

Planning Board and ZBA Role Play Workshop

19th Annual Spring Planning and Zoning Conference

Radisson Hotel, Manchester, New Hampshire

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The Presenters:

Christopher L. Northrop, AICP, Principal Planner, NH Office of Energy and Planning (your room host/session moderator/narrator)

Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella PLLC, Exeter, NH appearing as “the *applicant*”

Timothy J. Corwin, Esq., Assistant City Planner, City of Dover appearing as “the *planning board chair*”

Stephen Buckley, Esq., Hage Hodes, PA, Manchester, NH appearing as “the *zoning board of adjustment chair*”

Carol Ogilvie, Community Development Director, Town of Peterborough appearing as “the *emailing ZBA member*”

The Scenario:

Act I

Introduction

The setting is your town. A small but very popular restaurant wants to increase their business by enlarging the kitchen and adding a banquet hall/function facility to supplement the restaurant use. The restaurant is a legal, permitted use and the owner was told by town officials that he needs to apply to the planning board for site plan review approval.

Scene 1

(the applicant and the planning board)

The applicant files his SPR application and attends the PB meeting. The applicant shows plans of the existing small restaurant (permitted use) which he wants to expand with a commercial kitchen and a large banquet hall/function facility along with the associated expansion of parking and additional signage. All aspects of the application are in compliance with local, state and federal regulations.

After reviewing the application, the planning board realizes that a banquet hall/function facility is not listed as a permitted use in the Commercial zone. The applicant argues that he is merely expanding the permitted use of the restaurant and therefore it should be allowed. The planning board doesn't know what to do so they decide to continue the hearing for a month to allow them time to get input from the town attorney.

Scene 2

(the applicant and the planning board)

Fast forward one month. The PB reconvenes and now has a letter from the town attorney. At the continued public hearing, the board announces they have the letter and read one paragraph where essentially the town attorney suggests that banquet hall/function facility is not an allowed use. The board then votes to find that the

expansion of the restaurant into a combination restaurant with a banquet hall /function facility is not permitted in the zone.

Before the board votes to formally deny the site plan application, the applicant questions the finding and asks for a copy of the letter from the town attorney. The board denies the request citing that the letter is privileged attorney- client correspondence and is not a public document under the Right to Know Law. They also inform the applicant that he can appeal their administrative decision to the ZBA and that they will not make a formal decision on the application until he has a chance to appeal.

Clearly frustrated, the applicant leaves but says he will appeal to the ZBA.

Act II

Introduction

The applicant completes and submits an application to the ZBA appealing the PB's administrative decision that the banquet hall/function facility is not permitted in the commercial zone. The ZBA receives the application and schedules a public hearing.

Before the ZBA hearing, the town staff person who supports both the PB and ZBA takes it upon himself to forward electronic copies of the site plan application, including the town attorney letter, to all the members of the ZBA. After receiving those materials, one ZBA member replies to all the other board members with an email message that remarks on the content of the attorney's letter and concludes with a statement to the effect, "Wow, that's pretty clear, we should just uphold the planning board and deny this new banquet hall/function facility."

Another board member (Joe) replies back to all to the effect, "Yeah. I totally agree."

Scene 1

The ZBA then holds their hearing on the appeal of the administrative decision. At the hearing the applicant argues as to why he thinks this is just an extension of the permitted restaurant and that the planning board was wrong to interpret the ordinance in such a way so to find that what he wants to do is not permitted. During the hearing, the member who sent the original email to all the board members remarks, ***"I don't see how we can overturn the planning board. Didn't you all see the letter from the town attorney that was in the staff email? It was pretty clear to me that he thinks this is not a permitted use and even Joe (the other board member) agreed with me."***

The applicant throws up his hands in disgust and dismay that the board has apparently discussed the application amongst themselves via email and makes a new demand for the letter claiming that it now has become a public document because it was forwarded to the ZBA and included with all the original site plan application materials.

Act III

What happens next?