

Planning Lunches at Noon (PLAN) Monthly Webinar Services

Welcome to the PLAN Monthly Webinar Series!

“Working Through the Subdivision and Site Plan Review Process”

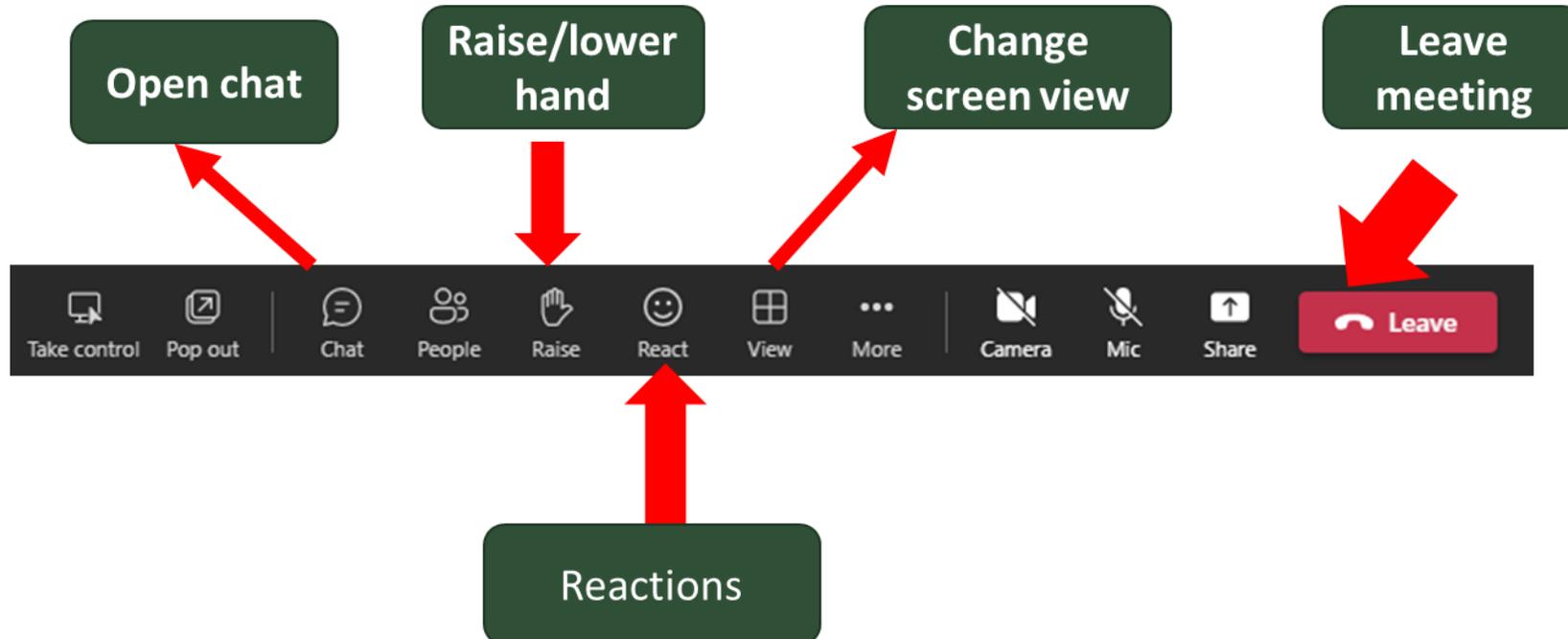
Check out our Planning and Zoning Training website page for:

- Slides and recording of all completed PLAN webinars in the
- Schedule for upcoming webinars
- OPD Planning Board and Zoning Board Handbooks & Optional Tests and Certificates
- A short, anonymous online survey

Webinar Logistics

Presentation then Question and Answer session

- ▶ Type questions into Chat box
- ▶ Raise hand
- ▶ We will be **recording** this webinar.



Working Through Subdivision and Site Plan Approvals

Agenda

- Applicable Laws- Review and approval authority
- Regulations, Forms, Checklists, Waivers, and Deadlines- Yes! Yes! Yes!
- Application types- Major and Minor
- Application and Meeting Management- Staff and Board Roles
- Motions, Accept or Not, Approve or Not, Continue or not...
- Site Walks-Yes!
- Third party review-Yes!
- Board Decisions-Final or not
- Tips for board members

Q&A

March 21, 2024, PLAN Webinar



New Hampshire Department of
BUSINESS AND
ECONOMIC AFFAIRS

Planning Process



Subdivision Regulations (674:36)

MAY Address: Services

- Street Layout
- Utilities
- Public Health
- Open Space
- Lot Configuration
- Thresholds for major and minor subdivisions

Must provide for waivers

*Goal/Purpose-Provide against “scattered and premature development.”

Practice Pointer-The adoption and amendment of subdivision and site plan regulations can be done at any time throughout the year as they do not have to go to town meeting for approval. They would follow the normal 10-day public hearing notice procedures.

