

Our zoning board recently approved a conditional use application with stipulations. The permit holder has submitted another application that is essentially the same as the one approved, with a request that the board reconsider one of the permit conditions imposed. Must the zoning board hold another public hearing?

No, the zoning board is under no obligation to rehear an application that is essentially the same as one already acted upon by the board. In order to ensure finality to zoning decisions, subsequent applications must be substantially different from the original application, or the applicant is required to show that there has been a change in circumstances that warrants further consideration of the original decision by the board. *In re: Crescent Beach*, 126 Vt. 140, 224 A.2d 915 (1966). In addition to zoning boards of adjustment, this general rule applies to planning commissions, development review boards and zoning administrator decisions.

Once the zoning board has issued its written decision, the appropriate step for the dissatisfied permit holder to take is to file an appeal with the Vermont Environmental Court within the requisite 30-day period. Failing that, he or she is stuck with any permit conditions imposed, unless the proposed project is amended substantially enough to warrant reconsideration by the board or there is new evidence to support a change in the objectionable stipulation.

The following scenario offers an example of “new evidence.” A site plan permit is issued conditioned upon the construction of 60 on-site parking spaces to serve a retail business. Subsequent to the issuance of the permit by the planning commission, the landowner is successful in negotiating the use of 10 shared parking spaces on the adjacent lot (shared parking is allowed under the zoning ordinance). The “new evidence,” then, would be a copy of the legal agreement for shared parking between the permit holder and the adjacent landowner, accompanied by a new application requesting a reduction in the stipulated number of on-site parking spaces required under the original permit.

More to the point, however, your question demonstrates the importance of finding out *during the hearing process* whether or not the applicant agrees or disagrees with potential permit conditions. By doing so, the likelihood of a town having to defend its decision in an appeal is minimized, and the permit holder is more likely to try to live up to the conditions imposed.

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