



TOWN OF FALMOUTH

ORDINANCE NO 33-2014

An Ordinance Amending the Zoning and Site Plan Review Ordinance regarding staff approval of minor improvements to commercial and multi-family residential properties.

Be it ordained by the Town Council of the Town of Falmouth, Maine in Town Council assembled, that the Falmouth Zoning and Site Plan Review Ordinance be amended to read as follows:

- 5.5 Off-Street Parking** [Amended, 5/24/04][Amended 5/13/13][Amended 8/26/13]
- a. To match actual demand for parking with supply the permitting authority shall determine the number of off-street parking spaces required. The number and proximity of on-street parking spaces shall be considered when determining the number of spaces required. The table below provides the minimum number of parking spaces required for the uses listed. Parking for uses not listed shall be determined by the permitting authority. Staff may waive parking requirements for improvements approved under Minor Site Plan Review if it is satisfactorily demonstrated to the staff by the applicant that there is adequate parking provided for the property without the addition of spaces as required in this section.
- 5.11 Permanent Signs - General Provisions** [Amended 5/26/09] [Amended 1/24/11, 05/30/12]
- b. Sign Permits. After the effective date of this ordinance and except as otherwise herein provided, no person shall erect or move any signs without first applying for and obtaining a sign permit. Applications shall be on forms prescribed and provided by the town setting forth such information as may be required for a complete understanding of the proposed work. Signs requiring an approval from the Planning Board or Community Development Director must in addition obtain a permit from the Building Official prior to installation. [Amended 1/24/11]
- (2) Signs requiring Planning Board Approval. [Adopted 1/24/11]

- (a) Any new sign in excess of twenty (20) square feet of display area.[Amended 5/30/12]
- (b) Any new sign located in the BP, TMPDD, WFCMPDD or CO Districts. [Amended 5/13/13]
- (c) Property Identification Signs.

Submittal requirements shall include such information referenced in Sections 9.2.a (4) and 9.7.e. of this ordinance.

- (3) Signs requiring approval by the Community Development Director or the Director's designee. [Adopted 1/24/11]
 - (a) Replacement or alteration of signs equal to or less than twenty (20) square feet of display area in the BP, VC1, VC2, VCC, TMPDD, WFCMPDD or CO Districts. [Amended 5/13/13]
 - (b) Replacement or alteration of signs equal to or less than twenty (20) square feet of display area previously approved by the Planning Board.
 - (c) Refacing of any existing sign in the BP, VC1, VC2, VCC, TMPDD, WFCMPDD or CO Districts. [Amended 5/13/13]
 - (d) Any new sign equal to or less than twenty (20) square feet of display area in the VC1, VC2 and VCC Districts. [Added 8/26/13]

SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS

6.2 Except as provided in this subsection, a nonconforming structure or use shall not be extended or enlarged in any manner except as may be permitted as a variance. The following requirements shall apply to expansion or enlargement of structures which are nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements. [Amended 1/24/00]

- d. A structure other than a single family detached dwelling or a multiplex dwelling unit which is nonconforming due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, may be expanded or enlarged subject to Site Plan Review under Section 9, provided that the extension or enlargement is not located between the lot lines and the required setback lines, and does not compound nor create a lot coverage or height violation. [Amended 1/24/00][Amended 8/26/13]

Any single family detached dwelling located in the BP, MUC, or VC Districts which is nonconforming solely because of its use, may be expanded or enlarged in accordance with the preceding requirements. [Amended 12/22/86] [Amended 5/13/13]

SECTION 9. SITE PLAN REVIEW

9.1 Site Plan Approval Required [Amended 4/28/03] [Amended 8/26/13]

9.1.1 Exemptions - The following activities are specifically exempt from site plan review:

- a. Detached single-family dwellings and their accessory buildings and parking access areas; and
- b. Any site alterations that occur in conjunction with the Town's implementation of the 2013 Route One South Infrastructure Plan are exempt from this section and further, shall be considered part of and in compliance with previously approved site plans. [Added 5/13/13]

9.1.2 **Minor Site Plan Approval** – The following expansions, additions, replacements, alterations and improvements to previously developed commercial or multi-family residential properties meeting the following thresholds may be approved under the Minor Site Plan Approval procedure in Section 9.2.1 below. Projects submitted under this section shall require approval by the Community Development Director and the Senior Planner.[Added 8/26/13]

- a. Replacement or new utility or support structures such as mechanical systems and coolers.
- b. Replacement of lighting stanchions and fixtures and changes of location of the same.
- c. Replacements and additions to landscaping.
- d. Replacements and alterations to screening.
- e. Minor alterations to grading, drainage and stormwater improvements provided they do not have any negative impact on water quality standards or downstream properties. Any improvements under this paragraph require approval by the Town Engineer.
- f. Increase in impervious surfaces of no greater than 2,000 square feet in a ten year period.
- g. Building additions limited to no more than a 20% expansion of the total gross square footage of the existing building or 500 gross square feet, whichever is less. Additions shall not exceed a total of 1,000 gross square feet in a ten year period.
- h. New accessory buildings or structures not to exceed 500 gross square feet in any ten year period.

