

September 24, 2019

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Re: Twilight Cove Retirement Community Question

Dear Amanda and Jenn,

The Planning Board has asked which Land Use Ordinance (LUO) curb cut provision governs the proposed Twilight Cove Retirement Community development – the general C-3 District performance standard or the more specific standard for retirement community developments.

I have reviewed Terradyn Consultants LLC's sketch plan application dated August 5, 2019. I understand that the proposed Twilight Cove development is to be located on one of two adjoining lots in Windham, which has frontage on and access to and from Route 302 (the "Property").

It appears that there are three access points on the Property along Route 302 – a driveway and two "woods roads." The Property appears to have no other frontage on a public road. The proposed development is a 62-unit subdivision with access from the Property to an arterial street, Route 302, over two roadways.

As you have pointed out, there are two different and somewhat conflicting standards for curb cuts under the LUO:

(1) Under Section 400 G.6, in the C3 District in which the site is located, for curb cut standards, the reader is directed to the Section 500 Performance Standards. Section 522 contains standards that "provide for the review of any entrance onto a public way for compliance with sound construction and design practices to ensure that traffic safety, drainage and public improvements are not adversely affected." For C1, C2, C3 and I Districts, a parcel generally is limited to one curb cut on the same street. Section 522 (a)(1) allows the Planning Board to waive this standard to allow two curb cuts on a non-Arterial street if part of a site plan or subdivision application.

(2) Under Section 546, Retirement Community Performance Standards, "Retirement Community projects shall conform with the Street and Road Design Standards in Section 900 Subdivision Review." Under Section 911 M.5(b)(7), a project with 31 or more lots or dwelling

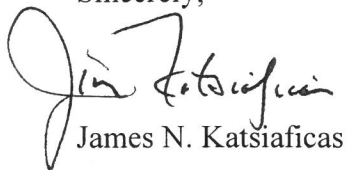
units requires a residential subdivision street to have a minimum of two connections with an existing public street, which would mean two curb cuts.

Section 104 of the LUO provides that whenever there is a conflict or inconsistency between two sections of the LUO, "the more restrictive provision shall control."

While it is not entirely clear which is the more restrictive provision, Sections 400 G and 522 or Sections 546 and 911 M, the Planning Board could reasonably determine that Sections 546 and 911, which apply specifically to retirement communities in a zoning overlay district enacted for that purpose and which requires a residential subdivision street to have a minimum of two connections with an existing public street, is more restrictive than the Sections 400 G and 522 requirement that applies generally in the C3 District and requires only one curb cut. In that case the Planning Board could determine that it interprets the LUO performance standard of two curb cuts/access points along Route 302, as specifically required by the Section 911 street standards that apply in the Retirement Community and Care Facility Overlay District, to be more restrictive than the one curb cut general C3 District standard, particularly because of the additional cost of a second curb cut and access road. If the Planning Board were to so determine, as a condition of approval, it could require the discontinuance of separate private road access points that do not meet sight distance requirements, or the relocation of those access points to connect to the proposed access roads that do meet sight distance requirements.

Please let me know if you have any additional questions or comments in this matter.

Sincerely,



James N. Katsiaficas

JNK/ems