

DURHAM ZONING ORDINANCE
Proposed Amendments to Administrative Articles
For Discussion with the Planning Board – July 28, 2021

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~~Suggested deletions are shown like this~~

ARTICLE I

GENERAL PROVISIONS

175-1. Title.

This chapter shall be known and may be cited as the "Zoning Ordinance of the Town of Durham, New Hampshire."

175-2. Authority.

This chapter is adopted pursuant to the authority granted by RSA 674:16, as amended, which provides for the local legislative body to adopt or amend a Zoning Ordinance under the Ordinance Enactment Procedure of RSA 675:2-5.

175-3. Purpose.

The provisions of this chapter are intended to regulate the use of land for the purpose of protecting the public health, safety, convenience and general welfare of the residents of the ~~Town~~ *town* of Durham, in accordance with RSA 674:17. This chapter is adopted in accordance with and in order to implement the Master Plan and other policies designed to promote the orderly growth of the Town of Durham. Among other purposes, this chapter is specifically adopted to preserve air and water quality; to conserve open space and agricultural resources; to encourage the installation and use of renewable energy systems and protect access to renewable energy sources; to protect natural and scenic resources from degradation; to provide for recreational needs; to protect life and property from flooding and other natural hazards; to preserve historic sites and structures; *and* to ensure that development is *commensurate compatible* with the character and physical limitations of the land; *and, generally, to enhance the quality of development*. Further, this chapter is designed to ensure that the timing, location and nature of new development takes into account the immediate and long-range financial impacts of proposed uses and enhances the achievement of the ~~town's~~ *Town's* economic development goals.

175-4. Applicability.

A. No land shall be used and no building or structure shall be erected, structurally altered, enlarged, moved, or used unless such use or activity is in conformity with the provisions of this chapter, except as provided in Section 175-5.

B. No building permit shall be issued for any proposed use, construction or activity which is not in compliance with the Zoning Ordinance of the Town of Durham.

175-5. Applicability to Governmental Uses including the University of New Hampshire.

The provisions of this chapter shall be advisory with respect to governmental uses as identified by RSA 674:54 including the University of New Hampshire (UNH) except as provided in C. below.

A. The state agency, county, municipal agency, university, school district or other governmental entity identified in RSA 674:54 shall provide the Planning Board with written notification of any use of its property or facilities that constitutes a substantial change in use or a substantial new use. This notification shall be provided to the Town Planner at least sixty (60) days prior to the start of construction and shall contain plans, specifications, and explanations of the proposed use and an assessment of the potential impacts of the use on the community. The notification for any project involving the University of New Hampshire shall be in accordance with the adopted “Process for Coordination and Communication” between the University and the Town. The Planning Board may hold a public hearing on the proposed use. If a hearing is held, the hearing shall be held within thirty (30) days of the receipt of the written notification and at least two (2) weeks after publication of a notice thereof in a paper of general circulation in the town. The purpose of such hearing shall be to bring to light possible problems of traffic circulation, parking, provision of utilities, the protection of persons and property or any other problems affecting the town or the neighborhood, and ideas for enhancing the quality of the proposed project. A representative of the governmental entity or UNH shall be present at the hearing to present the plans, specifications, and construction schedule, and to provide explanations. The Planning Board may issue nonbinding written comments relative to conformity or nonconformity of the proposal with normally applicable land use regulations to the government entity or university within 30 days after the hearing, together with any recommendations for minimizing any adverse impacts of the project on the community and for enhancing the quality of the project.

B. Any use of land or buildings for governmental or university purposes that is located on land or in buildings or structures that are not owned by the governmental entity or university but for which the entity acquires only the right to use, whether by rental, lease or other beneficial interest, may not be used for any other purpose not otherwise permitted by this chapter.

C. Any use, construction, or development of land, buildings, or other facilities on governmentally owned or occupied land including UNH, that is not used for a governmental or university use as defined in RSA 674:54 shall comply with the provisions of this chapter including, but not limited to, the requirements for site plan review and the issuance of building and other permits.

175-5.1 Minimum Requirements.

The provisions of this chapter shall be construed to be the minimum requirements for the granting of any pertinent Town approvals. Compliance with these requirements, however, is not necessarily deemed sufficient for the granting of these approvals. All applicants must comply with all other applicable statutes, ordinances, regulations, rules, standards, and policies of the Town of Durham and of other governmental authorities. In particular, all applicants must comply with the Durham Site Plan Regulations and the Durham Subdivision Regulations which include

specific requirements and provide for the reasonable judgment of the Planning Board in reviewing applications.

