

- (1) The Board shall make findings of fact on the application and approve, approve with conditions, or deny the application. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- (2) The Board shall notify the applicant and abutters who requested to be notified of the action of the Board, including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and conclusions of the Board.

§ 120-808 **Waivers.**

- A. Waiver of submission requirements. The Staff Review Committee, for minor developments, or the Planning Board, for major developments, may waive any of the submission requirements of § **120-811** based upon a written request by the applicant. Such request shall be submitted at the time of the preapplication conference for minor developments or as part of the sketch plan application for major developments. A waiver of any submission requirement may be granted only if the Planning Board or Staff Review Committee finds that the information is not required to determine compliance with the standards and criteria of this chapter.
- B. Waiver of site plan performance standards. The Planning Board may waive the requirements of § **120-812** if it finds that extraordinary and unnecessary hardships, not self-imposed, may result from strict compliance with the site plan review standards. In all cases, waivers shall not be deemed a right of the applicant, but rather shall be granted at the discretion of the Planning Board.
  - (1) Procedure. The applicant shall submit a list of the requested waiver(s), in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in § **120-808B(2)** below. The Planning Board may request additional information to make a determination on a waiver request.
  - (2) Criteria. In granting a waiver, the Planning Board shall use the following criteria:
    - (a) The waiver will improve the ability of the project to take the site's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, surface drainage, location of unique or valuable natural resources, and relation to abutting properties or land uses.
    - (b) The waiver does not result in:
      - [1] Undue water or air pollution.
      - [2] Undue light pollution or glare.
      - [3] An inadequate water supply.
      - [4] Unreasonable soil erosion.
      - [5] Unreasonable traffic congestion or safety risk.
      - [6] Decreased pedestrian safety or access.
      - [7] Inadequate supply of parking spaces.
      - [8] Inadequate sewage disposal capacity.

- [9] Inadequate solid waste disposal capacity.
- [10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.
- [11] Flooding or adverse drainage impacts on abutting properties.
- (3) Recording of waivers of site plan performance standards. When the Board grants a waiver to any of the improvements required by these regulations, the final plan shall indicate the waivers granted. Waivers shall be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

#### § 120-809 **Final approval and filing.**

- A. Upon completion of the requirements of this article and an approval vote by the majority of the Planning Board members, or Staff Review Committee members, the application shall be deemed to have final approval.
- B. The applicant shall send an electronic version of the approved plans to the Planner for review. Within seven working days, the Planner shall review and confirm that the plan includes the conditions of approval, amendments, notes and other information as required by the Planning Board's, or Staff Review Committee's, final approval.
- C. Once confirmed by the Planner, the applicant shall provide the following items:
  - (1) One complete full size plan set with a signature block on the overall site plan sheet.
  - (2) One Mylar and one paper copy of the plan sheet containing the signature block.
  - (3) Any additional plan sheets with the signature block for the applicant's records, if desired by the applicant.
  - (4) A complete electronic copy of the site plan in a format acceptable to the Town.
  - (5) Revised GIS data with any changes made during the review process, if necessary.
- D. The site plan shall be signed by a majority of the members of the Planning Board or Staff Review Committee and shall be filed by the applicant with the Planner.
  - (1) Any plan not so filed with the Town within 30 days of the date upon which such plan is approved and signed by the Board as herein provided shall become null and void.
  - (2) The Planning Board, by vote, may extend the filing period for good cause.

#### § 120-810 **Fees.**

- A. Sketch plan fee. Prior to submitting a sketch plan for a major development, the applicant shall pay the processing fee as set by the Town Council in the Windham Fee Schedule.
- B. Application fee. An application for site plan review shall be accompanied by an application fee. This fee is intended to cover the cost of administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee shall be paid to the municipality, and evidence of payment of the fee shall be included with the application.
- C. Consulting, review and construction observation fees. Notwithstanding any other provision(s) of this chapter, Articles 1 through 12 (the "code"), to the contrary, and in addition to such fees as are otherwise specified by the code, the Town shall assess fees to cover 100% of its costs related to independent

geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:

- (1) Such fees shall only be as expressly provided by this § **120-810C**;
  - (2) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or ordinance;
  - (3) Such fees shall be assessed only to recover costs directly associated with review and post-approval inspection of the application submitted by the applicant to whom they are assessed;
  - (4) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
  - (5) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
  - (6) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- D. An escrow account shall be established with the Town by the applicant to guarantee payment in advance of actual fees assessed pursuant to § **120-810C**. The original deposit shall be an amount specific to the application, as accorded in the Town's Fee Schedule. If the balance in the escrow account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.
- E. Any dispute regarding the application of § **120-810C** or the amount required to be paid, either in advance or upon completion, may be appealed, in writing, within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- F. In an effort to minimize the use of outside or independent consulting, the provisions of § **120-810C** shall be subject to the following additional limitations:
- (1) The Planner, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any major site plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four hours of the review shall be paid for with the project's application fee. Review work beyond the initial four hours shall be paid for with the escrow established in § **120-810D** above.
- G. Construction observation fee. At least five days prior to the commencement of construction, the applicant shall pay to the Town a construction observation fee. The fee shall be calculated and administered as follows:
- (1) The applicant's engineer/representative shall prepare a line-item cost estimate of all site improvements.
  - (2) The Town's consulting engineer shall review the cost estimate. This review shall be withdrawn from the

escrow balance established in § **120-810D** above.

- (3) The applicant shall post with the Town an amount equal to 3% of the cost estimate for site improvements.
  - (a) If, and when, a construction observation will result in the Town exceeding the 3% of site improvements amount, the Town's consulting engineer will submit a written notice stating the reasons why the estimate is to be exceeded, and by how much.
  - (b) If the balance in the construction observation fee account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit.
  - (c) Any and all unused observation fee funds shall be returned to the applicant.
- H. Section **120-810C** shall be administered by the Planning Director or other Town employee responsible for administering the ordinance under which review is sought. No building permit, commencement of any construction or site preparation, or certificate of occupancy may be issued or released until all fees assessed hereunder have been paid in full.
- I. Establishment of fees. The municipal officers may, from time to time and after consultation with the Board, establish the appropriate fees following posting of the proposed schedule of fees and public hearing.

