

From: James Bubar <jamesbubar@gmail.com>
Sent: Monday, August 22, 2022 10:05 AM
To: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Subject: Solar Ordinance Conditional Use

Michael,

Please share with Planning Board

I have come to dislike Conditional Use. I think that our ordinances use that too much and that we are simply kicking the can down the road. This essentially pushes the decision off, but not off our agenda. If we are capable of deciding a Conditional Use application then we should be capable of crafting an ordinance that avoids the need for Conditional Use in almost all cases.

This email is really not about the Solar Ordinance, it just happens to be the proposed ordinance on our upcoming agenda that proposes conditional use. I have attached a spreadsheet that details all of the conditional use criteria and then added my personal evaluation of that criteria to the category of use proposed as conditional. In the case of the Solar Ordinance, many of the criteria are N/A (in my opinion). I would suggest that we work through the Conditional Use criteria for each conditional use suggested with an aim to adjusting the ordinance language to eliminate the need for conditional use.

For example, we could embed the language for Conditional Use #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 could easily be done for #6 *The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.*

I believe the Planning Department is more than capable of making those decisions and any aggrieved applicant or abutter could appeal that decision. If that is too much leeway for the Planning Board to offer the Planning Department then propose additional restrictions in the language that are more quantitative and and less vague.

--

James A Bubar

Criteria Required for Consideration of a Conditional Use Permit.	Large Scale Freestanding		Large Group Freestanding	Solar Parking Canopy
Effected Zones	MUDOR/ORLI		MUDOR/ORLI	Excludes RES & CB
1. Site suitability: The site is suitable for the proposed use. This includes:				
a. Adequate vehicular and pedestrian access for the intended use.	N/A		N/A	N/A
b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.	N/A		N/A	N/A
c. The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.	?		?	N/A
d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.	N/A		N/A	N/A
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	N/A		N/A	N/A
noise	N/A		N/A	N/A
odor	N/A		N/A	N/A
vibrations	N/A		N/A	N/A
dust	N/A		N/A	N/A
fume	N/A		N/A	N/A
hours of operation	N/A		N/A	N/A
exterior lighting and glare	N/A		N/A	N/A

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	?		?	?
shall mitigate any external impacts of the use on the neighborhood.	?		?	?
This shall include, but not be limited to, the				
the relationship of the building to the street	?		?	?
the amount, location, and screening of off-street parking	N/A		N/A	N/A
the treatment of yards and setbacks	?		?	?
the buffering of adjacent properties	?		?	?
provisions for vehicular and pedestrian access to and within the site.	N/A		N/A	N/A
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				
scale	N/A		N/A	N/A
height	N/A		N/A	N/A
massing of the building or structure	N/A		N/A	N/A
roof line	N/A		N/A	N/A
architectural treatment of the front or street elevation	?		?	?
location of the principal entrance	N/A		N/A	N/A
material proposed to be used	N/A		N/A	N/A
colors proposed to be used	N/A		N/A	N/A

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 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				
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 and are approved or assured, to the end that the use will be capable of proper operation	N/A		N/A	N/A
sewage disposal	N/A		N/A	N/A
solid waste disposal	N/A		N/A	N/A
water supply	N/A		N/A	N/A
utilities	N/A		N/A	N/A
drainage	N/A		N/A	N/A
other necessary public or private services	N/A		N/A	N/A

In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to				
water	N/A		N/A	N/A
sewer	N/A		N/A	N/A
waste disposal	N/A		N/A	N/A
police protection	N/A		N/A	N/A
fire protection	N/A		N/A	N/A
schools	N/A		N/A	N/A
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	N/A		N/A	N/A