9.1.3 Planning Board site plan approval under the procedures, submission requirements, and performance standards of this Section 9 shall be required for the following activities:

- a. The construction or enlargement of any nonresidential or multi-family residential building (multiplex and institutional);
- b. The construction or enlargement of any municipal building;
- c. The establishment or substantial change of any area for parking, loading, or vehicular service associated with non-residential or multi-family residential uses;
- d. The alteration, renovation, or change in use of more than ten thousand (10,000 sq. ft.) square feet of gross floor area of any non-residential building, including,

without limitation, the alteration, renovation, or change in use of adjacent non-residential spaces that cumulatively consist of more than 10,000 sq. ft. of gross floor area.

- e. Outdoor Sales and Storage of Equipment and Outdoor Retail Display when proposed as part of a new or redevelopment of a property otherwise requiring site review under this section or requiring an amendment to an existing site plan approval. [Added 5/13/13]

9.2 Site Plan Review Procedure [Amended 3/14/11]

The following procedure shall govern the submission and review of building and site plans. Projects approved under 9.1.2, Minor Site Plan Review above shall meet all requirements and procedures in this section unless otherwise noted.

- a. The property owner shall submit to the permitting authority building and site plans in a number and format as determined by the Community Development Department, and such submissions shall include: [Amended 8/27/07][Amended 8/26/13]

NOTE: No changes to items (1) and (5)

- (2) A site plan, drawn to scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the Senior Planner, and prepared by a licensed land surveyor, showing the dimensions and area of each lot or plot to be built upon or otherwise used; the size, shape and location of existing and proposed buildings; the location and layout of parking areas, all parking spaces and driveways, proposed grades and drainage, proposed sewer and water facilities and connections; a landscaping plan including locations of proposed plantings and screenings and buffer areas; proposed locations of fences, signs and advertising features; and a key map showing the entire project, and its relation to surrounding properties and the existing building thereof. The preparation of the plan by a licensed land surveyor may be waived by the Senior Planner if they determine that there is adequate dimensional information submitted.
- (3) Information requested by the permitting authority for determining whether the proposed structure and uses of the site conform to the requirements and objectives of this section, including but not limited to sketch plans or renderings of proposed structures.
- (4) A signage plan, drawn to scale of one (1) inch equals one (1) foot, or a scale acceptable to the Senior Planner, showing the elevations, dimensions, color, materials, lettering and other graphics, type of illumination, mounting details, and area of all free standing and wall mounted signs proposed for the site. [Adopted, 4/27/87]
- b. Projects shall be designed by a multidisciplinary team of professionals that includes surveyors, architects, engineers, and landscape architects, among other professionals, as needed and appropriate.

NOTE: No changes to item (1)

- (2) The owner's landscape architect, or other professionals as needed, shall consult with Town staff or with the Town's peer review consultant in order to ensure

compliance with the Town's design standards. The consultation process shall occur throughout the design, approval, and construction phases of the project.

- (3) The permitting authority may waive the requirement for a landscape architect or for the consultation process, if, in the opinion of the permitting authority, the project does not require these services due to its small size or lack of complexity. [Amended 7/23/01]

- c. At the time of the filing of the application, a fee shall be paid in accordance with the following schedule:

NOTE: No changes to items (1), (3)-(5)

- (2) Review Escrow [Adopted 9/24/90] - Escrow fees as established by the Town Council shall be submitted and deposited in an escrow account established by the Town, which monies may be used by the Town to pay for professional reviews and advice related to the developer's application as it deems necessary. The Community Development Department shall provide the applicant with notice of its intent to spend any portion of this account, which notice shall specify the purpose for the proposed expenditures. If the Town expends the review escrow account prior to completing its review, the applicant shall replenish the review escrow to the original amount. Those monies deposited by the developer and not spent by the Town in the course of its review shall be returned to the developer within thirty days after the Board renders its final decision on the application. [Amended 1/25/99, Amended 9/24/01][Amended 8/27/07][Amended 8/26/13]

- d. Planning Board Applications.[replaced 8/26/13]