**§ 120-811 Submission requirements.**  
**[Amended 11-28-2017 by Order 17-347]**

- A. Sketch plan submission requirements.
  - (1) The sketch plan is intended to provide both the applicant and the Planning Board/Staff Review Committee with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environment. It is anticipated that this analysis will result in a development plan that reflects the conditions of the site; those areas most suitable for the proposed use will be utilized, while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that the applicant submit basic information about the site and an analysis of that information.
  - (2) The sketch plan submission shall contain, at a minimum, five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission unless a waiver of a submission requirement is granted (see § **120-808**, Waivers):
    - (a) A complete sketch plan application form.
    - (b) A narrative describing the existing conditions of the site, the proposed use and the constraints or opportunities created by the site. This submission should outline any traffic studies, utility studies, market studies or other applicable work that will be conducted as part of the final plan application.
    - (c) The names, addresses, and phone numbers of the record owner and the applicant.
    - (d) The names and addresses of all consultants working on the project.
    - (e) Evidence of right, title, or interest in the property.

- (f) Evidence of payment of the application and escrow fees.
- (g) Any anticipated requests for waivers from the submission requirements for the final site plan review application (see § **120-808**, Waivers).
- (h) An accurate scale plan of the parcel, at a scale of not more than 100 feet to the inch, showing at a minimum the following information:
  - [1] The name of the development, North arrow, date and scale.
  - [2] The boundaries of the parcel.
  - [3] The relationship of the site to the surrounding area.
  - [4] The topography of the site at an appropriate contour interval depending on the nature of the use and character of the site (in many instances, submittal of the applicable USGS ten-foot contour map will be adequate);
  - [5] The approximate size and location of major natural features of the site, including wetlands, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats and fisheries or other important natural features (if none, so state).
  - [6] Existing buildings, structures, or other improvements on the site (if none, so state).
  - [7] Existing restrictions or easements on the site (if none, so state).
  - [8] The approximate location and size of existing utilities or improvements servicing the site (if none, so state).
  - [9] A Class D medium-intensity soil survey (information from the most current soil survey for Cumberland County, Maine, is acceptable).
  - [10] The location and size of proposed buildings, structures, access drives, parking areas, and other development features (if applicable).
  - [11] The sketch plan is not required to be surveyed. Recommendation: If the site is to be surveyed, please refer to the GIS requirements for final plan review. It may be in the applicant's best interest to obtain the required GIS data while the surveyor is on site.
- B. Final site plan review application submission requirements. Applications for final site plan review shall be submitted on application forms provided by the Town. The complete application form, evidence of payment of the required fees, and the required plans and related information shall be submitted to the Planning Department. Applications for major developments will not be received until the review of the sketch plan is completed. The submission shall contain at least the following exhibits and information, unless specifically waived in writing:
  - (1) Minor and major final site plans. All final site plan applications shall contain five copies of the following information, including full size plan sets, along with one electronic version of the entire submission:
    - (a) A fully executed and signed copy of the final site plan application form.
    - (b) Evidence of payment of the application and escrow fees.
    - (c) Written information. Written materials shall be contained in a bound report.

- [1] A narrative describing the proposed use or activity.
- [2] Record owner's name, address, and phone number and applicant's name, address and phone number, if different.
- [3] Names and addresses of all abutting property owners.
- [4] A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
- [5] Copies of existing or proposed covenants or deed restrictions.
- [6] Copies of existing or proposed easements on the property.
- [7] The name, registration number and seal of the licensed professional who prepared the plan, if applicable.
- [8] Evidence of the applicant's technical capability to carry out the project as proposed.
- [9] An assessment of the adequacy of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property.
- [10] Estimated demand for water supply and sewage disposal.
- [11] Provisions for handling all solid wastes, including hazardous and special wastes.
- [12] Detail sheets of proposed light fixtures.
- [13] Listing of proposed trees or shrubs to be used for landscaping.
- [14] An estimate of the weekday a.m. and p.m. and Saturday peak-hour and daily traffic to be generated by the project.
- [15] A description of important or unique natural areas and site features, including but not limited to floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources.
- [16] A narrative describing stormwater drainage, maintenance and inspection program, and erosion and sedimentation control measures, stormwater calculations, ~~erosion and sedimentation control measures,~~ and water quality and/or phosphorous export management provisions; if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board or Staff Review Committee determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project.
- [17] A written statement from any utility district providing service to the project as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows, and the capacity of the sewer system to accommodate additional wastewater if public water or sewerage will be utilized.
- [18] Financial capacity.
- [a] Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement

and landscaping.

- [b] Financing. Provide one of the following unless otherwise approved by the Town:
  - [i] Letter of commitment to fund. A letter of commitment, acceptable to the department, from a financial institution, governmental agency, or other funding agency, indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
  - [ii] Self-financing.
  - [A] Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
  - [B] Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
  - [iii] Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following:
    - [A] Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20% equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
    - [B] Financial plan. Financial plan for the remaining financing.
    - [C] Letter. Letter acceptable to the Town from an appropriate financial institution indicating an intention to provide financing subject to reasonable conditions of acceptance.
    - [c] Certificate of good standing. If new applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- [19] Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
  - [a] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
  - [b] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
  - (d) Plan information. The maps or drawings shall be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch for that portion of the tract of land being proposed for development.
- [1] Existing conditions.
  - [a] Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
  - [b] Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property line of the proposed subdivision. The vicinity plan shall show the following:

- [i] The approximate location of all property lines and acreage of parcels.
- [ii] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
- [iii] The location and designations of any public spaces.
- [iv] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
- [c] A North arrow identifying all of the following: grid north; magnetic north with the declination between the grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
- [d] The location of all required building setbacks, yards, and buffers.
- [e] Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.
- [f] The Tax Map and lot number of the parcel or parcels on which the project is to be located.
- [g] Zoning classification(s), including overlay and/or subdistricts, of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or subdistricts or abuts a different district.
- [h] The bearings and length of all property lines of the property to be developed and the stamp of the surveyor that performed the survey. For curve lines, at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.
- [i] Existing topography of the site at two-foot contour intervals.
- [j] Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed and on abutting streets or land that may serve the development. Appropriate elevations shall be provided as necessary to determine the direction of flow.
- [k] Location, names, and present widths of existing public and/or private streets and rights-of-way within or adjacent to the proposed development.
- [l] The location, dimensions and ground-floor elevation of all existing buildings on the site.
- [m] The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.
- [n] Location of intersecting roads or driveways within 200 feet of the site.
- [o] The location of the following:
  - [i] Open drainage courses;
  - [ii] Wetlands;
  - [iii] Stone walls;
  - [iv] Graveyards;

