

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Maria Madsen Holzberg

DATE: October 1, 1997

RE: Legal Opinion Request

QUESTIONS PRESENTED:

- 1.) Under what authority does the Planning & Zoning Commission review school building projects?
- 2.) Does the Board of Education have the authority under state statute to overrule Planning & Zoning Commission mandates relating to school property?
- 3.) Does the Planning & Zoning Commission have the authority to mandate installation of a sidewalk adjacent to a driveway when there are no regulations requiring the installation of sidewalks adjacent to driveways?
- 4.) What regulation gives the Planning & Zoning Commission authority to require that an existing driveway, not specified to be changed under the scope of the project, be relocated?
- 5.) What legal recourse does the School Building Committee and/or Board of Education have concerning the Planning & Zoning Commission's decision?

ANSWERS AND ANALYSIS:

1.) The Commission conducts site plan reviews pursuant to state statute and its regulations. Section 8-2 of the Connecticut General Statutes authorizes Planning & Zoning Commissions to enact regulations governing the "erection, construction, reconstruction, alteration or use of buildings or structures and the use of land." C.G.S. § 8-2 (a), as amended.

Section 8-3 of the Connecticut General Statutes provides that "[t]he zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building, use or structure with specific provisions of such regulations." C.G.S. § 8-3 (g), as amended.

Section 55 of the Zoning Code provides that "[i]t shall be unlawful to construct, erect, enlarge, alter, or rebuild any structure or modify any site or change any land-use or to apply for any required municipal permit unless such proposed development shall have received site plan approval as herein provided." Zoning Code of the City of Middletown, § 55.01.

2.) The Board of Education does not have the authority to overrule Planning & Zoning mandates concerning school property. Section 10-220 of the Connecticut General Statutes sets out the duties of boards of education and provides that the Board "shall have charge of the schools of its respective school district" and "shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes". C.G.S. § 10-220 (a), as amended. However, the state legislature has not exempted boards of education from local zoning authority. Fuller, Land Use Law and Practice, Conn. Practice Vol. 9, § 1.5 at page 10 (1993/1997 supp.).

The legislature has provided an avenue by which municipalities may exempt themselves from zoning requirements. C.G.S. § 8-2 provides that "[a]ny city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations." C.G.S. § 8-2 (a), as amended.

The Common Council has not voted to exempt municipal property from Planning & Zoning Commission regulation.

3.) Connecticut General Statutes § 8-3 provides that "[a] site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations." C.G.S. § 8-3 (g), as amended.

Regarding sidewalks the Zoning Code provides as follows:

#### PEDESTRIAN WALKS

Sidewalks, or other Commission approved system of pedestrian walks are required for all development involving new streets and for development associated with existing streets within one mile of an existing school or officially designed future school site. Mile measurement to be along the most direct street to school site.

Zoning Code, at § 12.12 (emphasis added).

The Zoning Code requires that the site plan map submitted for review must illustrate the "[l]ocation and dimensions of pedestrian walkways, entrances, and exists." Zoning Code, at § 55.04 (A)(4)(c), as amended.

In present situation, the application involved realigning the driveway entrance and extending the driveway leading to the school approximately a tenth of a mile to form an arc of 180 degrees and constructing a new exit into the street. The Commission has required sidewalks along the new 470 feet of driveway.

Section 55 of the Zoning Code sets out the Commission's scope of review when evaluating site plans. This section provides that the Commission shall take into consideration, among other things, "[c]ompliance with the Zoning Code and general intent of the Plan of Development", the "[e]ffect of the proposal upon the public health and orderly growth of the Community", and the "[e]ffect of the proposal on area traffic patterns". Zoning Code, at § 55.05.01 (A)(C)(E), as amended.

Section 12.12 specifically gives the Commission the authority to require a "Commission approved system of pedestrian walks ... for development associated with existing streets within one mile of an existing school". Section 55.04 specifically requires site plan maps to delineate pedestrian walkways. Further, the Commission's standard of review mandates that it evaluate site plans with regard to public health and safety and their effect on traffic. Consequently, the Commission's approval of the site plan with the condition that a sidewalk be installed is supported by the zoning regulations.