Nothing herein shall prevent the condemnation of land or buildings for municipal purposes by the Town of Durham or for public or institutional use by any agency, department, institution or public corporation of the State of New Hampshire or of the United States.

ARTICLE III
ADMINISTRATION AND ENFORCEMENT

175-8. Administrative Officer.

Authority to administer this Zoning Ordinance is hereby vested in the Town Administrator, who is duly appointed by the Town Council. The Town Administrator shall have the authority to appoint a Zoning Administrator or duly qualified designee, who shall have the authority to administer, interpret, and enforce the provisions of this chapter. In the performance of these duties, the Zoning Administrator may request entry to any building, structure or premises, or any part thereof, at any and all reasonable times for the purpose of performing ~~his or her~~ their official duties.

175-9. Zoning Administrator.

A. The Zoning Administrator, ~~his or her~~ or their assistant or designee shall be responsible to do the following. The Zoning Administrator may coordinate with the Town Planner as appropriate:

1. Enforce any and all provisions of this chapter.
2. Keep complete, accurate and secure records.
3. Accept applications and ensure their appropriateness and completeness.
4. Accept and remit fees as established in the adopted administrative procedures.
5. Update these regulations and the Official Zoning Map as directed by the Town Council.
6. Provide for the accuracy and security of the Official Zoning Map.
7. Undertake any other administrative function appropriate to the office of the Zoning Administrator.
8. Report to the Town Planning Board any recommendations for changes and improvements in these regulations and the procedures therein.
9. Issue any permit granted by the Planning Board or ordered by the Board of Adjustment and make periodic inspections to verify that all conditions of such granted permit are complied with by the applicant or ~~his or her~~ their agent.

10. Receive and investigate allegations of noncompliance or violation of this chapter these regulations, report findings to the Town Council and file a complaint where such allegations are based in apparent fact.
 11. Refer any matters under appeal to the Zoning Board of Adjustment for its action.
 12. Make recommendations to the Planning Board in connection with any conditional use permit or to the Board of Adjustment in connection with any application for variance or appeal and recommend such conditions as may be necessary to fully carry out the provisions and intent of this Zoning Ordinance.
- B. The Zoning Administrator shall not:
1. Make any changes in the uses categorically permitted in any zoning classification or zoning district, or make any changes in the terms of this Zoning Ordinance, or make any changes in the terms, classifications or their boundaries on the Official Zoning Map.
 2. Issue any conditional use permit or variance without the specific direction to do so from the authorizing body.

175-10. Violations and Penalties, Methods of Corrections.

- A. Any person, partnership, association, company, corporation or individual who violates, disobeys, omits, neglects, or refuses to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor offense and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a civil fine as set forth in RSA 676:17 for each day such violation continues.
 - B. A violation or suspected violation may be brought to the attention of the Zoning Administrator by any individual who suspects that such violation has occurred or may be occurring. The Zoning Administrator shall conduct an investigation into the alleged violation. If the investigation appears to uphold the allegation, the Zoning Administrator shall first notify the offending party, who shall have a maximum of ten (10) days in which to correct the violation or in which to come to an agreement on a time frame in which the violation will be abated. Such an agreement shall be binding. In the event that these efforts fail to result in an abatement of the violation, the Zoning Administrator shall notify the Town Administrator and file a complaint with the Town Attorney. The Town Attorney shall take appropriate legal action to address the complaint and the matter shall come before a court of competent jurisdiction for resolution.
 - C. Every violation of these regulations shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be deemed a separate and distinct offense.
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ARTICLE IV

INTERPRETATION, AMENDMENTS, AND LEGAL PROVISIONS

175-11. Scope and Interpretation.

In interpreting and applying the provisions of this chapter, affected parties shall be held to be the minimum requirements for the promotion of the health, safety, convenience and general welfare of the Town of Durham and its residents. Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern. Any use not specifically permitted ~~or permitted by conditional use permit~~, permitted by conditional use permit, permitted by special exception, or otherwise lawfully permitted is prohibited.

175-12. Administrative Appeals.

Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in ~~his or her~~ their interpretation of the Ordinance, ~~# the Board~~ shall modify or reverse the decision accordingly.

175-13. Severability.

The provisions of this chapter are severable. If a court finds that any section or provision of this ordinance is invalid, this finding shall not invalidate any other section or provision of this chapter and those other sections shall remain in force without further action by the Town Council.

