


ZONING ORDINANCE

Building Regulations
AND
Subdivision Regulations

TOWN OF DURHAM
NEW HAMPSHIRE
April 14, 1952

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Town of

Durham, New Hampshire

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Preamble

Pursuant to the authority vested in towns by Chapter 51, Revised Laws of New Hampshire, 1942, as amended; and to promote the health, safety, convenience and general welfare of the Town by regulating and restricting the use of land and buildings thereon in the Town of Durham, the following ordinance is hereby enacted by the voters of the Town of Durham, New Hampshire, in official Town Meeting convened, March 11, 1952. Revised and amended in official Town Meeting convened March 11, 1958.

ARTICLE I

Section 100. Establishment of Districts

100.1 Districts defined. For the purpose of this ordinance, the following use classifications, as hereinafter defined, are hereby created for districting the land in the town of Durham:

- (a) Class A Business Use; (b) Class B Business Use; (c) Class I Residential Use; (d) Class II Residential Use; (e) Class III Residential Use; (f) Rural Use; (g) University Use.

100.2 Districts established. For the purpose of this ordinance, the following use districts are hereby created and established:

- (a) Class A Business District, hereafter referred to as Business A;
- (b) Class B Business District, hereafter referred to as Business B;
- (c) Class I Residential District, hereafter referred to as Residential I;
- (d) Class II Residential District, hereafter referred to as Residential II;
- (e) Class III Residential District, hereafter referred to as Residential III;
- (f) Rural District;
- (g) University District;

The aforesaid districts are shown on a Zoning Map of the Town of Durham which is hereby incorporated as a part of this ordinance and is filed with the Town Clerk. The said map and all the notations, references, district boundaries, and other information shown thereon shall be as much a part of this ordinance as if all were fully described herein.

100.3 Boundaries of Districts. Where uncertainty exists with respect to the boundaries of the various districts, as shown on the zoning map, the following rules shall apply:

- (a) The district boundaries are either streets, alleys, lot lines, natural features or division lines described or otherwise shown, and where the districts designated on the zoning map are bounded approximately by street, alley, lot lines, natural features or division lines, the said street, alley, lot line, natural feature or division line shall be construed to be the boundary line of such district.

(b) Where the district boundaries are neither streets, alleys, lot lines, or natural features, unless otherwise clearly indicated on the zoning map, they shall be determined by the use of the scale of the zoning map.

(c) Where privately owned land is entirely or partly surrounded by the University District, that private land use and classification shall be deemed to have the same zoning classification of the nearest general classification of similar privately-owned land.

ARTICLE II

Section 200. Definitions

Definitions of Terms

(a) Unless otherwise expressly stated, the following terms shall, for the purpose of this ordinance, have the meanings indicated in this section.

(b) Words used in the present tense include the future; the singular number includes the plural and the plural the singular.

(c) Where terms are not defined in this section, they shall have their ordinarily accepted meanings or such as the context may imply.

Accessory Building means a subordinate building, attached or unattached to the main building. For the purpose of this ordinance and its amendments, however, a garage or carport, attached directly to or by another structure to the main building, shall be regarded as an integral part of the main building.

Alley means any public thoroughfare less than 21 feet in width which has been legally dedicated or devoted to public use.

Alteration, as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities; or an enlargement, whether by extending a side or by increasing its height; or structural changes other than repairs, that would affect safety; or adding an elevator; or significant changes to the plumbing, gas piping, wiring, ventilating or heating installations. The term "alter" in its various moods and tenses and its participial forms, refers to the making of an alteration.

Apartment — see "Dwelling unit."

Attic means the space between the ceiling beams of the top habitable story and the roof rafters.

Areaway means an uncovered subsurface space adjacent to a building.

Automobile Service Station means a building designed or used primarily for the supply of motor fuel, oil, accessories and service or repair to motor vehicles.

Basement means a story of a building or structure having one-half or more of its clear height below grade. Also see "Story."

Brick means a solid masonry unit having a shape which approximates a rectangular prism, usually not larger than 12 by 4 by 4 inches. A brick may be made of burned clay or shale, or fire clay

or mixtures thereof, of lime and sand, of cement and suitable aggregates, or of other approved materials.

Building means a structure, including all integral parts thereof, intended for use and occupation as a habitation, or for some purpose of assembly, business, manufacture, institutional, storage, ornamentation, or shelter to persons, animals or chattels.

Building Area means the maximum horizontal projected area of the building at or above grade excluding uncovered steps and terraces.

Building Line means the line, established by ordinance, beyond which a building shall not extend.

Building Inspector means the officer or other designated authority charged with the administration and enforcement of this ordinance or his duly authorized representative.

Club Lodgings means a building or accessory thereto used or adapted to use primarily as a meeting or lodging place occupied by a fraternal organization, club or voluntary corporation for the benefit of its members or members of a beneficiary recreational or social club, organization or association. For the purpose of this ordinance a collegiate social fraternity or sorority house shall be considered as a club lodging.

Clearance means the minimum horizontal distance from any property or lot line to the nearest point of any proposed or existing structure;

side clearance, refers to the distance from the side lot line to a building.

rear clearance, refers to the distance from the rear lot line to the building.

Concrete means a mixture of portland cement, aggregates and water;

reinforced concrete means concrete in which reinforcement other than that provided for shrinkage or temperature changes is embedded in such a manner that the two materials act together in resisting forces.

Court means an open, uncovered, unoccupied space on the same lot and fully enclosed on at least three adjacent sides by walls of the building;

inner court means any court other than an outer court or a yard;

outer court means a court other than a yard having at least one side thereof opening on to a street, alley or yard or other permanent open space.

Curb level means the elevation of the street curb as established in accordance with an ordinance.

District: A district includes all the land, water and buildings within certain designated boundaries, defined in Article I of this ordinance and shown on the Zoning Map which is incorporated as a part of this ordinance and the amendments thereto.

Dwelling: A building used as a habitation or parts thereof used for access to such building.

- (a) *Single family dwelling* means a building and accessories thereto used or adapted for use as a dwelling by one family.
- (b) *Two family dwelling* means a building and accessories thereto used or adapted for use as a dwelling by two families.
- (c) *Multiple dwelling* means a building and accessories thereto used or adapted for use as a dwelling by more than two families or by any unit or group other than a family as defined herein.
- (d) *Seasonal dwelling* means a dwelling used for a part of a year.
- (e) *Dwelling unit* means one or more rooms arranged for the use of one or more individuals living together as a single house-keeping unit, with cooking, living, sanitary and sleeping facilities.

Elevator means a hoisting and lowering mechanism equipped with a car or platform which moves within guides in a substantially vertical direction, and which serves two or more floors of a building or structure.

Exit doorway means a doorway opening directly to the exterior, to a horizontal exit, to an exit stairway, or to a similar place of safety.

Family: One or more persons living together in a dwelling as a single non-profit housekeeping unit, as distinguished from a group or fraternal organization occupying a hotel, club lodging or rooming house.

Fire District, as applied to this ordinance, is defined to include the areas zoned as the Business A and B Districts.

Fire door means a door and its assembly, constructed and assembled in place, to give protection against the passage of fire.

Fire resistance rating means the time in hours that the material or construction will withstand the standard fire exposure as determined by a fire test made in conformity with the "Standard Methods of Fire Tests of Building Construction and Materials," ASTM E119.

Fire-resistive construction includes fire-resistive construction type A and type B, as defined by the National Board of Fire Underwriters in the National Building Code Art. VII, Sec. 700.

Foundations: For the purpose of this ordinance a foundation of a building or structure used for human habitation shall be defined as a continuous supporting wall of masonry, masonry units, concrete or other similar materials, the base of which is not less than 3 feet below the ground level at the building line.

Fire retardant ceiling means a ceiling used in a floor and ceiling construction that has a fire resistance rating of one hour or more.

Fire walls — see "Walls."

Fire window means a window and its assembly, constructed and assembled in place, to give protection against exposure fires.

Public garage is a building for which the primary use is the sale, storage, maintenance and repair of motor vehicles.

Private garage is an accessory building, joined or attached to or entirely separate from the main building, the primary use of which is the storage or parking of not more than three motor vehicles.

Carport means a roofed, wall-less or semi-walled shed, projecting from the side of a building or entirely separated therefrom, that is used primarily as a shelter for private automobiles.

Height, as applied to a building, means the vertical distance from grade to the average elevation of the roof of the highest story; "height" of a building in stories does not include basements — see "Story";

Height, as applied to a story, means the vertical distance from top to top of two successive tiers of floor beams or finished floor surfaces;

Height, as applied to a wall, means the vertical distance to the top measured from the foundation wall, or from a girder or other immediate support of such wall.

Home industry means a business incidental to the occupancy of a dwelling and accessory building as a family unit, employing not more than one person outside the immediate family and operated by a member of the family occupying the dwelling.

Light industry is defined, for the purpose of this ordinance, on the basis of performance in terms of absence of objectionable noise, smoke, odor, dust, dirt, noxious gases, glare and heat; the creation of hazards to health and life by reason of fire hazard, effects of industrial wastes, psychological effects and generation of motor vehicle traffic.

Livestock means the horses, cattle, sheep and other useful animals kept or raised on a farm.

Lot means a parcel of land considered as a unit, occupied or intended to be occupied by a building or buildings, including the open spaces required in this ordinance. The lot area shall not include any part of a public right-of-way which it fronts or abuts.

Lot Area means the area of the lot on which one building and its accessory buildings are located, provided that the area shall be measured to the street line only, and provided further that the portion of the lot farther back from the street line than the distance of four times the average width shall not be included in the lot area, unless the rear portion abuts a street line.

Lot depth is the mean distance from the front or street line to the extreme rear lot line measured on a line which is the mean direction of the side lot lines.

Lot line means a line dividing one lot from another, a street right-of-way or other public space.

Masonry means a built-up construction or combination of building units of such materials as clay, shale, concrete, glass, gypsum or stone set in mortar or plain concrete.

Motel means a roadside hotel which provides lodging in one

central building or individual cabins for tourists and travel and garaging or parking space for their motor vehicles.

Noncombustible, as applied to a building construction material, means a material which, in its usable form, will not ignite, burn or support combustion.

Noncombustible construction includes protected noncombustible construction and unprotected noncombustible construction.

Occupied, as applied to a building, shall be construed as though followed by the words "or intended, arranged or designed to be occupied."

Occupancy means the use classification of a building, structure or land.

Owner includes his duly authorized agent or attorney, a purchaser, devisee, fiduciary, and a person having a vested or contingent interest in the property in question.

Pent house means an enclosed structure other than a roof structure, located on a roof, extending not more than twelve feet above it and used primarily for living or recreational accommodations.

Person includes corporation and copartnership as well as individual.

Place of assembly means a room or space used for assembly or educational occupancy for 100 or more occupants.

Plastic means a material that contains as an essential ingredient an organic substance of large molecular weight and which is solid in its finished state. At some stage in its manufacture or in its processing into finished articles it can be shaped by flow.

Plot plan is a drawing, satisfactory to the Selectmen that shows the dimensions of the lot and the buildings proposed to be altered or erected, the set-back, and the side and rear clearances. See Art. IX, Sec. 900.7.

Prefabricated means fabricated prior to erection or installation on a building or structure foundation.

