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ZONING ORDINANCE

Town of Durham
New Hampshire

ARTICLE I

ENACTMENT

1.10 PURPOSE

The purpose of this ordinance is to promote the public health, safety, convenience and general welfare by means of the provisions of this ordinance.

- a. encouraging the most appropriate use of land;
- b. preventing overcrowding of land;
- c. conserving the value of land and buildings;
- d. minimizing traffic hazards and congestions;
- e. preventing undue concentration of population;
- f. providing for adequate light, air and sanitation;
- g. reducing hazards from fire, flood and other dangers;
- h. assisting in the economical provision, utilization and expansion of all services provided by the public;
- i. enhancing the natural, man-made and historical amenities of Durham.

1.20 VALIDITY

1.21 Adoption. Pursuant to the authority vested in towns by Chapter 31, New Hampshire Revised Statutes Annotated, 1955, as amended, the following ordinance is hereby enacted by the voters of the Town of Durham, New Hampshire, in official Town Meeting convened March 11, 1969; as amended 1971, 1972, 1973 and 1974. This ordinance shall take effect immediately upon its passage and the presently existing Zoning Ordinance and amendments thereto shall be repealed hereby, except that any building or use that was unlawful or in violation of such existing zoning ordinance is not made lawful by such repeal or by this ordinance.

1.22 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.

1.23 Legal Nonconformity. This ordinance shall not apply to existing lawful structures nor to the existing lawful use of any building or land, which shall be considered as lawfully nonconforming structures or uses for as long as they are not changed. Lawful structures and uses shall be only such as were lawful nonconforming structures or uses under the terms of the Zoning Ordinance hereby repealed, or shall be otherwise lawfully existing at the time this ordinance was enacted.

1.24 Interpretation of Ordinance. 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, convenience, and general welfare of the Town of Durham and its residents. Where a provision of this ordinance differs from that prescribed by any other applicable statute, ordinance, or regulation, that provision which imposes the greater restriction or the higher standard shall govern.

1.30 AMENDMENT

1.31 Procedure For Amendment. 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 in the manner required in Chapter 31.62-a, RSA. Said Chapter requires among other things, that there shall be two public hearings in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days notice of time and place of each such hearing, shall be published in a paper of general circulation in the Town of Durham and a legal notice thereof shall also be posted in at least three public places in the Town. Official copies of the final proposed ordinance or amendments shall be placed upon file and made available to the public at the office of the Town Clerk two weeks prior to that date upon which action is to be taken. If a majority of the voters present and voting shall vote in the affirmative, the ordinance or amendment thereto shall be declared to have been adopted.

1.32 Protest to Amendment or Repeal. In case of a written protest against a proposed amendment or repeal, filed with the Board of Selectmen and signed by the owners of twenty percent, either of the area of the lots included in such proposed changes, or of those immediately adjacent in the rear thereof extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such proposed amendment or repeal shall not become effective except by the favorable vote of two thirds of all the members of the Town Meeting present and voting.

1.40 DEFINITIONS OF GENERAL TERMS

Additional definitions relevant to a particular Article of this ordinance are listed thereunder. Unless otherwise expressly stated, the following terms shall, for the purpose of this ordinance, have the meanings indicated in this section. Words used in the present tense include the future; the singular number includes the plural and the plural, the singular. 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.

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.

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, storage, ornamentation, or shelter to persons, animals or chattels.

Dumps See Junk Yards

Dwelling Unit means the area and set of living facilities designated, used, or adapted for use for human occupancy and having the distinguishing building characteristics and occupancy limits as shown in the table below.

Classes of Dwelling Units (subject to note g below)	Accommodations					*Max. no. of occupants in unrelated house-hold per 300 sq. ft. habitable floor space	
	Sleeping	Dining/ Cooking	Sanitary	Social			
Single Detached	H	H	H	H	1	Notes a,b	
Duplex, Townhouse	H	H	H	H	1	Notes a,b,c	
Apartment-inc. accessory apt use	H	H	H	H	1.5	Notes a,h	
Motel, Hotel	H	M	H	-	2	Notes a,d	
Boarding House-inc. accessory Boarding House use	I	C	C(e)	-	2.5	Notes a,f,h	

Classes of Dwelling Units Subject to note g below	Accommodations					*Max. no. of occupants in unrelated house-holds per 300 sq. ft. habitable floor space	
	Sleeping	Dining/ Cooking	Sanitary	Social			
Rooming House-inc. accessory Rooming House Use	I	-	C(e)	-		2	Notes a,f,h
Dormitory	I	-	C(e)	C		3	Note a
Fraternity, Sorority, Club House	I,C	C	C(e)	C		2	Note a
Rest Home	I,C	C	C(e)	C		2	Note a
Housing for Older Citizens	H	H	H	H		1.5	Notes a,b,c

Notes:

- a. Subject also to land area requirements of Section 5.18.
- b. Limited to not more than 5 occupants per unrelated household.
- c. Pertains to each living quarters of duplex or townhouse.
- d. Pertains to each room or suite of the building.
- e. Not fewer than one toilet bowl, one lavatory and one shower stall or head or one bath tub, with or without shower, per 7 occupants.
"H" means common to the household.
"M" means a facility available in common to all lodgers and to the public.
"C" means common to the occupants of the building.
"I" means separate accommodations for the occupants of each room.
- f. But not exceeding 10 unrelated persons per building.
- g. Only one such class of dwelling unit other than accessory lodging use shall be permitted on a single lot.
- h. Not exceeding four unrelated persons per building for accessory use.

