

Karen Edwards

From: RobinM <melodyofharpists@gmail.com>
Sent: Thursday, April 29, 2021 2:22 PM
To: Rick Taintor
Cc: Karen Edwards
Subject: Mill Plaza | Conditional use review | Town Attorney guidance 2018 | public info
Attachments: Conditional Use_ 20200601 ZO.pdf

Greetings, Rick --

Please forward to the Planning Board the below a lengthy e-mail thread -- and attachment -- related to guidance from Laura Spector-Morgan about the Conditional Use criteria in our zoning ordinance. While I sent this same email to the Board regarding an anticipated discussion about Conditional Use for the 19 Main Street application, and Michael Behrendt posted it to the Planning Board's website for that specific application, **it remains relevant for the Mill Plaza and two members of the Planning Board are new enough they may not have seen the earlier email.**

You may wish to communicate with Karen about how she posted the earlier email and document. Thank you.

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Dear Planning Board members,

Below please see an email thread between Town Planner Michael Behrendt and Town Attorney Laura Spector Morgan regarding the Conditional Use Permit section of Durham's zoning ordinance. **As you will note, Administrator Todd Selig approved sharing it with the public.**

I bring it to your attention because several current members of the Planning Board were not Board members at that time. It is important that all members of the Planning Board be on the same page insofar as legal guidance goes; individual judgment is a different issue.

Please read the email thread from the bottom up for a chronological account.

Michael refers to the *pertinent section of the ordinance,* although it was not appended in the 2018 email thread. For your convenience, I have attached the current (June 1, 2020) Article VII. Conditional Use Permits (entire article excerpted and converted to PDF from the Word document posted online at <<https://www.ci.durham.nh.us/planning/zoning-ordinance>>), which applies to this application.

In addition, I highlight a few points:

- 1) **All eight criteria must be met** to support the granting of approval.
- 2) **Documentation of rationale advisable** -- Laura Spector Morgan notes: *They don't have to "justify" their decisions; however, since appeals are heard on the record, it would be extraordinarily helpful if, as the board discussed each criteria, each board member expressed why s/he feels the criteria are met or not met, even if that is just to say that they agree with the sentiment another board member expressed.*

3) **Tradeoffs not permissible** -- Within each criterion, a set of examples (*not subcriteria*) is provided. Counsel advises that it is not a question of balancing. That is, within a given criterion, if there is more or less impact of a given type (example), *The board does not need to make specific findings on each of these examples; however, this is not a balancing consideration. If the board finds that the traffic impact of the proposed use is greater than existing or permitted uses, it does not matter that the dust impact from the proposed use might be lesser.*

4) **Administrative gloss / follow past interpretations:** It appears that Spector Morgan supports an interpretation that conforms with past interpretations. She also states that she does not believe the ordinance is ambiguous. Read below.

Regards,

-- Robin

Robin Mower
Durham, NH

* * *

Begin forwarded message:

From: Michael Behrendt <mbehrendt@ci.durham.nh.us>

Subject: Conditional use review - Town Attorney guidance

Date: November 1, 2018 at 5:46:02 PM EDT

To: "Joshua Meyrowitz (prof.joshua.meyrowitz@gmail.com)" <prof.joshua.meyrowitz@gmail.com>, "Josh Meyrowitz (joshua.meyrowitz@unh.edu)" <joshua.meyrowitz@unh.edu>, RobinM <malpeque@gmail.com>, "Beth Olshansky (Beth.Olshansky@comcast.net)" <Beth.Olshansky@comcast.net>

Hello Josh, Robin, and Beth,

The Planning Board is continuing its discussion about conditional uses at the workshop this Wednesday. Because there was significant concern on the part of several town residents, including the three of you as I recall, about exactly how the 8 criteria should be reviewed, Todd Selig deemed it appropriate to share Town Attorney Laura Spector's email from September 10 (below) with the public at the Planning Board meeting on September 12. Ordinarily, guidance from the Town Attorney is confidential but in this case Todd made an exception.

