



JOINT MEETING MINUTES

Planning & Zoning Commission (PZC), Architectural Review Board (ARB) and Board of Zoning Appeals (BZA)

Thursday, August 22, 2024

CALL TO ORDER

Ms. Rauch, Director of Community Planning, called the meeting to order at 6:00 p.m. in the City Development Building, 5200 Emerald Parkway.

MEMBERS PRESENT

Planning & Zoning Commission members: Rebecca Call, Kim Way, Kathy Harter, Dan Garvin, Gary Alexander, Jason Deschler, Jamey Chinnock

ARB members present: Sean Cotter, Lisa Patt-McDaniel
ARB members absent: Michael Jewell, Hilary Damaser, Martha Cooper
[quorum not present]

BZA members present: Joseph Nigh, Patrick Murphy, Bridget Tyznik, Joel Kretz, Garrett Anderson

Staff members present: Jennifer Rauch, Bassem Bitar, Chris Will, Tammy Noble, Sarah Holt, Zachary Hounshell, Rati Singh, Tammy Mullinax, Micole Champion

Others present: Greg Dale, FAICP, McBride Dale Clarion, consultant
Thaddeus Boggs, Frost Brown Todd, Assistant Law Director
Anthony Severyn, Frost Brown Todd, attorney

Ms. Rauch introduced the training portion of the meeting and indicated that Consultant Greg Dale would guide the first portion of the Board and Commission training.

BOARD/COMMISSION MEMBER RESPONSIBILITIES

Mr. Dale reviewed the following Board/Commission member responsibilities with the members:

1. Accept that your job is hard. Board and Commission members get the tough calls. It would not come to you if it did not require judgment and discretion.
2. Understand your role in the process - Advisory vs. quasi-judicial
3. Focus on facts and standards.

Find the facts and apply them to the standards. Encourage the speakers to share facts. Be aware of what standards apply to the case and have them before you. Be aware that you represent the community, not your personal views. If the applicant demonstrates that they meet the standards, the Board/Commission should approve the project rather than if the members like the project. Likewise, if the applicant does not meet the standards, the Board/Commission shouldn't approve the project, whether you like the project. Facts and standards determine how the cases are determined. There is a period of time in the meeting when the members are on a fact-finding mission.

4. Run fair and efficient meetings that get to the facts.

5. Separate fact-finding from deliberating.

In the case review, have a clear point when the discussion shifts from questioning and listening to building Board/Commission consensus for a decision.

6. Cite the facts and findings to support the Board/Commission's decisions.

Weigh, assess, sift and apply facts to the standards that apply to the request. Be explicit in considering standards. Avoid setting precedents; use the findings to distinguish the case.

7. Be prepared for reviewing the cases.

Know the City's Code, Guidelines and role of the Community Plan. Review your meeting packet thoroughly before the meeting and view the application site.

8. Be respectful within the meeting.

Avoid attempting to be the applicant's friend; do not mingle with the crowd in the audience; do not use the applicants' and witnesses' first names. Remain calm if the applicant or an attendee's emotions rise.

9. Have an unbiased and open mind.

Disclose and deal with conflicts and biases, and allow yourself to change your mind.

10. Always conduct the business of the public in public and understand what constitutes public records.

Mr. Dale stated that it is important to follow clear procedures. Manage the length of time spent on the case review and the amount of time spent speaking. Focus the speaker on the facts of the case. No one should be permitted to speak unless they have been recognized by the Chair first. Members of the audience and other members of the Board should wait until they have been recognized by the Chair before speaking. Members of the audience should not speak from their seats but go to the microphone to speak. It forces decorum and discipline into the meeting process. When the meeting reaches the point that everyone has had their say and the Board has had its discussion, a Board member needs to frame a motion that they find represents the consensus of the Board members. A motion should not be made to advance a Board member's opinion.

Ms. Rauch and Mr. Boggs affirmed that the motion should always be to approve, not to disapprove, even if the anticipation is that the votes will be in the negative.