Repair means the replacement of existing work with equivalent materials for the purpose of its maintenance but it does not include additional work that would affect safety, the required exit facilities, or plumbing, gas piping, wiring, ventilating or heating installation.

Roof structure means a structure above the roof of any part of a building enclosing a stairway, tank, elevator machinery or service equipment, or such part of a shaft as extends above the roof. This definition does not apply to living or recreational accommodations.

Rooming House means a building other than a hotel where lodging is provided for more than five persons, with or without meals, for compensation.

Setback means the horizontal distance between the street line and the nearest part of any building on the lot, excluding uncovered steps and terraces.

Self-closing is applied to a fire door or other opening normally

closed, equipped with an approved automatic device for closing after having been opened for use.

Shaft means a vertical opening or passage through two or more floors of a building or through floors and roof.

Sign means a structure that is arranged, intended, designed or used as an advertisement or announcement; this definition includes signs, sign screens, billboards and advertising devices of every kind, irrespective of size or area.

Sprinklered means equipped with an approved automatic sprinkler system.

Stairway means one or more flights of stairs and the necessary landings and platforms connecting them, to form a continuous and uninterrupted passage from one story to another in a building or structure.

Story means that part of a building comprised between a floor and the floor or roof next above. A mezzanine shall be considered a story if it exceeds $33\frac{1}{3}$ percent of the roof area of the floor immediately below. A pent house shall be considered a story if it exceeds 1,000 square feet or $33\frac{1}{3}$ percent of the roof area. The basement of a building used for educational occupancy shall be considered a story if it is used for purposes other than storage or heating.

Shore Front means that part of a lot that is bounded by tidal water and for the purpose of this ordinance this applies only to the lands abutting Oyster River, Little Bay and Great Bay, east of Newmarket Road.

Shore Front Measurement: The minimum shore front dimension shall be established by measuring along a straight line, perpendicular to either side line, said straight line shall be so located that the line does not include any tidal land beyond the mean low tide boundary. Where tidal creeks lie between the side lot lines, the minimum shore front dimensions shall be increased by the width of such creek.

Street means a public road, highway or thoroughfare having a right-of-way width of 50 or more feet, which constitutes or is designed to constitute, the main access to more than one lot and which has been legally dedicated and accepted for public use.

Street line is the line dividing a lot from a street right-of-way.

Structure means a combination of materials to form a construction that is safe and stable; including among others are: buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, piers, wharves, sheds, coal bins, shelters, fences and display signs. The term structure shall be construed as though followed by the words "or part thereof."

Structural alteration means any change in the supporting or structural members of a building or structure, such as the bearing walls, supporting partitions, columns, beams, girders or roof framing.

Trailer is a non-automotive highway vehicle designed to afford living accommodations, whether supported on wheels, jacks, skids, wood blocks, posts or other form of non-continuous supports. A trailer set on a continuous supporting wall of masonry, masonry units, concrete or other similar material extending at least 3 feet below normal ground level shall be deemed to have an adequate foundation and said trailer shall be considered a building or dwelling within the terms of this ordinance.

Unit and Unit Areas: For the purpose of this ordinance, a unit is defined as the area of a building used as a dwelling by one person or a family. The minimum area of such a Unit shall be 200 square feet. The maximum area of a Unit shall not exceed 1000 square feet, where the number of the combined Units controls the area of the lot or front footage required. The foregoing maximum unit area does not apply to single or two family dwellings.

Use of a Building means any and every use conducted within a building or accessory thereto.

Variance is an order by the Zoning Board of Adjustment issued pursuant to its discretionary power, in order that the spirit of the ordinance may be observed and substantial justice shall be done. The Board may waive a literal enforcement of the terms of the ordinance where such enforcement:

- (a) would result in unnecessary hardship, or
- (b) would not permit the continuance to the best advantage of a non-conforming use of land or buildings in existence at the time of the enactment of this ordinance.

Walls:

Bearing wall means a wall which supports a vertical load in addition to its own weight;

Fire wall means a wall constructed of masonry or other proved non-combustible material for the purpose of subdividing buildings to restrict the spread of fire;

Veneered wall means a wall having a facing of masonry or other material securely attached to the backing, but not bonded, so as to exert a common reaction under load.

Yard means an open unoccupied space surrounding a building on a lot.

- (a) *side yard* means the required open space extending along the side lot lines from the street line to the rear of the main building, except for a corner lot, where the side yard restriction of the adjacent lots shall apply.
- (b) *rear yard* means the required open space extending across the whole width of the lot in the rear of the main building, except for a corner lot, where it is the area at the rear of the side yards.

ARTICLE III

Section 300. Class A Business District

300.1 The following shall be permitted in the Class A Business District:

- (a) Any uses permitted in the Residential Districts under the provisions that apply to residences in those Districts.
- (b) Stores, restaurants and other retail business except hereinafter provided.
- (c) Business offices, theaters, halls and clubs.

300.2 Uses not permitted: No land shall be used and no building shall be erected, altered or used for any purpose injurious, noxious or offensive to a neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration or noise or any cause or for any of the following specified uses, unless the Zoning Board of Adjustment shall, on application of the proposed user, rule that such use under such conditions and in such a building as it may prescribe will neither be detrimental nor injurious to the neighborhood:

- (a) Factory or industry
- (b) Automobile service station or public garage
- (c) Junk Yard or Dump
- (d) Lumber or coal yard
- (e) Storage in excess of 10 gallons or the equivalent, for the purpose of sale or service, of gasoline, fuel oils, petroleum products or any combustible fluids or gases.

300.3 Off-street parking and unloading: Any building erected or altered hereafter, so that changes in the land use, type occupancy or the use of the building, shall be served with adequate facilities for off-street unloading and space for off-street parking for the number of persons regularly employed or 25 percent of the number of persons living in the building.

The foregoing does not apply to the land or buildings as now used and now deemed to be in conforming use.

300.4 Trailers: The use of land for the accommodation of trailers is forbidden, provided, however, that this section shall not be construed to prohibit any property owner or lessee from accommodating trailers of non-paying guests for a period not to exceed 30 days in any one year.

Section 310. Class B Business District

310.1 In the Class B Business District, land may be used and buildings may be erected, altered or used for any purpose permitted in the Class A Business District. In addition the following uses are permitted, provided that no internal combustion engine shall be operated unless objectionable noise be eliminated:

- (a) Automobile service stations
- (b) Public garage
- (c) Storage for the purpose of sale or service of gasoline, fuel oil, petroleum products and other flammable fluids or gases, provided these products are stored and protected in accordance with the requirements of the State Fire Marshall.

310.2 Uses not permitted: No land shall be used and no building shall be erected, altered or used for any purpose deemed dangerous, injurious, noxious or offensive to a neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration or noise for any cause or for any of the following specified uses unless the Zoning Board of Adjustment shall, on application by the proposed user, rule that such use under such conditions and in such building as it may prescribe will neither be detrimental nor injurious to the neighborhood. Junk yards or dumps are excluded from this District.

310.3 Off-street parking and unloading: Any building erected or altered hereafter, so that changes in the land use, type of occupancy or the use of the building, shall be served with adequate facilities for off-street loading and off-street parking space for the number of persons regularly employed or 25 percent of the number of persons living in the building.

The foregoing does not apply to the land or buildings as now used and now deemed to be in conforming use.

310.4 Trailers: The use of land for the accommodation of trailers is forbidden, provided, however, that this section shall not be construed to prohibit any property owner or lessee from accommodating trailers of non-paying guests for a period not to exceed 30 days in any one year.

ARTICLE IV

Section 400. Class I Residential District

400.1 Uses: In the Class I Residential District, land may be used and buildings may be altered or used for:

- (a) Single family and two family dwellings and accessory uses thereto
- (b) Churches and schools
- (c) Farms and gardens, excluding any use injurious, noxious or offensive to the neighborhood
- (d) Accessory use customarily incident to any of the above uses

400.2 Accessory uses not permitted:

- (a) Any use injurious, noxious or offensive to the neighborhood.
- (b) Taking more than five lodgers.
- (c) The sale of produce not raised on the premises, but not excluding the products of home industries.
- (d) The raising or keeping of poultry or livestock except as incidental to a farm operation, provided, however, that nothing herein shall prevent the keeping of household pets.
- (e) Signs except those pertaining to the lease, sale or use of the land or building on which placed and not to exceed a total area of eight square feet.

400.3 Uses excluded from this District: The following uses of land and buildings are excluded in the Class I Residential District:

Multifamily dwellings, apartment houses, club lodgings, clubs, fraternity and sorority houses, hotels, motels, business establishments and offices, theaters, automobile service stations, public garages, public or commercially operated parking lots, junk yards or dumps.

400.4 General provisions:

- (a) The building area shall not exceed 33 percent of the lot area.
- (b) No building or structure shall be erected or altered so that it projects nearer to the street line than the average set-back of other buildings within 300 feet each way on the same side of the street, or 30 feet from the street line, whichever is the greater distance.
- (c) Each building or structure hereafter erected in the Class I Residential District shall have a side yard, on each side, of width not less than 10 feet, and for an interior lot a rear yard of not less than 20 feet.
- (d) Separate buildings or structures for accessory use may be located in the rear or side yard, but shall not project nearer to the street line than the main building and shall not be placed closer than 10 feet from the rear or side lot lines of the lot upon which the main building is located.
- (e) Building lots shall have a frontage of not less than 100 feet, provided, however, that a lot with lesser frontage which is listed and taxed as a lot at the time of passage of this ordinance shall be deemed a conforming use.
- (f) The following minimum lot areas are specified in those parts of the district served and not served by Town sewers and water:
 - 1. Single family dwellings served with both sewer and water, 10,000 square feet.
 - 2. Single family dwellings served by water but not sewer, 20,000 square feet. If neither service is available the minimum area shall be 40,000 feet.
 - 3. Two family dwellings served by both sewer and water, 15,000 square feet.
 - 4. Two family dwellings served by water but not sewer, 25,000 square feet. If neither service is available the minimum area shall be 50,000 square feet.

The foregoing minimum areas do not apply to those lots of lesser area which are listed and taxed as building lots at the time of passage of this ordinance.

- (g) The height for any wood-frame building or structure in this district shall be limited to 2½ stories or 35 feet whichever is lesser.
- (h) All buildings shall be provided with off-street parking facilities. Entrance and exits to such off-street parking facilities are subject to the regulation of the New Hampshire Department of Public Works and Highways.

- (i) The use of land for accommodation of trailers is forbidden, provided, however, that the provisions of this section shall not be construed to prohibit any property owner or lessee from accommodating trailers of non-paying guests for a period not to exceed 30 days in any year.
- (j) Owners and users of land for all purposes permitted in this district, not served by Town water and sewer, shall be required to furnish plans for a satisfactory on site sewage disposal system with field tests that indicate satisfactory drainage conditions before a building permit will be issued.
- (k) Untreated sewage or household wastes shall not be discharged into any flowing stream or body of water.

ARTICLE V

Section 500. Class II Residential District

500.1 Uses: In the Class II Residential District, land may be used and buildings and structures may be erected, altered or used for single and two family dwellings, rooming houses, rest homes, churches, schools, clubs, club lodgings, fraternity or sorority houses, apartments, multifamily dwellings and accessory uses thereto.