4.) Section 55.04 of the Zoning Code, entitled "Site Plan Review", provides that project site plans must display, among other things, the "[l]ocation, arrangement, and dimensions of automobile parking spaces, aisles, vehicular drives, five lanes, entrances, exists and ramps." Zoning Code, at § 55.04. (A)(4).

Section 55.05.01 of the Zoning Code provides that "[i]n reviewing a site plan the following shall be taken into consideration... Effect of the proposal on area traffic patterns". Zoning Code § 55.05.01 (E).

Section 55.06 of the Zoning Code provides that "[a]fter all comments are received, the proposal shall be approved, modified and approved, or denied. The approving authority may attach reasonable conditions to an approval."

Accordingly, the Zoning Code provides the Planning & Zoning Commission with the authority to review the means of ingress and egress from the subject

parcel and the effect on area traffic therefrom and to attach reasonable conditions to its approval of the proposal.

5.) The only legal recourse which the Building Committee and the Board of Education have to contest the Planning & Zoning Commissioner is to take an appeal of the decision to Superior Court.

Connecticut General Statutes § 8-8 provides that "[a]ny person aggrieved by any decision of a board may take an appeal to the superior court for the judicial district in which the municipality is located. The appeal shall be commenced by service of process in accordance with subsections (e) and (f) of this section within fifteen days from the date that notice of the decision was published as required required by the general statutes." C.G.S. § 8-8 (b), as amended.

The Commission's decision on this matter was made on November 13, 1996 and notice of the decision was published in The Middletown Press shortly thereafter. Consequently, any appeal by the Building Committee or Board of Education would have to have been brought in December, 1996.

  
Timothy P. Lynch  
Deputy City Attorney

TPL/kt

cc: George P. Dunn, Chair, Snow School Building Committee  
William Warner, AICP, Planning & Zoning Director

REQUEST FOR OPINION, ADVICE, OR OTHER LEGAL SERVICE

(Submit to Mayor in Duplicate)

TO: Office of the Mayor  
FROM: Snow School Building Committee  
DATE: May 20, 1997  
RE: Planning and Zoning Commission Jurisdiction

FACTS:

- 1) At the Planning and Zoning Commission meeting held on November 13, 1996, the Commission voted to accept realignment of the driveway and to require that sidewalks be installed along the new driveway at the school (see attached).
- 2) At the Board of Education meeting held on December 3, 1996, the Board directed its Chair, John Shaw, to express to the Planning and Zoning Commission the Board's reservations concerning the Commission's requirement that a sidewalk be constructed along the new driveway, based on the consensus of the Board that a sidewalk will pose safety hazards to children and adults (see attached).
- 3) The Building Committee received correspondence from Gordon Stewart, Loss Control Manager for H.D. Segur Insurance on April 16, 1997, stating the recommendation that the sidewalk be limited to the outgoing side of the driveway only, due to safety considerations for the students who attend the school. This letter of concern was forwarded to Lee Osborne, Commission Chair (see attached).
- 4) The Planning and Zoning Commission stated at its meeting held on March 12, 1997, that it will not reconsider its action of November 13, 1996 (see attached).

LAW:


The Building Committee does not have the legal resources to state ordinance, regulation, statute, or case law application for this matter.

QUESTION:

Firstly, under what authority does the Planning and Zoning Commission review school building projects? Secondly, if said authority to review school building projects exists, does the Board of Education, under authority granted by State statutes, have the jurisdiction to overrule Planning and Zoning Commission mandates relating to school property? Thirdly, the sidewalk, being mandated by the Planning and Zoning Commission, will be adjacent to a driveway, and not a public road. If there are no regulations requiring the installation of a sidewalk adjacent to a property's driveway, does the Planning and Zoning Commission have the authority to arbitrarily mandate said installation? Fourthly, what regulation gives the Planning and Zoning Commission authority to require that an existing driveway, not specified to be changed under the State of Connecticut approved scope of the project, be relocated? Finally, what legal recourse does the Building Committee and/or Board of Education have to overrule a Planning and Zoning decision that blatantly disregards concerns of student safety as formally iterated by the Building Committee, Board of Education, and the City's Liability Insurance Broker/Consultant?

ESTIMATE OF PRIORITY:

    X                Urgent

  
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George P. Dunn, Chair, Snow School Building Committee