

To: Durham Planning Board

Subject: Misuse of Conditional Use criteria

For this discussion, I suggest that you familiarize yourselves with [RSA 354-A](#), New Hampshire's "Law Against Discrimination" and the New Hampshire Municipal Association's treatment of [Fair Housing in New Hampshire](#).

I would like to draw specific attention to **354-A:1** which includes

"The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. "

And in the NHMA document the paragraph on **Age Discrimination** and the section on **Prohibited Activities Under the Fair Housing Act**, which several federal courts have affirmed apply to Municipalities and their Boards.

There is a hierarchy of law within Durham that runs Federal Law, State Law, Local Laws and Regulations. Our Zoning Regulations and Conditional Use criteria are subservient to the greater laws of the land. I feel that there is currently a concerted effort by some in the community to utilize the Conditional Use criteria in an inappropriate manner to urge us to violate RSA354-A. This is their right under the First Amendment, but we should be vigilant regarding which arguments we allow to sway our decisions so that we may reasonably defend them in the end.

The Conditional Use criteria have us evaluate social impacts, as well as potential noise, odors, and hours of operation. These are meant regarding physical structure or commercial activities. Examples would be placing a gentleman's club near the middle school, noise caused by a metal manufacturer, or odors from a processing operation. They are not meant to be used against people going about their normal lives.

As a child I remember one of my elders telling me that you can choose where you live, but you cannot choose who moves in next to you. This is a yardstick of discrimination that is easy to apply and that has been bothering me for a long time.

I appreciate your views and comments, but please hold them until an appropriate meeting of the Board.

Paul Rasmussen
Durham Planning Board Chair