Mr. Dale stated that all motions should be made in the same manner. When making a motion to approve, state the reason behind it. If you cannot explain the rationale behind that motion, the

motion is not yet ready to be made. The record needs to reflect the reasoning. Mr. Boggs stated that the record reflecting the action is adopted at the subsequent meeting.

Mr. Dale observed that if many conditions are needed to approve, perhaps the case is not ready for approval. Too many conditions require unnecessary staff time in checking and following up to confirm adherence to the conditions. Additionally, all the conditions need to be tied to the impact of the development.

Mr. Boggs stated most conditions he has seen fit the condition criteria. Typically, they are items tied up either before a building permit or certificate of occupancy is issued. Mr. Dale responded that conditions such as more landscaping or limiting hours of operation are appropriate. However, the conditions should not be for the purpose of making the Board feel that it is improving the application.

Mr. Way stated that in the Commission's deliberations, each member states his/her reason for approving or the issues they have with the application. It is made very clear the reason that a member is voting a certain way. He believes that works well.

Ms. Call stated that applicants often do not like lengthy discussions about details, if the Commission is not going to approve the case anyway. Applicants have expressed the preference not to be put through unnecessary discussion, if the application will not be moving past the initial review.

Mr. Alexander stated that as a design professional, and not as a board member, he has always found it beneficial to have as much feedback as possible from a review board on the entire project early in the process. If those issues will be reviewed later by the Board, it helps the architect to focus on them earlier.

Mr. Dale stated that if the discussion concerns whether a proposed use is the correct use in a particular place, and a member's assessment is yes based on rational planning principles and the Community Plan, then spending time on discussing the lighting or whether the materials are compatible is appropriate.

Mr. Dale requested that Ms. Rauch describe the staff review process. Ms. Rauch stated that the staff's review is based on the Code and the Community Plan recommendations. In her tenure with the City, the reviews for an Informal Review, for example, have been conducted in both ways. Previously, all the questions were asked, but recently, we have focused on the first question regarding the use, and if that is not acceptable, the discussion does not move on to the other details. Staff may review an application that they do not believe meets the Code or is supported by the Community Plan, but the applicants want to have their case heard. Staff's job is to share information and let the Commission review staff's recommendations, the applicant's presentation and public comments and provide the ultimate feedback or determination. The applicant has the right to move forward.

Mr. Dale agreed. If the applicant wants to try to convince the Commission of the reason their application should be approved, they have the right to do that.

Mr. Boggs stated that the point at which that type of discussion occurs is generally with the Informal Review stage of the development process, where a significant level of non-binding feedback is

provided. The Informal Review discussion begins with the question, "Does the Planning Commission support the requested use?" If the answer is affirmative, then additional questions seek the Commission's views on other items. If there are not four PZC members who support the use, the PZC Chair typically asks the applicant if they desire feedback on the other questions. It is the applicant's prerogative to move forward from the Informal Review stage, even if they do not receive positive feedback on the use. If they do so, it is preferable that they be well advised and able to make certain changes that would make the use less objectionable when they return.

Ms. Call stated that we do not want to waste the applicant's time if the answer to the first question is no, but if the applicant is interested in changing or mitigating the first concern, we want to provide them guidance on the lower-level details.

Mr. Dale stated that the applicant may not like the feedback, but he would recognize that he was treated respectfully.

LEGAL OVERVIEW

- Ex Parte Contact:

Mr. Dale explained that ex parte is having contact with individuals who have involvement with a development application outside of the meeting process. It involves engaging in substantive conversations with those individuals outside of the meeting process. Members engaging in ex parte contacts are issues some communities have experienced. The City's review bodies operate in a quasi-judicial manner with many of their cases. Engaging in ex parte contact regarding quasi-judicial cases can present legal problems. If it is revealed that a board member had ex parte contact with individuals involved with a development case, it could provide legal grounds for appeal. After a ruling, however, there are no legal ramifications from speaking with the other party.

Mr. Boggs stated that once the case is disposed/complete, there is no legal issue with having a conversation about the case.

