

August 7, 2018

Planning Board
8 Newmarket Road
Durham, NH 03824

RE: *Proposed revision of the Conditional Use Permit checklist*

Greetings,

First, I appreciate the simplicity and clarity of the Town Planner Michael Behrendt's draft revision of the checklist to be used by the Planning Board during its deliberations on Conditional Use Permits. It is important that Board members have before them the exact current language of the ordinance, whether or not one believes it should be revised.

Accompanying this letter (the second email attachment) please find a slight revision of Michael's draft that does **only** that. My revision (see changes in green):

- a) provides omitted criterion language in the ordinance
- b) matches the word **pertinent** in the ordinance (replacing **not applicable**)
- c) reminds the checklist user that all eight criteria must be met (per the ordinance)
- d) adds a **date effective** to a footer
- e) adjusts the format to retain the 2-page length

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On the other hand, the level of detail in the current checklist **forces Board members to focus on specific points embedded in the ordinance language for each criterion.** Doing so for all criteria will of course lengthen the checklist by perhaps another page. But that may be a small price to pay for ensuring that a critical legally-binding process is well documented. And, of course, a shorter checklist that is not comprehensive may not accomplish the very purpose of the checklist.

The role of a checklist is to aid with memory recall and to make explicit the minimum and the obvious. (This will sound familiar to those who have read surgeon Atul Gawande's *The Checklist Manifesto* or articles referencing it.)

A checklist should be detailed enough to encompass all points critical to taking action.

Put yet another way, without such detail, points may be overlooked or forgotten. ("Oh, whoops! I didn't mean to say YES to the overarching criterion — I forgot that there will be a terrible stink from the project, even though I don't think the traffic congestion will be worse" kind of scenario.)

Please consider seriously Joshua Meyrowitz's related comments and the example he provided **expanding the checklist to specify details mentioned in the ordinance's criteria.** Including a line for "Other" where appropriate is also important, particularly given language for several criteria that reads: "This shall include, but not be limited to..."

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As for including on the checklist itself the language of Section 175-23(D) Conditions of Approval: I would argue against doing so, although I understand why some believe otherwise. I think the sole purpose of the checklist is to create a clear legal record of the Board's position on each and every criterion. That record should stand on its own.

The Conditions of Approval will be laid out separately in the Notice of Decision and should, of course, be so precise that no question remains about expectations and that cause for enforcement will be clear.

That said, for convenience (and as a reminder), Section 175-23(D) could be printed and handed to the Board along with draft Conditions of Approval at the appropriate time.

In closing, I address new Board members with what I hope will be a forgivable reminder to seasoned members: I hope that you each maintain a personal list throughout a site plan review—whether for a Conditional Use Permit or not—of any issue that must be addressed through the process. Some issues may be *solved* by proposals by the applicant. Others will remain for the Board to discuss as possible requirements under the Conditions of Approval. These may or may not be related to concerns addressed within the Conditional Use criteria and, indeed, additional Conditions tightly related to impacts of the project may legally be included in any approval, whether or not an application is for a Conditional Use permit.

Regards,

Robin Mower

Conditional Use Application Checklist

Checklist For Review by the Durham, NH Planning Board

This form may be used to ensure that applications for Conditional Use Permits meet the requirements of Article VII – Conditional Use Permits, including the eight criteria in Section 175-23, of the Durham Zoning Ordinance, Section 175-23(C), which states: “A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following conditional use permit criteria (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application)...”

Application Name: _____

Questions for the Town Planner:

1.	<u>Application</u> . Was the conditional use application submitted by the property owner or duly appointed?	YES ___	NO ___
2.	<u>Fee</u> . Was the required fee submitted to the Planning Department?	YES ___	NO ___
3.	<u>Newspaper Notice</u> . Was the public notice placed in the newspaper at least 10 days prior to the public hearing of the Planning Board?	YES ___	NO ___
4.	<u>Notices to Abutters</u> . Were written notices sent by certified mail to abutters within 300 feet of the subject property at least 10 days prior to the public hearing by the Planning Board?	YES ___	NO ___
5.	<u>Sign</u> . Was a sign measuring two by three feet placed on the property by the applicant at least 10 days prior to public hearing by the Planning Board?	YES ___	NO ___

Questions for the Planning Board – Eight Criteria That Must Be Met under per Section 175-23

1. Site suitability: The site is suitable for the proposed use. This includes:
 - a. Adequate vehicular and pedestrian access for the intended use.
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
 - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

6. Impact on property values: The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

7. Availability of Public Services & Facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___

8. Fiscal impacts: The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.

➤ Is the above criterion met? YES ___ NO ___ NOT APPLICABLEPERTINENT ___