Dwelling means a building or part thereof used as a habitation under one of the following categories:

- a. Single detached dwelling means a building and accessories thereto principally used, designed, or adapted for use by a single household.
- b. Duplex dwelling means a building and accessories thereto principally used, designed, or adapted for use by two households, the living quarters for each of which are completely separate.
- c. Apartment dwelling means a building and accessories thereto principally used, designed or adapted for use as occupancy by three or more households each of which has separate living quarters.
- d. Rooming house means a building and accessories thereto principally used, designed, or adapted to provide living accommodations for not more than ten occupants and without owner-provided cooking and dining facilities.
- e. Boarding house means a building and accessories thereto principally used, designed, or adapted to provide living accommodations for not more than ten occupants and having common cooking and dining facilities.
- f. Motel or Hotel means a building, or assembly of buildings, principally used, designed, or adapted to provide lodgings for more than ten occupants on a commercial basis and having separate sleeping quarters for each household.
- g. Fraternity or Sorority means a building occupied by a legally organized fraternal organization and principally used, designed, or adapted for use primarily for the provision of lodgings, social and dining facilities for members and pledges of the fraternal order.
- h. Club house means a building principally used, designed or adapted for use by an organization chartered under state law provided that the principal purpose of the club is not that of providing lodgings. Any lodgings contained therein shall be restricted to those defined as accessory lodgings in the ordinance.
- i. Dormitory means a building and accessories thereto principally used, designed, or adapted for the use for providing housing for more than ten occupants. In general such units are distinguished by separate study and sleeping quarters for each individual or pair of individuals; common social assembly rooms, common toilet facilities; and common cooking and dining facilities, where provided. It shall normally be provided with a resident manager.
- j. Townhouse means a residential structure containing three or more single nondetached dwelling units separated by a common vertical wall.
- k. Condominium means an apartment building or townhouse containing three or more dwelling units being under or intended for separate ownership for each household living accommodations.
- l. Prefabricated dwelling means a single detached dwelling constructed primarily off-site, designed to be transported on a flat bed truck or trailer provided that it is installed on a permanently enclosed concrete or masonry foundation, with sewer and water connections designed for permanent connection to municipal or on-site systems, and permanently connected to such systems. Such structures are distinguished from mobile homes as described in Article 8 of this

ordinance when they have a minimum gross floor area of 600 square feet having no horizontal exterior dimensions of less than 15 ft. not including porches or carports. When such a structure meets the above requirements and conforms to all provisions of the building code of the Town of Durham it shall qualify for all uses permitted single detached dwellings.

- m. Accessory Lodging Use means any class of permitted dwelling unit accessory and secondary to the principal use of the building concerned.
- n. Housing for Older Citizens means a group of small dwelling units situated and arranged so as to provide comfort, security, social contact, convenience and congenial surroundings for permanent residents at least 55 years of age. Authority for any such developments shall be restricted to occupancy by persons of at least 55 years of age, and the selectmen may revoke the certificate of occupancy of any owner or developer allowing occupancy by persons below such age.

Family

Household means the group of occupants of a dwelling unit restricted to the following two categories:

- a. Family - a number of persons living together and related by blood, marriage, or adoption.
- b. Unrelated Household - a number of unrelated persons living together provided that no such household shall have a number of members in excess of the figure provided in the table under dwelling unit.

Floor area, gross means the sum of the areas of all floors of a building, unless limited by the text to a specific floor, as measured from the exterior dimensions, but not including cellars, attics, enclosed porches, garages or areas occupied by heating and ventilating equipment.

Floor Area, Habitable means those heated areas used daily for living, eating, cooking and sleeping, but excluding garages, circulation areas, storage areas, etc. It will be presumed for the purposes of this ordinance that habitable floor area is deemed to be seventy per cent (70%) of gross floor area of a given building unless evidence sufficient to rebut the presumption is submitted to the Building Inspector. This presumption shall not apply in any instance where the owner or occupant(s) of the building permit inspection and measurement of such interior floor areas by town authorities concerned. (It is recognized that under these definitions it is possible for the habitable floor areas to exceed the gross.)

Junk Yard means the use of any lot or parcel of land, or any part of a lot or parcel of land, for the open or exposed storage, keeping, sale, disposal or abandonment of food, garbage, refuse, old, used, wholly or partially dismantled, useless, broken or damaged articles, machines,

) machinery, automobiles, motor vehicles of any sort, clothing, furniture or things of any sort. Such storage, keeping, placing for sale, disposal or abandonment of two or more unused, inoperative or unregistered motor vehicles on any lot or parcel of land, or portion thereof, shall constitute a junk yard. The term "junk yard" as so defined shall not be deemed to include any municipal dump or municipal refuse disposal area.

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; and of the creation of hazards to health and life by reason of fire, effects of industrial wastes, psychological effects and generation of motor vehicle traffic.

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.

Marina means a facility for the docking and servicing of boats.

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.

Neighborhood means an area of land, local to the use concerned, generally lying within a radius of 1,000 feet of such use for the purposes of this ordinance, but including all areas farther away from such use whenever the use creates a condition which by reasons of noise, vibration, lighting, smoke, dust, or other emission or cause is a detriment, hazard or is injurious to an area more extensive in size.

Person means any natural individual, firm, trust, partnership, association or corporation.

Special Exception means a use which would not be appropriate generally or without restriction in a particular district, and accordingly, is allowable only upon such conditions as are established by this ordinance, and only after public hearing and determination by the Board of Adjustment. For the purposes of this ordinance, the following are established as conditions upon the grant of all Special Exceptions, subject to such further conditions as may be defined elsewhere herein as to the uses concerned, namely:

- a. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity, or by reason of obvious and adverse violation of the character or appearance of the neighborhood;
- b. That the use will not be injurious, noxious or offensive, and thus detrimental to the neighborhood by reason of any of the causes stated in Section 4.12 of this ordinance;
- c. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes or conditions;
- d. As to all non-residential uses subject to site review by the Planning Board, pursuant to R.S.A. 36:19(a) and Section 10.30 of this ordinance, that written approval by the Planning Board of the applicant's site plans must be on file with the Board of Adjustment.

Street means a public road, highway or thoroughfare 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.

Structure means a combination of materials to form a construction that is safe and stable; including among other, buildings, stadium, 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".

Subdivision means the division of a tract, or parcel of land into two or more lots, plots, sites or other division of land for the purpose of sale, or building development, whether immediate or future. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

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

Variance means a variation from the terms of this ordinance, not otherwise permitted within the district concerned, which may be granted by the Zoning Board of Adjustment pursuant to its discretionary power, where the Board finds that the granting of such variance will do substantial justice and the intent of the ordinance will still be observed. The Board of Adjustment may in such case waive the literal enforcement of the applicable provision(s) of this ordinance and grant a variance only where such literal enforcement would result in unnecessary hardship to the applicant.

