

OVERVIEW OF PUBLIC DISCUSSION BETWEEN TOWN ATTORNEY AND PLANNING BOARD ON VARIOUS ITEMS OF INTEREST FOR RESIDENTS FROM MAY 27, 2015

On Wednesday evening, May 27, 2015, the Durham Planning Board met with Town Attorney Laura Spector to discuss a number of planning issues and members of the public were allowed to ask questions as well.

What follows are highlights of that public discussion:

Site plan review and regulations are what needs to be followed. The application either meets the criteria, or must obtain a waiver.

An application must meet all criteria, and if it does, then the Planning Board must approve it.

Reasons NOT allowable for the Planning Board to deny a project:

- Because a room full of residents are against it;
- Because an individual board member personally does not agree or 'like' the project;
- Because of language in the Master Plan. The Master Plan is simply an advisory document; it is not a legal standard upon which a Planning Board decision can rely.

If an individual Board member votes against a project, s/he should state why.

Question: What is most effective way for a member of the public to appear before the board?

Answer: Resident questions, concerns, comments should be sent to the board prior to the meeting so board members are prepared to respond. If members of the public or the applicant come to a meeting with information that has not yet been seen or considered by the board, the board should feel free to delay further action on the application until such time as the board members have had a chance to review the new material.

Question: What types of conversations can board members have outside of a meeting regarding matters before the board?

Answer: None, either with a member of the public or an applicant. If a board member gets an email from someone, it should be sent to the Planning Dept. for distribution to all

board members and should not be replied to other than to indicate that it has been shared with staff to provide to the full board at the next regular meeting.

Question: What about issues of health, safety, and welfare within an application?

Answer: It has to be an issue that would cause a hazard to the general public. (Examples given were water & sewer issues.)

Question: What about cumulative impact concerns such as too much student housing?

Answer: There is case law in zoning requirements related to variances, but it is more difficult to apply those to Planning Board projects. A Town has to let the market decide at what point the Town is saturated.

Negotiating with an Applicant. A Planning Board can request an applicant to negotiate details of a plan, but the applicant is not always required to negotiate such matters with the board.

Master plan. A Master Plan is a forward looking planning document that is used to guide the development of future zoning regulations, and to help with the planning of other elements of the Town. The Master Plan is not an ordinance and has no regulatory authority.

Master Plan: The Master Plan has no legal standing. Not every zoning change has to be tied to the Master Plan. In fact, a zoning change can be contrary to the Master Plan. It is the zoning ordinance that moves the vision contained in the Master Plan into an enforceable document that regulates development. There can also be chapters within the Master Plan that do not align.

Question: Can a Planning Board use the reputation of a developer as criteria to deny a project?

Answer: No.

Question: Can the experience of other communities or the “track record” of a developer be used in making a decision to approve or deny a project?

Answer: No.

A Planning Board should be sure that everything that is represented or promised by a developer becomes a formal written condition of approval.

Question: How can Durham maintain a balance between the interaction of students and the community?

Answer: The Planning Board does not manage that. Every community has to bear a certain amount of different types of housing. The Board should seek legal advice before enacting any zoning change that potentially discriminates (i.e., against students, or the elderly, etc.). Zoning and planning does not address the balance of discrimination.

Question: What leverage does the Planning Board have to make changes to a project?

Answer: If the project complies with all conditions, the Planning Board cannot require the developer to make any changes. But there can be negotiation if the developer is willing. The Planning Board can negotiate, but cannot force a change unless the application does not meet the requirements of our local regulations, in which case it should be denied.

Question: What is the best way to oversee the process of what to do if Master Plan chapters conflict?

Answer: By statute, it is the Planning Board that adopts a Master Plan as a planning document. The Planning Board ultimately decides which points of view best reflect the goals of Durham through the overall vision of the Board.

Information on the appeal of Planning Board decisions to Superior Court: When an appeal of a Planning Board decision is made to Superior Court, the Town's lawyer gathers information from the Planning Dept. and submits all materials to the court. The hearing itself is usually 30 minutes long, with each side allowed 15 minutes to argue whether the Planning Board decision was right or wrong. The arguments must be based only on the materials of record that were presented to the court. There are not juries, witnesses, testimony, etc.

Conditional Use Permit: If an applicant meets all of the conditions of a Conditional Use Permit request as outlined by our local zoning, then the permit must be granted by the Planning Board.