

September 7, 2018

Planning Board
8 Newmarket Road
Durham, NH 03824

RE: (a) *Revision of the Conditional Use Permit compliance checklist*
(b) *Conditional Use Criteria: Interpretation*

Greetings,

I would like to address two concerns I have regarding the current Planning Board discussion to modify the process through which Conditional Use applications are evaluated: 1) the necessity of checklists, and 2) the approach to evaluating the Conditional Use criteria.

Once one agrees that the language of the compliance checklist for Conditional Use Permit criteria should match that of the ordinance, one might think that's the end to it. But as at least one Planning Board member pointed out at the August 8, 2018, meeting, the resulting document then ceases to function as a checklist. Indeed, it becomes a ballot rather than a tool to help the Board evaluate whether an application complies with the criteria.

In contrast, it is clear that the drafters of our current checklist understood this distinction and deliberately designed the existing checklist to function as checklists are intended. Surgeon Atul Gawande's *The Checklist Manifesto* makes clear why we need checklists:

"...where the most basic steps are too easy to overlook and where overlooking even one step can have irremediable consequences, something as primitive as writing down a to-do list to 'get the stupid stuff right' can make a profound difference."

book review, *The New York Times*, December 23, 2009

"I introduced the checklist in my operating room, and I've not gotten through a week without it catching a problem. It has been really eye-opening. You just realize how fundamentally fallible we are."

Gawande interview with *Time* magazine, January 4, 2010

A checklist makes a process wholly transparent and provides a clear record of it; in this case, the evaluation of a development application relative to its impacts on the community.

I therefore submit to you the accompanying draft version of the checklist that picks up the exact language of the ordinance for convenience followed by a list of the elements referenced in the ordinance, i.e., the actual checklist "tool." (As a sometimes fast but careless reader myself, I appreciate the value of this type of "highlighting" and imagine it would be helpful to others. As with bulleted text, lists typically improve readability.)

My second concern is the Board's interpretation of Section 175-23 C of the ordinance, the Conditional Use Criteria themselves, as manifest in a discussion at the Board's August 8 meeting. The suggestion made that the Board, in essence, sums up where an application stands on the pluses and minuses of the examples provided within a given criterion, aggregating or trading off, is alarming. This interpretation smacks of "the ends justify the means" and **is not supported by the language of the ordinance**, as several residents with language, literature, and communications professional expertise and/or Planning Board experience concur. (Should it really be OK to have a stink-producing use that is attractively designed, screened, and otherwise compatible with the neighborhood?) This suggested "trade-off" approach would also, I believe, be a break with precedent.

I urge the Board to request a written opinion from our Town Attorney about how to "interpret" the ordinance's criteria and to share the opinion with the public.

For example, Criterion #2—"External Impacts"—is a category within which are provided examples of potential impacts. If **any** of the adverse impacts would arise from the development, unmitigated by actions volunteered by the applicant or required by the Board, then the application would not meet the criterion. This is an "aggregate" criterion only in the sense that **all** of the potential impacts listed within the paragraph fall into this category. The language does not state or imply that tradeoffs may be made.

Regards,

Robin Mower

Conditional Use Application Checklist
For Review by the Durham Planning Board

This form is intended to help Board members confirm that applications for Conditional Use Permits meet the requirements of Article VII – Conditional Use Permits 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).” Exact language of the ordinance is followed by compliance questions related to elements specified in the ordinance.

Project Name/Applicant: _____

Question for the Town Planner:

Were all application and notice requirements met, including submission of the conditional use application, payment of required fees, placement of the newspaper notice, mailing of notices to neighbors within 300 feet, and placement of the sign ten days prior to the public hearing?

YES ___ NO ___

Questions for the Planning Board – Criteria under Section 175-23 C

1. *Site suitability:* The site is suitable for the proposed use. This includes:
 - a. Adequate vehicular and pedestrian access for the intended use.
YES ___ NO ___ NOT PERTINENT ___
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
YES ___ NO ___ NOT PERTINENT ___
 - c. The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
YES ___ NO ___ NOT PERTINENT ___
 - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
YES ___ NO ___ NOT PERTINENT ___

➤ Is Criterion #1 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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.

Elements of above criterion:

- | | | |
|-----------------------------------------|---------|--------|
| a. Greater impact of traffic generation | YES ___ | NO ___ |
| b. Greater impact of noise or vibration | YES ___ | NO ___ |

- c. Greater impact of dust or heat YES___ NO___
- d. Greater impact of smoke, fumes, gas, or odor YES___ NO___
- e. Greater impact of hours of operation YES___ NO___
- f. Greater impact of exterior lighting and glare YES___ NO___
- g. Adverse effect on surrounding environment and/or neighborhood from location, nature, design, height of structure(s) YES___ NO___
- h. Adverse effect from nature and intensity of the use YES___ NO___
- i. Other: _____ YES___ NO___

➤ Is Criterion #2 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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.

Elements of above criterion:

- a. Relationship of building(s) to street is compatible with neighborhood YES___ NO___
- b. Off-street parking amount, location, screening are compatible with neighborhood YES___ NO___
- c. Yards and setbacks are compatible with neighborhood YES___ NO___
- d. Buffering of adjacent properties is compatible with neighborhood YES___ NO___
- e. Vehicular access to and within site are compatible with neighborhood YES___ NO___
- f. Pedestrian access to and within site are compatible with neighborhood YES___ NO___
- g. Other: _____ YES___ NO___

➤ Is Criterion #3 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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.

Elements of above criterion:

- a. Scale, height, and/or massing of structure(s) are compatible with neighborhood YES___ NO___
- b. Roof line(s) is compatible with neighborhood YES___ NO___
- c. Architectural treatment of front or street elevation is compatible with neighborhood YES___ NO___
- d. Location of principal entrance is compatible with neighborhood YES___ NO___
- e. Materials and/or colors to be used are compatible with neighborhood YES___ NO___
- f. Other: _____ YES___ NO___

➤ Is Criterion #4 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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.

Elements of above criterion:

- a. Wetlands are preserved YES___ NO___ N/A___
 - b. Floodplains are preserved YES___ NO___ N/A___
 - c. Significant wildlife habitat is preserved YES___ NO___ N/A___
 - d. Stonewalls are preserved YES___ NO___ N/A___
 - e. Mature tree lines are preserved YES___ NO___ N/A___
 - f. Cemeteries and/or graveyards are preserved YES___ NO___ N/A___
 - e. Designated historic buildings and/or sites are preserved YES___ NO___ N/A___
 - g. Scenic views and/or viewsheds are preserved YES___ NO___ N/A___
- Other: _____ YES___ NO___

➤ Is Criterion #5 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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

➤ Is Criterion #6 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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.

Elements of above criterion:

- a. Water available is sufficient YES___ NO___
- b. Sewer available is sufficient YES___ NO___
- c. Waste disposal available is sufficient YES___ NO___
- d. Police protection available is sufficient YES___ NO___
- e. Fire protection available is sufficient YES___ NO___
- f. Schools available are sufficient YES___ NO___

➤ Is Criterion #7 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___

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 Criterion #8 (above) met? COMPLIES ___ DOES NOT COMPLY ___ NOT PERTINENT ___