

**BERKSHIRE COUNTY REGIONAL PLANNING COMMISSION**

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Land Use Memorandum  
No. 1, 1994

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**FINDING OUT ABOUT FINDINGS**  
or How To Make A Decision

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Watching televised special permit hearings is a good way to learn how boards do some things well and some things badly. Something many boards do badly is "make findings." Simply put, they don't make findings. Most often, they recite the criteria in their bylaws and call them findings. They're not. If the decision is appealed, the judge may determine that the decision is deficient "on its face" because there is nothing in it to show the judge why the board decided as it did. That often means the board must hold a second hearing and do what it should have done the first time round.

Findings are facts which the board members sift out of the testimony they have heard at the hearing and observed on the site visit. They are facts which a board member uses to determine whether or not the standard or criterion in the bylaw is met.

Here's how it works:

**Example A - C 40A, s.9 SPECIAL PERMIT**

For purposes of illustration assume the applicant has filed for a special permit for a professional office in an existing structure in the R-30 zone.

Your bylaw provides for professional offices in existing structures in the R-30 and R-15 zones by special permit subject to the following specific requirements:

## **SPECIAL PROVISIONS**

Professional Offices in existing R-30 - and R-15 structures -

- 1) All parking areas shall be screened
- 2) Signs shall conform to residential sign provisions
- 3) No more than 50% of the floor area of the structure shall be used for non-residential purposes.

In addition to the above specific provisions the bylaw has the following provisions which must be met for any special permit:

Before granting a special permit for any use requiring such permit under the provisions of this bylaw, the Board of Appeals shall find that the proposed use:

- a) Is in compliance with all provisions and requirements of this bylaw, and in harmony with its general intent and purpose;
- b) Is essential or desirable to the public convenience or welfare at the proposed location;
- c) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- d) Will not create undue traffic congestion, or unduly impair pedestrian safety;
- e) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting public health, safety or general welfare.

*After the public hearing each member must make specific findings of fact as to each criteria:*

- (1) I find that the structure is an existing structure and no new structure is to be built.
- (2) I find the structure is located at 35 Maple Street which is in the R-30 zone.

- (3) I find based upon the plans submitted that the parking area is to be screened by *(here describe the screening)*
- (4) I find that the sign requested is 1' x 2' and conforms to the residential sign requirements of bylaw which permit one 1' x 2' sign.
- (5) I find based upon the floor plans submitted that 30% (925 sq.ft.) of the floor area will be used for non-residential purposes.

**Findings (1) thru (5) above deal with the special provisions for professional offices. If any of the specific special provisions are not met, the request for a special permit would have to be denied.**

Assuming items (1) thru (5) are found, you then have to deal with the general criteria set out in the bylaw for any special permit.

***Work from (e) to (a) since (a) is a conclusion reached after examining all the other criteria.***

- (e) The department of public works submitted a letter that the structure is served by municipal water and sewer which are adequate for the proposed use.

The proposed use will not increase the amount of water used or sewerage generated since an apartment is being eliminated.

There will only be one professional and two office staff in the proposed office.

Based upon the above facts I find the criteria of paragraph (e) have been met.

- (d) The proposed use will generate additional traffic. Two vehicles for staff, one for the professional and two or three at any given time for clients.

Adequate off street parking - 6 spaces have been provided. Traffic on Maple Street is moderate. Based upon the above facts I find that the criteria of paragraph (d) have been met, or I find the proposed use will not create undue traffic congestion or impair pedestrian safety.

- (c) 35 Maple Street is located within 1/4 mile of the downtown

commercial area. Maple Street consists of single family homes , two family homes, a dentist office, a realtor's office and a doctor's office within 300 feet of the existing structure.

The neighborhood is a mix of residential and professional uses. Based upon the above facts, I find the use would not be detrimental to the character of the neighborhood.

(b) I find public convenience would be served by the proposed use at this location since I find there is a need for the proposed service and it would be centrally located.

(a) I find the use is in conformance with the provisions of the bylaw as found in items (1) thru (5) and is in harmony with its general intent and purpose as found in items (e) thru (b)

**Example B - C 40A, s.6  
(Non-Conforming Use) SPECIAL PERMIT**

If you are dealing with a C.40A, s.6 finding, here's an example of how to make the finding. The statute says:

**"Pre-existing non-conforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or bylaw that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood."**

I find, based on the site visit, that all of the rest of the houses located within the Belle Vista neighborhood (the area lying west of Pink St., north of Blue St., east of Green St. and south of Orange St.) are located on small lots, and almost all of them have free standing garages. I find from examining the plans and from Mrs. Red's testimony that the proposed garage will be a wooden structure similar in height and bulk to the existing buildings in the neighborhood.

**Therefore, I find that the proposed alteration is not more detrimental than the existing nonconforming use to the neighborhood.**

It is useful in making findings to recite the standard that must be met and say "because" or ask yourself why the standard is met or not met. A well-reasoned decision, well supported by pertinent facts, is likely to

discourage an appeal in the first place, or to be upheld if an appeal is filed. An applicant whose petition is denied is more apt to believe he has been treated fairly if the decision contains the factual basis for the board's decision. An abutter who knows she has been heard because her concern about drainage problems is evaluated and used as part of the board's fact finding process will know her presence at the hearing made a difference.

Don't make a decision first and find reasons afterward. Spend some time together finding facts first. The decision ought to follow naturally. If you can't make the necessary findings, the petition should be denied, and the written decision should reflect that the petitioner failed to make his case by giving you enough facts to support his argument.