



CITY OF SALEM PLANNING BOARD

LAPSE IN DECISION POLICY

March 14, 2024

INTRODUCTION

The intent of the *lapse in decision policy* is to provide transparency on when a planning board decision lapses, pursuant to Sections 9.5.7 and 9.5.10 of the Salem Zoning Ordinance. To that end, the policy herein provides the framework for a fact-specific analysis that will be used to determine whether a special permit or site plan approval has lapsed.

This policy will be reviewed periodically and may be updated or amended at any time at the discretion of the Planning Board.

REFERENCES TO THE SALEM ZONING ORDINANCE

9.4.7 Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the City Clerk.

9.5.10 Lapse. Site plan approval shall lapse after two years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

POLICY STATEMENT

Where a site plan review is under consideration or a special permit that is clearly one for construction, as opposed to use, the Planning Board will include the following condition:

The site plan approval/special permit shall lapse after two years from the grant thereof if actual construction thereon has not sooner commenced except for good cause as determined by the Planning Board in its sole discretion. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

“Actual construction” shall be determined by the Building Commissioner. A “good cause” shall be determined by the Planning Board.

The actions that constitute substantial use of a special permit that are sufficient to avoid lapses are based on the nature of the special permit and whether those actions were taken in fulfillment of conditions required under the special permit. Given that this is a case-by-case situation, the Planning Board will not include the above condition in instances where a special permit or site plan approval involves a question of substantial use.

DEFINITIONS

Actual construction: Physical construction activities that would otherwise be prohibited without the benefit of a building permit and/or a street opening/trench permit. This includes but is not limited to, installation of foundations including footings, installation of utilities and vertical construction of a building. Whereas the commitment of time, effort, and money preparatory to construction does not constitute commencement, where construction is required. Likewise, physical site preparation—such as demolition, excavation, and leveling is considered preparation, as opposed to construction.