ARTICLE 2
ZONING DISTRICTS

2.10 ESTABLISHMENT OF DISTRICTS

For the purposes of this ordinance, the Town of Durham is hereby divided into zoning districts as follows:

Residential Districts

RA - Residence A
RB - Residence B
RC - Residence C
R - Rural

Non-Residential Districts

CR - Commercial Residential
BA - Business A
BB - Business B
OR - Office and Research

2.20. PURPOSE OF DISTRICTS

RA - The purpose of this district is to maintain the central residential district in its largely developed, higher density uses, a factor in which is availability of Town water and Sewer.

RB - The purpose of this inner belt district is to foster and maintain residential development on a more spacious basis, assuring more open space and privacy of uses, but upon a medium density basis in consideration of near-center location, accessibility to extension of sewer and water, and similar factors.

RC - The purpose of this shore-oriented district is to foster and maintain its unique beauty and accessibility for recreation and conservation, with adequate open spaces, in a residential context.

R - In this district, where customary rural land uses are retained, a low density residential development is provided with on-site water and sewer systems.

CR - The purpose of this centrally located district is to provide a common district for commercial residence structures such as fraternities, sororities, apartments, rooming and boarding houses, and dormitories, primarily used for student housing and located with access to municipal utilities.

BA - The purpose of this district is to provide for establishments offering retail sales and services in a centrally located area.

BB - The purpose of this district is to provide a compact area for automotive services and vehicularly oriented business.

OR - The purpose of this district is to provide for office and research facilities in an area served by major highways and where water and sewer extensions are feasible.

2.30 ZONING MAP

A Zoning Map of the Town of Durham dated January 27, 1969 (amended in March 1971) which shows the zoning districts is hereby incorporated as part of this ordinance and is filed with the Town Clerk. The Zoning 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.

2.40 INTERPRETATION OF ZONING MAP

2.41 Location of District Boundaries. A district line drawn on the Zoning Map, generally on, or parallel to, a street, railroad, utility line or water course, or on a lot line, shall, as relevant, be deemed to be:

- a. on the center line of the right-of-way or water course, or
- b. parallel to the center line at the distance noted, or
- c. on the lot line,

as these existed on the date of adoption of this ordinance, or at the time of any amendment of such Zoning Map. In cases of uncertainty, the Planning Board shall define the exact location of the boundary.

2.42 Lots Crossed by Town Lines. When part of a lot in single or joint ownership lies outside the Town of Durham, the portion within Durham shall conform to the use regulations of this ordinance. In applying dimensional controls to that portion of the lot within Durham, the dimensions of the whole lot shall be considered without reference to the town line.

ARTICLE 3

STANDARD EXEMPTIONS

3.10 EXEMPTION FOR THE UNIVERSITY OF NEW HAMPSHIRE

3.11 Land Owned by the University. Any land which is owned by the University may be used for educational purposes and operations incidental to the administration of the University of New Hampshire.

3.12 Required Hearing. Land which is purchased by the University subsequent to the adoption of this ordinance shall not be used or developed for any purpose or in a manner not otherwise permitted without a public hearing conducted by the Planning Board at least two weeks after a publication of a notice thereof in a paper of general circulation in the Town. The purpose of such hearing shall be to bring to light possible problems of circulation, parking, provision of utilities, the protection of persons and property, or any other problems affecting the town or the neighborhood. The Planning Board may by way of advisory action recommend conditions for such use or development.

3.13 Land Not Owned by the University. Lands which the University does not own but acquires only the right to use, whether by rental, lease, or other beneficial interest may not be used for any purpose not otherwise permitted unless the owner obtains a variance or a special exception from the Zoning Board of Adjustment.

3.14 Land Owned But Not Used by the University. University land which is leased or allowed to be used by others for private or business purposes not connected with the public functions of the University shall be subject to all the regulations for the district within which it lies.

3.20 EXEMPTION FOR GOVERNMENTAL USE

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

3.30 NONCONFORMING USES

3.31 Continuance. Any lawful nonconforming use in existence at the time of passage of this ordinance may continue unchanged, but may not be extended in any manner.

3.32 Resumption After Discontinuance. A nonconforming use which has ceased to exist for a period of twelve consecutive months may not again be initiated or replaced by another nonconforming use, provided however that the Zoning Board of Adjustment may grant a special exception to allow the resumption of a nonconforming 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:

- a. of undue hardship by reason of non-adaptability of the premises to a conforming use, and
- b. that the proposed nonconforming use will not be conducted within 100 feet of the lot line of any other owner's conforming use of land or buildings.

3.40 NONCONFORMING BUILDINGS

3.41 Continuance. Any lawful nonconforming building in existence when this ordinance is passed may continue unchanged but may not be altered or extended in any way which will result in a new and increased violation.

3.42 Restoration and Reconstruction. Nothing herein shall prevent the substantial restoration or reconstruction within one year of a building destroyed in part or whole by fire or other casualty so long as this use does not result in a new or increased violation.

3.50 NONCONFORMING VACANT LOTS

3.51 Single Lot. A nonconforming vacant lot which at the time of passage of this ordinance was in separate ownership from any adjacent lot and which was duly recorded in the Strafford County Register of Deeds prior to the adoption of this ordinance may be used for one single-family dwelling, provided:

- a. the lot is in a district where residential use is permitted;
- b. the requirements of this ordinance regarding yards and height are met;
- c. the arrangements for sewage disposal are approved by the Building Inspector in accordance with the provisions of State law.

3.52 Lots in Contiguous Ownership. Where two or more adjacent nonconforming lots in a district are held by the same fee or beneficial ownership when this ordinance is passed, the area and frontage of the lots shall be combined in such a manner as to comply as nearly as practical with the dimensional requirements of this ordinance. This provision shall not apply to lots within a subdivision previously approved by the Planning Board under this, or the prior, Durham Zoning Ordinance.

ARTICLE 4

USE REGULATIONS

4.10 PROHIBITED USES

4.11 Unlisted Uses. Only uses listed in Article 4 and legal nonconforming uses listed in Section 3.30 shall be allowed unless the Zoning Board of Adjustment finds that a petitioned use is substantially identical in purpose and operational characteristics to a conforming use permitted in the district.

4.12 Offensive Uses. Uses shall not be permitted in a manner injurious, noxious or offensive to a neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration, noise, glare, or any other cause, nor as a fire hazard, nor in a manner which is disorderly or unsightly and thus detrimental to adjacent property or to the public. The Zoning Board of Adjustment shall have original authority to determine, after due public hearing, whether any use is or has become noxious or offensive, and to order the removal or abatement of any use so found to be noxious or offensive.

