

The Impacts of State Land Use Laws on Concord: or why the Planning Board can't "Just Say No".

November 3, 2011 marked my twenty-fifth year working with the Town of Concord. I use the word "with" because the people of Concord are truly involved with and concerned about the Town and the development that occurs within it. What people particularly want to know when they call my office is "why can't the Board just say no?"

There are two State laws that regulate development and land use in the town: the Subdivision Control Law (M.G.L. Chapter 41) and the Zoning Act (M.G.L. Chapter 40A). For administrative purposes, the Subdivision Control Law became effective in the Town of Concord on February 28, 1938. Zoning was adopted by the Town in 1928.

The Subdivision Control Law is a narrowly focused law which addresses the "laying out" and construction of ways, or roads, that provide access to (and frontage for) new building lots. This law applies to all property owners who want to divide their land to create additional lots. For those property owners with a tract of land which has sufficient additional area and frontage on an existing way, the procedure is relatively simple. The property owner hires a land surveyor to prepare a plan showing the division of land, each lot shown must have adequate frontage on an existing way. The property owner or surveyor submits the plan to the Planning Board and the Board must review and sign the plan within twenty-one days. This procedure is known as the "Approval Not Required (ANR) under Subdivision Control Law" process and is outlined in MGL Ch.41.

Property owners with land which does not have adequate additional frontage on an existing way to allow the use of the ANR process must prepare a Subdivision Plan. Such a plan must show the layout and construction of a new road (or improvement to an existing right-of-way or paper street) and the division of the land using the new road or newly improved road as frontage. A property owner may choose to prepare a Preliminary Plan, which shows the proposed road and lot layout in a general way; this approach allows the Planning Board to guide the property owner about issues and concerns that should be addressed by the final plan. The Preliminary Plan must be reviewed and acted upon by the Board within 45 days of its submittal. The next step is the Definitive Plan which shows in detail the proposed road and lot layout. If a Preliminary Plan has been filed, the Planning Board has 90 days to review and act on the plan; otherwise the Board has 135 days in which to act upon the plan. Issues may arise during the review process to which the Board can request additional information or modification of the plans; however, the Board must make a decision to either approve, approve with conditions or

disapprove a plan (with stated reasons for disapproval) within the stated time frame unless the property owner grants an extension of time to the Board for its decision.

The Subdivision Control Law also requires the Planning Board to adopt rules and regulations regarding the procedure for submission and approval of plans and the requirements of the Board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services. If a Definitive Plan is submitted which meets the requirements of the Board (commonly referred to as a “standard subdivision”) it is presumed to be approved because stated in the law is the following “It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivision of land.” There is also a provision that allows the Planning Board to waive such portions of the rules and regulations when appropriate and advisable (such as furthering a stated town goal or protecting a significant wetlands or vista,); however, it is implicit that the rules and regulations are to be followed.

The Zoning Act enables the town to adopt zoning bylaws and to establish standard procedures for the administration and creation of zoning bylaws. Zoning bylaws are intended to address a multitude of purposes including, but not limited to: reducing street congestion; conserving health and safety; preventing the overcrowding of land; encouraging housing for persons of all income levels; facilitating the adequate provision of town services; conserving the value of land and buildings (including natural resources); encouraging the most appropriate use of land throughout the town and to preserve and increase amenities. Some of the ways these purposes are achieved is through the regulation of uses in various zoning districts, limitations on building height and lot coverage by buildings and pavement, and setbacks from property lines. Any revisions or amendments to the Concord Zoning Bylaw must be adopted by a two-thirds vote of Town Meeting.

The challenge in drafting revisions to the Concord Zoning Bylaw is ensuring that the intended purpose is met. The Planning Board is the primary group responsible for drafting new zoning bylaws and revisions to existing zoning bylaws; however, new zoning bylaws can also be proposed by town residents and property owners. The administration or implementation of the Concord Zoning Bylaw falls primarily to the Board of Appeals and the Zoning Enforcement Officer (also known in Concord as the Building Commissioner or Inspector); although for certain types of special permit developments (such as Residential Compounds and Residential Cluster Developments), the Planning Board is the designated

administrator. Concord's Zoning Bylaw is a working document that provides some flexibility for certain types of uses and no flexibility for other types of uses. Town staff and the Boards that administer the Zoning Bylaw constantly review the bylaws to ensure they are administered fairly and that the final result is as anticipated by asking the questions "is this what was expected?" and "does it work?".

Whenever a plan is submitted to the Planning Board for review and approval under the Subdivision Control Law or Zoning Act, or for further recommendation to the Board of Appeals (as often required by the Concord Zoning Bylaw), the Board is responsible to measure the proposal in terms of the existing rules, regulations and zoning. If the plan or proposal meets the requirements of the Board as outlined in its rules and regulations and/or in the Concord Zoning Bylaw, then an approval or approval with conditions is the result. These laws and procedures give a property owner some level of assurance as to the requirements they must conform to in order to use and develop their land.

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