500.2 Accessory uses not permitted:

- (a) Any use injurious, noxious or offensive to the neighborhood.
- (b) The sale of produce not raised on the premises, but not excluding the products of home industries.
- (c) The raising or keeping of poultry or livestock except as incidental to a farm operation, provided, however, that nothing herein shall prevent the keeping of household pets.
- (d) Signs except those pertaining to the sale, lease or use of the land or building on which placed and not to exceed a total area of eight square feet.

500.3 Uses excluded from this District: The following uses of land and buildings are excluded in the Class II Residential District: Business and commercial establishments, theaters, automobile service stations, public garages, public or commercially operated parking lots, junk yards or dumps.

500.4 General provisions:

- (a) The building area shall not exceed 33 percent of the lot area.
- (b) No building or structure shall be erected or altered so that it projects nearer to the street line than the average set-back of other buildings within 300 feet each way on the same side of the street, or 30 feet from the street line, whichever is the greater distance.
- (c) Separate buildings or structures for accessory use may be located in the rear or side yard, but shall not project nearer to the street line than the main building and shall not be placed closer than 10 feet from the rear or side lot lines of the lot upon which the main building is located.

(d) Building lots for any use permitted in this district shall have a frontage of not less than 100 feet, provided, however, that a lot with lesser frontage listed and taxed as a lot at the time of passage of this ordinance shall be deemed conforming use.

(e) The following minimum lot areas are specified in those parts of the district served or not served by Town sewers and water.

1. Sewer and water available

- Single family dwelling — lot area 10,000 square feet
- Two family dwelling — lot area 15,000 square feet
- Multifamily dwelling — lot area 20,000 square feet, but increased by 5,000 square feet for each unit in excess of 5 dwelling units
- All other uses permitted — lot area 20,000 square feet

2. Sewer not available — water available

- Single family dwelling — lot area 20,000 square feet
- Two family dwelling — lot area 25,000 square feet
- Multifamily dwelling — lot area 30,000 square feet, but increased by 5,000 square feet for each unit in excess of 5 dwelling units
- All other uses permitted — lot area 40,000 square feet

3. Sewer and water not available

- Single family dwelling — lot area 40,000 square feet
- Two family dwelling — lot area 50,000 square feet
- Multifamily dwelling — lot area 50,000 square feet, but increased by 10,000 square feet for each unit in excess of 5 dwelling units
- All other uses permitted — lot area 50,000 square feet

The foregoing minimum area requirements do not apply to those lots of lesser area which are listed and taxed as a lot at the time of the passage of this ordinance.

(f) The height of any wood-frame building or structure in this district shall be limited to 2½ stories or 35 feet whichever is the lesser.

(g) All buildings shall be provided with off-street parking facilities. Entrances and exits to such off-street parking facilities are subject to the regulation of the New Hampshire Department of Public Works and Highways.

(h) The use of land for accommodation of trailers is forbidden, provided, however, that the provisions of this section shall not be construed to prohibit any property owner or lessee from accommodating trailers of non-paying guests for a period not to exceed 30 days in any year.

i) Owners and uses of land for all purposes permitted in this district, not served by town water and sewer, shall be required to furnish plans for a satisfactory on site sewage disposal system with field tests that indicate satisfactory drainage conditions before a building permit will be issued.

- (j) Untreated sewage or household wastes shall not be discharged direct into any flowing stream or body of water.

ARTICLE VI

Section 600. Class III Residential District

600.1 Use: In the Class III Residential District, land may be used and buildings may be erected, altered or used for the following:

- (a) Single, and multifamily dwellings and accessory uses thereto.
- (b) Churches, hospitals, sanitarium, rest homes, rooming houses, club lodgings, schools, hotels and motels, yacht clubs, marinas and boat yards including the operation of not more than two gasoline pumps for service of marine craft.
- (c) Commercial uses permitted in the Class A Business District, with the same use restrictions set forth in Article III Section 300 of this Ordinance.
- (d) Farms and uses incidental to farming excluding any use injurious, noxious or offensive to the neighborhood.
- (e) Accessory use customarily incident to any of the above uses.

600.2 Accessory use in this Article shall not include:

- (a) The use of land to accommodate trailers; however, the provisions of this section shall not prohibit any property owner or lessee from accommodating trailers of non-paying guests for a period not to exceed thirty days in any one year.
- (b) Signs in excess of 15 square feet in area and two in number, pertaining to the use, sale or lease of lot on which placed.

600.3 The following uses are not permitted in this district:

Any use injurious, noxious, offensive to a neighborhood by reason of the emission of smoke, fumes, dust, vibration noise or any other cause, or for any of the following specific uses: Factory, light or heavy industry, commercial airport, motor vehicle service station, public garage, dump or junk yard, the storage for purpose of sale, of coal, gasoline, oils, gas or other flammable products. The latter is not intended to exclude gasoline fuel pumps to service marine craft.

600.4 Building lot area and dimensions:

- (a) Building lots used for residential purposes shall have a minimum front footage of 200 feet on an existing or proposed street or road, and a minimum area of 40,000 square feet for single or two-family houses. Where multifamily houses or group units are to be built in excess of a two family unit, the area of the lot shall be increased 10,000 square feet per unit and the front footage shall be increased 50 feet per unit. The foregoing shall not apply to those lots of smaller size so listed and taxed at the time of the adoption of this article.
- (b) Building lots used for other than residential purposes, as

permitted and specified in Section 600.1 (b) and (c) of this article, shall have a minimum front footage on an existing or proposed street or highway of 200 feet or the longest dimension of the proposed building plus 100 feet, whichever is the greater.

600.5 Shore Frontage:

- (a) Building lots for single and two family residential use, having shore frontage on tidal water, shall have a minimum shore front dimension of 100 feet. (see definition Art. II, Sec. 200). The foregoing shall not apply to those lots having lesser shore frontage so listed and taxed at the date of the adoption of this article.
- (b) Building lots used for multifamily use shall have a minimum shore frontage of 100 feet (see definition) plus 50 feet additional for each family unit planned, built or used but the required maximum is limited to 300 feet.
- (c) Building lots and land use for other than residential purposes as permitted and specified in Section 600.1 (b) and (c) of this Article, shall have a minimum shore frontage of 300 feet.

600.6 General Provisions:

- (a) The total area occupied by buildings on a lot shall not exceed $33\frac{1}{3}$ percent of the area of the lot.
- (b) No building or structure shall be erected so that it projects nearer to the street line or highway right-of-way boundary than the average set-back of the buildings on adjacent lots, or 30 feet whichever is greater distance.
- (c) No building or structure shall be erected so that the side or rear clearance is less than 50 feet from the side or rear property line.
- (d) The building height for any wood-frame building or structure in this District shall be limited to $2\frac{1}{2}$ stories or 35 feet whichever is the lesser.
- (e) Adequate off street or highway parking facilities shall be provided consistent with the character of the land use.
- (f) Owners and users of land for all purposes permitted in this district, not served by Town water and sewers, shall be required to furnish plans for a satisfactory on-site sewage disposal system with field tests that indicate satisfactory drainage conditions before a building permit shall be issued.
- (g) Untreated sewage or industrial wastes shall not be discharged direct into any flowing stream or body of water.

ARTICLE VII

Section 700. Rural District

700.1 Uses: In the Rural District land may be used and buildings and structures may be erected, altered or used for any of the

uses permitted in the Residential Districts, the Class A and B Business Districts, and in addition farms and uses incidental to farm operation.

700.2 Uses not permitted: Any uses that are injurious, dangerous, or offensive to the neighborhood by reason of the emission of odor, fumes, dust, smoke, noise or as a fire hazard, or for any other cause. Junk yards and dumps are excluded from this district.

700.3 Building lot area and dimensions:

- (a) Building lots for residential purposes shall have a minimum frontage of 200 feet on an existing or proposed street or road, and a minimum area of 40,000 square feet for a single or two family house. Where multifamily houses or group units are to be built in excess of a two family unit, the area of the lot shall be increased 10,000 square feet per unit and the frontage 50 feet per unit. The foregoing shall not apply to those lots of smaller size so listed and taxed at the time of the adoption of this article.
- (b) Building lots used for other than residential or farm uses as permitted in this district shall have a minimum frontage on an existing or proposed street or road of 200 feet or the longest dimension of the proposed building plus 100 feet whichever is the greater. The minimum area shall be 40,000 square feet.

700.4 General provisions:

- (a) The total area occupied by buildings on a lot shall not exceed $33\frac{1}{3}$ percent of the area of the lot.
- (b) No building or structure shall be erected or altered so that it projects nearer the street line or highway right-of-way boundary than the average set-back of buildings on adjacent lots, or 30 feet whichever is the greater distance.
- (c) No building or structure shall be erected so that the side or rear clearance is less than 10 feet from the side or rear property line.
- (d) The height of any wood-frame dwelling shall be limited to $2\frac{1}{2}$ stories or 35 feet whichever is the lesser. The height of buildings not used for dwelling purposes is not limited, provided, however, that adjacent or accessory wood-frame buildings or structures be separated from wood-frame dwellings by at least 50 feet.
- (e) Adequate off-street or highway parking facilities shall be provided, consistent with the character of the land use.
- (f) Signs pertaining to the use, sale or lease of the lot on which placed are not permitted in excess of 15 square feet in area and not more than two in number.
- (g) The use of land for the accommodation of trailers is forbidden, provided, however, that the provisions of this section shall not be construed to prohibit any property owner or

lessee from accommodating trailers of non-paying guests for a period not to exceed 30 days in any one year.

- (h) Owners and users of land for all purposes permitted in this district, not served by Town water and sewers, shall be required to furnish plans for a satisfactory on site sewage disposal system with field tests that indicate satisfactory drainage conditions before a building permit will be issued.
- (i) Untreated sewage or industrial wastes shall not be discharged direct into any flowing stream or body of water.

ARTICLE VIII

Section 800. University District

800.1 Uses: The University District shall be the lands owned and used by the University of New Hampshire. In the University District land may be used for education purposes and operations incidental to the administration of the University of New Hampshire. When lands owned, used, or leased, by the University of New Hampshire shall pass by sale, lease or other conveyance to private persons or corporations, the lands and buildings thus conveyed shall revert in their use to the uses permitted in the Zoning District in which located.

ARTICLE IX

Section 900. Administration

900.1 Duty and Authority: It shall be the duty of the Board of Selectmen, and the Board is hereby given the power and authority, to enforce the provisions of this Ordinance.

900.2 Administrative Official: The Board of Selectmen is hereby given the power and authority to appoint a Building Inspector and delegate to such Building Inspector the power and authority to administer these Ordinances.

900.3 Building Inspector — Appointment and Salary: The Building Inspector shall be appointed annually by the Selectmen and he shall be responsible to the Selectmen for the administration and enforcement of this Ordinance and amendments thereto, and other such ordinances that pertain to the regulation of buildings; particularly the Fire District regulations. The salary or compensation of this officer shall be fixed by the Selectmen.