4.13 Dumps and Junkyards. Private dumps and junkyards are prohibited in all districts.

4.14 Untreated Wastes. Untreated sewage or household wastes shall not be discharged into any flowing stream or body of water. Owners and users of land not served by Town water and sewer shall be required to furnish plans for a satisfactory on-site sewage disposal system with percolation tests that indicate satisfactory drainage before a building permit will be issued, provided such system satisfies all local and State ordinances, statutes and regulations.

4.15 Mobile Homes, Travel or Camper Trailers. The use of land for the accommodation of mobile homes, as defined in Article 8, or trailers is forbidden except as follows:

- a. mobile home parks will be permitted in designated zones by Special Exception only;
- b. mobile homes in a licensed mobile home park;
- c. travel or camper trailers in a licensed camping ground;
- d. one occupied mobile home or trailer at a time, of a non-paying guest on the property of the host for a cumulative period not to exceed 30 days in any one calendar year;
- e. dead storage of unoccupied mobile homes or trailers, subject to the following provisions:

1. not more than one such vehicle shall be stored or parked at any time on any lot in any district;
2. any such vehicle shall be stored or parked in such a manner as to fully comply with the provisions governing the location of buildings and structures for accessory use in the respective district;
3. any such vehicle shall remain on its own wheels and shall not be affixed to the land nor connected to any utility, public or private, such as water, sewer, electricity or gas.

4.16 Inoperative Motor Vehicles. The outdoor storage of unregistered or inoperative motor vehicles shall be forbidden except as follows:

- a. not more than one such vehicle may be stored at a time for a period not to exceed 90 days for any one vehicle; (The presence, storage or location of two or more such unregistered or inoperative vehicles on a lot shall constitute a junkyard and is prohibited.)
- b. the provisions of state law shall determine the storage period for abandoned, improperly registered or wrecked vehicles by any garage or other persons properly storing same according to law. (See R.S.A. 266)

4.20 PERMITTED USES; DEFINITIONS AND TABLE

The uses as listed in the Table of Permitted Uses shall be limited to those as defined below, including:

4.21 Residential Uses Permitted

- a. Single detached dwelling units, duplexes, townhouses, apartment buildings, motels, hotels, rooming and boarding houses, fraternities, sororities, dormitories, and club houses as defined in Section 1.40 provided each dwelling unit is provided with floor area as follows:
 1. Single detached dwelling and each separate living quarters of a duplex or townhouse shall have a gross first floor area of 600 sq. ft. or more, having no horizontal exterior dimensions of less than 15 ft. not including porches or carports.
 2. Each apartment including those in accessory lodgings shall have a habitable floor area of 200 sq. ft. or more.
- b. Conversion of a structure from one use to another provided the result of the conversion is a permitted use and meets the requirements cited in this ordinance for such use within the zoning district in which the structure exists. A building permit is

required for any conversion whether or not any construction or alteration is involved and a site review is required if the use converted to is one which would require a site review if it were new construction.

- c. Rest homes, nursing homes, provided State Health Department requirements are met.
- d. Mobile home park and uses incidental to its operation, subject to the provisions of Article 8.
- e. Accessory first-class home occupation or professional office, provided:
 - 1. it occupies no more than 500 square feet of floor area;
 - 2. the principal operator resides on the premises, employs not more than one other person and sells no principal products prepared by others;
 - 3. there is no indication of such occupation visible on the exterior of the building or on the lot, except permitted signs.
 - 4. the activity does not produce noise, odor, traffic or other nuisances perceptible at the lot line at a higher level than is usual in a residential neighborhood.
- f. Accessory second-class home occupation, light industry or office, provided:
 - 1. it occupies no more than 1,000 square feet of floor area;
 - 2. the principal operator resides on the premises, employs not more than three other persons and sells no principal products prepared by others;
 - 3. the activity, except for outdoor storage, is completely enclosed in a building;
 - 4. outdoor storage of materials or equipment is at least 10 feet from any lot line and so screened as not to be visible from any public way or shoreline or public park;
 - 5. suitable arrangements are made for public access, parking of customers and employees, and for loading;
 - 6. the activity does not produce noise, smoke, fire hazard, odors, or other nuisances.
- g. Accessory buildings for non-commercial use by residents of the premises only, such as garages for not more than three motor vehicles, boat houses, storage sheds, greenhouses, etc.; the keeping of customary household pets except as provided in 4.22d; provided that not more than two such accessory buildings shall be placed upon any lot by Special Exception; except that in the R zone one such additional accessory building shall be permitted for each additional 80,000 sq. ft. of lot area above the minimum required lot size, Such buildings shall be removed prior to any

subdivision of the land if such subdivision would result in a legally non-conforming use.

- h. Accessory lodging use in single detached, duplex and townhouse dwellings, provided the total number of unrelated occupants of the dwelling shall not exceed the numbers presented for the accessory use according to the table in Section 1.40 and that such use is restricted to not more than four unrelated occupants per building. Accessory lodging use in other classes of building are permitted so long as such uses do not exceed the limits cited in the table of Section 1.40 for the class of dwelling provided.
- i. Housing for Older Citizens shall consist of small dwelling units with a minimum habitable floor area of 400 square feet which may be:
 - 1. arranged in clusters,
 - 2. Garden apartments,
 - 3. in a single building, or
 - 4. in an existing building suitably converted into separate units. In addition to the floor area, each unit shall be required to have one and one-half parking spaces (300 square feet) and 100 square feet of open space in addition to the setback requirements. These units will be allowed in RA, BA, and CR districts only by Special Exception and require a site review.

