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Court Update

SECOND SITE PLAN MUST ONLY ADDRESS REASONS FOR INITIAL SITE PLAN DISAPPROVAL

Kulick's Inc. v. Town of Winchester
New Hampshire Supreme Court No. 2016-0054, 9/16/2016

Clarifying the Court's decision in *CDBA Development, LLC v. Town of Thornton*, 168 N.H. ___, (2016) the Court addressed what is a material change to a site plan permitting a planning board to approve a second site plan.

The Winchester Planning Board denied site plan approval to Kulick's, Inc. because the proposed use overwhelmed the site and did not employ best design standards. That decision also cited highway safety and parking concerns as reasons for site plan disapproval.

Kulick's submitted a second site plan to the Planning Board that prohibited left hand turns from the site and reduced the size of the proposed building. A complaining abutter challenged the Planning Board's approval of the revised second site plan arguing that in order for the Board to approve the second site plan the changes had to be "significant" and or "physical". The complaining abutter also argued that, based upon a Connecticut case, if the changes could have been required at the first hearing as conditions precedent then no material change could be found by the Planning Board. The Court rejected these arguments because the second site plan had been modified to address the Planning Board's specific concerns about the initial site plan.

The Court also rejected the abutters's argument that when the Planning Board granted certain waivers to the site plan review regulations the Board should have adhered to the standard of hardship required for granting variances found in RSA 674:33, I(b)(5). The Court made clear that the definition in RSA 674:33, I(b)(5) is explicitly limited to the purposes of that sub-paragraph, granting or denying zoning variances. The hardship standard for granting a site plan review regulation waiver found in RSA 674:44, III(e) is intended to measure the degree of difficulty a site plan applicant will experience with her proposed use when required to strictly comply with all of the provisions of the regulations. Ultimately, it is essential that that the Planning Board's underlying rationale for granting a waiver be adequately reflected in its minutes.

Click Here to View Court Decision (http://www.nhmunicipal.org/Resources/ViewDocument/764)

Practice Pointers: In order to permit the Planning Board to approve a site plan that was previously denied it is sufficient if the second site plan was modified to address the Board's specific concerns about the initial site plan. Planning Boards do not have to follow the hardship standard for granting variances when granting a waiver from site plan review regulations.

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