Mr. Dale stated that when an individual is engaging in ex parte contact, they are gaining information that no one else is hearing. Everyone has a right to hear everything that will be considered in the decision-making.

Mr. Boggs recommended if a member is contacted by someone seeking to better understand the board member's concerns, that they reach out to Mr. Boggs. He will assist the member in determining the specific context and if the contact is appropriate. For an example, once the jury delivers a verdict at a jury trial in which he has provided counsel, if a juror is willing, his practice is to ask that juror everything about what they found compelling or not, and what he could have done differently. That is very appropriate. However, there may be circumstances in these type of development applications that have more nuance, so he is available to provide legal guidance in such situations.

Mr. Dale noted that emails and text conversations are also legally discoverable public information.

- Conflict of Interest:

Mr. Dale stated that legally, the board member has a conflict of interest with a case if the member or a family member has financial interests with the case. Typically, a conflict of interest is apparent. The cases that are less clear are when there is not necessarily a conflict of interest but the situation creates a potential perception of conflict of interest. If an applicant is your next-door neighbor, is

that a conflict of interest? There may not be an actual conflict of interest, but the average individual could perceive it as one. Similarly, if it is a sibling with whom the board member has no shared financial interest, is it a legal conflict of interest? Could the average person perceive it as such? Mr. Boggs concurred that those also are situations that should be avoided.

Ms. Call stated that during the discovery period in review of a case during a meeting, it could be tempting to express support for the items one likes. She inquired what the recommendation is for separating opinions from the fact-finding.

Mr. Dale stated that a Commission/Board member should never state, "I like this." That is not a legal criterion. Whether a member likes it or not is irrelevant. A good rule of thumb is not to express an opinion. You can ask the applicant to tell you more about the items you question.

Mr. Boggs responded that the use of objective language is preferred.

Mr. Dale stated that there can be times when the attorney may indicate that there is no conflict of interest; however, the board member recognizes that they might not be unbiased. They should recuse themselves. Applicants and neighbors — anyone involved — has the right to expect that the people making the decision are unbiased. That is where avoiding a perception of conflict of interest is important.

Mr. Chinnock inquired if making the comment that "I support" or do not support something is the same as saying, "I like" this or that.

Mr. Dale responded that it is not the same. It is stating that you believe the applicant has made his case.

Ms. Call stated that it can be different when providing recommendation to Council.

Mr. Dale agreed that in providing advice to City Council regarding the case, you are set apart of the legislative process and, therefore, have more discretion in terms of your advice for their consideration. A Council member will want to know more than whether the Commission supports the case. They will want to know what the issues are. It is important to explain your rationale for Council's consideration when they make their decision.

Mr. Way stated that it is difficult to remain neutral when the public expresses their comments. The Commission is not the issue; they are just executing the Code. The Commission often wants to appear warm and welcoming to community members who come to provide testimony. We want to project a feeling of empathy to community members, but that may be perceived as showing a preference one way or the other.

Mr. Dale stated that there is nothing wrong with being compassionate, user-friendly and problem solving if you remain objective in assessing the facts. You can encourage the public by making them feel welcome and asking clarifying questions. That is primarily the responsibility of the chairperson. The responsibility is a combination of welcoming people yet projecting that the Commission/Board has a job to do.

Ms. Rauch stated that is the reason each case repeatedly displays slides that shows where the application is in the process. That explanation is helpful in educating the public regarding the case. This is most applicable to PZC and ARB, where there are multiple steps in a review. The Planning Reports are intended to help board members determine whether an application meets the findings of fact or the criteria. The discussion questions provided with Concept Plans and Informal Reviews are not subjective, but objective, i.e. "Is this use appropriate....is it based on the Community Plan, what are the landscaping and setback requirements?" For a determination, the staff report

indicates the criteria that are met/not met and whether it could be met with a waiver. That is staff's role in helping the Commission/Board make informed decisions, and those components help comprise the public discussion and record.