175-14. Amendment Procedure.

Amendments to the Zoning Ordinance including the Official Zoning Map may be initiated by the Planning Board, Town Council, or citizens in accordance with the following procedures:

- A. ***Amendments Initiated by the Planning Board.*** The Planning Board may, upon its own initiative, from time to time, consider amendments to the Zoning Ordinance, including its overlay districts and the zoning map, and submit recommendations thereon to the Town Council. The referral shall be made in writing by the chair of the Planning Board. Such amendments shall be developed pursuant to the notice and public hearing requirements contained in Subsection D below.
- B. ***Amendments Initiated by the Town Council.*** The Town Council may, upon its own initiative, from time to time, consider ~~changes~~ amendments to the Zoning Ordinance, including its overlay districts and the zoning map. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the Town Administrator. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their ~~referral~~ referral. (the date of the letter from the Town Administrator). The Town Council may grant extensions to this timeframe at its discretion.

C. ***Amendments Initiated by Citizens.*** Citizens submitting amendments to the Zoning Ordinance, including its overlay districts, shall forward their proposed changes to the Planning Board for its consideration. Such submission shall be by typed petition signed by not fewer than fifty (50) properly registered voters of the Town of Durham, and shall set out the language of the proposed amendment or the proposed change to the Official Zoning Map. The Planning Board shall have the request placed on the agenda for its next available regularly scheduled meeting. It shall, after following the notice and public hearing requirements contained in Subsection D below, make its recommendation concerning such request to the Town Council within sixty (60) days of the date of the Planning Board's initial consideration. A thirty (30) day extension of the above time limit may be granted by the Town Council.

D. ***Public Notice and Hearing Requirements.***

1. Notice. Notice shall be given for the time and place of the public hearing at least ten (10) days before the hearing. The notice required under this section shall not include the day notice is posted or published or the day of the public hearing. Notice of each public hearing shall be published in a newspaper of general circulation in the municipality and ~~shall be~~ posted in at least two (2) public places.
2. Text of Ordinance. The full text of the proposed amendment to the Zoning Ordinance need not be included in the notice if an adequate statement describing the proposal and designating a place where the proposal is on file for public inspection is stated in the notice.

E. ***Ordinance Form.*** Any amendment to the aforementioned ordinances approved by the Planning Board or submitted through it pursuant to Subsection G below shall be submitted to the Town Administrator, who shall be responsible for putting the amendment into proper ordinance form beginning with the words "The Town of Durham ordains..." Whenever practical, the Town Administrator shall set out in full the ordinance sections or subsections to be repealed or amended and shall indicate the material to be omitted by enclosing it in brackets or by strikeout type and ~~shall indicate~~ new material by underscoring it or by typing it in italics, or the changes may be indicated in another appropriate manner which clearly indicates the intended changes. In every case, the recommendation of the Planning Board shall ~~follow immediately at the end of~~ be clearly conveyed along with the proposed amendment.

F. ***Action by Town Council.***

1. Agenda. The proposed amendment shall be placed on the agenda of the Council at the next available regularly scheduled Council meeting for first reading.
2. First Reading. If the Council votes not to pass at the first reading, the proposed amendment dies. If the Council votes to pass the amendment to second reading, it shall be scheduled for a public hearing before the Council. The Council may, however, refer an amendment initiated by petition that has not passed at the first reading to the Planning Board to be revised and resubmitted to the Town Council for reconsideration. Such reconsideration shall be considered to be the first reading of the amendment.

3. Notice and Public Hearing Requirements. Prior to final Council action, the notice provisions contained in Subsection D above shall be followed.
 4. Minor Revisions. After the public hearing, the Council may make minor changes to the proposed amendment, so long as the proposed amendment remains substantially the same as that which was advertised for the public hearing.
 5. Second Reading. Following the second reading and public hearing, the Council shall vote on the proposed amendment.
 6. Majority Vote Required. Any proposed amendment shall require a majority affirmative vote of Council members present in order to pass.
 7. Recording of Amendment. If passed by the Council, the ordinance amendment shall be recorded, authenticated, indexed and printed in accordance with the provisions of the municipal charter.
- G. ***Protest Process.*** Pursuant to RSA 675:5, concerned property owners may protest proposed amendments to the Zoning Ordinance.
1. Required Signatures. All protest petitions must be signed by either:
 - a. The owners of twenty (20) percent of the area of the lots included in such proposed change; or
 - b. The owners of twenty (20) percent of the area within one hundred (100) feet immediately adjacent thereto or across a street therefrom.
 2. Requirements for Council Consideration of Protest Petition(s).
 - a. In order to have any protest considered:
 - (1) The owners signing the petition shall identify themselves on the petition by name and address and by address of the property involved or by lot and map number or by whatever other means is used within the town to identify the land in question so that the Durham Town Council may identify such others as interested and affected parties.
 - (2) The signed protest petition shall be submitted to the Durham Town Council at least ten (10) days prior to the next Town Council meeting; provided, however, that each protest petition shall apply to that petition only. The Chair of the Durham Town Council shall announce at the opening of the Council meeting that a protest petition has been received.
 - b. Any such amendment or repeal developed pursuant to this subsection shall not become effective except by the favorable vote of two-thirds (2/3) of all Council members present at its second reading. (See Subsection F above.)
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ARTICLE V
PLANNING BOARD