- [v] Fences;
- [vi] Stands of trees or tree line; and
- [vii] Other important or unique natural areas and site features, including but not limited to floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources.
- [p] The direction of existing surface water drainage across the site.
- [q] The location, front view, dimensions, and lighting of existing signs.
- [r] Location and dimensions of any existing easements that encumber or benefit the property.
- [s] The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.
- [2] Proposed development activity.
  - [a] The location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.
  - [b] A grading plan showing the proposed topography of the site at two-foot contour intervals.
  - [c] The direction of proposed surface water drainage across the site, and from the site, with an assessment of impacts on downstream properties.
  - [d] The location and proposed screening of any on-site collection or storage facilities.
  - [e] The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off site.
  - [f] Proposed landscaping and buffering.
  - [g] The location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the site.
  - [h] Location, front view, materials, and dimensions of proposed signs, together with the method for securing the sign.
  - [i] Location and type of exterior lighting. The Planning Board or Staff Review Committee may require a photometric plan to demonstrate the coverage area of all lighting.
  - [j] The location of all utilities, including fire protection systems.
  - [k] Approval block. Space shall be provided on the plan drawing for the signatures of the Planning Board or Staff Review Committee and date, together with the following words: "Approved: Town of Windham Planning Board, or Town of Windham Staff Review Committee (choose appropriate review authority)."
- (2) Major final site plans, additional information. In addition to the information required for all minor and major site plan applications, an application for a major final site plan shall contain the following information:
  - (a) A narrative and/or plan describing how the proposed development plan relates to the sketch plan.
  - (b) A stormwater drainage and erosion control program showing:

- [1] The existing and proposed method of handling stormwater runoff.
- [2] The direction of flow of the runoff, through the use of arrows and a description of the type of flow (e.g., sheet flow, concentrated flow, etc.).
- [3] The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
- [4] At a minimum, engineering calculations used to determine drainage requirements based upon the twenty-five-year, twenty-four-hour storm frequency.
- [5] Methods of minimizing erosion and controlling sedimentation during and after construction.
- (c) A groundwater impact analysis prepared by a groundwater hydrologist for projects involving on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.
- (d) The name, registration number, and seal of the Maine licensed professional architect, engineer, surveyor, landscape architect and/or similar professional who prepared the plan.
- (e) A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, cable television, and any other utility services to be installed on the site.
- (f) A planting schedule keyed to the site plan indicating the general varieties and sizes of trees, shrubs, and other vegetation to be planted on the site, as well as information pertaining to provisions that will be made to retain and protect existing trees, shrubs, and other vegetation.
- (g) Digital transfer of any site plan data on the Town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone FIPS Zone 1802, North American Datum 1983; Units: US survey feet.
- [1] The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum 1929 (NGVD29) is possible, this is permissible. The choice of vertical datum shall be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic Reference System 1980).
- [2] Data shall have survey-grade positional accuracy. Data could be developed using either real-time kinematic (RTK) GPS, survey-grade static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.
- (h) A traffic impact study, prepared by a Maine licensed professional engineer, demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets, if the project or expansion will generate 50 or more trips during the a.m. or p.m. peak hour based upon the latest edition of the trip generation manual of the Institution of Transportation Engineers, or if required by the Planning Board. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

#### § 120-812 **Performance standards and approval criteria.**

The following criteria shall be used by the Planning Board or Staff Review Committee in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board or Staff Review Committee determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who shall produce evidence sufficient to warrant a finding that all applicable criteria have been met.

- A. Utilization of the site. The plan for the development shall reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers shall be maintained and preserved to the maximum extent. Natural drainage areas shall also be preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.
- B. Vehicular traffic. **[Amended 4-9-2019 by Order 19-053]**
- (1) Adequacy of road system. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development.
    - (a) Intersections on arterial streets within a half mile of any entrance road which are functioning at a level of service D or better prior to the development shall function at a minimum at level of service D after development. If any such intersection is functioning at a level of service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety. A development not meeting this requirement may be approved if the applicant demonstrates that:
      - [1] A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
      - [2] The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
    - (b) Existing streets and intersections that can be expected to carry traffic generated by the development shall have the capacity or be suitably improved to accommodate that traffic. For the purposes of this section, "suitably improved" shall mean that all of the existing private ways in the road network back to the closest public street shall meet the applicable street construction standard (see Article 3, definition of "street classification," and Appendix B, Street Design and Construction Standards).
  - (2) Access to the site. Vehicular access to and from the development shall be safe and convenient.
    - (a) Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards. (See standards for curb cuts in Article 5, Performance Standards.)
    - (b) Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
    - (c) The grade of any proposed drive shall be not more than  $\pm 3\%$  for a minimum of 50 feet, from the intersection.
    - (d) The intersection of any access/egress drive or proposed street shall function at a level of service of D following development if the project will generate 1,000 or more vehicle trips per twenty-four-hour period.
    - (e) Where a lot has frontage on two or more streets, the primary access to and egress from the lot shall be

provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.

- (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
- (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
- (h) The following criteria shall be used to limit the number of driveways serving a proposed project:
  - [1] No use which generates less than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway shall be no greater than 40 feet wide.
  - [2] No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways shall not exceed 60 feet.
  - [3] The Planning Board or Staff Review Committee may limit a development to one point of ingress/egress onto Routes 302, 35 and 115.
- (3) Accessway location and spacing. Accessways shall meet the following standards:
  - (a) Private entrances/exits shall be located in accordance with Table 2 in Appendix B, Street Design and Construction Standards. This requirement may be reduced if the shape of the site does not allow conformance with this standard. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
  - (b) Private accessways in or out of a development shall be separated by a minimum of 75 feet where possible.
  - (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
  - (4) Internal vehicular circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
    - (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles. If the project is to be served by tractor-trailer delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
    - (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
    - (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
    - (d) All roadways shall be designed as follows:
      - [1] To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil

erosion.

- [2] By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.
- [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all-season emergency access, snow storage, and delivery and collection services.
- (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.
- C. Parking and loading requirements. **[Amended 4-27-2010 by Order 10-075; 3-8-2011 by Order 11-037; 8-25-2015 by Order 15-122; 6-12-2018 by Order 18-099]**
  - (1) Off-street parking layout.
    - (a) Parking areas with more than two parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.
    - (b) All parking spaces, access drives, and impervious surfaces shall be located at least five feet from any side or rear lot line, except where a parking lot is shared between two adjoining properties, or where standards for buffer strips require a greater distance. No parking spaces shall be located within five feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding 24 feet in width.
    - (c) Parking stalls and aisle layout shall conform to the standards in Table 1 of this subsection.

**Table 1, Parking Stall and Aisle Layout**

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9' 0"	0' 0"	18' 0"	24' 0" two-way
60°	8' 6"	10' 6"	18' 0"	16' 0" one-way only
45°	8' 6"	12' 9"	17' 6"	12' 0" one-way only
30°	8' 6"	17' 0"	17' 0"	12' 0" one-way only

- (d) In parking lots utilizing a parking angle of 90°, 30% of the spaces shall be created with a stall width of 10 feet zero inches and a stall depth of 20 feet zero inches. Remaining spaces shall be created with a

stall width of at least nine feet zero inches and a stall depth of at least 18 feet zero inches.