B&C MEMBER SUPPORT/COUNCIL LIAISONS/MEDIA INQUIRIES

- Staff Support

Ms. Rauch reviewed the staff support provided to the Commission and Boards. Each body has its own staff liaison, and Commission/Board members should reach out to them, if they have a need or questions. Legal staff is also available to assist with any legal questions related to the case.

- Media Inquiries

Ms. Rauch stated that the media is using different methods to ask questions today. In such an instance, advise your staff liaison, or Mr. Boggs and they will work with our communications and marketing team to address any needed response. Board and Commission members represent the City. The media may reach out to you, but it is often a Citywide issue, and information should be shared from the perspective of the City.

- Council Liaisons

Ms. Rauch shared that Council liaisons have been provided for PZC and ARB and this role provides Council-related guidance and background to those two bodies. The PZC liaison is Councilmember Cathy De Rosa and the ARB liaison is Councilmember Amy Kramb. The intent is that the liaison be aware of any challenges the board is facing and allow the Board to have an understanding of Council's direction and goals.

RESPONSIBILITY MATRIX

Mr. Boggs, assistant law director, introduced himself and explained that he works primarily with the Planning & Zoning Commission and City Planning staff. He noted that he is joined this evening by Anthony Severyn, who will be serving as a legal advisor to BZA. Legal staff has been asked to provide legal counsel for that body going forward. He provided a new infographic created for this evening's meeting. He is hopeful it will prove useful and be built upon over time. Creation of this infographic is a result of the feedback that staff and Council members received from the Boards and Commission requesting clarification of how their responsibilities fit within the overall development scheme. Dublin's development, land use and the built environment is a significant matter, since the City's built environment is what distinguishes it to people crossing into our community. There are many stakeholders involved in creating that built environment. Wherever you fall within the infographic perimeter, you are not alone. However, as the infographic on the flip side portrays, each body has its specific primary responsibilities – PZC, ARB, BZA, Staff, property owners/developers, and HOA's. If a member is wondering how a rezoning could impact City revenues, that question is not the responsibility of the Commission or Boards. It is City Council that makes that decision when it adopts land use plans that will impact the fiscal policies of the City.

Mr. Way noted that there can be other stakeholders involved with some of the cases, such as the Dublin Arts Center.

Mr. Boggs responded that occasionally there are third-party entities, although they are not involved in over 95% of the applications.

Ms. Call stated that some are intertwined. A project proposal that would involve private roads would be an example that first involves PZC but then the HOA. The Commission does not address potential

school population; however, Dublin School District relies on the Community Plan. It is important to understand the cross sections.

Mr. Dale stated that it is important for the Boards and Commission to understand the difference in acting in a reactive mode, where they have the responsibility to respond to an application that has been submitted versus a proactive mode, which would include recommendation of Code amendments. The responsibility the Commission/Boards have is not just to act on applications but to participate in the City's planning process. They can recommend Code amendments or changes to design guidelines to City Council.

Mr. Boggs stated that both PZC and ARB might notice standards that are requiring them to accept or deny actions they believe do not achieve the best results. They can recommend the requirements be amended accordingly. BZA has dealt with the need to interpret ambiguous Code phrases. While BZA has made the determinations, it also has identified phrases that needed to be better clarified.

Ms. Rauch stated that in addition to the Commission/Boards and Council's roles, all applications undergo rigorous staff review, not just by Planning staff but by other division staffs, as well. While Planning staff meets frequently for application reviews, there is also an established weekly meeting where Planning meets with other division staff members to review the applications together and work out the issues collaboratively. Many of these cases involve re-submissions.

Ms. Harter inquired about the conversation with an applicant who is being informed by staff that their application is not being recommended for approval.

Ms. Rauch responded that the applicant retains their right to submit their application to the Commission/Board for review. Staff makes a recommendation, but the Commission/Boards were appointed by Council to make the determinations, unless it is an administratively reviewed case, which the Code permits staff to determine. Staff presents a review board with a synthesis of all the information reviewed with a recommendation for disapproval, but the applicant has the opportunity to attempt to convince the body.

Mr. Dale inquired if staff would make the applicant aware that similar cases to theirs were not approved.