Site Plan Regulations (674:43)

May include-

- Traffic
- Parking
- Utilities
- Landscaping
- Building location
- Signage
- Lighting
- Noise

Must include-

- Procedures
- Purpose
- Standards
- Performance Guarantees
- ***Must provide for waivers***

Planning Board Application Process 676:4

1. Application submitted to the planning board according to the board's meeting and deadline schedule or at a minimum of 21 days before a public hearing.
2. 676:4.I(b) the planning board SHALL specify by regulation (*674:36 Subdivision/ 674:44 Site Plan*) what constitutes a completed application sufficient to invoke jurisdiction to obtain approval.
3. A completed application means sufficient information is included to allow the board to proceed with consideration and make an informed decision.
 - Checklists

Checklists

Checklist- Are to itemize the types of plans, studies, designs, information, materials, required fees, escrows, etc. that are required by the regulations.

- **Suggestion** Planning boards without staff support could have the Secretary of the Planning Board process applications to check the submission contains all the required information required in the checklist prior to the meeting. If that is not feasible then the board should review the application at a public hearing.
- **OPTION** Conduct completeness review as a conceptual consultation. Applicant applies with preliminary information and reviews with the board what the checklist and regulations require in order to have accept an application as complete..

The Planning Board Handbook

Formal Application

Formal Application-

- 676:4,I(b) “The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval.”
- “A “**completed application**” means sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision”

*Regulations spell out what a completed application includes.

*Remember-Checklists are part of the regulations AND the application submission.

Waivers

1. Subdivision Regulations 674:36
2. Site Plan Regulations 674:44
 - Waivers
 - ▶ Applicants must show good cause that strict conformity to the regulations would cause an unnecessary hardship and a waiver would not go against the spirit and intent of the regulations.
 - ▶ Waiver requests must be in writing and should identify the section of the regulation in which the waiver is being requested.
 - ▶ The board should be clear in their reason for granting OR not granting the waiver

Waivers cont'd

- ***“Will this affect the information we need in order for us to hear and decide on this application? (Yes or No)”***
- ***“Is there enough information to make an informed decision based on your regulations?” (Yes or No)***
 - PUT DECISION IN WRITING whether it is a “yes” or “no”
 - If waiver is granted the application can be accepted as complete and the public hearing can begin.
 - ❖ This can be done at the same meeting, as long as it was noticed that way to the public and abutters
- If the waiver is not granted, the application can be denied.
- The board and/or staff should work with the applicant for what material or information is missing.

Major and Minor Applications

Subdivision and Site Plan Regulations should define what a major and minor subdivision and site plan are. i.e., size in number of lots, square footage of new buildings, etc.

The regulations should include if third party review is required for all applications, just major applications, or at the board's discretion.

If there is an established TRC (Technical Review Committee) with site plan review authority than TRC can review minor site plans. Has to be spelled out in their regulations what the guidelines are for minor site plan review.

Major and minor site applications need a public hearing

Staff Application Management

Process for application acceptance in the office-

1. Set deadlines for applications for Noon on deadline day-

NO 4:29 PM drop offs! Stick to deadlines!

2. Create spreadsheet for tracking applications and escrow accounts-very helpful for Yr. End Reports/Town Reports
3. Consider creating a cover sheet for the application to help with tracking and quick references., i.e., when application was submitted, 1st public hearing/acceptance, approval, etc.
4. Do not verify abutters-applicants responsibility
5. Set an abutter submission policy based on number of abutters.
6. Don't have to make copies of applications for applicants

Staff Application Management cont'd

7. Review application materials for all submission requirements NOT for content requirements.
8. You are looking for- signed application, checklist, waivers, fees, escrow funds, etc. not reviewing the integrity of the application-that is the board's job.
9. Inform Chair number of application submissions
10. Process fees and escrow funds
11. Create the public notice and abutter notices.
12. Prepare packets for the planning board
13. Circulate packets to the planning board at least 1 week before meeting

Staff Meeting Management

Seven Days before meeting-

1. Confirm board members have received their packet.
2. Prepare templates for minutes and templates for decisions for each application.
3. Review agenda with Chair

Day of meeting

1. Confirm there is a Quorum
2. Confirm applicants and agents are attending
3. Inform Chair of any changes or update to applications or agenda items

Staff Meeting Management cont'd

“Clean Up” after meeting

1. Begin Notice of Decisions
2. Work on minutes (5 business days to complete!)
3. Update all tracking sheets for the status of applications
4. Issue Notice of Decisions
5. Work with applicants on getting conditions of approval completed or submitting more information
6. After conditional approvals, work with applicant and Chair for final plans and signatures
7. Work on updating escrow accounts
8. Finalize file after approval and conditions of approval are complete

Board's Role

- To accept or not and review and approve/deny formal applications that are submitted.
- Chair-Allow the applicant and abutters to speak and be heard. Do NOT have to allow repetitive comments!
- Run a calm and respectful meeting-set time limits
- If uncertain on whether to accept an application as complete or not-don't hesitate to continue acceptance
- Utilize the existing regulations in your decision-making process i.e., does this meet the Master Plan goals? Site Plan/Subdivision Regs?