4.22 Rural and Recreational Uses.

- a. Crop farms, plant nurseries, provided:
 - 1. no poultry or livestock shall be kept except as incidental to a farm operation;
 - 2. all products sold are raised or prepared on the premises.
- b. Livestock farms for horses, cattle, sheep and other useful animals, provided:
 - 1. no swine or fur bearing animals shall be raised for commercial purposes;
 - 2. no shelter for livestock or outdoor storage of odor-producing substances shall be less than 75 feet from any lot line.
- c. Poultry farms, provided:
 - 1. no poultry run or shelter shall be less than 100 feet from any lot line,
 - 2. such runs shall be fenced.
- d. Boarding, training or veterinary care of animals for compensation.
- e. Commercial greenhouse, cidermill, sawmill.
- f. Retail sales of farm or nursery products, provided:

1. the major portion of the goods are raised and prepared on the premises;
 2. any non-agricultural products sold are accessory thereto, such as gardening supplies and equipment within a nursery, and are displayed only within a building.
- g. Seasonal camping grounds in institutional group, or commercial management, which accommodate cottages, tents, travel or camp trailers, etc., provided such camping grounds are licensed in the same manner as required for Mobile Home Parks by Article 8.80.
- h. Outdoor recreation, such as a riding stable, golf course, swimming beach, skating rink and other forms of predominantly outdoor recreation, except shooting ranges, provided:
1. spectator events are incidental and not operated as a business;
 2. accessory service buildings are limited to those necessary to the pursuit, on the premises, of the sport;
 3. no area developed for active recreation is within 100 feet of any residential lot line.
- i. Public, commercial or private marinas, yacht clubs, and boat yards, including the operation of not more than two gasoline pumps for service or marine craft.
- j. Public, commercial or private skimobile area, shooting ranges or other sports not creating unusual noise or hazard.
- k. Public, commercial or private airport, air landing strip, heliport and any use customarily accessory thereto, provided the size, runway layout, private or commercial nature, land approach details are approved under the Special Exception.
- l. Removal of earth products, except as incidental to development of a permitted use, subject to the provisions of Article 9.
- m. The keeping of small animals (e.g., dogs, cats, birds, etc.) as pets, providing such use shall not result in noise, odors, unsightly or dangerous activities which are detrimental to the neighborhood.
- n. The keeping of personal riding horses or other large animals (e.g., cattle, goats, sheep, etc.) for non-commercial purposes, provided:
1. the lot size of the dwelling at which any such animal is kept shall not be less than 40,000 sq. ft.;
 2. no separate shelter for such animals or outdoor storage of odor producing substances shall be less than 75 feet from any lot line;
 3. such use shall not result in noise, odors, unsightly or dangerous activities which are injurious or detrimental to the neighborhood;
 4. riding horses are maintained only for use of the owner's household and his personal, non-paying guests.

4.23 Retail and Personal Service Uses

- a. Retail stores, craft, consumer, professional or commercial establishment dealing directly with the general public, provided:
 1. All displays, storage and sales are conducted within a building;
 2. Any outdoor vending machine is located at least 20 feet from any street line or residential district line;
 3. The manufacture, assembly, packaging of goods handled is confined to those sold on the premises and occupies not more than half the area thereof.
- b. Restaurants, except drive-in eating places.
- c. Drive-in eating places, where customers are not seated in the building.
- d. Theatre, club operated as a business, or other commercial indoor amusement, provided that the building is so insulated and maintained as to confine noise to the premises.
- e. Hotel, motel providing lodging in one central building or in individual cabins for tourists and travelers and garaging or parking space for their motor vehicles.
- f. Medical or dental clinic.
- g. Office for Professional or personal services to the public; offices of a public agency.
- h. Bank, provided drive-in teller windows are approved by the Planning Board under the site review provisions.
- i. Funeral parlors, undertaking establishments.

4.24 Automotive Uses.

- a. Automobile service station, for the supply of motor fuel, oil, accessories, and service to motor vehicles, or a public garage for their sale, storage and maintenance, provided.
 1. Storage in excess of 10 gallons or the equivalent for the purposes of sale or service of gasoline, fuel oil, petroleum products and other flammable fluids or gases as provided and protected in accordance with the requirements of the State Fire Marshall.
 2. No service, maintenance or repair work shall be undertaken without adequate provision for abatement of objectionable noise.
- b. Car Washing establishment, provided arrangements for entrance and exit are provided by the Planning Board under site review provisions.
- c. Parking lot, public or commercial.

4.25 Research and Business Office Uses.

- a. Research offices and laboratories, including the accessory manufacture, but not retail sale of prototypes developed by such office or laboratory.
- b. Administrative, sales and other business offices not primarily dealing with the general public.

4.26 Light Industry

Light industry as defined under Article 1.40 by Special Exception procedures only.

4.27 Institutional and Semi-Public Uses

- a. Religious and public educational uses.
- b. Other schools, nurseries.
- c. Civic clubs, sport club building, non-residential and not operated as a business.
- d. Hospitals and sanitararia.
- e. Private utility without service yard not to exceed 40,000 sq. ft.
- f. Private utility with service yard not to exceed 40,000 sq. ft.

4.28 Table of Permitted Uses by Zoning Districts. The symbols used in this table mean:

X - a use permitted only in the district(s) indicated and prohibited elsewhere.

SE - a use permitted only upon the granting of a Special Exception by the Zoning Board of Adjustment.

Permitted uses shall be limited as described in the preceding and subsequent sections of this ordinance and by footnotes to this section.

USES	RA	RB	RC	R	BA	BB	OR	CR
<u>Residential Uses</u> (see 1.40, 4.21)								
all uses except a, b, i and m each require site review								
a. single household	X	X	X	X			X(1)	X
b. duplex household	X	X	X	X			X(1)	X
c. apartment dwelling				X(2)	X			X
d. rooming house				X(3)	X(3)			X(3)
e. boarding house				X(3)	X(3)			X(3)
f. fraternity & sorority					X			X
g. club house					X			X
h. dormitory					X			X

	RA	RB	RC	R	BA	BB	OR	CR
i. accessory lodging use								
1. accessory apartments	X	X	X	X	X		X	X
2. accessory rooming	X	X	X	X	X		X	
3. accessory boarding	X	X	X	X	X		X	X
j. accessory home occupation								
1. first class	X	X	X	X	X			X
2. second class				X	X		X	X
k. rest and nursing homes			SE	X	SE			
1. mobile home parks (Art. 8)				SE				
m. accessory buildings	X	X	X	X	X	X	X	X
n. housing for older citizens	SE				SE			SE

Notes: (1) Only one dwelling per vacant lot of record on date of adoption of this ordinance.

(2) Only where municipal sewer and water are connected to use.

(3) Not to exceed 10 unrelated persons per building.