- (e) In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indications and maintained as necessary.
- (f) Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double-stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.
- (g) Provisions shall be made to restrict the overhang of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.
- (h) Parallel parking spaces may be used along internal driveways or accessways. Stall width and depth shall be at least nine feet by 20 feet.
- (i) Automobile storage. The parking space dimension requirements in § **120-812C(1)(c)** to **(g)**, above, do not apply to vehicles stored for display, sale or repair. However, the operator of the use shall demonstrate that there is enough land area to accommodate all vehicles within any setbacks or required buffer areas of § **120-812C(1)(b)** and/or the applicable zoning district. (See Article 4, Zoning Districts.)
- (2) Minimum off-street parking space requirements.
  - (a) No minimum number of parking spaces are required. The applicant should demonstrate that the number of spaces provided on-site will meet the needs of the anticipated uses on the property. Shared parking arrangements are encouraged.
  - (b) Off-site parking. Parking spaces may be located off-site if the spaces will adequately serve the principal use for which the spaces are required. In making this determination, the Planning Board, Staff Review Committee, or Code Enforcement Officer, as applicable, shall consider the following factors:
    - [1] Proximity of the off-street parking.
    - [2] Ease of pedestrian access to the off-site parking.
    - [3] Provision of sidewalks or paths between the off-site parking and the principal use.
    - [4] The applicant has sufficient legal interest in the land on which the off-site parking is provided to establish control as long as the use exists.
    - [5] Adequate lighting shall be installed to provide for safe pedestrian movement.
- D. Pedestrian traffic. The site plan shall provide for a system of pedestrianways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.
- E. Stormwater management.
  - (1) Adequate provisions shall be made for the collection and disposal of all stormwater that runs off

proposed streets, parking areas, roofs, and other surfaces, through a stormwater management plan, which shall not have adverse impacts on abutting or downstream properties.

- (a) Stormwater management systems for minor and major site plans shall detain, retain, or result in the infiltration of stormwater from the twenty-four-hour storms of the two-year, ten-year, and twenty-five-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project. The Planning Board may waive the flooding standard in accordance with the following criteria:
  - [1] Insignificant increases in peak flow rates from a project site. When requesting a waiver for a project resulting in an insignificant increase in peak flow rates from a project site, the applicant shall demonstrate that insignificant increases in peak flow rates cannot be avoided by reasonable changes in project layout, density, and stormwater management design. The applicant shall also demonstrate that the proposed increases will not unreasonably increase the extent, frequency, or duration of flooding at downstream flow controls and conveyance structures. In making its determination to allow insignificant increases in peak flow rates, the Planning Board shall consider cumulative impacts.
- (b) The applicant shall demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow of a minimum twenty-five-year storm without adverse effects, including but not limited to flooding and erosion of drainage channels and shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation. The Staff Review Committee or Planning Board may require capacity for a storm of greater than 25 years due to soil, topographic, or other factors that affect stormwater drainage.
- (c) All natural drainageways shall be preserved at their natural gradients and shall not be filled or converted to a closed system unless approved as part of the site plan review.
- (d) The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- (e) The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.
- (f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500, Stormwater Management, as amended.
- (g) Major and minor site plan projects located within the Highland Lake watershed shall also meet the following standards: **[Amended 5-22-2018 by Order 18-905]**
  - [1] Projects in the Highland Lake watershed must include a stormwater plan designed to meet the standards of DEP Chapter 500, Section 4D, Phosphorous standards. The option to pay the compensation fee for exceeding the parcel's phosphorus allocation is not allowed in this watershed. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for site plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.
  - (2) Mineral extraction stormwater management plan compliance. Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation in accordance with Article 6 of this chapter shall demonstrate compliance with that plan as follows: **[Amended 4-9-2019 by Order 19-053]**
    - (a) A qualified third-party inspector hired by that person shall, at least annually, inspect the stormwater

management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved stormwater management plan.

- (b) If the stormwater management facilities require maintenance to function as intended by the approved stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.
- (c) A qualified third-party inspector hired by that person shall, on or by May 1 of each year, provide a completed and signed certification to the enforcement authority, in a form provided by the Town of Windham, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by approved stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by approved stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

F. Erosion control.

- (1) All building, site, and roadway designs and layouts shall harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity shall be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut and fill and/or the need for retaining walls. Natural vegetation shall be preserved and protected wherever possible.
- (2) An Erosion Control Plan shall show the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP Documents:
  - (a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.
  - (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.

~~Soil erosion and sedimentation of watercourses and water bodies shall be minimized by an active program meeting the requirements of the "Maine Erosion and Sediment Control BMPs" (Maine Department of Environmental Protection), dated March 2003, or other construction management practices system approved by the Planning Board or Staff Review Committee, as appropriate.~~

- (c) Applicants are ~~encouraged~~required to utilize contractors who are certified in erosion control through the Maine Department of Environmental Protection's Voluntary Contractor Certification Program.
- (3) ~~The plan shall meet the standards of Chapter 201, Stormwater Management, Article I, Surface Water Protection, of the Town Code, where applicable.~~

G. Water supply provisions.

- (1) The development shall be provided with a system of water supply that provides each use with an adequate supply of water.

- (2) If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Portland Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.
- H. Sewage disposal provisions. The development shall be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.
- (1) All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.
  - (2) If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system shall be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within 100 feet of a new use with a design sewage flow of less than 500 gallons per day or within 300 feet of a new use with a design sewage flow of 500 or more gallons per day and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system shall occur if and when the subsurface system needs to be replaced.
  - (3) If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Waste Water Disposal Rules.
  - (4) When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
  - (5) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Portland Water District.
- I. Utilities. The development shall be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility facilities shall be screened from view to the extent feasible. Utility lines shall be placed underground.
- J. Groundwater protection. The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- K. Water quality protection. All aspects of the project shall be designed so that:
- (1) No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface waters or groundwater so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human,

animal, plant, or aquatic life.

- (2) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's Office.
- (3) If the project is located within the direct watershed of a body of water most at risk from development, as identified by the Maine Department of Environmental Protection (DEP), the following standards shall apply: **[Added 3-26-2019 by Order 19-020]**
  - (a) If the project does not require review under Chapter 500 of the Maine DEP Stormwater Law, the Planning Board may require a phosphorus control plan. The plan shall be submitted to the Town for review by an appropriate third-party reviewer at the applicant's expense.