We received additional correspondence from the Town Attorney about conditional uses, immediately below. Todd has approved my sharing this with the public. Here is an email chain with my questions and the Town Attorney's responses. Please feel free to share this information with any parties (but please also include my email here for background). Best regards.

Michael Behrendt

Durham Town Planner

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From: Laura Spector-Morgan [<mailto:laura@mitchellmunigroup.com>]

Sent: Thursday, November 01, 2018 1:28 PM

To: Michael Behrendt; Todd Selig

Subject: FW: Conditional use review - CONFIDENTIAL

Hi Michael.

In order to grant a conditional use permit, the board must find that each of the conditional use permit criteria are met. In order to make such a finding, the board members must consider look at each of the criteria, and determine whether this application satisfies them based on the facts of the particular application.

As you rightly note, many of the criteria (#2-5) provide examples of the types of impacts the board members need to consider. These are not "subcriteria." They are examples of the types of things the board should consider when weighing the criteria. Take, for example, the "external impacts" criteria.

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 structures 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.

This is a criteria: 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. The board needs to make a specific finding that this is met.

This is a list of non-exclusive things the board can consider when determining whether the criteria is met: traffic, noise, odors, vibrations, dust, fumes, hours of operation and exterior lighting and glare. The board does not need to make specific findings on each of these examples; however, this is not a balancing consideration. If the board finds that the traffic impact of the proposed use is greater than existing or permitted uses, it does not matter that the dust impact from the proposed use might be lesser.

This is also a criteria: the location, nature, design and height of the structures 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. The board needs to make a specific finding that this is met.

Criteria 3, 4, and 5 would be analyzed similarly. As for whether the impact must be significant, for #2 and #5, no, it is an absolute. For #3 and #4, a minor impact might not make the use "incompatible," that is something the board members will need to decide.

For criteria #1 (site suitability), each of the a-d items must be met, to the extent that they are applicable.

Each board member will inevitably make different judgments on the criteria. However, if they follow the general rule that they have to weigh the evidence against each of the criteria, they will be fine. They don't have to "justify" their decisions; however, since appeals are heard on the record, it would be extraordinarily helpful if, as the board discussed each criteria, each board member expressed why s/he feels the criteria are met or not met, even if that is just to say that they agree with the sentiment another board member expressed.

As for past interpretations of the ordinance, there is a theory in the law called "administrative gloss" and it says that where a term in a zoning ordinance is ambiguous, and where the board has consistently interpreted that term in a certain way, that the board cannot later change its interpretation without changing the ordinance. So the first question is whether your ordinance is ambiguous. I don't think it is, but if the board is concerned about its past interpretations, it can certainly propose amendments to the zoning ordinance to address the issue.

I believe this addresses your questions, but should the board have additional questions, or if a meeting would be helpful in assisting them with this issue, I am always happy to meet with them.

Thank you.

Laura

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From: Michael Behrendt [<mailto:mbehrendt@ci.durham.nh.us>]
Sent: Thursday, September 20, 2018 10:35 AM
To: Laura Spector (laura@mitchellmunigroup.com)
Cc: Todd Selig; Paul Rasmussen (pnrasm@yahoo.com); Barbara Dill (barbaradill@gmail.com)
Subject: Conditional use review - CONFIDENTIAL

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE

Hello Laura,

We have some follow up questions. Could you send us a response in writing? Please mail it to Paul, Barbara, Todd, and me. Feel free to respond simply to the questions or with a general narrative as you see fit. I attach Article VII – Conditional Use Permits. The Planning Board changed the form (former “checklist”) to use the ordinance language verbatim (attached just fyi, no need to review).

I am leaving on vacation for two weeks and will be out starting tomorrow and returning on Tuesday, October 9.

