



TOWN OF CONCORD

Planning Division

141 Keyes Road - Concord, MA - 01742

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To: Zoning Board of Appeals

From: Elizabeth Hughes, Town Planner

Re: 1440-1450 Main Street PRD Application - Questions for Town Council

Date: March 6, 2020

On March 4th, the DPLM Director and I had a phone conversation with Town Council regarding the four questions from the Board about the 1440-1450 Main St. PRD application. Below is each question and Town Council's response and guidance.

Question #1: Does the Board have to take a single vote on the application that includes all 3 requested Zoning Bylaw Sections or is the Board able/required to vote on each individual Section (7.5, 10 & 11.7)?

The Board will review each Zoning Bylaw Section, make the required finding(s) under each Section and take a vote on whether to grant the requested permit under each Section. There is no particular order that needs to be taken.

Question #2: If the Board votes to deny the Variance, is that a fatal flaw in the application, thus basically denying the entire application?

No. It is not the Board's responsibility to determine if the project is feasible or not if either Section 7.5 or 11.7 is denied and the PRD under Section 10 is approved. The Board will review each Zoning Bylaw Section, make the required finding(s) under each Section and take a vote on whether to grant the requested permit under each Section.

Question #3: Does the Board have the ability to make a finding under Section 6.2.11 for the height or is a variance required?

It should first be noted that Section 6.2.11 is not a waiver to the height limit; it is a waiver from how the height of a structure is calculated. This distinction means that the structure itself is not actually higher than the maximum 35 feet.

It is Town Council's opinion that there is a narrow window between the findings required for relief from how height is measured (the Board finds that a literal application of this requirement

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would be unreasonable because there are no reasonable alternatives available and that the desired relief may be granted without substantial detriment to the neighborhood and without derogating from the intent and purpose of this Bylaw) and the third required finding for a variance (a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw).

The Board may ask the Applicant to submit an opinion as to why they believe Section 6.2.11 applies and under what circumstances a literal application of how height is measured would be unreasonable because there are no reasonable alternatives available and how that desired relief may be granted without substantial detriment to the neighborhood and without derogating from the intent and purpose of this Bylaw and why they believe Section 11.7 applies and under what circumstances a literal enforcement of how height is measured would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

Question #4: Could Town Counsel provide an opinion on whether a variance is legally justifiable given that the applicant can, without a variance, build approximately 20-something houses through the application of a standard Subdivision Plan.

If the Board determines and finds that there may be a reasonable alternative, then it is Town Counsel's opinion that there is no substantial hardship and the findings required for either Section 6.2.11 or a variance could not be made.

From a procedural point, Town Counsel advised that the Board makes the findings under both Sections 11.7 and 6.2.11 to preclude arguments in the event the decision is appealed.