***Don't forget-When in doubt-DON'T! It is ok to continue the application for more information or guidance from staff and/or Municipal Attorney**

Motions

- Motions may be made by any regular member (chair included) or alternate serving in place of a regular member
- Motions should contain the complete action
 - All conditions of approval; reasons for denial
 - Require second; require deliberation; require vote
- A failed motion (not a majority of yeas*) is not an approved action to do the opposite!
- If the motion to approve fails it does not mean the application is denied; a new motion must be made. Discussion continues

Site Walks

Consider an important part of the application decision making process.

Can be done at the beginning of the process-or as part of the application process.

- It is a meeting! Post an agenda and take minutes!
- Public **MUST** be allowed to attend. Denying public access can lead to delays or denial of the application.
- Good for fact finding and visualizing the development in the area
- If no site walk is scheduled, individual members may view the site on their own.

Third Party Review-676:4-b

Should be part of every application.

DON'T take applicant's "word" on engineering/traffic/drainage, etc. studies-get a professional to work on the town's behalf.

Hire experts to help you understand

- ▶ Complex/phased applications, controversial issues, unusual subject matter
- ▶ Get an estimate, establish an applicant-funded escrow (separate account).
- ▶ All third-party reviews are paid for by the applicant.
- ▶ Keep good records of funds
- ▶ Put process in application and regulations

Third Part Review Cont'd

Role of your expert

- ▶ Work with applicant's expert to develop an improved plan
- ▶ Provide alternative review of the same facts
- ▶ Work to protect the municipality's interests
- ▶ Establish a basis for approval or denial
- ▶ Utilize for actual development of project i.e., drainage inspections, road inspections, escrow drawdowns, final inspections, compliance, etc.

Final Answer!

TIME TO MAKE THE DECISION!

- Consider, review, and discuss proposed conditions of approval or reasons for denial while public hearing is still open.
- Provide last chance for applicant and abutters to comment.

Close the public hearing!

- Begin deliberations-
 - Discuss among the board and staff potential conditions of approval or reasons for denial
 - **BE CLEAR WITH CONDITIONS AND REASONS.** Don't pay attention to the number of conditions of approval/reasons.
 - You can't enforce intent!
 - Minutes don't count for enforcement

Final Answer cont'd

Conditions of approval-

conditional approval under **RSA 676:4, I(i)** is only an “interim step in the process of the board’s consideration” and is not a final approval. **For a valid final approval under the statute, there must be no unfulfilled conditions precedent.**

Conditions precedent-conditions/items that must be completed in order to obtain final approval. i.e., revised plans, escrow funds, final documents, etc.

- a “Conditional Approval” is. Conditional is NOT final
- When conditions precedent have been met the final approval is granted. Final plans can be signed.

Conditions subsequent-conditions or operations that are for the life of the project-they are “attached” to an approval. i.e. hours of operation, maintenance of landscaping, lighting times, etc.

Final Answer cont'd

Practice Pointer:

- When granting approvals with conditions, be clear which conditions are precedent or which conditions are subsequent.
- If a board wants the final approval based on the applicant completing certain conditions precedent, the board needs to be clear that failure to comply with conditions precedent means there is no final approval.
- A conditional approval that includes only conditions subsequent constitutes a final decision appealable under RSA 677:15, I.
- Use templates!
- ***When in doubt-DON'T! Consult with Municipal Attorney!**

How to be a good board member

- DO YOUR HOMEWORK!
- Be fair and unbiased
- Attend the meetings, be on time, look presentable
- Work with staff on learning ordinances
- Cooperate with other boards
- Be respectful to fellow members and the public
- DO NOT COMMUNICATE VIA EMAIL (RSA 91-A)
- ASK MUNICIPAL ATTORNEY!

How to be a good board member cont'd

- Do not use social media to discuss applications
- Do not develop or express preconceived opinions about any applications
- Do not abstain
- Recuse yourself when appropriate (674:14,I)
- Juror Standard (500-A:12 Examination)
 - Expects to gain or lose from the case
 - Is related to either party
 - Has advised or assisted either party
 - Directly or indirectly given or formed an opinion
 - When in doubt-don't

Alphabet Soup of Planner-ese

BANANA- Build Absolutely Nothing Anywhere
Near Anything

CAVEmen-Citizens Against Virtually Everything

Designosaur-Designer with an enormous impact

DUDE-Developer Under Delusions of Entitlement

GOOMBA-Get Out Of My Business Area

NIMBY- Not In My Backyard

PIITBY- Put It in Their Backyard

YIMBY- Yes In My Backyard

Contact Information

Stephanie N. Verdile, Principal Planner
NH Office of Planning and Development

Stephanie.N.Verdile@livefree.nh.gov **(603) 271-1765**

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Q&A

THANK YOU