900.4 Duties of the Building Inspector: The Building Inspector shall receive application and fees for permits for the erection, alteration, remodeling and demolition of buildings, the installation of or alteration of electrical wiring and heating systems. He shall keep a record of all applications and his action on same. He shall promptly inspect all sites for proposed buildings, and those buildings on which alterations or remodeling are proposed. He shall collect such permit fees as are prescribed and deposit same with the Town Treasurer. He may approve the issuance of a permit for the erection, alteration, remodeling of all buildings and

the use of such buildings, if, in his opinion, the proposal complies with the laws of the State, this Ordinance and other Town Ordinances. It is further provided that in any instance where other licenses or permit fees for uses are required, his approval of the permit shall constitute an approval on which other proper authority may act. He shall review and approve or disapprove all plans for which permits have been issued. He shall periodically inspect all new buildings being erected and those being altered, remodeled or demolished, for the purpose of enforcing these ordinances. He shall perform such other duties prescribed by law and shall cooperate with the Fire Warden, Health Officer, and other Town Officers in such matters where their respective duties overlap or coincide. He shall take such action in the enforcement of this ordinance as the Selectmen may direct.

900.5 Applications and Permits: It shall be unlawful to construct, alter, remove, or demolish, or commence any construction, alteration, remodeling, removal or demolition of a building or structure, or install equipment for the operation of a building without first filing a written application with the Building Inspector and obtaining a formal permit.

900.6 Application Form: Applications shall be filed with the Building Inspector in such form as he may require. The application shall contain the full name of the owner and/or his agent. It shall contain a certification that the property does not lie in an unapproved sub-division. The application shall describe briefly the proposed work and give such other information as may be required to enable the Building Inspector to determine whether the proposed work complies with the provisions of this ordinance.

900.7 Plot Plan: A plot plan shall accompany the application and shall show the following: (a) Lot dimensions; (b) name of abutting streets; (c) name of abutting property owners with the location of all buildings on the adjoining land within 10 feet of the property lines; (d) dimensions of the proposed building; (e) dimensions indicating the set-back, side and rear clearances; (f) location of proposed connection to the town sewer and water lines where available, otherwise the proposed location of the well, septic tank and drainage field; (g) location of the proposed driveways; (h) such other information as may be required by the Building Inspector.

900.8 Plans to Accompany Application: Applications for permits shall be accompanied by drawings of the proposed work, drawn to scale, showing when necessary, floor plans, sections, elevations, structural details.

900.9 Issuance of Permit:

- (a) No work shall be started on the proposed site and no building shall be erected, altered, remodeled or demolished, until the owner or his agent shall first secure a building permit from the Selectmen or from the Zoning Board of Adjustment as hereinafter provided.

- (b) No building permit shall be issued or become effective until the Building Inspector has certified that the proposed building, alteration or remodeling, and its intended use or type occupancy complies with the provisions of this ordinance.
- (c) Upon approval of the application by the Building Inspector the *Selectmen shall issue* a permit authorizing such construction, alteration or demolition.
- (d) The Building Inspector shall be given at least 12 hours notice of the starting of work under a permit.

900.10 Permit Fees: The following schedule of permit fees is based upon the estimated cost of construction. The permit fee shall be paid prior to the issuance of a permit:

<i>Estimated Cost</i>	<i>Fee</i>
New construction or remodeling	
Less than \$500	None
\$500 to \$10,000	\$10.00
\$10,000 to \$20,000	\$15.00
\$20,000 to \$30,000	\$20.00
\$30,000 to \$40,000	\$25.00
\$40,000 to \$50,000	\$30.00
Above \$50,000	\$35.00

900.11 Certification of Occupancy: No building or structure or part thereof hereafter erected or altered shall be used, moved or the open spaces in any way reduced, until the Building Inspector shall have certified on the building permit the specific use to which the land or structure complies as to use or occupancy.

900.12 Revocation of Lapse of Building Permits:

- (a) A violation of or variation from the terms, conditions or authorization of a building permit by the holder thereof or his agent, architect or contractor shall be cause for the revocation of said permit. Such revocation shall be made at the discretion of the Selectmen and an appeal from such action may be made as provided in Article X of the ordinance.
- (b) The Building Inspector shall, at the expiration of 12 months during which no earnest or substantial effort has been made to complete or carry out the construction or alterations authorized in a building permit declare, and send notice to the holder thereof, that said permit has lapsed. Said permit may be reinstated on application of the proposed user to the Building Inspector.

900.13 Enforcement: Upon any well founded information that this ordinance is being violated, the Selectmen shall, on the advice of the Building Inspector, take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action. For penalty, see Article XII, Section 1200.5.

- (a) Should the Building Inspector or Selectmen fail to take action on an application for a building permit within 15 days of the date of filing, the applicant may apply to the Zoning Board of Adjustment for a building permit.
- (b) A building permit, once issued, shall not be assignable nor shall it be revocable except on an appeal as authorized by Article X of this ordinance or as provided in Section 900.12 herein.
- (c) No building permit shall be required for repairs or maintenance necessitated by ordinary wear and tear.
- (d) No permit fee shall be required for remodeling, where the total cost for such work including materials will not exceed \$500.00 and the purpose for which the building is to be used is not changed.
- (e) No permit, however, shall be issued unless the proposed structure will present a reasonable appearance and will be in keeping with the neighborhood and unless the building is to be finished on the exterior in a permanent manner and is to be suitably painted on the outside whenever the same is of wood or material customarily painted. This is intended to eliminate the erection of structures obviously out of place for the neighborhood where they are to be located and which may have a detrimental effect on the property values and neighborhood character. When an objection on the account of appearance of a proposed structure, as above indicated, is raised by a majority of the families residing or owning property within a radius of 500 feet to the property in question or when the Selectmen cannot reasonably grant a permit on the basis of the interpretation of the foregoing, the Selectmen shall request the Zoning Board of Adjustment to hold a public hearing to receive the evidence on both sides. The Zoning Board of Adjustment shall have the authority to decide whether the permit shall be issued.
- (f) Plans for the provision of sewage disposal facilities for (1) commercial and industrial buildings in all districts, and (2) residences not employing town facilities shall be approved by the Town Health Officer prior to granting of building permit.

ARTICLE X

Section 1000. Board of Adjustment

1000.1 Members. A Zoning Board of Adjustment, consisting of five members appointed by the Board of Selectmen, is hereby created and established. When the Board is first organized, one member shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years, thereafter the Board of Selectmen shall annually appoint one member for a term of five years. Said members can be removed for cause only by the Board of Selectmen upon written charges filed and after a public hearing on said charges. Vacancies shall be filled for the unexpired term.

1000.2 Meetings. A. A chairman and Clerk shall be appointed. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

B. Meetings of the Board shall be held at the call of the Chairman and at such other 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, 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 immediately filed in the Town Office and shall be a public record.

1000.3 Powers of the Board. 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 ordinance. In addition the Zoning Board of Adjustment shall have the following powers.

A. To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement of this ordinance.

B. To hear and decide special exceptions to the terms of the ordinance upon which the Board is required to pass under the ordinance.

C. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing in special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

D. 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.

E. The concurring vote of three 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 ordinance, or to effect any variation in this ordinance.

F. Any other power authorized to a Zoning Board of Adjustment by virtue of the adoption by the Town of Durham of Chapter 51, Sections 50-71, and Chapter 53, Sections 26 and 31, of the Revised Laws of New Hampshire, as amended.

1000.4 Appeals to Board. Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of an administrative official. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing

with the officer or board from whom the appeal is taken and with the Zoning Board of Adjustment a notice of appeal specifying the grounds thereof. The officer or board from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

1000.5 Effect of Appeal. An appeal stays all proceedings under the action appealed from unless the officer or board from whom the appeal is taken certifies to the Zoning Board of Adjustment after notice of appeal shall have been filed with it that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the officer or board from whom the appeal is taken and cause shown.

1000.6 Notice of Hearing. The Zoning Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appeal in person or by agent or attorney.

1000.7 Disqualification of Board Member. No member of the Zoning Board of Adjustment shall sit upon the hearing or any question which the Board is to decide in a judicial capacity who would be disqualified from any cause, except exemption from service and knowledge of the facts involved gained in the performance of his official duties, to act as juror upon the same matter in any action at law. If a member shall be disqualified or unable to act in any particular case pending before the Board, the Board of Selectmen, upon application of the Board, shall appoint a member to act in his place upon said case.

ARTICLE XI

Section 1100. Amendments

1100.1 The provisions of this ordinance, or any part thereof, may from time to time be amended, supplemented or repealed by a resolution, adopted at a duly held Town Meeting, setting forth the proposed amendment. No such amendment shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a paper of general circulation in the Town of Durham; provided, however, that such hearings shall not be necessary if the warrant for the Town Meeting at which the matter is to be considered shall contain an article stating what regulations, restrictions, and boundaries are to be acted upon.

1100.2 In case of a written protest against a proposed amendment, filed with the Board of Selectmen and signed by the owners of twenty per cent either of the area of the lots included in such

proposed changes, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such proposed amendment shall not become effective except by the favorable vote of three-fourths of all the members of the Town Meeting.

ARTICLE XII

Section 1200. General Provisions

1200.1 Continuation of Non-conforming Use. A. Any lawful building or use of a building or property in existence at the time of passage of this ordinance shall be continued, except that if such use shall cease to exist for a period of twelve consecutive months, such use may not again be initiated provided however, that the Zoning Board of Adjustment shall grant a special exception to the provisions of this section to allow the resumption of a non-conforming use by the person or his heirs, or the corporation or its successors, who originally abandoned the said use on a showing by such proposed user as applicant of (a) undue hardship by reason of non-adaptability of the premises to a conforming use, or (b) that the proposed non-conforming use will not be conducted within one hundred (100) feet of any other owner's conforming use of land or buildings.

B. For the purpose of this ordinance, vacant land or buildings shall be deemed to be conforming in use.

C. Any lawful building or use of a building or property, whether conforming or not; in existence for six consecutive months and not challenged by proper authority shall be deemed, for the purpose of this ordinance, to have been in existence at the time of passage of this ordinance.

1200.2 Restoration. Nothing herein shall prevent the substantial restoration within one year and continued non-conforming use of a building damaged by fire or other casualty, provided that, in case of damage to a building non-conforming in use, location or structure, to an extent that the estimated cost of such restoration exceeds 75% of its fair valuation immediately prior to such damage, authorization of the Board of Adjustment must be obtained for such restoration.

1200.3 Governmental Use. Nothing herein shall prevent the use or condemnation of land or buildings for (a) municipal use by the Town of Durham, or (b) public or institutional use by any agency, department, institution, or public corporation of the State of New Hampshire or of the United States.

1200.4 Interpretation. A. In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare of the Town of Durham and its citizens.

B. Whenever the provisions of this ordinance or any other law-

ful regulations made under the authority of Chapter 51, Sections 50-71, of the Revised Laws of New Hampshire and amendments thereto, shall conflict, or shall differ from those prescribed by any statute, ordinance or other regulation, that provisions which imposes the greater restriction or the higher standard shall govern.

1200.5 Penalties. A. For any and every violation of the provisions of this ordinance, the owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the architect, builder, or any other person who knowingly commits, takes part or assists in any such violation, shall be liable on conviction thereof to a fine or penalty not exceeding \$25.00 for each and every offense and whenever such person shall have been notified by the Board of Selectmen, or by service of summons in a prosecution, or in any other way that he is committing such violation of this ordinance, each day that he shall continue such violation after such notification, shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected.

B. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this ordinance, the Board of Selectmen, in addition to other remedies may institute any appropriate action or proceedings to prevent such unlawful action, to restrain, correct or abate such violation or to prevent the occupancy of the building, structure or land, or any illegal act or use in or about such premises.