L. Hazardous, special, and radioactive materials.

- (1) The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.
- (2) No flammable or explosive liquids, solids or gases shall be stored in bulk above the ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

M. Shoreland relationship.

- (1) The development shall not adversely affect the water quality or shoreline of any adjacent water body.
- (2) The plan shall meet the requirements of Chapter **185**, Shoreland Zoning, where applicable.

N. Technical and financial capacity.

- (1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board or Staff Review Committee shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.
- (2) Technical capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan. In determining the applicant's technical ability, the Planning Board or Staff Review Committee shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant. A violation for the purposes of this article includes any order, consent decree or consent agreement with which the applicant, owner or proposed operator of the facility is not currently in full compliance. **[Amended 4-9-2019 by Order 19-053]**

O. Solid waste management. The proposed development shall provide for adequate disposal of solid wastes. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

P. Historic and archaeological resources. If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

Q. Floodplain management. If any portion of the site is located within a special flood hazard area as

identified by the Federal Emergency Management Agency, all use and development of that portion of the site shall be consistent with the Town's floodplain management provisions.

- R. Exterior lighting. The proposed development shall have adequate exterior lighting to provide for its safe use during operating hours.
- (1) Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways.
    - (a) Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings and so that they do not unnecessarily light the night sky.
    - (b) Direct or indirect illumination shall not exceed 0.5 footcandle at the lot line or upon abutting residential properties.
  - (2) Wiring to light poles and other exterior light fixtures shall be underground.
- S. Noise.
- (1) The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four feet above ground at the closest occupied structure not owned or under the control of the owner or operator of the proposed development or use.

**Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leq 1) [Measured in dB(a) Scale]**

<b>Abutting Use</b>	<b>7:00 a.m. to 10:00 p.m.</b>	<b>10:01 p.m. to 6:59 a.m.</b>
Residential	55	45
Residential located in a commercial or industrial district	65	55
Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60

- (2) Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI S1 4-1961) "American Standards Specification for General Purpose Sound Level Meters."
- (3) No person shall engage in construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 6:00 a.m.
- (4) These standards shall not apply to the temporary use of such machinery as chain saws, lawn mowers and snowmobiles.

T. Storage of materials.

- (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- (2) All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. The dumpster or receptacle shall be screened by fencing or landscaping.
- (3) Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

**§ 120-813 Commercial district design standards.**

**[Added 4-24-2012 by Order 12-052]**

The following design standards are hereby established for development within Windham's Commercial 1, Commercial 2, Commercial 3, and Village Commercial Districts. Where there is a conflict between a provision of the design standards and any other provision of this chapter, the more restrictive provision shall apply. In addition to meeting all design standards required in the applicable zoning district, development must comply with a minimum of eight other design standards. For purposes of this section, "development" shall mean that portion of the project that is subject to site plan review under Article 8 or will renovate 20% or more of the entire wall area of a structure on the site. For this type of renovation, the renovation will be subject to the required design standards in Section A below, but will not be subject to other required design standards.

Design Standards Framework					
		C-1	C-2	C-3	VC
A.	Architecture/Building				
	1 Building style	R <sup>1</sup>	R	R	R
	2 Materials	R	R	R	R
	3 Color	R	R	R	R
	4 Roofline	R	R	R	R
	5 Facade	R	R	R	R
	6 Building style coordination (multibuilding)	R	R	R	R
	7 Entrance	R	R	R	R
	8 Architectural details	R	R	R	R
	9 LEED certification				
B.	Site/Parking				

1	Parking location				
2	Internal traffic flow				
3	Interconnected parking lots				
4	Orientation of building				
5	Screening, parking		R		
6	Screening, utilities and service areas/structures	R	R		R
7	Parking lot landscaping				
8	Low-impact design stormwater				
9	Shared stormwater treatment				

C. Landscaping/Lighting

1	Lighting/photometric plan	R			R
2	Lighting coordinated with architecture	R			R
3	Lighting coordinated with landscaping	R			R
4	Existing trees preserved			R	
5	Snow storage areas designated	R	R	R	R
6	Planting variety				
7	Planting suitability				
8	Mass plantings				
9	Illumination levels				

D. Bicycle/Pedestrian

1	Internal walkways	R			
2	Links to community	R	R		R
3	Outdoor activity area				
4	Sidewalks	R			
5	Crosswalks	R			
6	Bike parking/racks	R	R		R

1. Any item listed with an R in the table is a required design standard in that zoning district.

The following standards are taken from the booklet Town of Windham Design Guidelines, adopted by the Town Council on July 26, 2005, a copy of which is on file in the Windham planning office.

A. Architecture/building.

- (1) Building style. Required in C-1, C-2, C-3, and VC Zoning Districts. National franchise prototypes are permitted, provided they meet the design standards for architectural principles, scale, color, rooflines, and materials. Buildings that are stylized to the point where the structure is a form of advertising are not acceptable.
- (2) Materials. Required in C-1, C-2, C-3, and VC Zoning Districts.
  - (a) Traditional, high-quality building materials common to northern New England (e.g., brick, clapboard, shingles or other similar products) shall be used as the primary siding material. Contemporary materials that have the same visual characteristics as traditional materials (e.g., cement plank clapboards or vinyl siding) are acceptable if attention is paid to detailing (e.g., corners, trim at openings, changes in material). Painted MDO plywood is acceptable when used in combination with traditional materials.
  - (b) Awnings and canopies shall be made of canvas or similar material.
  - (3) Color. Required in C-1, C-2, C-3, and VC Zoning Districts. Facade colors shall be low-reflectance. The use of high-intensity, high-reflectance, chrome, metallic, or fluorescent colors is prohibited on the primary building face.
  - (4) Roofline. Required in C-1, C-2, C-3, and VC Zoning Districts.
    - (a) Where pitched roofs are used, the minimal pitch shall be at least 5/12. Buildings with projecting rooflines shall be designed to create strong patterns of shade and shadow.
    - (b) Nontraditional roof forms shall not be used as the primary roofline. Examples of nontraditional roof forms include, but are not limited to, false mansard, A-frames, and others.
    - (c) Flat roofs are allowed, provided that the design creates no horizontal line greater than 50 feet.
    - (d) Where parapets are used to break up a flat roofline, the height of the parapet shall be at least 5% of the total length of the wall.
    - (e) Composite asphalt shingles and standing-seam, nonglare metal are acceptable for visible roofing. High-gloss roofing materials shall not be used.
    - (f) Mechanical and other equipment mounted on rooftops must be screened from public view or grouped at the rear of the structure where visibility is limited. Rooftop screening shall be designed as an integral part of the architecture to complement the building's mass and appearance.
  - (5) Facade. Required in C-1, C-2, C-3, and VC Zoning Districts.
    - (a) Facades that face public streets shall have transparent openings, such as display windows or entry areas, a minimum of 40% of the horizontal length on the ground floor in total. Uses not subject to this standard are:

[1] Agriculture.