Ms. Rauch responded affirmatively. Planned Unit Developments (PUDS) have a significant level of flexibility and opportunity for discretion.

Ms. Call noted that the staff is not advocating for an applicant. If the staff report indicates numerous waivers would be necessary to pass the application, it does not necessarily mean the staff is advocating for its approval. Additionally, the body may hear different information presented in the meeting of which staff was unaware, or the Commission/Board can have a completely different perspective of the case. It is the reviewing body's job to consider all the information.

Mr. Alexander stated that ARB sees many applications that cannot be approved without several conditions. By the time the Board works through all the applications, it would have been better to table the application or not attempt to approve it all. Many of those cases end up being tabled after discussion. The staff reports for those applications rarely recommended disapproval. They are presented in a much more positive manner than is typical in other communities. Yet many of these projects are far from meeting the City's standards. The applicant anticipates approval and believes they can negotiate out of some of the conditions.

Ms. Rauch stated that ARB applications are much more subjective, which makes the cases very challenging. In addition to staff, independent consultants provide review support. Due to the level of subjectivity, there are a number of different ways in which a design issue can be solved and it requires input from the ARB to make that determination.

Mr. Dale pointed out that when staff makes a recommendation, they are indicating that, based on their review, it is their professional opinion that the standards are or are not met.

Mr. Cotter stated that staff's recommendations help frame the issues, so people can understand how staff has reviewed the application. The Board, however, can see it differently.

Ms. Call stated that it is essential that a reason be given for the Board taking a different position from staff. Perhaps, the Board sees the case differently because they do not believe it meets one of the standards. It is important to cite the Code criteria that you believe the application does not meet.

Ms. Rauch stated that staff's practice has been is to work with the applicant to get their application to the place that it can warrant the Board's consideration.

Mr. Garvin noted that even if staff recommendations were not given, he believes the Commission/Boards would reach the same conclusion as staff based on the criteria met/not met.

Mr. Boggs stated that the legal advice to state motions in the affirmative is not encouraging the members to try to reach approval of the application. It is solely to clarify a yes versus a no vote.

Ms. Rauch stated that when a member votes no, they should be citing the criteria that is not met as part of the deliberations.

Ms. Call stated that making a motion to approve does not mean the member agrees with approving it. However, the case review cannot proceed until that motion is made. The motion is not the record of a position; the vote is the record.

Ms. Call inquired if Council is currently discussing the extent of staff report contents.

Ms. Rauch responded affirmatively.

Mr. Boggs stated that, typically, the Chair will conduct a roundtable of the members allowing each to state their positions and reasons on the record.

Mr. Dale stated that in the roundtable it is appropriate for the member to state that they will not be supporting approval of the application for the following reasons.

Ms. Call stated that is the purpose of the deliberations – for members to explain their support or lack of support on the application based on the fact of the criteria not met. As chair, she will summarize the members' feedback before calling for the vote.

Mr. Boggs stated that once the question is called, he would prefer no further discussion and limit not to have more than a yea or nay, no discussion.

Mr. Deschler pointed out the importance of ensuring that you state your position and the reason for it succinctly for the record. In the event there is an appeal, that record will be important.

Mr. Boggs recommended that this occur before the question is called. If it has not, he would typically recommend the Board/Commission provide more discussion before the question is called.

Ms. Call advised that members review their meeting minutes and ensure they accurately reflect your statements made during the meeting; if not, request that they be amended before passage.

Mr. Nigh stated that the Board's questions and deliberations are reflected in the record. He noted the applicants' tendency to attempt to quote board members and hold them to their comments. Ms. Call stated that there is a difference in the Questions portion of the discussion versus the deliberations. If the people present believe that a board member's mind is made up before any questions have been asked or presentation provided, that is a problem. Members need to ensure they are impartial, listening to all the facts and not expressing their viewpoints until that proper point in the meeting.