- (1) The applicant may request a Preapplication Sketch Plan Review under Section 7. A. of the Subdivision Ordinance.
- (2) Within forty-five (45) days but not sooner than twenty-one (21) days of the submission of a completed application, with all supporting documentation, the Board shall hold a public hearing.
- (3) At least ten (10) days prior to the hearing date, the Community Development Department shall notify by mail the owners of all property abutting the property for which application is made. For the purposes of this section, the owners of property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Board. [Amended 12/22/86;8/26/13]]
- (4) At any hearing, a party may be represented by agent or attorney. Hearings may be continued to other times for good cause as determined by the Planning Board.
- (5) The Senior Planner or his designated assistant may attend all hearings and may present to the Planning Board plans, photographs or other material deemed appropriate for an understanding of the application.
- (6) The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.

- (7) Subsequent to the public hearing, the Planning Board shall reach a decision and inform, in writing, the applicant and the Senior Planner of its decision and its reasons therefore.
 - (8) If the Board denies an application, a second application of a similar nature shall not be brought before the Board within one (1) year from the date of the denial of the first application, unless a majority of the Board finds that substantial new evidence exists, or that it committed an error or mistake of law or misunderstood the facts.
 - (9) The Board shall keep a record of each application filed, noting the date of filing, the date of hearing, and the person by whom such application was formally presented at the hearing. The Board shall record in writing the reasons for its actions and the final disposition of each application.
 - (10) An appeal from a decision rendered by the Planning Board under this Ordinance shall be taken directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure and no appeal shall lie from a decision of the Planning Board to the Board of Zoning Appeals.
- e. Minor Site Review Applications [added 8/26/13]
- 1) Applicants may voluntarily file applications under this section for review by the Planning Board. If filed with the Planning Board, all submittal requirements, including fees associated with Planning Board applications, will be applied and abutter notice will be required.
 - 2) Any application also requiring Board of Zoning Appeals approval shall receive the BZA approval prior to being approved under this section.
 - 3) It shall be at the sole discretion of the staff to refer an application to the Planning Board due to the complexity or nature of the application. The staff shall notify the applicant within one week of receipt if the application will be referred. Examples of reasons why an application may be referred are:
 - a) Subjective criteria in Design Guidelines or Ordinance
 - b) Application of architectural standards
 - c) Request for waivers to ordinance requirements
 - d) Nature of a Conditional Use needed
 - e) Potential impacts to abutting residential properties or districts.
 - f) Need for amendments to state or federal permits.
 - g) Cumulative impact of improvements requested.
 - 4) The Community Development Department shall keep a record of all applications. If an application is denied, the staff shall prepare a written report detailing the reason for denial.
 - 5) An appeal of any decision made under this section shall be to the Planning Board. It shall be submitted in the same manner as a regular application.

9.3 Action by the Permitting Authority [Amended 8/26/13]

The permitting authority shall ensure that the following requirements are met prior to site plan approval with or without conditions:

- a. The detailed drawings and specifications meet all applicable codes and ordinances. Applications for Minor Site Plan Review shall meet all applicable requirements for only those alterations, additions and improvements being made.[Amended 8/26/13]
- b. Bonds, letters of credit or other security acceptable to the Town are posted to insure the installation of improvements or other requirements of the town. All bonds shall be drawn in accordance with town procedures. [Amended 11/10/08; Effective 01/01/09]
- c. The applicant agrees in writing to all conditions of final approval.
- d. Proof has been submitted that all taxes and assessments for local improvements on the property have been paid.
- e. The applicant has the financial capability to complete the project.

9.4 Effect of Final Approval

Final approval shall be effective for the time periods established in Section 9.6, notwithstanding any revisions of or amendments to this or other Ordinances.

9.5 Transfer of Approval

Approval is not transferable without permitting authority approval.[Amended 8/26/13]

9.6 Duration of Final Approval

If the permitting authority grants final approval, the applicant's legal rights, duties or privileges determined hereby, shall expire if the construction or alteration is either not commenced within one (1) year or not substantially completed within two (2) years of the date on which final approval was granted. The permitting authority may extend these time limits by not more than one (1) year, upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals. [Amended 8/26/13]

9.7 General Site Plan Review Standards

The following standards shall be utilized by the permitting authority in reviewing proposed site plans including all accessory buildings, structures, signs, and other site features.[Amended 8/26/13]

- d. Utility Service: The Planning Board may require electric, cable television, and telephone lines to be underground. Any utility installations remaining above ground shall be located so as to have a harmonious relation to neighboring properties and the site.