[2] Convention center.

- [3] Industry, light.
  - [4] Industry, heavy.
  - [5] Warehousing, private.
  - [6] Warehousing, public.
- (b) Retail and food service facades that are visible or potentially visible from adjacent properties shall be designed to match or complement the architectural treatment of the front facade. Blank or unadorned walls facing public roads or abutting properties are prohibited except when such wall faces a service area.
  - (c) The site plan and architectural elevations shall show the locations reserved for vending machines. Machines will be located within the footprint of the primary structure of the site. (Drive-up ATMs are not considered vending machines.)
  - (d) When in public view, windows, doors, ventilation fixtures, and other openings in frame construction shall be trimmed to create a frame around the opening. Materials used for trim shall match those used on the facade of the building.
  - (e) Horizontal facades greater than 50 feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20% of the length of the facade. No uninterrupted facade shall exceed 50 horizontal feet.
  - (6) Building style coordination (multibuilding developments). Required in C-1, C-2, C-3, and VC Zoning Districts.
  - (a) As part of the site plan application, the applicant shall provide a phasing plan that will illustrate the sequence that development will occur, and what steps will be taken to ensure compatibility between current and future activities.
  - (b) Nonhabitable freestanding structures, such as freestanding ATMs, garages, storage units, recycling sheds, cart corrals, and utility buildings, shall be treated as architectural elements and meet the same design guidelines as larger buildings.
  - (7) Entrance. Required in C-1, C-2, C-3, and VC Zoning Districts.
  - (a) New or renovated buildings over 20,000 square feet shall have clearly defined and highly visible customer entrances, incorporating at least three of the following elements:
    - [1] Significant variations in rooflines.
    - [2] Distinctive lighting and landscaping.
    - [3] Canopies or porticos.
    - [4] Overhangs, recesses, or projections.
    - [5] Pedestrian arcades.
    - [6] Raised corniced parapets over the door.
    - [7] Peaked roof forms in scale with building.

- [8] Outdoor patios.
  - [9] Display windows.
  - [10] Architectural details such as tile work and moldings which are integrated into the building structure and design.
- (b) Linear commercial buildings shall have clearly defined and highly visible customer entrances that are designed as integral architectural elements.
- (8) Architectural details. Required in C-1, C-2, C-3, and VC Zoning Districts. Architectural detailing and trim shall be proportional to the scale and design of the entire building.
  - (9) LEED certification. Optional in C-1, C-2, C-3, and VC Zoning Districts. The project shall obtain any level of leadership in energy and environmental design (LEED) certification from the United States Green Building Council (USGBC), for any of the USGBC rating systems.
- B. Site/parking.
- (1) Parking location. Optional in C-1, C-2, C-3, and VC Zoning Districts. Wherever possible, parking lots shall be located at the rear or sides of commercial buildings. Where land use conflicts occur (e.g., unavoidable siting of a parking lot next to a home), the lot shall be screened with evergreen trees, earth berms, solid walls, or shrubs.
  - (2) Internal traffic flow. Optional in C-1, C-2, C-3, and VC Zoning Districts.
    - (a) To ensure the safety of motorists, delivery trucks, and pedestrians, the site plan shall clearly delineate internal traffic patterns. Parking space, directional arrows, crosswalks, and other markings on the ground shall be delineated with pavement paint or other suitable material to ensure safe circulation.
    - (b) Circulation patterns for parking lots with more than 40 spaces shall be designed by a traffic engineer to meet the Land Use Ordinance. The Planning Board may require a traffic engineer for smaller lots where there are particular public safety issues. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
  - (3) Interconnected parking lots. Optional in C-1, C-2, C-3, and VC Zoning Districts. If feasible, connections between abutting properties shall be provided to facilitate deliveries and minimize turning movements onto the highway. As required by the Planning Board during site plan review, internal connections shall be designed by a traffic engineer to provide safe, direct access between adjacent lots. Cross easements shall be provided as required. Traffic-calming measures, such as speed tables, well-marked crosswalks, raised crosswalks, vertical curbing, curvilinear road alignment, neckdowns, curbed islands, and signage, are encouraged to reduce speeding on internal vehicular connections.
  - (4) Orientation of building. Optional in C-1, C-2, C-3, and VC Zoning Districts.
    - (a) Buildings along the roadways shall be located as close to the front property lines as established under the Land Use Ordinance to establish a visual edge to the street and give scale and interest to the pedestrian environment. In cases where new structures are being proposed, parking shall be located at the rear or side of the building.
    - (b) Service stations, convenience stores, and similar uses shall be sited to face the street. On corner lots, said uses may face both streets.
  - (5) Screening, parking. Required in C-2; optional in C-1, C-3, and VC Zoning Districts. Plant materials and other landscape elements shall be used to create suitable buffers between residential and commercial

properties. The design of buffers shall consider the appearance from both commercial and residential viewpoints. Evergreen plantings are particularly effective for year-round buffering.

- (6) Screening, utilities and service areas/structures. Required in C-1, C-2, and VC Zoning Districts; optional in C-3. Service areas, loading docks, delivery areas, trash receptacles, and mechanical equipment shall be screened to minimize visibility from sensitive viewpoints such as public and private roadways, main entrances, abutting neighborhoods, public open spaces, and pathways. Service areas shall be screened with architectural elements such as walls or fences. Screening may be further enhanced with evergreen trees, shrubs, and earth berms. Gates on utility enclosures shall be designed to prevent sagging.
- (7) Parking lot landscaping. Optional in C-1, C-2, C-3, and VC Zoning Districts.
  - (a) A minimum of 10% of the parking lot shall be landscaped for sites with 40 parking stalls or fewer. Parking areas with greater than 40 parking stalls shall landscape a minimum of 15% of the total area. Planting islands shall be a minimum of nine feet in width. All parking lot landscaping shall be able to tolerate parking lot growing conditions.
  - (b) Trees in parking lots may be planted in informal groups, straight rows, or irregular groupings as space permits, or they may be concentrated in certain areas. Trees should be planted a minimum of five feet from the end of parking lot islands.
  - (c) Where trees abut pedestrian walkways or places where people will be walking in parking lots, their lower branches shall be pruned to at least eight feet above the paved surface to avoid becoming an obstacle. Shrubs used in parking lot islands shall not exceed three feet in height to avoid blocking visibility.
  - (d) Landscaped areas used for separation between banks of parking stalls shall contain 50% vegetative cover.
  - (e) Landscape materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant materials shall not be used in areas where they are likely to be buried under snow.
- (8) Low-impact design stormwater. Optional in C-1, C-2, C-3, and VC Zoning Districts. The project shall incorporate low-impact development (LID) systems as identified in the September 21, 2007, report, "LID Guidance Manual for Maine Communities," as amended.
- (9) Shared stormwater treatment. Optional in C-1, C-2, C-3, and VC Zoning Districts. Wherever appropriate, treatment basins shall be designed to be shared by abutting properties to minimize the amount of land area dedicated to stormwater management.