Here are some questions:

- 1) Generally, how should the board decide if a specific criterion is met? What could constitute failure to meet a criterion?
- 2) There is some debate whether the applicant must meet each of the “subcriteria” within a criterion (regarding traffic, noise, etc.) individually or whether it is only a “global” (or “net” or “aggregate”) review. Is failure to meet one of the subcriteria automatically sufficient to deem noncompliance of the criterion?
- 3) Can the subcriteria be weighed or considered together, i.e. if the traffic impact is increased but the noise is decreased, can the board look at the net effect? Can one subcriterion balance another? Does the applicant get “credit” for improving other subcriteria?
- 4) Is it a reasonable assumption that some relatively *minor impact* of one subcriterion is acceptable if the overall effect seems reasonable, whereas a *significant or substantial impact* of one subcriterion, should be deemed a failure to comply by itself, even if there are other positive effects for other subcriteria?
- 5) The various criteria are worded differently. Criterion 1: actually is broken down into separate bullets/letters. Criteria 2, 3, 4, and 5, state, “shall include, but not be limited to” whereas criterion 1 says, “This includes”. Is this relevant? Should different criteria be evaluated differently?
- 6) Does the board as a whole need to have a clear method here or is it acceptable for individual members to interpret the ordinance as they see fit. In the board’s discussion recently, it was noted that different members will invariably have their own way to interpret the ordinance, even if it is unspoken. Five members will need to vote favorably so we just see how people decide in their collective wisdom.
- 7) To what extent should individual board members be prepared to justify or explain their decision?
- 8) If the board has historically interpreted the criteria in a very strict manner where failure to meet one subcriteria is deemed a failure to comply but we change the approach now, are there any ramification to such a change?

Thank you.

Michael Behrendt

Durham Town Planner

Town of Durham

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From: Laura Spector-Morgan [<mailto:laura@mittchellmunigroup.com>]
Sent: Monday, September 10, 2018 4:24 PM
To: Michael Behrendt
Cc: Todd Selig; 'Paul Rasmussen'; 'Barbara Dill'
Subject: RE: Conditional use checklist CONFIDENTIAL

Michael:

I do not think the board needs to or should be making individual findings on each of the items listed in the conditional use permit criteria as set forth on the current checklist or on Robin's proposed checklist. I think they should make a global conclusion on each of the eight criteria, taking into account the specific items to the extent they are relevant.

My reasoning is based on the following: the criteria is set forth in the first sentence of each criteria. What follows are really examples of things the board can consider if relevant. The board might also consider other things that are not specified in the ordinance or on the checklist but are relevant given a specific application. We know this from the language "this includes but is not limited to". So I think the existing checklist is both too detailed and too narrow; it would lead an average board member to think about specific items rather than the actual criteria.

I would use your revised checklist to guide the planning board. And you are correct, this guidance need not be included on the checklist.

Please let me know if I can be of additional assistance.

Laura

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From: Michael Behrendt [<mailto:mbehrendt@ci.durham.nh.us>]
Sent: Friday, September 07, 2018 2:20 PM
To: Laura Spector (laura@mittchellmunigroup.com)
Cc: Todd Selig; Paul Rasmussen (pnrasm@yahoo.com); Barbara Dill (barbaradill@gmail.com)
Subject: Conditional use checklist CONFIDENTIAL

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Hi Laura,

I am following up to my earlier email about the conditional use.

- 1) The Planning Board has used a checklist for years to determine if the 8 criteria are met. See attached "conditional use checklist for PB." The board is now looking at changing this checklist. The current checklist includes each criterion but it breaks it down in language that is different from the language in the ordinance. I am very concerned that use of this checklist would cause trouble since it does not follow the ordinance and decisions could easily be made for the criteria that do not align with the actual language.
- 2) The board recognizes this and is now looking at using the proposed revised checklist – "conditional use - checklist for Planning Board – revised." I think this works well because the language follows the ordinance verbatim.
- 3) Several residents have expressed concern about using this revised checklist because it does not break down each criterion into separate lines or bullets. They are concerned that board members would just give a simple okay to each criterion without thinking carefully about each component. Robin Mower has suggested using a hybrid of sorts. See the attached "Mower CUP checklist." This would include the ordinance language verbatim on top and then break it down into the components. I think it unavoidable that there are different (if nuanced) ways to breaking out the components and that they are not equal to the verbatim language. However, this approach could break out the components for board members to think through recognizing that what counts is the actual language of the ordinance.