DEVELOPMENT REVIEW PROCESS OVERVIEW AND DISCUSSION

- Overview of the Development Review Initiative

Ms. Rauch stated that in Fall 2023, City Council adopted an Economic Development Strategy, which focuses on the City's economic and fiscal sustainability, as led by the Economic Development team. One of the opportunities recognized as part of that Strategy was the need to look at the City's development review process and determine how that process could be made more transparent and consistent. That began as an internal discussion and progressed to include stakeholder representatives from the Boards and Commission and the development community. They looked at the development review process from the onset of an idea to building occupancy and looked for ways to make the process more efficient and clear to everyone involved. We aim to understand the expectations and mitigate and preempt potential problems. The City's development process is very challenging, yet it is the hallmark of Dublin. While it is a rigorous process, the results speak for themselves in the built environment. The question is how to ensure we maintain those results yet achieve them more efficiently and clearly. We have held several staff work sessions and have met with the development community, stakeholders and members of City Council to understand the key points on which we should be focusing. From a staff standpoint, we are trying to identify ways to improve the review process. We have discussed ways to help applicants as they move through the process. We have discussed whether applicants should have one assigned staff member or liaison who helps them navigate the system. We have discussed whether the staff reports and presentations that are provided to the Boards/Commission include the best information to make a decision. Six main action items were identified as part of this initial Development Review Initiative. All of these items involve more dialogue with the Board and Commission members and City Council as staff works toward implementation.

SMALL GROUP DISCUSSION

Ms. Rauch stated that the training would separate into table group discussions, after which the full group would share and discuss their observations. The discussion questions are:

1. How do the Boards and Commissions balance using objective (Code requirements) and subjective (guidelines) review standards?
2. How do the Boards and Commissions address determinations that involve Code language that is unclear or "silent" on an issue?

Following the table discussions, the small groups shared their responses.

Mr. Alexander stated that his small table group involved BZA members and himself. Although he now serves on PZC, his main experience is as an ARB member, so their observations are related to the experiences of those two boards. Since Mr. Dale has begun to provide this type of training for the members, he has recommended that members follow the Code. The Code is clear, but the

Historic District Guidelines involve subjective interpretation of the Code. In addition to waiver precedents, guiding documents, including one for Alternative Building Materials, allow for interpretation of items that the Code does not directly address. In addition, an architectural consultant provides a report that is referenced in the staff report, which helps with those items not clearly defined in the Code. The staff report helps in areas of subjectivity.

Mr. Nigh shared that BZA follows the Code's objective guidance; there is no opportunity for subjectivity. Their determinations are based on whether the variance request meets the Code criteria.

Mr. Cotter shared the observations of his small group discussion. He also serves on ARB. Members indicated that the Code provides a rigid framework, as adopted by City Council. The members attempt to adapt the applications while ensuring that they remain consistent with Code. The members review the staff report first, then hear the applicants' presentations. The Board's objectivity comes within the constraints of past practice. While not in the Code, there are precedents that help guide the Board. With ARB, there are many more past precedents to be considered. If the decision is objective, the members try to state clearly how the application meets the Code requirements or Guideline recommendations, so that the next individual who sits on the Board can understand how the decision was arrived at. We need to be able to reference our decisions back to some constant, if not the Code, then the Guidelines. They attempt to operate with an objective framework.

Ms. Rauch stated that BZA is much more rigid in its deliberations.

Mr. Boggs stated that he does not think of it as an objective versus subjective dichotomy. It is a range of discretion that each board might have in a different context. Even when you are dealing with architectural guidelines, there are principles that are set forth in those guidelines; there are anchors to which the Board/Commission members can point. It is not a matter of "I like or dislike this." It should strive to be fair, objective and based on some standards. However, Guidelines versus strict criteria provide a broader range of discretion versus a narrower range of discretion. Working off precedent is tricky when dealing with land use and development issues, because each piece of property is unique. There may be seemingly small differences that make all the difference in the conclusion that is reached. A board member should not feel compelled to grant a variance on one property because the Board granted a variance on another property. Certainly, being informed of decisions that have been made in the past is part of being informed. Staff does a good job of providing that history in the meeting packet. The Board/Commission does not want to be arbitrary. An applicant should not receive one response one month, but 6 months later, another applicant receive a completely different rationale for a similar application. He would recommend that the members clearly articulate the rationale for their decision.