#### C. Landscaping/lighting.

- (1) Lighting/photometric plan. Required in C-1 and VC Zoning Districts; optional in C-2 and C-3 Zoning Districts.
  - (a) A lighting plan shall be presented to the Planning Board during site plan review or the Code Enforcement Officer during the building permitting process. It shall contain:
    - [1] The lighting fixtures proposed to illuminate all buildings, roadways, service areas, landscaping, parking areas, and pedestrian areas.
    - [2] Specifications and illustrations of all proposed lighting fixtures, including pole heights, height of luminaire, photometric data, Color Rendering Index (CRI) of all lamps (bulbs), and other descriptive information.

- (b) For site plans with greater than 20 parking spaces or high traffic volumes, the Town may require additional information, including:
  - [1] A narrative that describes the site lighting, how lighting will be used to provide safety and security, and aesthetic effects.
  - [2] A photometric diagram that shows illumination levels from all externally and internally visible lighting sources, including existing sources, to show how the minimum amount of illumination will be provided and the maximum amounts will not be exceeded.
- (2) Lighting coordinated with architecture. Required in C-1 and VC Zoning Districts; optional in C-2 and C-3 Zoning Districts. If done properly, unique building or landscape features may be highlighted, if the lighting does not create glare or distraction. Neon bulbs used as lighting features are not allowed on the exterior of buildings.
- (3) Lighting coordinated with landscaping. Required in C-1 and VC Zoning Districts; optional in C-2 and C-3 Zoning Districts. The lighting plan shall consider the ultimate size of trees that could eventually obscure the lighting or create dark spots in parking lots.
- (4) Existing trees preserved. Required in C-3 Zoning District; optional in C-1, C-2, and VC Zoning Districts. To maintain the character of the landscape, existing healthy trees and shrubs shall be preserved or be transplanted to another area of the site wherever practical. Where it is not possible to maintain existing trees, the reason for removal shall be given in writing.
- (5) Snow storage areas designated. Required in C-1, C-2, C-3, and VC Zoning Districts. Provisions shall be made for snow storage in the design of all parking areas. The areas used for snow shall not conflict with proposed landscaping. The areas shall be sited to avoid problems with visibility, drainage, or icing during winter months.
- (6) Planting variety. Optional in C-1, C-2, C-3, and VC Zoning Districts. The use of a variety of plant materials that exhibit seasonal color and interesting texture is encouraged to create a distinctive yet low-maintenance environment. Plantings plans should strike a balance between monoculture (the use of a single species) and too much variety.
- (7) Planting suitability. Optional in C-1, C-2, C-3, and VC Zoning Districts. The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. All plantings shall be resistant to insect infestation, drought, disease, roadside salt, and auto emissions, and hardy to Maine winters.
- (8) Mass plantings. Optional in C-1, C-2, C-3, and VC Zoning Districts. Shrubs and perennials should generally be planted in large masses or drifts, rather than as individual specimens, to provide a pleasing effect for both motorists and pedestrians.
- (9) Illumination levels. Optional in C-1, C-2, C-3, and VC Zoning Districts.
  - (a) Light fixtures used in driveways and parking lots shall be in scale with buildings on site. Maximum pole height along driveways shall not exceed 25 feet.
  - (b) Fixture heights shall vary with the size and position of the lot. Small parking areas (fewer than 150 cars) shall have a maximum pole height of 20 feet. In large parking areas (greater than 150 cars) thirty-foot poles may be allowable to reduce the number of poles. Poles within 200 feet of residential property lines shall not exceed 20 feet in height.
  - (c) Pole heights for pedestrian lighting shall be appropriate for the project and the setting. Bollard fixtures,

three feet to four feet in height, and ornamental fixtures, up to 12 feet in height, are encouraged as pedestrian-area lighting. When decorative or special lighting is used, pole height shall be a maximum of 16 feet above the ground.

D. Bicycle/pedestrian.

- (1) Internal walkways. Required in C-1, optional in C-2, C-3, and VC Zoning Districts. Continuous internal walkways shall be provided from the public sidewalk to the principal customer entrance of all principal buildings on the site. Walkways shall also connect other buildings on multibuilding developments, transit stops, and other focal points of pedestrian activity.
- (2) Links to community. Required in C-1, C-2, and VC Zoning Districts, optional in C-3.
  - (a) Site plans shall preserve or create linkages with surrounding buildings, neighborhoods, and other parts of the community. The design of these links shall consider views, noise, traffic, security, lighting, the privacy of abutting commercial or residential neighbors, and other factors relating to the safety and welfare of the user.
  - (b) Internal pedestrian connections between abutting properties shall be provided to encourage walking and discourage additional auto trips onto major roadways. Connections shall avoid crossing parking lots, major interior roadways, service areas, drive-throughs, and other potential points of conflict. Where such crossings are unavoidable, they shall be well-marked and as direct as possible.
- (3) Outdoor activity area. Optional in C-1, C-2, C-3, and VC Zoning Districts. Commercial buildings with footprints in excess of 15,000 square feet shall provide inviting open spaces where people can sit, relax, and socialize. Open spaces shall be designed as outdoor rooms, with consideration to ground surfaces, landscaping, lighting, site furnishings, and other physical elements. The outdoor activity area(s) shall cumulatively total 10% of the building size, but will not be required to exceed 1,000 square feet.
- (4) Sidewalks. Required in C-1; optional in C-2, C-3, and VC Zoning Districts. Sidewalks and planted esplanades shall be provided by the developer within or near the right-of-way, or the North Windham sidewalk impact fee paid in accordance with Article 12 of this chapter. In cases where new development calls for the construction of a new street, both sides of the street shall be developed where practical to encourage safe pedestrian and bicycle movement. Facilities shall be coordinated with abutting land uses to create interconnections throughout the commercial district and linkages to surrounding residential neighborhoods where appropriate. **[Amended 5-14-2013 by Order 13-072]**
- (5) Crosswalks. Required in C-1; optional in C-2, C-3, and VC Zoning Districts. Where sidewalks intersect with commercial driveways or roads, crosswalks shall be installed to emphasize the conflict point and improve its visibility. Materials for crosswalks shall be highly durable and slip-resistant. Raised crosswalks may be used as a traffic-calming device to make crosswalks more visible. They shall be designed by a traffic engineer as part of the site circulation plan. Signs may be warranted at the discretion of the Town in certain situations as recommended by the Institute for Traffic Engineers (ITE). Materials selected for crosswalks shall allow safe bicycle movement across the surface.
- (6) Bicycle parking/racks. The applicant shall provide facilities for the parking of two bicycles, or one space per 10,000 square feet of building area, whichever is greater.