What do you think of these three approaches? Also, regarding my prior email about whether to review the individual components separately or collectively, I assume that we should not include guidance on that question on this checklist; please advise if you think otherwise.

If you could respond by this Tuesday or Wednesday that would be helpful as the board is discussing this item on Wednesday. Thank you.

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ATTORNEY-CLIENT PRIVILEGED INFORMATION

Hello Laura,
Regarding conditional uses, there are 8 criteria included in Article VII – Conditional Use Permits in the Zoning Ordinance. Most of the 8 criteria involve several components within them (e.g. criterion 2 External Impacts speaks to traffic, noise, odors, etc.). The question arises whether the applicant must meet each of the individual components within a given criterion or whether the Planning Board can look at all of the components within a criterion in total, considering the overall net impact. It is clear that an applicant must meet all 8 criteria but not clear how to evaluate each individual criterion.

I include the pertinent section from the ordinance at the bottom. Each criterion is worded differently so it may be possible that the answer to this question varies based on the specific criterion. For example, see criterion 2 External Impacts. Must the board determine that the external impacts are no greater for traffic, then form a similar conclusion for noise, then for odors? Or can it consider that overall the impact is no greater: there might be a little more noise but that is more than offset by the reduced traffic.

My understanding is that the board has always reviewed the criteria requiring each separate component within each criteria must be met. If you interpret that the board can or should review the components in total, is there a problem with changing the approach now?

Thank you.

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**THE DURHAM ZONING ORDINANCE
AS ADOPTED BY THE DURHAM TOWN
COUNCIL ON FEBRUARY 20, 2006
LAST AMENDED JUNE 1, 2020**

**CHAPTER 175
ZONING**

PART A. ADMINISTRATIVE PROVISIONS

**ARTICLE VII
CONDITIONAL USE PERMITS**

175-21. Conditional Use Permits.

- A. The purpose and intent of a Conditional Use permit is to allow certain uses that are not normally permitted under conventional zoning provisions. Specifically authorized conditional uses appear in Section 175-53, Table of Land Uses. A Conditional Use shall be approved if the application is found to be in compliance with the approval criteria in Section 175-23. Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town. The Planning Board shall make findings of fact, based on the evidence presented by the applicant, Town staff, and the public, respecting whether the Conditional Use is or is not in compliance with the approval criteria of Section 175-23
- B. No structure, building or land requiring a conditional use permit shall be used, constructed, altered or expanded unless a conditional use permit specifically required by this chapter has been authorized by the Planning Board and issued by the Town Planner.
- C. Any use that was lawfully established prior to the adoption, extension or application of this chapter and is now permitted by this chapter subject to a conditional use permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of this chapter. A conditional use permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot on which said use is located.
- D. Structures or buildings devoted to any use permitted under the terms of this chapter subject to the securing of a conditional use permit, may not be altered, added to, enlarged, expanded or moved from one location to another on the lot without securing a new conditional use permit.

175-22. Procedures.

A. Application.

1. Application for a conditional use permit may be made by the owner of the affected property, or his or her designated agent, on a form obtainable from the Town Planner.
2. The completed application and fee as set by the Town Council shall be submitted to the Town Planner or his or her designee. Said fee is nonrefundable.

B. Procedure for Consideration.

1. After receipt by the Town Planner or his or her designee, the completed application shall be transmitted to the Planning Board staff for their review and evaluation.
2. The planning staff shall set a public hearing date and publish a notice advertising the public hearing before the Planning Board in a newspaper of general circulation. Public notice shall be made at least ten (10) calendar days prior to the meeting of the Planning Board at which the application is to be considered.
3. The planning staff shall also mail written notice, by certified mail, to all abutting and adjacent property owners within three hundred (300) feet of the subject property and a sign measuring two by three (2 x 3) feet shall be placed on the property by the applicant not less than ten (10) calendar days prior to the time of the public hearing by the Planning Board. The sign shall remain on the property until the conclusion of the public hearing. This sign shall be visible from the most heavily traveled street right-of-way adjacent to the property. The sign shall state the date of the public hearing, the time, the location and the action to be considered. (Where the subject property abuts a public right-of-way, the three hundred (300) foot measurement shall be in addition to the right-of-way along the abutting side.)
4. Any written comment shall be specific when maintaining that the granting of the conditional use permit would adversely or injuriously affect the writer's personal and legal interests.
5. The Planning Board shall consider the application at its next regular meeting following the public notice process.
6. Where development approval for a conditional use includes subdivision or site plan approval by the Planning Board, the application and review procedure for a conditional use permit shall be made concurrently and in accordance with the procedures specified in the Subdivision Regulations or Site Plan Regulations as applicable to the particular development.