175-15. Planning Board.

- A. There shall be a Planning Board consisting of seven (7) regular members and not more than five (5) alternate members as provided by state statute and in accordance with Sec.11.1.A of the Town Charter.
- B. During the period of ~~his or her~~ their service on the Planning Board, a member may not appear before the Planning Board as a paid representative of or paid consultant to an applicant before the Board.
- C. The Town Administrator shall meet with the Planning Board as needed to provide the Board with the information and guidance necessary for the Board to carry out its duties including those specified in Section 175-16 and fulfill the purposes set out in Section 175-3.

175-16. Powers and Duties.

The Planning Board shall have all the powers granted to, and the duties conferred upon, planning boards by state law, including but not limited to the following:

- A. The Planning Board shall prepare and amend, from time to time, a Master Plan to guide development of the municipality in accordance with RSA 674:1.
- B. The Planning Board may initiate changes in the Zoning Ordinance to ensure that the ~~Town's regulations are ordinance is~~ is consistent with the adopted Master Plan.
- C. The Planning Board shall review and make recommendations to the Town Council on proposed amendments to the Zoning Ordinance.
- D. The Planning Board shall develop, adopt, and periodically review and amend the Durham site plan regulations, subdivision regulations, road construction regulations, ~~site plan review regulations, road standards,~~ and other land use regulations authorized by state law or local ordinances.
- E. The Planning Board shall review and approve or ~~disapprove~~ deny proposals for subdivisions.
- F. The Planning Board shall review and approve or ~~disapprove~~ deny site plans ~~for the development or change or expansion of use of tracts for nonresidential uses or multi-unit residences whether or not such development includes a subdivision or re-subdivision of the site, and~~ as provided for in RSA 674:43.
- G. The Planning Board shall review and approve or ~~disapprove~~ deny requests for Conditional Uses.

175-17. Delegation of Site Review Authority.

The Planning Board is empowered to delegate to a Minor Site Committee, its site review powers for minor site plan reviews of permitted uses pursuant to RSA 674:43 III. The Minor Site Committee shall, at a minimum, consist of the Code Enforcement Officer/Zoning Administrator, and the Town Planner. The membership of the Minor Site Committee may expand at the discretion of the Code Enforcement Officer/Zoning Administrator and the Town Planner to

include staff representatives from other ~~town~~ Town departments, including, but not limited to, the Public Works, Police, Fire and Economic Development Departments. The Minor Site Committee shall ensure compliance with the provisions of the Town of Durham Site Plan Review Regulations. The Committee shall have the power to grant waivers under Part I, Article 5 of the Site Plan Review Regulations. The Minor Site Committee shall approve, deny, or make a recommendation to the Planning Board on site plans reviewed by it. For each site plan reviewed by the Minor Site Committee, the Planning Board shall be provided, at its next regularly scheduled meeting, a written report of the Minor Site Committee's decisions. Decisions rendered by this committee may be appealed to the full Planning Board, provided that a notice of appeal is filed within thirty (30) days of the committee's decision. The Planning Board shall hold a public hearing on the appeal. The review by the Planning Board shall be based upon the materials submitted to the Minor Site Committee, the record of the committee action, and testimony at the public hearing. The Planning Board may affirm or change the decision of the committee. All provisions of RSA 676:4 shall apply to actions of the Minor Site Committee. (See provisions regarding the Minor Site Committee in the Site Plan Regulations.)

ARTICLE VI
ZONING BOARD OF ADJUSTMENT

175-18. Appointment.