	RA	RB	RC	R	BA	BB	OR	CR
<u>Rural and Recreational</u>								
<u>Uses</u> (see 4.22 - each such use will require site review, see 10.30)								
a. crop farms and plant nurseries	X	X	X	X			X	
b. livestock farms			X	X				
c. poultry farms				X				
d. boarding, training, or veterinary care of animals				X			X	
e. commercial greenhouse, cidermill, sawmill				X				
f. retail sales of farm or nursery products	X	X	X	X			X	

	RA	RB	RC	R	BA	BB	OR	CR
g. seasonal camping grounds			X	X				
h. outdoor recreation		X	X	X				
i. Marinas, yacht clubs, boat yards				X				
j. sports using motors, shooting ranges				X				
k. airport, heliport				X			X	
l. removal of earth products (by authorization of Board of Selectmen only, See Art. 9)	X	X	X	X	X	X	X	
m. keeping of personal riding horses or other large animals	X	X	X	X	X	X	X	

Retail and Personal Uses
(see 4.23 - each such use
will require site review,
see 10.30)

	RA	RB	RC	R	BA	BB	OR	CR
a. retail stores, personal services					X	X		
b. restaurants, except drive-ins				X	X		X	
c. drive-in eating places					SE	X		
d. theatre, club operated as a business indoor amusement				X	X	X		
e. hotel, motel				SE	X		X	X
f. medical or dental clinic				X	X	X	X	X
g. offices for professional or personal services				X	X	X		X

	RA	RB	RC	R	BA	BB	OR	CR
h. Bank					X			
i. Funeral parlor					X			
<u>Automotive Uses</u> (see 4.24 each such use will require site review, see 10.30)								
a. Automobile service station				SE		X	SE	
b. Car washing establishment						X	X	
c. Commercial parking lot					X	X	X	
<u>Research and Business Office Uses</u> (see 4.25-each such use will require site review see 10.30)								
a. Research offices; Laboratories					X		X	X
b. Administrative, sales offices					X	X	X	X
<u>Light Industry</u> (see 4.26-each such use will require site review, see 10.30)								
						SE	SE	
<u>Institutional and Semi-Public Uses</u> (see 4.27-each such use will require site review, see 10.30)								
a. Religious and public educational uses	X	X	X	X	X			
b. Other schools, nurseries	X	X	X	X	X		X	
c. Civic clubs, sports clubs	X	X	X	X	X		X	
d. Hospitals and sanitarium		SE		SE			SE	
e. Private utility without service yard, not to exceed 40,000 sq. ft.	X	X	X	X	X	X	X	X

RA RB RC R BA BB OR CR

f. Private utility with
service yard, not to
exceed 40,000 sq. ft.

X X X X

(For signs permitted in each district, see Article 4.49)

ARTICLE 5

DIMENSIONAL CONTROLS

5.10 REQUIRED DIMENSIONS: DEFINITIONS AND TABLE

5.11 Lot Area. 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.

5.12 Lot Line. A line dividing one lot from another, a street right-of-way or other public space. A street line is the line dividing a lot from a street right-of-way.

5.13 Frontage. The front lot line (and its length) running along (abutting) a street.

5.14 Setback. The horizontal distance between the street lot line of a street right-of-way and the nearest part of any building on the lot, excluding uncovered steps and terraces.

5.15 Yard. The land between a lot line and the nearest part of any building on the lot, excluding uncovered steps and terraces.

- a. Street yard - a yard along the full length of any street line.
- b. Side yard - a yard along the full length of any lot line from the point where the line touches a street yard or street line.
- c. Rear yard - a yard along the full length of any remaining lot line between two side yards.

5.16 Coverage. The aggregate gross ground floor area of all buildings on a lot expressed as a percentage of the total lot area.

5.17 Building Height. The vertical distance in feet from average grade to the average elevation of the roof, except that height limitations shall not apply to chimney, spires, cupolas, TV antennae and other parts of buildings not intended for human occupancy.

5.18 Table of Dimensional Controls by Zoning Districts

Zoning District	Min. Lot Area Sq.ft. Notes 6 & 12	Max. No. of occupants per lot	Min. Frontage Ft. Note 13	Min. Street Ft.	Yard Side Ft.	Dimen. Rear Ft.	Max. Coverage %	Max. Ht. Ft.	Max. No. of Stories
<u>RA</u> Note 1	10,000 Note 15	See Note 7	100	30 Note 8	10	20	33	40 Note 10	3
<u>RB</u> Note 2	40,000	See Note 7	150	30 Note 8	10	20	30	35 Note 10	2½
<u>RC</u> Note 3	60,000	See Note 7	200	30 Note 8	50	50	25	35 Note 10	2½
<u>R</u> Notes 4,5	80,000	See Note 7	200	Note 8	50	50	20	35 Note 10	2½
<u>OR</u>	80,000	See Note 7	200	30 Note 8	50	50	--	50 Notes 10,11	5
<u>BA</u>	5,000 Note 15	See Note 7	50 Note 9	10 Notes 8,9	10 Note 9	20 Note 9	--	50 Notes 10,11	5
<u>BB</u>	5,000	--	50 Note 9	10 Notes 8,9	10 Note 9	20 Note 12	--	50 Notes 10,11	5
<u>CR</u>	10,000 See Note 15	See Note 7	100	20	10	20	50	40 Note 11	3

