

**From:** [Eric Lund](#)  
**To:** [Karen Edwards](#); [Michael Behrendt](#)  
**Subject:** 19-21 Main St.: Differences between CU and by-right development  
**Date:** Friday, July 1, 2022 2:30:33 PM

---

Dear members of the Planning Board:

In considering the application for a parking facility at 19-21 Main Street, it is important to remember the distinction between conditional use (CU) applications such as this one, and by right development. The bar for CU applications is higher than for applications to develop a use permitted by right in a zone. The latter usually only need to be reviewed for compliance with site plan regulations, while a CU application must also satisfy eight criteria.

The second CU criterion, external impacts, explicitly instructs the planning board to compare the external impacts of the proposed development to “other uses permitted in the zone.” It is therefore appropriate in evaluating this criterion for the Planning Board to speculate about what might be developed by right on the site.

None of the other CU criteria makes references to by right development. The implication is that these criteria should be evaluated either in absolute terms or what currently exists in the vicinity of the proposed development, not to any hypothetical future development that the zoning ordinance may permit. This distinction is particularly significant for criteria 3-5, which concern the character and scale of the proposed development and the preservation of natural and scenic resources. Thus, for example, the fact that a by right development on the site would result in removal of most of the urban forest on the site is irrelevant for considering whether the CU application meets the fifth criterion; if the proposed development would result in the removal of mature tree lines, as would certainly happen should the proposed facility be built, then it fails criterion 5. Likewise, the scale of a hypothetical by-right development is irrelevant to whether the proposed development meets the fourth criterion; the comparison must be made to what currently exists in the surrounding area.

It is also important to remember that, notwithstanding the claims of the applicants’ lawyers, denying their CU application on the basis that it would destroy the Church Hill woods does not constitute an unconstitutional taking of their land. Such a denial would have no impact on the right of the applicants to develop their property in any of the ways that are designated as permitted uses in the Church Hill zone.

Thank you for your consideration.

Eric Lund  
31 Faculty Rd.  
Opinions are my own and are not necessarily shared by others on Town Council