

August 27, 2019

RE: Proposed Amendments to Planning Board Rules of Procedure

Dear Mr. Behrendt,

It's Tuesday noon on 8/27/19 and I've just read through the proposed amendments to the Rules of Procedure for the Planning Board for the first time. With very limited time at present to provide a detailed response, I've attached my first impressions and reactions, inserted in **[Bold]** for consideration. This appears to be a work in progress. I will attempt to watch the meeting on DCAT when I can. Hopefully, this hearing will be continued to next month.

First reactions:

4.7 Public Comments. The public is welcome to speak on any topics except for: 1) matters currently under review for which the public hearing has been closed; 2) matters for which a public hearing is expected to be scheduled at that meeting; **[This is a curious situation. Comments from the public during "public comments" may have significant bearing on whether topic is ripe for a public hearing. Members of the public should not be expected to be prescient with respect to what the board may do. To disallow comments because of something the board might do does not seem proper.]** and 3) items for which a public hearing is to be held that same evening. All speakers shall provide their name and address and direct their comments to the board. Any questions that are asked may be answered at the discretion of the chair. **The chair may limit the length of comments at his or her discretion [Is that with generally applied guidelines or to certain, specific speakers?]**

5.3 i) **When a decision by the Planning Board to reopen a public hearing occurs on the same day as the public hearing was closed then no new notices are required. [Interested citizens may have departed the meeting hall upon "closing" the public hearing. Is there legal precedence for this rule? If board members are not prepared to close a hearing, they should not close the hearing. Perhaps a "continuation" would be in order before a "closing". A continuation would alert the concerned public that the topic will be open at a later date]** When a decision to reopen a public hearing occurs on a subsequent date to when the public hearing was closed new notices **may be [are]** required. The reason for requiring new notices in this instance is that the applicant and interested parties may not have attended the meeting, not expecting a public hearing

5.4 Public Submission of Information. The public is welcome to submit information via emails and letters prior to the opening of a public hearing and while the public hearing is open. This correspondence will be posted on the website and forwarded to the Planning Board. The Planning Board will not accept public input after a public hearing has closed, **including verbatim transcripts of statements made at the public hearing. [By implication, one might conclude that board members would not be permitted to review the meeting on DCAT or other media. Nonsense! Perhaps you should have a rule stating that a final vote following a public hearing shall not be made until the next meeting following the closure of the hearing.]** However, for administrative matters, such as zoning amendments, amendments to site plan regulations, and master plans, the Planning Board may, **on a case-by-case basis, [Too vague. Under what conditions?] provide [provided]** that additional written input be submitted for a limited period of time after the public hearing is closed. This allowance must be stated prior to closing the public hearing.

5.5 Scheduling Public Hearings. a) The public hearing is held at the first meeting for: [Which/what “first meeting”? That language is unclear. It seems logical that the board, at a 1st meeting the board would discuss with the planner the fact that an application has been received and is complete. If a hearing is called for, then a hearing would be scheduled and a 2nd meeting would be scheduled and noticed • Boundary line applications when the application is straightforward [“Straightforward” is too subjective. The board needs to guard against granting too much authority to a planner. Planners come and go and board membership changes.] as determined by the Town Planner • Conditional uses under the Wetland Conservation Overlay District and Shoreland Protect Overlay District when the application is straightforward [see above] as determined by the Town Planner • Governmental applications (UNH, ORCSD, and the Town of Durham) • Scenic road activity (Bay, Bennett, Durham Point, and Packers Falls Roads) [We’ve been down this road before. Ample time must be allowed for the public to be aware that requests such as “prune and remove trees to improve safety and reliability” are on the docket. Too often in the past such open and ill-defined requests have been “rubber stamped” by boards without proper consideration by the board and adequate input from the public. Board membership changes and “institutional memories” are lost. If a planner gets a request on a Wednesday and posts a notice on Thursday for a meeting the next Wednesday, the public is short-changed simply because there was no lead-up at an earlier board meeting to the fact the request has been made. When a planner exercises “straightforwardness”, as proposed, by acting on his own, public awareness is diminished and the town at large suffers the consequences.]

5.6 Other Public Hearings. The board may hold a public hearing on any matter at its discretion. [Really? Better check that one out. Jurisdiction may come in to play.] For hearings where the procedure is not otherwise specified, notices need not be sent or placed except as the board sees fit. [Really? Why is it called a “hearing” and not a meeting? Better check that one out, too.]

6.3 Scheduling Site Walks. Site walks may be scheduled at the discretion of the Board. Typically, site walks are held after acceptance of an application and prior to the public hearing. The Planning Board may hold a site walk on a preliminary application at its discretion. For a Conservation Subdivision, a site walk should [[shall] Otherwise why mention it?] be held before the design review phase. Site walks are public meetings of the board, and an agenda must be posted and minutes prepared. The Conservation Commission and the Historic District/Heritage Commission may [shall] be notified of site walks when the application is germane to either commission.

8.2 Communication outside of meetings. There are two kinds of matters that come to the Planning Board: a) applications and project reviews, called “quasi-judicial” matters; and b) administrative, policy, and legislative matters, such as proposed amendments to the Zoning Ordinance or Site Plan Regulations. a) For quasi-judicial matters, all communications by individual Planning Board members shall be limited to Planning Board meetings and communication with staff. However, the Town Council representative and the Town Council alternate may discuss these matters with each other since they may need to coordinate who is sitting as a member for a particular project. [Why does this not also apply to other “alternates” who also may be required to sit in a member’s stead.] If Planning Board members are contacted about quasi-judicial matters by people outside of meetings, those people should be redirected to the Town Planner. b) For administrative, policy, and legislative matters, it is generally recommended that Planning Board members refrain from discussing these matters outside of Planning Board meetings. [This needs a discussion. As long as there is not a quorum, are board members not entitled to discuss issues between one another? “Generally recommended” needs a rationale and guidelines.]