§ 120-814 **Post-approval activities.**

**[Amended 1-22-2013 by Order 13-009; 1-22-2013 by Order 13-010; 2-28-2017 by Order 17-038]**

- A. Limitation of approval. Construction of the improvements covered by any site plan approval shall commence within two years of the date upon which the approval was granted. If construction has not commenced, as determined by the Code Enforcement Officer, within the specified period, the approval

shall be null and void. The time period does not run during any appeal of the project approval.

- (1) The applicant may request an extension of the approval deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planning Board or Staff Review Committee.
  - (2) The Planning Board or Staff Review Committee may grant up to two one-year extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.
- B. Incorporation of approved plan. One copy of the approved and signed site plan shall be included with the application for the building permit for the project, and all construction activities shall conform to the approved plan, including any conditions of approval and minor changes approved by the Planner, Code Enforcement Officer or Town Engineer to address field conditions.
- C. Improvement guarantees.
- (1) Application.
    - (a) Improvement guarantee. The Town shall require the posting of an improvement guarantee for an amount adequate to cover 110% of the total construction costs of all required off-site improvements and the following on-site improvements. The amount will be based upon a schedule of values maintained by the Town and based on construction costs of similar projects.
      - [1] Site preparation, including but not limited to clearing, grading, excavation, blasting, and parking area gravel material.
      - [2] All stormwater management infrastructure and erosion control and drainage improvements.
      - [3] Any public or private streets and associated sidewalks and any sidewalks providing access to the site from public or private streets.
      - [4] Site lighting, landscaping, public amenities, and utilities.
    - (b) Construction of improvements covered by any site plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. If construction has not been completed within the specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize the site or to complete the improvements as shown on the approved plan.
    - (c) Upon substantial completion of all required improvements, the developer shall notify the Town Manager, Public Works Department, Code Enforcement Department and Planning Department of the completion or substantial completion of improvements and shall send a copy of such notice to the appropriate municipal officials. The respective municipal officials shall cause an inspection of all improvements and shall file a report indicating either approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection.
      - [1] If the improvements are approved, the guarantee shall be released by the Town Manager. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.
      - [2] Performance guarantees may be reduced periodically, but in no event more than one time per month. In no case shall the performance guarantee be reduced by less than \$10,000 at one time or in any line item where improvements remain to be completed. No performance guarantee shall be reduced to less than 10% of the performance guarantee. The remainder of the guarantee will be released upon completion of the improvements.

- (2) Form of guarantee. Performance guarantees may be provided by a variety of means, including, but not limited to, the following, which shall be approved as to form and enforceability by the Town Manager. A performance guarantee shall not expire between October 31 and April 15 of the following year.
- (a) Security bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.
- (b) Letter of credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution. The letter of credit shall be provided in accordance with the Town of Windham's most current template.
- (c) Escrow account. The applicant may deposit cash or other instruments readily convertible into cash at face value, either with the municipality or in escrow with a bank. Any such account shall require Town approval for withdrawal and shall stipulate that the Town can withdraw the money upon 48 hours' advance notice to the applicant to complete the guaranteed improvements.
- D. Post-approval construction observations (see § **120-810**, Fees).
  - (1) At least 15 days prior to commencing construction of required improvements, the developer shall notify the Planner, in writing, of commencement of construction so that the planner can cause observations to be made to ensure that all specifications and requirements of the approved plans shall be met.  
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]
  - (2) At least five days prior to commencing construction of required improvements, the developer shall pay the construction observation fees as required in § **120-810G**. No building permits shall be issued on the project and no work, including site preparation, shall commence until the fee has been paid. A preconstruction meeting shall be held with Town staff prior to commencing construction.
  - (3) If the observer finds that any of the required improvements have not been constructed in conformance with the plans and specifications approved by the Planning Board or Staff Review Committee, he shall so report to the Town Manager, Public Works Director, Code Enforcement Officer and Planner. The Planner shall notify the developer of the reviewer's findings and seek confirmation of the developer's intent and time line to remediate the deficiencies.
  - (a) If the developer is not capable, or refuses, to correct the identified deficiencies, the Town Planner or Town Manager shall notify the bonding company or bank and take all necessary steps to preserve the municipality's rights under the bond, letter of credit or escrow account.
  - (b) No site plan amendments or new site plans submitted by said developer shall be approved by the Planning Board or Staff Review Committee as long as the developer is in default on a previously approved plan.
  - (4) Prior to the Town issuing any certificates of occupancy, the observer shall find that all required boundary markers have been installed by a Maine licensed professional land surveyor according to the plans approved by the Planning Board or Staff Review Committee.
- E. Submission of as-built plans. Any project involving the construction of more than 20,000 square feet of gross floor area or 50,000 square feet of impervious surface shall provide the Planning Department with a set of construction plans showing the building(s) and site improvements as actually constructed on the site. These "as-built" plans shall be submitted in both paper and electronic copies (including any revisions to the GIS information required in § **120-811**, Submission requirements) prior to the issuance of a certificate of occupancy for the project or occupancy of the building.
- F. Minor changes to approved plans. Minor changes in approved plans necessary to address field

conditions may be approved by the Planner, provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change shall be approved, in writing, by the Planner. Copies of the approval letter shall be placed in the project file.

- G. Amendments to approved plans. Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant and conditions, if any, imposed by the Planning Board or Staff Review Committee. Any variation from the plans, proposals, supporting documents, and representations, except minor changes that do not affect approval standards, is subject to review and approval by the Planning Board or Staff Review Committee, as appropriate.
- H. Change in ownership. Where there is a change in ownership of a project after approval has been granted, but prior to the release of the performance guarantee, the Town Manager may request new financial capability information, as well as other factors that the Town Manager deems necessary because of changing conditions.

**§ 120-815 Appeals.**

- A. Appeals of Staff Review Committee actions. Appeal of any actions taken by the Staff Review Committee with respect to this Article 8, Site Plan Review, shall be to the Planning Board in accordance with § **120-806E**, Appeal to the Planning Board.
- B. Appeal of Planning Board actions. Appeal of any actions taken by the Planning Board with respect to this article shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.