1200.6 Nuisance Uses. No land in any district shall be used for a dump, except as provided under Section 1200.3, above, or a place for refuse, waste, or junk of any kind, nor for abandoned automobiles, carriages, or other vehicles, machinery or other tools or appliances, nor used in any manner that is disorderly, unsightly, noxious, offensive or detrimental to the public, or the owners or occupants of adjacent property, or prejudicial to the general welfare of the community, without the approval, in writing, of the Board of Adjustment upon such conditions as they may determine.

1200.7 Saving Clause. Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

1200.8 Effective Date. This ordinance shall take effect immediately upon its passage.

Date Passed: March 11, 1952

Date Revised and Amended: March 11, 1958.

BUILDING REGULATIONS

Town of
Durham, New Hampshire

Adopted March 11, 1958

Preamble

Pursuant to the authority vested in the towns by Chapter 156, Sections 1-5, New Hampshire Revised Statutes Annotated, 1955, and to provide for safety, health and public welfare through structural strength and stability, and protection to life and property from fire and hazards incident to the design, construction, alteration of buildings and structures in the Town of Durham. The following ordinance is hereby enacted by the voters of the Town of Durham, New Hampshire, in official Town Meeting convened, March 11, 1958.

ARTICLE I

Section 10. Title, Purpose, Scope

10.1 Title. This article of the ordinance shall be known and may be cited as "the Building Regulations."

10.2 Purpose of the Building Regulations. The purpose of these regulations is to provide for safety, health and public welfare through structural strength and stability, means of egress, adequate light and ventilation and protection to life and property from fire and hazards incident to the design, construction, alteration, removal or demolition of buildings and structures.

10.3 Scope of the Building Regulations. The provisions of the building regulations apply to the construction, alteration, equipment, use, occupancy, and maintenance of buildings and structures and to appurtenances such as areaways and street encroachments, hereafter erected and where expressly stated, existing on land or over water and to buildings and structures and equipment for the operation thereof hereafter moved or demolished in the town. The provisions of the building regulations, based on occupancy, also apply to conversions of existing buildings and structures or portions thereof from one occupancy classification to another.

10.4 Validity of other laws. Nothing in these building regulations shall be construed to prevent the enforcement of other portions of these ordinances or state law which prescribe more restrictive limitations. The invalidity of any section or provision of this ordinance or these building regulations hereby adopted shall not invalidate other sections or provisions thereof.

10.5 Materials and methods of construction. Nothing in these building regulations shall be construed to prevent the use of any material or method of construction whether or not specifically provided for in these building regulations if, upon presentation of plans, methods of analysis, test data, or other necessary information to the building inspector by the interested person or persons, the building inspector is satisfied that the proposed material or method of construction complies with specific provisions of or conforms to the intent of this article.

Section 11. Unsafe Buildings and Structures

11.1 Removal or made safe. When a building or structure or any portion thereof is found unsafe upon inspection by the building inspector, he shall order such building or structure or any portion thereof to be made safe or taken down and removed. The term unsafe building or structure or portion thereof shall include buildings or structures or portions thereof structurally unsafe, unstable, unsanitary, inadequately provided with exit facilities, constituting a fire hazard, unsuitable or improper for the use or occupancy to which they are put, constituting a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment, or otherwise dangerous to life and property.

11.2 Demolition of buildings. Any building or structure that is damaged by fire or other cause in excess of 75 percent shall be either rebuilt or demolished within a period of one year, following such damage. Demolition includes removal from the premises of all debris and parts of the structure above the foundation.

Section 12. Violations

12.1 Notices of violations. Whenever the building inspector is satisfied that a building or structure, or any work in connection therewith, the erection, construction or alteration, execution of which is regulated, permitted or forbidden by these building regulations, is being erected, constructed, or altered, in violation of the provisions or requirements of these building regulations, or in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, he shall serve a written notice or order upon the person responsible directing discontinuance of such illegal action and the remedying of this condition that is in violation of the provisions or requirements of these building regulations.

12.2 Disregard of violation notices. In case a violation notice or order is not properly complied with, the building inspector shall notify the selectmen of such non-compliance. The selectmen upon receipt of such notice shall institute an appropriate action.

12.3 Stopping work. Whenever in the opinion of the building inspector, by reason of defective or illegal work in violation of a provision or requirement of these building regulations, the continuance of a building operation is contrary to public welfare, he shall order, in writing, all further work to be stopped and may require suspension of all work until the condition in violation has been corrected.

Section 13. Penalties

13.1 Non-compliance. A person who shall violate a provision of these building regulations or fail to comply therewith or with any of the requirements thereof, or who shall erect, construct, alter or repair, or have erected, constructed, altered or repaired a build-

ing or structure or portion thereof, in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, shall be guilty of a misdemeanor punishable by a fine of not less than \$10 nor more than \$100.

Section 14. Provision for Appeals

14.1 Appeals. Any person aggrieved, or any town official, may take an appeal to the Zoning Board of Adjustment from any decision of the building inspector, as provided in Article X of the Zoning Ordinance.

Section 15. Building Regulations

15.1 Assembly occupancy. Any building intended, designed, or converted to the use of public assembly for more than 50 persons, lying within the Fire District shall be built, or if rebuilt, reconstructed of noncombustible walls and roof.

Buildings intended, designed, or converted to the use for public assembly outside the Fire District, may be built of wood frame construction with a fire resistant roof covering, provided the height does not exceed 2½ stories and provided further that the minimum clearance between adjacent wood frame buildings be not less than 20 feet.

15.2 Business buildings. No buildings intended or designed to be used for business, commercial, mercantile or other public use shall be erected, altered or used for any purpose which does not provide noncombustible exterior walls. The interior walls which serve to separate or divide the building into units for different tenants or use shall be constructed in a manner to furnish a fire rating of one hour or more, as defined and described in the National Building Code and as approved by the National Board of Fire Underwriters.

Buildings for the above use may be built of wood frame construction in the Fire District, provided the restrictions set forth in Sections 30.3 and 30.4 of the Fire District requirements are met.

15.3 Exits. No building intended or designed for any public use or congregation of people shall be erected, altered, or used for any purpose which does not provide adequate exits and methods of egress as described in Chapter 176, Revised Laws of New Hampshire and Chapter 153, Laws of 1943, and in the regulations of the State Department of Health.

15.4 Garages. No public garage for the storage of five or more automobiles, or having any service or repair enterprises connected therewith shall be erected, altered, or enlarged unless the building is so constructed, or the proposed alterations, enlargements or extensions shall be of slow-burning or noncombustible material, except that use of automatic sprinklers may obviate the use of such slow-burning or non-combustible materials.

15.5 Fire and draft stops. No building of wood or other combustible material shall be erected, altered, remodeled, or enlarged

without providing fire-stops in every combustible wall or partition, at every floor and between floor joints at every partition, and draft stops around any shaft, or pipe passing through walls, floors, or ceilings. The open air spaces around chimneys, fireplaces and flues shall be blocked with noncombustible material.

15.6 Chimney construction. No chimney shall be built, erected, or altered below the roof unless it contains a tile or brick lining and with an iron cleanout door at or near its base, and shall extend at least two feet above the roof. No chimney shall be built, erected or altered below the roof having wood or other combustible materials within two inches of the chimney and no chimney shall have its base resting upon any floor or beam of combustible material.

15.7 Thimbles. No wall paper or other combustible material shall be laid over any thimble or thimble hole in any chimney.

15.8 Smoke pipes. No smoke pipes shall be installed or erected so as to be within twelve inches of any combustible floor or ceiling, unless amply protected with noncombustible material. No smoke pipes shall be installed or erected which passes into or through partitions or walls of combustible material, except when guarded by a double collar of metal with vented air space of at least five inches, or by at least five inches of brick or other non-combustible material between the pipe and the combustible material.

15.9 Electric wiring. All electrical wiring shall conform with approved methods and practices for safety to life and property. Compliance with the National Electrical Code, as published by the National Board of Underwriters, shall be prima facie evidence of such approved methods and practices.

15.10 Foundations. All structures shall be set on solid, continuous foundations of concrete, brick, stone or other acceptable masonry material having a minimum thickness of 6 inches and resting on a footing at least 12 inches wide, the base of which shall extend below the ground at the building line to a minimum depth of 3 feet or to solid rock whichever is less, except that in special cases where buildings are used for seasonal dwelling or accessory use only, the building inspector may waive the requirements of this section and permit the use of wood, metal or masonry piers.

15.11 Height restriction. For the safety of life, the maximum height for any building above grade at the front building line shall not exceed the following:

- (a) In the Fire District when the structure is built of noncombustible material and conforms to Class A or Class B as defined by the "National Board of Fire Underwriters," the height shall not exceed 75 feet.
- (b) In the Fire District when the structure is of wood frame construction and conforms to the set-back and clearance limita-

tions set forth in Section 30.3 of the Fire District ordinance, the height shall not exceed 2½ stories or 35 feet whichever is less.

- (c) In all other districts the maximum height of any building shall not exceed 2½ stories or 35 feet, except that the maximum height restriction shall not apply to church steeples or accessory buildings or structures subject to the limitations for that District.

15.12 Fire escapes. Fire escapes shall be provided as required by State Law.

15.13 Minimum building area. Every dwelling unit to be used by a single family shall have a minimum floor area of 500 square feet.

15.14 Plumbing. All plumbing installations shall conform to the requirements of the Town Health Officer, the Town of Durham Water Department, and the General Regulations of the Durham Sewer Commission.

15.15 Sewerage. All dwellings and all commercial, public or industrial buildings shall be connected to the public sewer system, where available. The connection to the public sewers is subject to the provisions set forth in "General Regulations of the Durham Sewer Commission."

15.16 Septic Tanks. When a public sewer is not available a private sewage disposal system shall be installed on the lot subject to the following requirements:

- (a) The minimum capacity of any septic tank shall be 300 gallons for a single family house, 500 gallons for a two family house, and the equivalent of a 300 gallon tank for each unit of a multi-family or group of units such as a motel or apartment house.
- (b) The drainage field for each septic tank shall have an adequate area and satisfy the requirements of the State Board of Health, the Town Health Officer and the Building Inspector.
- (c) Before any building permit is issued for a building where a septic tank is to be installed, the owner shall have a Standard Percolation Test made. Based on the results of this test the building inspector and health officer shall approve the size and type drainage field to be provided.
- (d) No building permit shall be issued by the building inspector when the use of a septic tank is proposed until the health officer has approved such use and signed the permit.

15.17 Street encroachments. No building or part thereof shall extend beyond the street line except as hereinafter provided.

15.18 Permissible projections.

- (a) Main cornices, mouldings, belts, the eaves of roofs and gutters may project no more than 12 inches over the street

line, providing such projections are not less than 12 feet above curb or sidewalk level.

- (b) Marquises at entrances to buildings or structures may extend beyond the street lines and across the sidewalk to the curb line, provided they are not less than 10 feet above the curb level at all points, and, within the fire limits, are constructed of iron and glass or other noncombustible materials. They shall be securely supported from the building or structure and shall be properly drained.
- (c) Awnings attached to buildings or structures may extend beyond the street line but not nearer than 18 inches to the curb line, provided that they are not less than 8 feet above the sidewalk at all points.
- (d) Areaways may project beyond the building line not more than 4 feet, provided that every such areaway shall be covered over at the sidewalk level by a grating of approved non-combustible material.
- (e) No device for exhausting air, fumes or vapor of any nature shall be permitted on the front of a building unless it be placed at least 12 feet above sidewalk level.