Z.O. amended 1971, 1972,
1973

1. Minimum dimensional controls in RA shall be the same as RB wherever town sewer not available.
2. Wherever town sewer is available and connected, minimum dimensional controls in RB shall be the same as RA.
3. Wherever town sewer is available and connected, minimum dimensional controls in RC shall be the same as RB.
4. Wherever town sewer is available and connected, minimum dimensional controls in R shall be the same as RB.
5. Wherever town water is available and connected, minimum dimensional controls in R shall be the same as RC.
6. Only one such class of dwelling unit, as defined in Section 1.40, other than an accessory lodging use, is permitted on a given lot.
7. The number of unrelated occupants is subject to the provisions of Article 1.40 and 6.30 and 6.40. No building or parking is permitted on the minimum front, side, or rear yards as defined above.
8. When the average street yard of other buildings within 300 feet each way on the same side of the street is less than 30 feet, the street yard may be reduced accordingly. See section 5.20 for required setbacks on arterial or collector streets.
9. These figures may be varied by the Planning Board upon site review.
10. Building height means the vertical distance in feet from grade to the average elevation of roof of the highest story. Story means that part of a building comprised between a floor and the roof of the highest story. Story means that part of a building between a floor and the floor or roof next above. A basement which has one-half or more of its clear interior height above grade shall be counted as a story if it is used for purposes other than storage or heating. A mezzanine shall be considered a story if it is used for purposes other than storage or heating. A mezzanine shall be considered a story if it exceeds $33 \frac{1}{3}$ per cent of the roof area. A half-story is the story beneath a pitched roof when not more than half of its floor area has a clear interior height of 7 feet or more. Height limitations shall not apply to chimney, spires, cupolas, TV antennae and other parts of buildings not intended for human occupancy.
11. Buildings erected, owned and used by the University of New Hampshire and not abutting privately owned property are exempt from height regulations except for those of the Fire District. However, no building shall exceed the height limits set for it in Table 5.18 or that of an adjacent building on non-University land by more than an amount equal to the distance between the building foundation and the adjacent lot line separating the buildings, which ever is the lesser.
12. In addition to the requirements of Articles 6.30 and 6.40 each dwelling unit, as defined in Article 1.40 requires a minimum land area of 2000 sq. ft. This requirement in no way lowers the minimum lot area set forth in this table (5.18) but may increase the necessary lot area for multiple dwelling unit usage.

13. These figures may be varied by the Planning Board under procedures outlined in the Durham Subdivision Regulations for plots of land of unusual shape or at corners where an increased set back can provide the same effective spacing of the usable portion of a lot.
14. Dimensional controls as stated in Article 8 apply to mobile home parks. For all other uses the controls shall be set forth in this table (5.18).
15. The minimum lot requirement of 2000 sq. ft. per unit may be varied by the Planning Board upon site review for Housing for Older Citizens. A minimum sized lot so allowable will provide at least 400 sq. ft. of habitable floor area, 300 sq. ft. for parking space and 100 sq. ft. of open space in addition to setback requirements. The parking area requirements for all or several units may be combined. The open space requirements for all or several units may be combined. But no parking will be allowed on the minimum open space area or within minimum setback areas.

5.19 Lot Dimensions. No change shall be made to the dimensions of a lot which would result in a new or increased violation of the dimensional requirements of this ordinance.

5.20 Building Setback. Except in the Business A district, no structure, other than permitted signs in any district, shall be closer to the street lot line than as follows:

- a. along an arterial street: 40.0 feet;
- b. along a collector street: 30.0 feet;
- c. where structures exist on properties or lots abutting both sides of the lot concerned which do not meet the conditions imposed in a. or b. above, the Planning Board is empowered to allow a lesser setback. However, the proposed structure may not be closer to the street lot line than the structures on abutting lots in such a case.

Arterial streets serve as connections between towns (e.g., Route 4, Route 108, Route 155-A, Route 155); collector streets collect local neighborhood traffic and bring it into the arterial system (e.g., Mill Road, etc.). Arterial and collector streets shall be shown on the Zoning Map and amendments thereto; other existing rights-of-way shall be considered minor streets. New streets may be designated as arterial or collector by the Planning Board at the time such streets are laid out.

5.21 Shore Frontage and Shore Yard. Any building lot which abuts on the Oyster River east of Newmarket Road, or on the Great and Little Bays shall conform to the following additional requirements:

- a. 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 so that the line does not include any tidal land beyond the mean high tide boundary.

- b. The minimum shore front dimension shall be 200 feet exclusive of the width of creeks at mean low tide.
- c. The minimum shore yard for any building other than a marina or boat yard shall be 50 feet measured perpendicularly from the minimum shore front dimension.

5.22 Corner Clearance. No object, vegetation, or slope which impedes visibility at street intersections shall be allowed within a triangle, two of whose sides extend 20 feet from the intersection along the street lot lines, and between two planes 3 feet and 7 feet above the level of the traveled ways.

5.23 Permitted Uses in Required Yards. All required minimum yards, except for driveways and walkways, shall be landscaped or left with natural vegetation with the following exceptions:

- a. Up to 25 percent of the area of street yards of non-commercial residential lots may be used for accessory parking.
- b. Structures accessory to residential uses shall occupy no more than 30 percent of the required yard and be no closer than 10 feet to any lot line nor more than 20 feet high.
- c. Where a lot in a Business A or B district abuts a residential district, the required yard need not be landscaped, provided there is a screen long the lot line consisting of either a row of evergreens at least 4 feet high when planted, which will grow into a thick hedge not less than 6 feet high, or of an opaque and neatly maintained fence not less than 6 feet in height. Where the lot in CR district directly abuts a lot in a residential zone the above provisions may be required.
- d. There shall not be more than one driveway per 100 feet of lot frontage where the frontage is less than 200 feet, plus one additional driveway for each additional 100 feet or major fraction thereof of frontage, except where prohibited by subdivision regulations. Driveways in the Business A and Business B districts must be approved by the Planning Board under the Site Review procedures.

ARTICLE 6

OFF-STREET PARKING AND LOADING

6.10 APPLICABILITY

No use of premises shall be authorized or extended and no building shall be erected or enlarged unless parking and loading requirements are met for the new or added use. Any use existing prior to passage of this ordinance which is later changed or enlarged shall provide an additional number of parking spaces at least equal to the difference between the number required for the total proposed use less the number which would have been required for the prior use under this ordinance.

6.20 GENERAL REQUIREMENTS

6.21 Location. Required parking shall be considered an integral part of the use it is to serve, except that parking required for two or more adjacent buildings or uses may be combined where it is evident that it will continue to be available to all the uses served.

6.22 Combined Parking Lots. The total parking provided shall meet the total requirements of all uses served.

6.23 Large Parking Areas. Any parking area for 10 or more cars shall be reviewed by the Planning Board for the safety of its arrangement and access. Each parking space shall be clearly marked. The paved area shall be surrounded by trees or hedges and any divisions between parking aisles shall be not less than 4 feet wide and shall be curbed.

6.24 Loading Spaces or Bays. Every retail business shall have direct access to an off-street exterior loading space or interior loading bay. Where the gross floor area of a retail business exceeds 2000 square feet, an off-street loading space or bay shall be provided on the premises. In the OR district, at least one off-street loading space or bay shall be provided for the first 25,000 square feet of gross floor area, and 2 such spaces or bays for the first 50,000 square feet of gross floor area.

