



Town of Stow PLANNING BOARD

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PLANNING BOARD PRESS RELEASE

The Planning Board filed its decision today on an application filed by the Collings Foundation, Inc. seeking approvals (an Erosion Control Special Permit and Site Plan Approval) for museum construction and use on property off Barton Road in Stow. For the reasons discussed below, the Planning Board denied these approvals.

The Board received this application on February 11, 2015, and held public hearings on March 4, April 1, April 29, and June 4, 2015. In addition, the Board held public hearings on five dates in 2014 on a prior, substantially similar application filed by the Collings Foundation, withdrawn by the applicant in favor of the later application. The Planning Board received extensive hearing testimony and submissions from the Applicant and from the public during the 1 -1/2 years of this process. The Board deliberated publically at several meetings held after the close of hearing, and voted 3-2 on August 26, 2015 to deny the requested approvals.

The Planning Board's Site Plan Review of any proposed construction and use includes a review of the proposal's compliance with the Zoning Bylaw. This application was no exception. The proposed museum use is not permitted under the Zoning Bylaw in either of the two zoning districts in which the property is located (Residential and Recreation-Conservation). The application therefore could not be approved by the Planning Board unless, as the Applicant contended, the proposed use is protected as an "educational use" under G.L. c. 40A, s. 3. Under this statute, the so-called "Dover Amendment," a city or town may not prohibit or "unreasonably regulate" an educational or religious use. A significant issue in the Planning Board hearing - and, ultimately, in the Planning Board's decision - was whether the proposed use qualifies as an "educational use" under G.L. c. 40A, s. 3. To qualify, education must be "the primary or dominant purpose for which the land or structures will be used."

The question of whether a proposed use is "educational" for purposes of Dover protection is answered solely in relation to G.L. c. 40A, s. 3 and under cases interpreting this statute. Definitions under other state law or federal law are irrelevant. There are no Dover cases involving a museum or similar use, so there was no specific guidance available from the Courts to the Board regarding this application.

Acting firmly in the tradition of Massachusetts citizen self-governance, the Planning Board reviewed relevant Dover cases; discussed and distilled the principles of "educational use" common to them; and applied these principles to the proposed use to determine entitlement to Dover protection. This was done with the guidance of Town Counsel, but, as was proper, the deliberation and determination rested with the Planning Board itself.

The question before the Board was not to determine whether museums generally are "educational." The question before the Board was whether the uses or activities proposed in this application have, in the aggregate, education as the primary or dominant purpose. The Board's decision attests to a thorough review of all uses described in the application, and to the Board's careful application of Dover law to the facts presented.

The Board concluded that while some activities entailed in the proposed use may be educational for some participants, in the aggregate, the predominant use of the property is not educational. Rather, the Board concluded, the predominant use of the property as proposed is open air festival/exhibitions primarily for entertainment, and acquisition, restoration and curation of artifacts.

Having found that the proposed use was not entitled to Dover protection, the Board concluded that the application for Site Plan Approval and an Erosion Control Special Permit could not lawfully be approved, where the proposed use is not permitted in the Recreation-Conservation and Residential zoning districts. So as to provide a complete record, and having received extensive submissions relating to these approvals, the Board nevertheless reviewed the application for Site Plan Approval and an Erosion Control Special Permit on the merits. The Board was aided in its review by consultant Places Associates, Inc., on engineering and planning issues.

Following a thorough discussion applying relevant criteria under the Zoning Bylaw to the project plans and other submissions by the Applicant, the Board concluded that neither approval could be granted consistent with such criteria.

The Planning Board thanks the Applicant and the public for their very robust participation in the hearing process.