15.19 Walls.

- (a) No exterior covering of tar paper or other treated paper shall be permitted on any building used as a dwelling, place of assembly or for any public use. Accessory buildings when placed in the rear yard and separated at least 20 feet from any adjacent building are excluded from this requirement.
- (b) In multifamily dwellings, each individual unit shall be separated and protected by interior walls having a fire rating of one hour or greater as defined and described in National Building Code and as approved by the National Board of Fire Underwriters.

Section 16. Conforming Buildings

16.1 Any building or structure in existence and in use at the time of the adoption of this Article shall be deemed to be in conforming use.

ARTICLE II

Section 20. Definitions

Definitions of Terms

- (a) Unless otherwise expressly stated, the following terms shall, for the purpose of this ordinance, have the meanings indicated in this section.
- (b) Words used in the present tense include the future; the singular number includes the plural and the plural the singular.
- (c) Where terms are not defined in this section, they shall have their ordinarily accepted meanings or such as the context may imply.

Accessory Building means a subordinate building, attached or unattached to the main building. For the purpose of this ordinance and its amendments, however, a garage or carport, attached directly to or by another structure to the main building, shall be regarded as an integral part of the main building.

Alley means any public thoroughfare less than 21 feet in width which has been legally dedicated or devoted to public use.

Alteration, as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities; or an enlargement, whether by extending a side or by increasing its height; or structural changes other than repairs, that would affect safety; or adding an elevator; or significant changes to the plumbing, gas piping, wiring, ventilating or heating installations. The term "alter" in its various moods and tenses and its participial forms, refers to the making of an alteration.

Apartment — see "Dwelling unit."

Attic means the space between the ceiling beams of the top habitable story and the roof rafters.

Areaway means an uncovered subsurface space adjacent to a building.

Automobile Service Station means a building designed or used primarily for the supply of motor fuel, oil, accessories and service or repair to motor vehicles.

Basement means a story of a building or structure having one-half or more of its clear height below grade. Also see "Story."

Brick means a solid masonry unit having a shape which approximates a rectangular prism, usually not larger than 12 by 4 by 4 inches. A brick may be made of burned clay or shale, of fire clay or mixtures thereof, of lime and sand, of cement and suitable aggregates, or of other approved materials.

Building means a structure, including all integral parts thereof, intended for use and occupation as a habitation, or for some purpose of assembly, business, manufacture, institutional, storage, ornamentation, or shelter to persons, animals or chattels.

Building Area means the maximum horizontal projected area of the building at or above grade excluding uncovered steps and terraces.

Building Line means the line, established by ordinance, beyond which a building shall not extend.

Building Inspector means the officer or other designated authority charged with the administration and enforcement of this ordinance or his duly authorized representative.

Club Lodgings means a building or accessory thereto used or adapted to use primarily as a meeting or lodging place occupied by a fraternal organization, club or voluntary corporation for the benefit of its members or members of a beneficiary recreational or social club, organization or association. For the purpose of this ordinance a collegiate social fraternity or sorority house shall be considered as a club lodging.

Clearance means the minimum horizontal distance from any property or lot line to the nearest point of any proposed or existing structure;

side clearance, refers to the distance from the side lot line to a building.

rear clearance, refers to the distance from the rear lot line to the building.

Concrete means a mixture of portland cement, aggregates and water;

reinforced concrete means concrete in which reinforcement other than that provided for shrinkage or temperature changes is embedded in such a manner that the two materials act together in resisting forces.

Court means an open, uncovered, unoccupied space on the same lot and fully enclosed on at least three adjacent sides by walls of the building;

inner court means any court other than an outer court or a yard;

outer court means a court other than a yard having at least one side thereof opening on to a street, alley or yard or other permanent open space.

Curb level means the elevation of the street curb as established in accordance with an ordinance.

District: A district includes all the land, water and buildings within certain designated boundaries, defined in Article I of this ordinance and shown on the Zoning Map which is incorporated as a part of this ordinance and the amendments thereto.

Dwelling: A building used as a habitation or parts thereof used for access to such building.

- (a) *Single family dwelling* means a building and accessories thereto used or adapted for use as a dwelling by one family.
- (b) *Two family dwelling* means a building and accessories thereto used or adapted for use as a dwelling by two families.
- (c) *Multiple dwelling* means a building and accessories thereto used or adapted for use as a dwelling by more than two families or by any unit or group other than a family as defined herein.
- (d) *Seasonal dwelling* means a dwelling used for a part of a year.
- (e) *Dwelling unit* means one or more rooms arranged for the use of one or more individuals living together as a single house-keeping unit, with cooking, living, sanitary and sleeping facilities.

Elevator means a hoisting and lowering mechanism equipped with a car or platform which moves within guides in a substantially vertical direction, and which serves two or more floors of a building or structure.

Exit doorway means a doorway opening directly to the exterior, to a horizontal exit, to an exit stairway, or to a similar place of safety.

Family: One or more persons living together in a dwelling as a single non-profit housekeeping unit, as distinguished from a group or fraternal organization occupying a hotel, club lodging or rooming house.

Fire District, as applied to this ordinance, is defined to include the areas zoned as the Business A and B Districts.

Fire door means a door and its assembly, constructed and assembled in place, to give protection against the passage of fire.

Fire resistance rating means the time in hours that the material or construction will withstand the standard fire exposure as determined by a fire test made in conformity with the "Standard Methods of Fire Tests of Building Construction and Materials," ASTM E119.

Fire-resistive construction includes fire-resistive construction type A and type B, as defined by the National Board of Fire Underwriters in the National Building Code Art. VII, Sec. 700.

Foundations: For the purpose of this ordinance a foundation of a building or structure used for human habitation shall be defined as a continuous supporting wall of masonry, masonry units, concrete or other similar materials, the base of which is not less than 3 feet below the ground level at the building line.

Fire retardant ceiling means a ceiling used in a floor and ceiling construction that has a fire resistance rating of one hour or more.

Fire walls — see "Walls."

Fire window means a window and its assembly, constructed and assembled in place, to give protection against exposure fires.

Public garage is a building for which the primary use is the sale, storage, maintenance and repair of motor vehicles.

Private garage is an accessory building, joined or attached to or entirely separate from the main building, the primary use of which is the storage or parking of not more than three motor vehicles.

Carport means a roofed, wall-less or semi-walled shed, projecting from the side of a building or entirely separated therefrom, that is used primarily as a shelter for private automobiles.

Height, as applied to a building, means the vertical distance from grade to the average elevation of the roof of the highest story; "height" of a building in stories does not include basements — see "Story";

Height, as applied to a story, means the vertical distance from top to top of two successive tiers of floor beams or finished floor surfaces;

Height, as applied to a wall, means the vertical distance to the top measured from the foundation wall, or from a girder or other immediate support of such wall.

Home industry means a business incidental to the occupancy of a dwelling and accessory building as a family unit, employing not more than one person outside the immediate family and operated by a member of the family occupying the dwelling.

Light industry is defined, for the purpose of this ordinance, on the basis of performance in terms of absence of objectionable noise, smoke, odor, dust, dirt, noxious gases, glare and heat; the creation of hazards to health and life by reason of fire hazard, effects of industrial wastes, psychological effects and generation of motor vehicle traffic.

Livestock means the horses, cattle, sheep and other useful animals kept or raised on a farm.

Lot means a parcel of land considered as a unit, occupied or intended to be occupied by a building or buildings, including the open spaces required in this ordinance. The lot area shall not include any part of a public right-of-way which it fronts or abuts.

Lot area means the area of the lot on which one building and its accessory buildings are located, provided that the area shall be measured to the street line only, and provided further that the portion of the lot farther back from the street line than the distance of four times the average width shall not be included in the lot area, unless the rear portion abuts a street line.

Lot depth is the mean distance from the front or street line to the extreme rear lot line measured on a line which is the mean direction of the side lot lines.

Lot line means a line dividing one lot from another, a street right-of-way or other public space.

Masonry means a built-up construction or combination of building units of such materials as clay, shale, concrete, glass, gypsum or stone set in mortar; or plain concrete.

Motel means a roadside hotel which provides lodging in one central building or in individual cabins for tourists and travelers and garaging or parking space for their motor vehicles.

Noncombustible, as applied to a building construction material, means a material which, in its usable form, will not ignite, burn or support combustion.

Noncombustible construction includes protected noncombustible construction and unprotected noncombustible construction.

Occupied, as applied to a building, shall be construed as though followed by the words "or intended, arranged or designed to be occupied."

Occupancy means the use classification of a building, structure or land.

Owner includes his duly authorized agent or attorney, a purchaser, devisee, fiduciary, and a person having a vested or contingent interest in the property in question.

Pent house means an enclosed structure other than a roof structure, located on a roof, extending not more than twelve feet above it and used primarily for living or recreational accommodations.

Person includes corporation and copartnership as well as individual.

Place of assembly means a room or space used for assembly or educational occupancy for 100 or more occupants.

Plastic means a material that contains as an essential ingredient an organic substance of large molecular weight and which is solid in its finished state. At some stage in its manufacture or in its processing into finished articles it can be shaped by flow.

Plot plan is a drawing, satisfactory to the Selectmen that shows the dimensions of the lot and the buildings proposed to be altered or erected, the set back, and the side and rear clearances. See Art. IX, Sec. 900.7 of Zoning Ordinance.

Prefabricated means fabricated prior to erection or installation on a building or structure foundation.

Repair means the replacement of existing work with equivalent materials for the purpose of its maintenance but it does not include additional work that would affect safety, the required exit facilities, or plumbing, gas piping, wiring, ventilating or heating installation.

Roof structure means a structure above the roof of any part of a building enclosing a stairway, tank, elevator machinery or service equipment, or such part of a shaft as extends above the roof. This definition does not apply to living or recreational accommodations.

Rooming House means a building other than a hotel where lodging is provided for more than five persons, with or without meals, for compensation.

Setback means the horizontal distance between the street line and the nearest part of any building on the lot, excluding uncovered steps and terraces.

Self-closing is applied to a fire door or other opening normally closed, equipped with an approved automatic device for closing after having been opened for use.

Shaft means a vertical opening or passage through two or more floors of a building or through floors and roof.

Sign means a structure that is arranged, intended, designed or used as an advertisement or announcement; this definition includes signs, sign screens, billboards and advertising devices of every kind, irrespective of size or area.

Sprinklered means equipped with an approved automatic sprinkler system.

Stairway means one or more flights of stairs and the necessary landings and platforms connecting them, to form a continuous and uninterrupted passage from one story to another in a building or structure.

Story means that part of a building comprised between a floor and the floor or roof next above. A mezzanine shall be considered a story if it exceeds $33\frac{1}{3}$ percent of the roof area of the floor immediately below. A pent house shall be considered a story if it exceeds 1,000 square feet or $33\frac{1}{3}$ percent of the roof area. The basement of a building used for educational occupancy shall be considered a story if it is used for purposes other than storage or heating.

Shore Front means that part of a lot that is bounded by tidal

water and for the purpose of this ordinance this applies only to the lands abutting Oyster River, Little Bay and Great Bay, east of Newmarket Road.

