FW: Review of Winthrop CBD zoning and clarifying some questions

Janelle M. Austin <jaustin@k-plaw.com>

Thu 8/10/2017 11:18 AM

To:Joseph Domelowicz Jr. <jdomelowicz@town.winthrop.ma.us>;

Cc:James McKenna <jmckenna@town.winthrop.ma.us>; THOMAS MC ENANEY <TMcEnaney@k-plaw.com>;

Joe,

You have requested an opinion with respect to interpretation of several provisions of the Town's Zoning Ordinance. Specifically, you have requested opinions relative to the below inquiries related to the Center Business District, each of which will be addressed in turn below. Please be advised that, to date, I have not been provided any documentation for review relative to this project, including any background documents from the Planning Board relative to its review of the major site plan and design review process.

1) Once an applicant has gone through the Major Site Plan and Design Review process with the Planning Board, Can the Building Inspector still deny the permit application and send a project to the Zoning Board of Appeals?

In my opinion, pursuant to Section 17.50.030 of the Town's Zoning Ordinance, once the Planning Board has provided written notification of approval of the site plan following review at a noticed public hearing <u>or</u> if sixty (60) days has passed with no extensions granted, then a building permit shall issue to a project subject to Major Site Plan and Design Review in the Center Business District. Specifically, Section 17.50.030(C) provides, in relevant part as follows:

> No building or occupancy permit shall be issued by the building commissioner [for Major Site Plan and Design Review Projects]:
>
> 1. Without written notification of approval of the site plan by the planning board; or
> 2. Unless sixty (60) days elapse from the date of submittal of the site plan without action by the planning board. The sixty (60) days may be extended if the planning board approves a request from the applicant for an extension of time for the consideration of the plan, and this extension is sent to the building commissioner.

Therefore, in my opinion, if the Planning Board has approved site plan for the project under Section 17.50.030 or sixty days has elapsed with no extensions from the date of submittal of the site plan without action by the Planning Board, then a building permit shall issue by the Building Commissioner. Please be advised, however that the project can undergo site plan review, but require other zoning relief under the Zoning Ordinance. I am not aware of the permitting history for this particular project, however, additional zoning relief may be required under the circumstances depending on the nature of the project. Please also be advised that while the Building Commissioner cannot deny a building permit based on aspects reviewed by the Planning Board under Site Plan Approval, the Site Plan Approval process does not give the Board of Appeals the right to also grant a variance. Accordingly, it is possible that a proposed project may present a situation where a dimensional variance may be needed, or if the proposed project involves the redevelopment of an existing structure that is nonconforming, alterations to the structure may also require a finding from the Board of Appeals pursuant to G.L. c. 40A, Sec. 6. This analysis, of course, is extremely fact specific and will require a review of the underlying project, location and intended uses.

2) On boundary of the zoning issues, can we confirm that the property boundaries shown on the map and supported by the assessing maps are sufficient to make a decision about height limits for properties close to the limits of the CBS?

In other words, our reading so far has been that a property wholly contained within the CBD and abutting only CBD properties has access to the 48' height limit without variance, regardless of the use of the CBD property, but that a CBD property contained within the district but abutting a property in the Res. A district has a 35'foot height limit without a variance.

In my opinion, the Town should rely on its Zoning Map to determine which district a property lies in for purposes of establishing the proper height limit under the Table of Use Regulations set forth in Section 17.16.030 of the Zoning Ordinance. In my further opinion, the Town may confirm the property's location on the assessing maps, but such determination is not dispositive of a property's location for purposes of zoning if challenged. As you know, Section 17.08.030 sets forth the boundaries of district requirements and Section 17.08.040 regulates lots that are located within two district boundary lines.

In my further opinion, pursuant to the Zoning Ordinance's Table of Dimensional Regulations, Section 17.16.030, footnote 14, the maximum number of stories for a building in the Center Business District is 2.5 stories or 35 feet if adjacent to a residential district or 4 stories or 48 feet otherwise.

Please feel free to contact me if you have any further questions.

Very truly yours,
Janelle

Janelle M. Austin, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
jaustin@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: THOMAS MC ENANEY
Sent: Wednesday, August 02, 2017 8:10 PM
To: 'Joseph Domelowicz Jr.'
Cc: THOMAS MC ENANEY; Janelle M. Austin; jmckenna@town.winthrop.ma.us
Subject: RE: Review of Winthrop CBD zoning and clarifying some questions

Joe:

I have forwarded your email to Janelle, who will take a look at it and get back to you.

If you have any questions, please do not hesitate to contact me or Janelle directly.

Thanks.

Tom

Thomas W. McEnaney, Esq.

KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
C: (781) 771 0506
tmcenaney@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: Joseph Domelowicz Jr. [mailto:jdomelowicz@town.winthrop.ma.us]
Sent: Wednesday, August 02, 2017 2:45 PM
To: THOMAS MC ENANEY
Subject: Review of Winthrop CBD zoning and clarifying some questions

Tom, Jim asked me to reach out to you to get clarity on a couple of items that have come up in our CBD zoning and zoning boundaries.

I just tried to send you a link from our zoning code a moment ago, which should include all of the zoning that needs tom be reviewed.

Two questions -
1) Once an applicant has gone through the Major Site Plan and Design Review process with the Planning Board, Can the Building Inspector still deny the permit application and send a project to the Zoning Board of Appeals?

2) On boundary of the zoning issues, can we confirm that the property boundaries shown on the map and supported by the assessing maps are sufficient to make a decision about height limits for properties close to the limits of the CBS?

In other words, our reading so far has been that a property wholly contained within the CBD and abutting only CBD properties has access to the 48' height limit without variance, regardless of the use of the CBD property, but that a CBD property contained within the district but abutting a property in the Res. A district has a 35'foot height limit without a variance.

Can you please have Janelle confirm these issues for us?

Thanks, feel free to give me a call or have Janelle call me. Hope you're enjoying your summer.

Joe

Joseph Domelowicz Jr.
Assistant to Town Manager/Grants Manager
One Metcalf Sq.
Winthrop, MA 02152
(o) 617-846-1852 ext. 1013
(m) 617-290-7060