Mr. Dale stated that it is important to base the decision on a set of reasons. The more you can distinguish one site from another, the better your response. If a variance for Site B would be exactly the same as for Site A, there would be a precedent issue. However, Site B is not typically the same as Site A. You should be able to cite specific conditions, so that when someone refers back to the case, they can see the reason(s) the Board made a different decision on one site versus the other.

Mr. Boggs stated that having clear, articulated rationales in each case should naturally lead to consistency.

Mr. Cotter stated that consistency is about observing precedents, however. A decision today makes sense in view of what has occurred in the past. Not every site can be completely different. There is a logic flow between past cases and future cases.

Mr. Kretz stated that applicants typically try to convince the Board of their need for the variance and of a precedent that exists for a similar Board decision.

Mr. Boggs responded that the Board members are the finders of facts. They have the ability to give weight or not to testimony based upon their perception of whether the applicant's testimony is credible. It is not required that their testimony be taken at face value.

Mr. Nigh stated that he believes that precedents or decisions made several years ago regarding similar applications and sites matter. If the Board rules differently than a precedent, how would a Court of Appeals look at that? The makeup of the boards/commission change, so consistency is maintained by the Board continuing to look at the decisions made previously regarding similar properties with the same issue. While no two properties are exactly the same, if two issues are almost exactly the same, the residents have the right to be treated the same. If the first applicant was denied previously, the second applicant should not be approved simply because his case was reviewed by a new board composition.

Mr. Boggs stated that their Law Office does receive such discovery requests. What is important in those discovery requests is what has been put into the record and what Board/Commission members have said on the record. That gives an attorney the tools to make the argument that this is what needs to be done or draw an analogy. Hopefully, the logic is present in the record. He agrees that while no two properties are the same, if two issues are the same, they should be decided the same. That is the product of a reasoned, fair process and open discussion rather than going through the precedents in earlier variance cases.

Mr. Nigh stated that standing in the position of the applicant, he believes they have the right to know that although they can take their variance request to the Board, seven applicants with very similar issues were all denied. As a board member, he also would like to know if seven previous boards have denied similar requests and their rationale for doing so. Perhaps it was for a reason he has not thought of. He believes that is helpful in ensuring cases are not appealed and litigated.

Mr. Boggs stated that in his observation, staff has done a good job gathering those historical materials to the extent they are available. The record-keeping process has improved over the course of Dublin's growth. Much history is now available, and these types of discussions generate more history, so that the people who come after us will have that advantage.

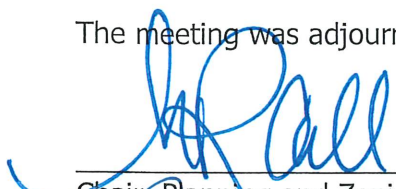
Mr. Garvin stated that their table discussed the second question: "How do the Boards and Commissions address determinations that involve Code language that is unclear or "silent" on an issue?" The members shared that when the language is unclear, they look at the context of the wording and use the deliberation process to arrive at what the Board thinks is the clarification. On silent issues, the Board can look at other documents the City has created, such as the Community Plan, and gain an idea of the over-arching objectives for an area and apply them on a more micro level. Finally, they can try to find an analogous/similar case, so they can look at the deliberations or clarity provided on a previous case.

Mr. Deschler stated that his group did not differentiate between unclear and silent. They stated that they would ask the attorney who is present about the best interpretation of a situation. The assistant law director has done a good job articulating on what the Board should focus. In regard to unclear language, their experience has shown it to be a matter of common sense. Most of the members on the board have previous legal review experience and they apply their knowledge/experience.


Ms. Rauch thanked the members for sharing in the training and the dialogue. Hopefully, it will help all members make determinations regarding their positions.

ADJOURNMENT

The meeting was adjourned at 8:06 p.m.



Chair, Planning and Zoning Commission



Chair, Board of Zoning Appeals



Assistant Clerk of Council