Shore Front Measurement: The minimum shore front dimension shall be established by measuring along a straight line, perpendicular to either side line, said straight line shall be so located that the line does not include any tidal land beyond the mean low tide boundary. Where tidal creeks lie between the side lot lines, the minimum shore front dimensions shall be increased by the width of such creek.

Street means a public road, highway or thoroughfare having a right-of-way width of 50 or more feet, which constitutes or is designed to constitute, the main access to more than one lot and which has been legally dedicated and accepted for public use.

Street line is the line dividing a lot from a street right-of-way.

Structure means a combination of materials to form a construction that is safe and stable; including among others are: buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, piers, wharves, sheds, coal bins, shelters, fences and display signs. The term structure shall be construed as though followed by the words "or part thereof."

Structural alteration means any change in the supporting or structural members of a building or structure, such as the bearing walls, supporting partitions, columns, beams, girders or roof frame.

Trailer is a non-automotive highway vehicle designed to afford living accommodations, whether supported on wheels, jacks, skids, wood blocks, posts or other form of non-continuous supports. A trailer set on a continuous supporting wall of masonry, masonry units, concrete or other similar material extending at least 3 feet below normal ground level shall be deemed to have an adequate foundation and said trailer shall be considered a building or dwelling within the terms of this ordinance.

Unit and Unit Areas: For the purpose of this ordinance, a unit is defined as the area of a building used as a dwelling by one person or a family. The minimum area of such a Unit shall be 200 square feet. The maximum area of a Unit shall not exceed 1000 square feet, where the number of the combined Units controls the area of the lot or front footage required. The foregoing maximum unit area does not apply to single or two family dwellings.

Use of a Building means any and every use conducted within a building or accessory thereto.

Variance is an order by the Zoning Board of Adjustment issued pursuant to its discretionary power, in order that the spirit of the ordinance may be observed and substantial justice shall be done. The Board may waive a literal enforcement of the terms of the ordinance where such enforcement:

- (a) would result in unnecessary hardship, or
- (b) would not permit the continuance to the best advantage of

a non-conforming use of land or buildings in existence at the time of the enactment of this ordinance.

Walls:

Bearing wall means a wall which supports a vertical load in addition to its own weight;

Fire wall means a wall constructed of masonry or other proved noncombustible material for the purpose of subdividing buildings to restrict the spread of fire;

Veneered wall means a wall having a facing of masonry or other material securely attached to the backing, but not bonded, so as to exert a common reaction under load.

Yard means an open unoccupied space surrounding a building in a lot.

- (a) *side yard* means the required open space extending along the side lot lines from the street line to the rear of the main building, except for a corner lot, where the side yard restriction of the adjacent lots shall apply.
- (b) *rear yard* means the required open space extending across the whole width of the lot in the rear of the main building, except for a corner lot, where it is the area at the rear of the side yards.

ARTICLE III

Section 30. Fire District

30.1 The Fire District shall include all of the area contained within the Class A and Class B Business Districts, as defined and shown on the Zoning Map of Durham.

30.2 Buildings may be built in the fire district without set-back limitation from property lines, provided all exterior walls are constructed of: (a) solid concrete or masonry, (b) masonry veneer not less than 4 inches thick, (c) noncombustible veneer on a structural frame of wood, or metal protected by a material having a fire rating of not less than one hour.

30.3 Buildings of wood frame construction may be built in the fire district provided the set-back from the side and rear property lines is not less than 10 feet, or the minimum clearance to an adjacent wood frame building be not less than 20 feet.

30.4 Roof coverings shall be of a noncombustible material and the roofing material and construction shall meet the standards as established by the National Board of Fire Underwriters. In addition, for the buildings referred to in Section 30.2 the parapets, cornices, dormers, penthouses, or other construction features built onto or above the level of the main roof shall be covered with a noncombustible material.

30.5 Buildings may be extended or raised in the fire district provided the requirements set forth in Section 30.2, 30.3, and 30.4 are met. Any building that is destroyed by fire to the extent of 75

percent, as adjudged by the State Fire Marshall, may be rebuilt provided it conforms to the provisions of this article.

30.6 Any building in existence in the fire district on the date of the adoption of this article shall be deemed to be in conforming use.

ARTICLE IV

Section 40. Administration

40.1 **Duty and Authority:** It shall be the duty of the Board of Selectmen, and the Board is hereby given the power and authority, to enforce the provisions of this Ordinance.

40.2 **Administrative Official:** The Board of Selectmen is hereby given the power and authority to appoint a Building Inspector and delegate to such Building Inspector the power and authority to administer this Ordinance.

40.3 **General Administration:** The general administration procedure of this Ordinance shall follow that outlined in detail in Article IX, Section 900 of the Zoning Ordinance, and reference being hereby made, that Article therefore becomes effective for the administration of the Building Regulations.

SUBDIVISION REGULATIONS

Town of
Durham, New Hampshire

Adopted April 14, 1952

SUBDIVISION REGULATIONS

Town of Durham, N. H.

Pursuant to the authority vested in the Durham Planning Board by the voters of the Town of Durham and in accordance with the provisions of Chapter 53, Sections 19-29, Revised Laws of New Hampshire, 1942, as amended by Chapter 138, Laws of 1949, The Durham Planning Board adopts the following regulations governing the subdivision of land in the Town of Durham, New Hampshire.

Section I. Definitions.

A. *Subdivision* shall mean the division of a tract or parcel of land into two or more lots for the purpose, whether immediate or future, of sale or building development, and requiring the extension of municipal utilities, the creation of one or more new streets, or the extension of existing streets, provided, however, that development for agricultural purposes is expressly excluded. When appropriate to the context of these regulations, the term *subdivision* shall relate either to the process of subdividing or to the land or area subdivided.

B. *Street* shall mean and include streets, avenues, boulevards, roads, lanes, alleys, and any other way exclusive of driveways serving not more than two contiguous lots.

C. *Reserve strip* shall mean and include areas for which future public use is intended for street connections and for street or pedestrian ways giving access to land dedicated for public use.

D. *Board* shall mean the Planning Board of the Town of Durham, New Hampshire.

E. *Preliminary plan* shall mean the preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

F. *Plat* shall mean the map, drawing or chart on which the final plan of subdivision is presented to the Planning Board, and which, if approved, will be filed or recorded with the Strafford County Register of Deeds.

Section II. Procedure.

A. Whenever any subdivision is proposed to be made and before any contract for the sale of, or negotiation to sell, such subdivision, or any part thereof, shall have been concluded, and before any permit for the erection of a structure shall be granted, the subdividing owner shall apply, in writing, to the Board for approval of such subdivision. Application for approval shall be filed not more than five days before any regular meeting with the Chairman or the Secretary of the Board who shall furnish the applicant with a receipt for same.

B. A preliminary plan including sufficient topographic information to give a general picture, as hereinafter described, shall accom-

pany the request for approval. This layout *may* include with it a topographic map showing contours, proposed street profiles, and any changes to be incurred in the proposed regrading for any lots and streets contained in the subdivision, if, in the opinion of the Board, such a topographic map and profiles are necessary for determining the most suitable layout of the tract.

C. The Board, after careful study of the preliminary plan, and after arriving at a tentative conclusion, will discuss the plan with the subdivider or his agents at a *regular* meeting of the Board. After such discussion and within forty days of the receipt of the application and *preliminary plan*, the Board will, if it approves the *preliminary plan*, communicate in writing to the subdivider any changes which will be required in order to safeguard public health, morals, safety and general welfare, and the character and extent of public improvements which may be waived, when waivers have been requested, and which, in the opinion of the Board, may be waived without jeopardy to the public health, safety, morals, and general welfare.

D. The preliminary plan shall be considered approved if no action is taken by the Board within 40 days, unless the subdivider shall have agreed in writing to an extension of the period of consideration.

E. Upon receipt of approval, or at the expiration of the forty day consideration period, the Subdivider shall within one year thereafter file with the Chairman or the Secretary of the Board three copies of the final plat and street profiles, and the subdivider shall be furnished a receipt therefor. The Board will then, within thirty days from the date of submission of the final plat, approve or disapprove the plat in accordance with Chapter 53, Section 23, Revised Laws of New Hampshire, 1942, as amended. Approval of the final plat, when granted, shall be attested on each of the three copies by the signatures of a majority of the Board.

F. A copy of the final plat will be retained by the Board, a copy shall be filed or recorded in the Office of the Register of Deeds of Strafford County by the subdivider, and a copy may be retained by the subdivider.

Section III. Hearing.

Before the *final plat* shall have been approved or disapproved, the Board shall hold a public hearing on the plan. Notice thereof shall be sent to the subdivider by registered mail, with return receipt requested, stating the time and place of such hearing not less than five days before the date fixed therefor. Notice shall also be posted at least five days before the hearing at the Town Offices, Durham, New Hampshire.

Section IV. The Preliminary Plan.

A. The preliminary plan may be drawn on paper with pencil on a scale of 1 inch to each 20 feet, 40 feet, or 80 feet. This plan must show the following:

(1) Location and boundaries of subdivision; name of owners of record, subdivider and designer; north arrow, date and scale.

(2) Names of all abutting owners.

(3) Existing and proposed lines, grades and widths of streets within the subdivision and on abutting land within 200 feet; building lines, easements and public areas within the subdivision and on abutting land within 200 feet; water courses or water areas.

(4) Proposals for water supply, storm and sanitary sewage disposal and drainage within the subdivision, together with a certificate of approval from the Health Officer of the Town of Durham when on-site facilities must be installed because town utilities are not available.

(5) Lot numbers, lines and dimensions.

(6) Parcels of land proposed to be dedicated to public use and any conditions of such dedication.

Section V. The Final Plat.

A. The *final plat* submitted for approval and recording shall be clearly and legibly drawn in ink or a suitable print may be accepted.

B. The drawing shall be at a scale of not more than 1 inch to each 20 feet, 40 feet, or 80 feet, and shall show:

(1) Right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites, with accurate dimensions, bearings and curve data.

(2) Right-of-way width of each street or other right-of-way.

(3) Location, dimensions and purpose of any easements.

(4) Number to identify each lot or site.

(5) Purpose for which sites, other than residential lots, are dedicated or reserved.

(6) Minimum building setback line on all lots and other sites.

(7) Location and description of monuments.

(8) Names of record owners of adjoining land.

(9) Reference to recorded subdivision plats of adjoining platted areas by record, name, date and number.

(10) Certification by surveyor or engineer.

(11) Statement by owner dedicating streets, rights-of-way and any sites for public uses.

(12) Title, scale, north arrow and date.

C. In the event that the size of the final plat shall be so great as to render it impractical to be contained in one sheet, as many sheets of the required size as may be necessary may be used provided that the continued portions are matched by means of a "matchmark."

Section VI. Streets.

A. The subdivider shall be required to conform to the standards established by the Board of Selectmen in street layout, including

width, maximum and minimum grades, curvatures and construction methods; and in the design and construction of sidewalks, curbs and gutters. The prevailing engineering standards will govern the design of sanitary and storm sewer systems and the structures related to them. Promise of such conformance shall be indicated on the final plan and profiles.

B. Arrangement of streets shall provide for the continuation of the principal streets in adjoining subdivisions or for their projection when adjoining property is not subdivided. Dead-end or cul-de-sac streets in general shall not exceed 400 feet in length, and shall be equipped with a turnaround roadway with a minimum radius of 45 feet for the outside curb at the closed end. On all streets, block lengths shall not generally be less than 600 feet. Block widths shall not be less than 200 feet.