C. Approval of Application and Granting of Conditional Use Permit. At least five (5) members must vote in favor of the issuance of a Conditional Use Permit for an application to be approved. Upon rendering a decision to grant a conditional use permit with conditions of approval that must be adhered to by the applicant, the Town Planner shall send a notice to the applicant of the board's decision, which shall include all conditions of approval. The application and all subsequent information, correspondence, evaluations, recommendations and decisions shall then be placed on permanent file in the office of the Town Planner. The

Conditional Use Permit Findings of Fact and Conditions of Approval shall be recorded at the Strafford County Registry of Deeds.

- D. **Revocation.** In the event of a violation of any of the provisions of these regulations or amendments thereto or in the event of a failure to comply with any prescribed condition of approval or stipulations placed upon such approval, the Zoning Administrator, in coordination with the Town Planner, shall suspend any conditional use permit immediately, shall notify the Planning Board and shall set a date for a hearing to determine if such suspensions shall be lifted or if the conditional use permit shall be revoked. The Planning Board shall be the hearing body. In the case of a revocation of a conditional use permit, the determination of the Planning Board shall be final, unless recourse is sought in a court of competent jurisdiction.
- E. **Termination and Transferability.** Once granted, a conditional use permit, with its terms and conditions, shall:
1. Run with the lot, building, structure or use and shall not be affected by changes in ownership.
 2. Terminate twelve (12) months from the date of authorization if the authorized use has not begun:
 - a. Unless otherwise spelled out in the conditions of approval; or
 - b. Unless the applicant can demonstrate good reason(s) at a public hearing before the Planning Board why the permit should be extended.
 3. Terminate after twelve (12) consecutive months of nonuse.
- F. **Denial of application.** In the event that an application is denied by the Planning Board, no resubmittal of an application for a conditional use permit for the same or similar use may be made for one (1) year from the date of said denial, unless sufficient new evidence or conditions are offered to the Zoning Administrator, in consultation with the Town Planner, to demonstrate that the circumstances have altered and that further consideration of the application is warranted. In such an event, the resubmitted application shall follow the same procedures as the original and shall be treated as a new application.

175-23. Approval Criteria.

- A. **Planning Board Decision Based on Findings.** Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a conditional use permit shall be based upon findings of fact and conditions of approval. The findings of fact and conditions of approval shall be supported in the records of its proceedings. The criteria enumerated in Subsection C are required to be met in any matter upon which the Planning Board is required to pass under these regulations. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall be deemed not to be in compliance with these regulations.
- B. **Burden on applicant.** The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence, through testimony, or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.

C. Criteria Required for Consideration of a Conditional Use Permit. 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):

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.
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.
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.
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.
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.

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

D. ***Conditions of Approval.*** Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary to further the objectives of this ordinance and the Master Plan, or which would otherwise allow the general conditions of this article to be satisfied. Conditions of approval shall be stated in writing in the issuance of a permit. The conditions shall, if applicable, include, but are not limited to, the following:

1. Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.
3. Landscaping in excess of any minimum requirements of this Ordinance.
4. Modification of the exterior features of buildings or other structures.
5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
6. Footprint or lot coverage less than the allowed maximum of this Ordinance.
7. Limitations on the number of occupants and methods and times of operation.
8. Grading of the premises for proper drainage.
9. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
10. Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance.
11. Other performance standards as appropriate.

175-24. Appeals.

Any persons aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5 III)