Within the VC, BP, and CO districts, all individual electrical and telecommunication services shall be placed underground from the building(s) to the main utility lines unless the cost of doing so would exceed twenty (20 %) percent of the total estimated project construction cost. This section shall not apply to projects submitted for Minor Site Plan Approval.[Amended 10/25/99] [Amended 5/13/13][Amended 8/26/13]

- h. deleted

9.8 Specific Performance Standards and Guidelines

The guidelines and required minimum performance standards in subsections 9.10 through 9.30 shall apply to all site plans. If the permitting authority finds that, due to special circumstances of a particular plan, the application of certain required performance standards are not requisite in the interest of public health, safety, and general welfare, the Planning

Board may waive the required standards, subject to appropriate conditions.[Amended 8/26/13]

9.11 Marking and Delineation of Parking Areas

Parking stalls, driveway and aisles shall be clearly marked and delineated. The permitting authority may require that certain areas be maintained for fire-fighting or other emergency purposes, and such areas shall be appropriately designated.[Amended 8/26/13]

9.13 Waiver of Parking or Loading Requirements

In the instance where the Planning Board, under Section 5.5 waives parking, it shall have the power to approve a site plan showing less paved parking or unloading area than is required. If parking is waived a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purpose of meeting future off-street parking or unloading requirements in the event that a change of use of the premises shall make such additional off-street facilities necessary. The requirement for reservation of waived spaces shall not apply to required parking in the VC Districts or to projects submitted for Minor Site plan Review. [Amended 5/13/13][Amended 8/26/13]

9.14 Entrances Location and Design

a. As used in this Section, driveway includes any private local or collector streets, as well as entrance roads to any use other than single-family dwelling units.

(4) No part of any driveway shall be located within a minimum of ten (10) feet of a side property line. However, the permitting authority may permit a driveway serving two (2) or more adjacent sites to be located on or within ten (10) feet of a side property line between the adjacent sites. Driveways and internal streets in the VC Districts are exempt from this section. [Amended 5/13/13][Amended 8/26/13]

9.17 Driveway Surfacing

Any driveway shall be constructed with the surface approved by the permitting authority. Such surface shall extend to the paved portion of the road and shall extend throughout the area defined by the required driveway dimensions specified above.[Amended 8/26/13]

9.19 Driveway Grades

Driveway grades shall not have a grade in excess of fifteen percent (15%) over the entire length. On arterials and collectors the grade shall not be more than five percent (5%) for the first twenty-five (25) feet from the road unless otherwise approved by the permitting authority. Driveways shall not be located where visibility is limited because of curves or topography.[Amended 8/26/13]

9.28 Other Landscaping Requirements

c. Required Plant Types. Required Plant Types. All plantings required under this Ordinance shall be of a type and species appropriate for the soil types and climatic conditions in Falmouth as determined by the permitting authority. Invasive species of plants are prohibited.[Amended 5/13/13; 8/26/13]

- d. Plant Maintenance Requirements. The owner of any premises approved by the permitting authority under any section of this Ordinance shall have a continuing obligation to maintain required plantings in accordance with the terms of the site plan approval and in a good and healthy condition. [Amended 11/10/08; Effective 01/01/09][Amended 8/26/13]

9.32 Site Conditions [Amended 8/26/13]

- a. During construction, the site shall be maintained and left each day in a safe and sanitary manner and any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon an order by the Town Engineer, Building Inspector, Senior Planner, or other authorized personnel. The developer shall make provision for disposal of oil and grease from equipment and the site area should be regularly sprayed to control dust from construction activity.
- c. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Town Engineer, Senior Planner, or Building Inspector. All the changes necessitated by field conditions shall be shown on the final plan and indicated as a change from the preliminary, or if final approval has been granted, the changes shall be shown on the as-built plans.
- d. Temporary improvements: Prior to or during construction, the Town Engineer, Senior Planner, or Building Inspector may require the installation or construction of improvements to prevent or correct temporary conditions on the site which could cause personal injury, damage to property or erosion and landslide, flooding, heavy construction traffic, creation of steep grades and pollution. Improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads and others appropriate to the specific condition. All temporary improvements shall remain in place and in operation until otherwise directed by the Town Engineer, Senior Planner or Building Inspector

SECTION 10. ADMINISTRATION

- 10.11 Minor Site Plan Review Sunset Provision** – All amendments associated with the establishment of Minor Site Plan Review as adopted on August 26, 2013 shall be repealed effective August 26, 2016, unless further legislative action is taken to extend the provision.

Attest: _____

**Ellen Planer
Town Clerk
August 26, 2013**