C. Streets in cut or fill shall be provided with side slopes not steeper than two feet horizontal to one foot vertical. Street grades shall not be more than 10%. Street intersections and curves shall be designed to permit adequate visibility for both pedestrian and vehicular traffic.

D. No street shall be accepted by the Town of Durham until after approval by the Board and until it has been properly graded and improved in a manner satisfactory to the Board of Selectmen except as provided in Chapter 53, Section 25, Revised Laws of New Hampshire, 1942, as amended.

Section VII. General Requirements.

A. The proposed subdivision shall conform to the Zoning Ordinance of the Town of Durham. Where strict conformity to the Subdivision regulations would cause undue hardship or injustice to the owner of the land, a subdivision plan *substantially* in conformity with regulations may be approved by the Board provided that the spirit of the regulations and public convenience and welfare will not be adversely affected.

B. Land subject to flooding and land deemed by the Board to be uninhabitable shall not be plotted for residential occupancy nor for any use which might be hazardous to health, life, or property.

C. In general, no reserve strips controlling access to land dedicated or to be dedicated to public use will be permitted, unless such strips are conveyed to the Town of Durham. Reserve strips of land which may prove to be untaxable for improvements shall not be permitted.

D. Remnants or lots below usable size left over after subdividing a large tract shall be added to adjacent lots rather than remain as unusable parcels.

E. No subdivision shall be approved by the Planning Board until the Health Officer of the Town of Durham shall have approved the layout and design of water service and sewage systems and disposal, and until the Superintendent of Public Works or the Board of Selectmen shall have approved the engineering and construc-

tion requirements in lieu of actual construction of street improvements.

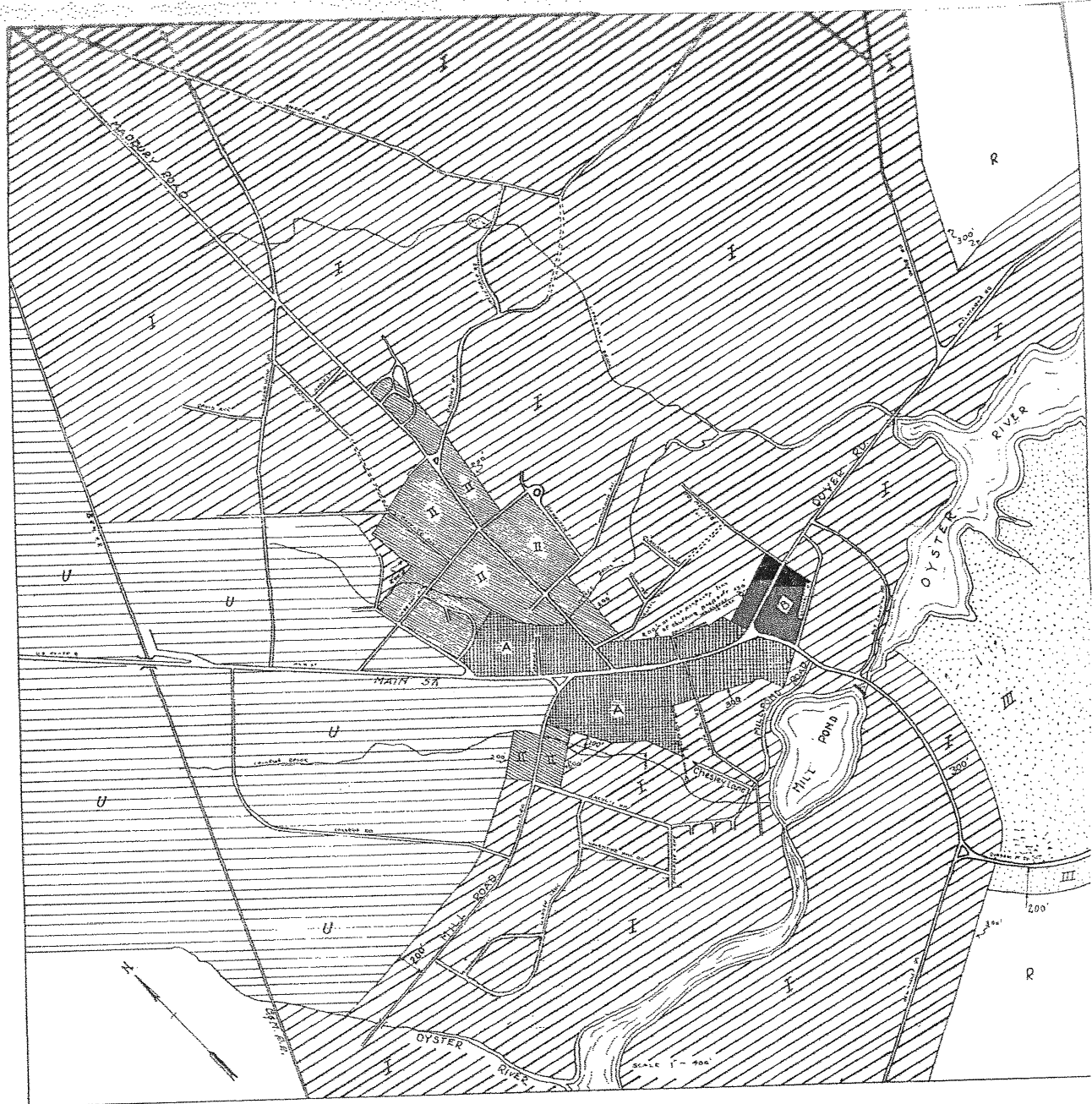
F. After the Planning Board has granted final approval of a subdivision and before any construction is started, the subdivider shall file a bond with the Selectmen in an amount sufficient to cover the cost of the preparation of the streets, the installation of sewage disposal service, and extension of water mains approved as to form and sureties by the legal counsel of the Town of Durham, and conditioned on the completion of such improvements within five years of the date of bond.

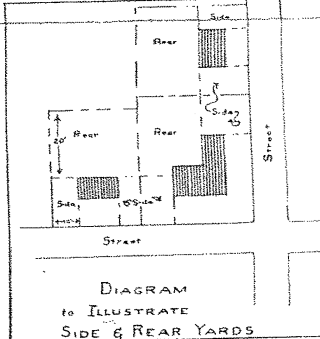
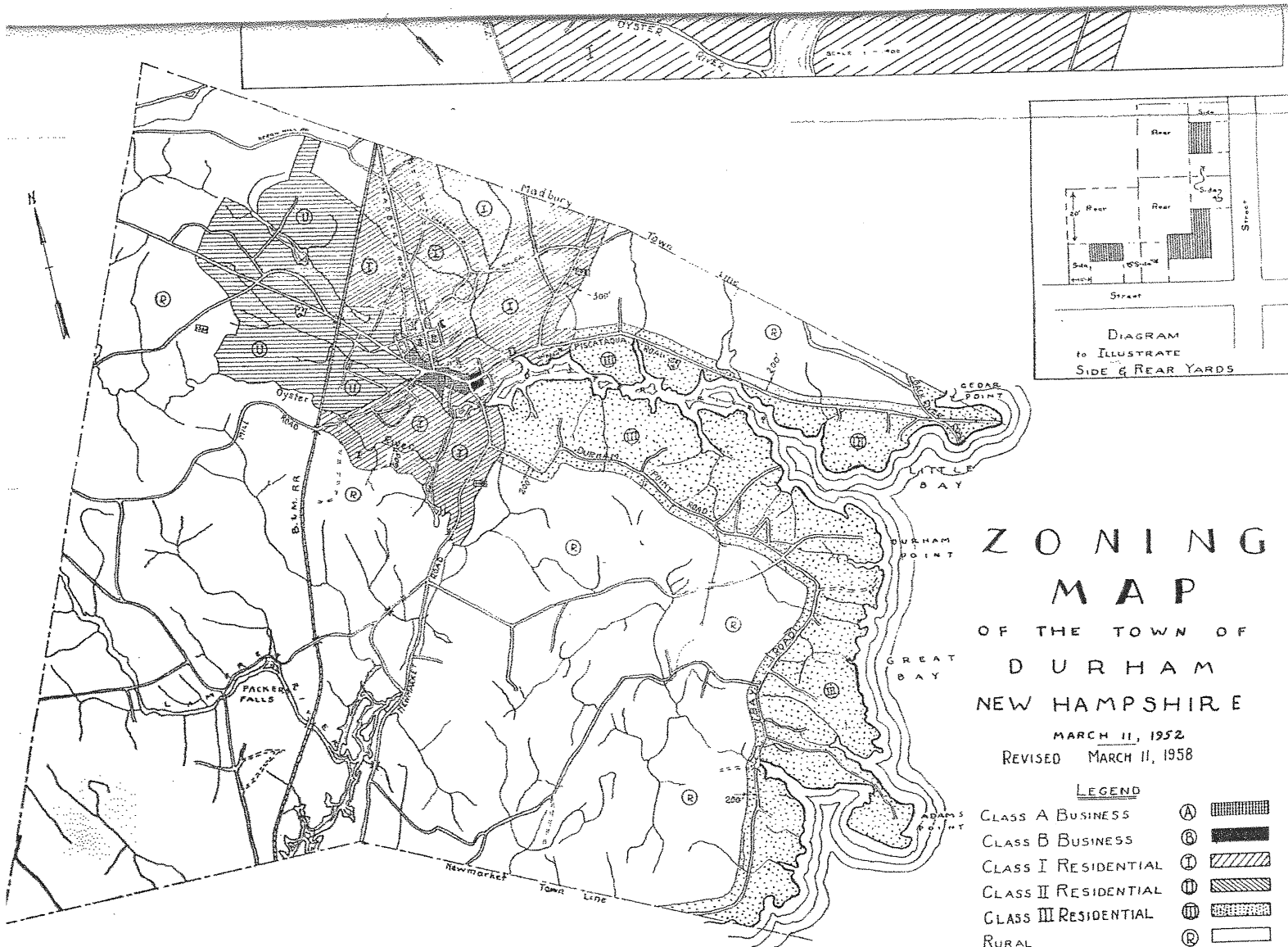
G. Where Town utilities are to be extended to a new subdivision, the subdivider shall indicate his intention to conform to the conditions of extension as set forth in the Terms and Conditions of the Durham Water Department and the Durham Sewer Department, 1951.

Section VIII. Amendment of These Regulations.

These regulations may be amended, changed, altered, added to or rescinded from time to time whenever this action is deemed necessary or advisable by the Planning Board, but only following public hearing on the proposed amendment, change, alteration, addition or rescission, and a statement, signed by the chairman or secretary of the Planning Board, indicating any variances thus authorized from such regulations as were previously filed, shall be transmitted to the register of deeds of Strafford County. (ref., Section 22, Chapter 53, Revised Laws of New Hampshire, as amended.)

Adopted April 14, 1952.





ZONING MAP

OF THE TOWN OF DURHAM NEW HAMPSHIRE

MARCH 11, 1952
 REVISED MARCH 11, 1958

LEGEND

CLASS A BUSINESS	(A)	
CLASS B BUSINESS	(B)	
CLASS I RESIDENTIAL	(I)	
CLASS II RESIDENTIAL	(II)	
CLASS III RESIDENTIAL	(III)	
RURAL	(R)	
UNIVERSITY	(U)	

SCALE 3" = ONE MILE