

19 May 21 PB Meeting Notes

Legal Review Summary

Subdivision Regulation Waivers (RSA 674:36, II(n)) Site Plan Regulation Waivers (RSA 674:44, III(e))
Basis for waivers to be recorded in the minutes.

The planning board may grant a waiver if it finds that:

1. Strict conformity would pose an **unnecessary hardship** to the applicant and waiver would not be contrary to the **spirit and intent** of the regulations; or
2. Specific **circumstances** relative to the site plan, or **conditions** of the land in such site plan, indicate that the waiver will properly carry out the **spirit and intent** of the regulations.

Objective Testimony from Residents, Combined with Personal Knowledge of Observable Facts by Board Members Can Refute Expert Opinions

Critical examination of the methodology of an expert traffic report, combined with direct evidence of objective evidence provided by abutters, residents and board members can support a land use board's decision to reject the conclusions of expert testimony and reports.

Planning Board Decisions Based on Zoning Regulations Must be Founded on Objectively Clear Zoning Non-Conformities

If a planning board is to deny a plan due to non-compliance with the zoning ordinance, those must be objectively clear zoning non-conformities, and not generalized statements of a zoning ordinance's purpose. This permits the applicant to appeal any planning board zoning determination to the zoning board of adjustment and satisfies a municipality's obligation to provide assistance to landowners seeking approvals. Planning board members must endeavor to avoid inserting their subjective personal feelings into board decision making.