

Board of Adjustment Training June 11, 2010

Scenarios and Answers

Scenario #1

You are a member of the BOA and you realize an upcoming case involves property owned by the church you used to attend up until three months ago. *What should you do?*

- What if the case involves property owned by a distant cousin?
- What if the case involves a business owned by your deceased wife's brother?

Discussion

When the applicant is the board member's church, even if the board member is no longer a member, this would be a close associational relationship; therefore the board member must not participate in the discussion or vote.

When the case involves a distant cousin, the proper course of action is to disclose the relationship. The board member should think about whether he/she can be objective, given the relationship, and if he/she thinks it is possible to be objective, then that can be said at the beginning of the meeting when the Chair is asking about conflicts. However, if people object then the board member should be excused and leave the room until the case has been decided.

When the applicant is the board member's brother-in-law, this is a close familial relationship; therefore the board member must not participate in the discussion or vote.

Scenario #2

There are seven members on your Board, and a case comes up that is located on a remote gravel road known to be difficult to drive. The applicant offers to drive the Board to the members to the property in her SUV in two groups so there won't be a quorum in her vehicle. *Is this OK?*

- What if the applicant offers to include the head of the citizens group opposed to the project on each trip?
- What if it is a county-owned vehicle and is driven by the planner?

Discussion

It is not a good idea to have a group of Board members traveling together to visit a site unless it is part of the meeting. There are too many opportunities for ex parte communication, even if it is unintentional. In addition, it also looks bad and will lead to mistrust and hard feelings on the "losing" side, whether it is the applicant or anyone opposed to the project or variance. In the examples given above, it is not a good idea regardless whether anyone from the citizens group is

included, the trip takes place in a vehicle owned by the local government (or a board member for that matter), or who is driving.

Scenario #3

You are a newly-appointed BOA member and there is a controversial conditional use permit coming before the BOA in a couple of weeks. You see one of your neighbors in the grocery store and she says she has a lot of concerns about the permit. You talk for a few minutes while she outlines her objections and then a few days later she comes by your house with a petition against the project and asks you to sign it. *What should you do?*

Discussion

First, as a board member you should have ended the conversation immediately in the grocery store, when the neighbor first began talking about the permit. You can inform her that you cannot talk about the case outside of the meeting, and then invite her to come to the meeting and make her feelings known to the entire board as well as the applicant. If she continues to talk, you must continue to be firm about not discussing the case, and then be prepared to walk away if she keeps talking. When she comes to your house with the petition, you can once again invite her to come to the meeting to share her concerns with everyone, tell her you can't discuss the case, and not sign the petition. It is not necessary to get into a long discussion about how petitions are not considered to be evidence—this can be done at the meeting, by the Chair.

Scenario #4

Bed and breakfasts are not allowed in the R-1 district of the zoning ordinance. A large house in the district was on the market for a while and was finally purchased a few months ago. The new property owner comes before the Board and asks for a variance to convert it to a B&B. She says she didn't realize how deteriorated it was when she bought it, has spent a lot of money fixing it up, and now doesn't have enough money left to make the monthly mortgage payments. She says she contacted the realtor who sold the house to her to get his advice because he served on the Board of Adjustment for several years, and she says he advised her to ask for a variance. She produces six letters from the surrounding neighbors, all notarized, saying they have no objection to it being converted to a B&B. She also says she won't put up a sign, and won't have any parking in the front of the house. *What should happen next?*

- What if the Board of Adjustment granted a variance to a B&B a few houses down on the same block three years ago—has a precedent been set?

- Would it make any difference if the property were adjacent to the R-2 zone, where B&Bs are allowed?

Discussion

As part of the 2005 legislation changes, the General Statutes were amended to specifically prohibit “use variances.” It is possible to let the applicant know this tactfully and not belittle the advice or reputation of the realtor/previous BOA member. The notarized letters from the neighbors are not relevant. A precedent has not been set when a variance should not have been given in the first place. In this situation, what matters is that the current zoning does not allow a B&B, which means there are two possible options for the applicant to have a positive outcome: amend the zoning ordinance text to allow B&Bs in the R-1 district, or rezone the property to R-2. The fact that this parcel is adjacent to R-2 means it is conceivable that a rezoning is a possibility, however, the factors that govern whether a rezoning is merited should be studied. The text amendment is also a possibility, but again, this needs careful study. There is no immediate fix for this problem—it is going to take time.

Scenario #5

You are the Chair of the BOA. At the hearing for a controversial conditional use permit, the representative of a citizens’ group opposed to the project presents a petition signed by 50 people and asks that it be entered into the record as evidence. *What should you do?*

- Would it make any difference if the signatures were notarized?
- At the same meeting, a representative of the local Merchants’ Association presents a petition in favor of the project, signed by all members of their Board and 60 general members. *What should you do?*

Discussion

Although petitions are considered to be “opinion” and therefore not relevant to a quasi-judicial hearing decision, it is not necessary to inflame passions by loudly proclaiming that petitions can’t be included as evidence (regardless of whether the signatures are notarized). Instead, it is acceptable to be polite, thank the person when he/she comes forward to hand in the petition, and then not use it as evidence or part of the findings of fact when it comes time for deliberation. This can be done with all petitions presented.