- A. ***Appointment.*** There shall be a Zoning Board of Adjustment appointed by the Town Council, consisting of five (5) members in accordance with Sec. 11.2. of the Town Charter and state law each serving a three-year term and three (3) alternates each serving a three-year term. Such terms shall be staggered. The Town Council shall fill any vacancy for the period of the unexpired term.
- B. ***Disqualification of Board Member.*** No member of the Zoning Board of Adjustment shall sit upon the hearing on any question which the Board is to decide in a judicial capacity who would be disqualified from any case, ~~except exemption from service and knowledge of the facts involved gained in the performance of his or her official duties,~~ to act as juror upon the same matter in any action at law. Knowledge of the facts involved gained in the performance of one's official duties is not grounds for disqualification.

175-19. Powers and Duties.

- A. The Zoning Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the efficient administration and enforcement of this chapter. ~~In addition, the~~ The Zoning Board of Adjustment shall have the following powers pursuant to and in accordance with RSA 673:1 and 674:33:
 - 1. Appeals. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter. (This may include specific interpretations made by the Planning Board in applying the site plan and subdivision regulations.)

2. Variiances. To authorize, upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.
 3. Special Exceptions. The Board shall hear and decide requests for special exceptions only when the granting of a special exception is specifically provided for in this chapter *or otherwise in state law*. No other special exceptions shall be granted. The request for the special exception and the Board's action on the request shall reference the specific section whereby the granting of the special exception is provided for in this chapter *or in state law*. Appropriate conditions may be placed on special exception approvals when necessary to meet the standards of this chapter.
 4. Equitable Waivers. To hear and decide requests for equitable waivers of dimensional requirements as provided for in RSA 674:33-a.
 5. Appeals under the Building Code. The Zoning Board of Adjustment is hereby authorized and empowered to act as the Building Code Board of Appeals pursuant to RSA 673:1. The Building Code Board of Appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of the state building code or the state fire code. (RSA 674:34)
- B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.
 - C. The concurring vote of three (3) voting members of the Board shall be necessary to reverse any action of such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.

175-20. Meetings.

- A. ~~A Chair and clerk shall be appointed.~~ The Chair or, in *his or her their* absence, the Acting Chair may administer oaths and compel the attendance of witnesses.
- B. ~~Meetings of the Board shall be held at the call of the Chair and at such times as the Board may determine.~~
- ~~C.~~ All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings in accordance with RSA 91-A as amended, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records

of its examinations and other official actions, all of which shall be filed in the Town Office and shall be a public record.

ARTICLE VIII
VARIANCES AND SPECIAL EXCEPTIONS

175-25. Variances.

- A. *Types of Variances.* The Zoning Board of Adjustment may grant variances from the requirements of this ordinance as provided for in state law.
- B. *Standards for the Granting of Variances.* The Zoning Board of Adjustment shall grant a variance if and only if it finds that the request meets the criteria set forth in state law.
- C. *Accommodation of Persons with a Recognized Physical Disability.* The Zoning Board of Adjustment may grant a variance from the dimensional standards of this ordinance without finding a finding of hardship when reasonable accommodations are necessary to allow a person ~~or persons~~ with a recognized physical disability to reside in or regularly use the premises, provided that:
1. Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.
 2. In granting any variance under this paragraph subsection, the Zoning Board of Adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.
- D. *Variances from Flood Hazard Overlay District Provisions.* For applications for a variance from the provisions of Article XV, the applicant shall have the burden of showing, in addition to the usual variance standards, the following:
1. The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 2. If the variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
 3. The variance is the minimum necessary considering the flood hazard, to afford relief.

The Zoning Board of Adjustment shall notify the applicant in writing that:

1. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
2. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

The Town shall maintain a record of all variance actions, including the justification for their issuance, and report such variances issued in its annual or biennial report submitted to FEMA's Flood Insurance Administrator.

175-26. Special Exceptions.

A. *Criteria for the Granting of Special Exceptions.* The Zoning Board of Adjustment is authorized to grant a special exception in accordance with RSA 674:33 IV, as amended. The board shall grant a special exception if, and only if, it finds that all of the following general criteria, along with additional specific criteria for particular uses and activities given elsewhere, are met: ~~*—The following are conditions of all special exceptions.*~~

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious or noxious and thus detrimental to the neighborhood ~~*by reason of any of the causes stated*~~ *due to failure to meet any of the standards contained* in Part B. Zoning Districts (See Table of Contents) of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or ~~*comparable*~~ *other* adverse causes, impacts, or conditions.