6.30 DESIGN REQUIREMENTS

6.31 Parking Spaces. Each required off-street parking space shall be large enough to contain a rectangle measuring not less than 10 by 20 feet, except for parallel parking spaces on the side of a roadway, which shall be at least 9 by 20 feet, with 5 feet of maneuvering room shared by adjacent spaces.

6.32 Design of Loading Spaces or Bays. No required loading space or bay shall be less than 14 feet high and 12 feet wide. The length shall be not less than 50 feet for retail stores, nor less than 30 feet for all other business establishments. The bay shall be so laid out as not to require repeated maneuvering within a public way or parking lot by the entering or departing vehicle.

6.33 Access to Parking Spaces. Each required parking space shall have direct access to an aisle or driveway having a minimum width of 24 feet in the case of two-way traffic or the following minimum widths in the case of one-way traffic only:

Angle of Parking	Minimum Aisle Width (one way traffic only)
Parallel	12 feet
30-45 degrees	10 feet
60 degrees	15 feet
90 degrees	20 feet

6.34 Maintenance of Parking and Loading Areas. All accessory driveways, parking and loading areas shall be graded, surfaced with a dust-free material and drained, all to the satisfaction of the Superintendent of Public Works and to the extent necessary to prevent nuisance of dust, erosion, or excessive water flow across public ways or the property of others.

6.35 Access From Required Parking Spaces to Town Roads. In the case of a building or adjacent buildings under common ownership and with single or multiple uses such as apartments, rooming houses, boarding houses, dormitories, fraternities, sororities, or commercial business, access to the street having a peak traffic of more than 50 cars or pedestrians in any single hour shall require approval in a Site Review procedure by the Planning Board.

6.40 REQUIRED NUMBER OF PARKING SPACES

6.41 Interpretation. Where the computation of required spaces results in a fractional number, a fraction of one-half or more shall be counted as one.

6.42 Minimum Number of Spaces, by Use. The minimum number of parking spaces required shall be as follows:

- a. for residences: 1.5 spaces per dwelling unit;
- b. for hotels, motels: 1 space per rented sleeping room plus one space per employee:

- c. for rooming and boarding houses, dormitories, fraternities, sororities, club houses, and apartments, 1 space per household or one space per 2 residents, whichever is the greater, and one space per employee;
- d. for a rest home or nursing home: 1 space per 4 beds plus one space per employee;
- e. in a mobile home park (see Article 8.40): 1.5 spaces per mobile home space plus one space per employee;
- ✓f. for educational facilities: 1 space per staff member, or 1 space per 4 seats in the largest public assembly room, including auditorium and gymnasium, whichever number is greater plus one space per employee;
- ✓g. for a place of assembly with seating, such as a church, funeral parlor, auditorium, restaurant, theatre: 1 space per 3 seats plus one space per employee;
- ✓h. for a place of assembly without fixed seats, such as a skating rink or dance hall: 1 space per 50 square feet of floor area accessible to the public plus one space per employee;
- ✓i. for a bowling alley: 2 spaces per bowling lane plus one space per employee;
- ✓j. for retail and service establishments, and for medical or dental offices or clinics: 1 space per ~~200~~ ¹⁰⁰ square feet of gross floor area plus one space per employee;
- ✓k. for automobile service stations: 1 space per 100 square feet of area in service bays plus one space per employee;
- ✓l. for an office, bank, post office in a Business A or B district: same as for retail and service establishments plus one space per employee;
- ✓m. for research or laboratory building, administrative offices in an Office and Research district: 4 spaces per 1000 square feet of gross floor area designed to be occupied by employees, not including areas used only for storage, utilities, fully automated equipment, etc., provided, however, that no more need be paved than 1 space for each employee, or 1.5 spaces per employee at the maximum shift where there is more than one shift plus one space per employee;
- ✓n. for other uses: adequate spaces to accommodate customers, patrons and employees, as determined by the Planning Board under its site review procedures plus one space per employee.

ARTICLE 7

SIGNS AND UTILITY STRUCTURES

7.10 APPLICABILITY

The purpose and intent of this section is to provide control of the erection, installation, and maintenance of signs, vending machines, awnings, marquees, canopies, public time pieces and thermometers for the purpose of uniformity with aesthetic values and for the convenience, comfort, propriety and the general welfare.

7.11 Nonconforming Signs and Utility Structures. Any sign, vending machine, marquee, canopy, public time piece, or thermometer, or other such structure not conforming to the terms of this ordinance shall be allowed to continue nonconforming until such sign or structure must be replaced for any reason.

7.12 Removal of Certain Signs. Any sign now or hereafter existing which no longer advertises a bona fide business conducted, or product sold, shall be removed by the owner, agent, or person having the beneficial use of the building or property upon which the sign may be located within 14 days after written notification from the building inspector; otherwise the same shall thereby constitute a public nuisance.

7.20 DEFINITION OF TERMS

Sign means any exterior or exterior-oriented structure, or part thereof or device attached thereto or other outdoor surface including billboards or any combination of one or more of the foregoing containing any word, letter, symbol, drawing, model, banner, flag, picture or design, or any device used for visual communication which identifies or calls attention to any premises, person, product, activity, or business, directing the subject thereof to the attention of the public.

Accessory Sign means any sign relating to business on the premises on which the sign is located.

Advertising Sign means any sign for the purpose of portraying a business, product, or location situated on or away from the premises on which the said sign is located.

Awning means any structure made of cloth or metal with a metal frame attached to a building or structure and projecting over a public way, when the same is so erected as to permit its being raised to a position flat or rolled against the building when not in use.

Canopy means any structure, other than an awning or a wedding canopy, made of cloth or metal with metal frames attached to a building, projecting over a public way, and carried by a frame supported by the ground or sidewalk.

Combination Sign means any sign which combines the characteristics of two or more types of signs.

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

Curb Line means the vertical plane of the street side of a curb.

Flashing Sign means any sign that moves or flashes or contains traveling lights or gives the impression of any movement or flashing.

Ground Sign means any sign supported by uprights or braces or cables placed upon the ground and not attached to any public building.

Identifying Sign means any sign or plate giving the name and/or address only of the business or occupant of the premises on which the said sign or plate is located.

Illuminated Sign means any sign that is lighted by electricity either directly or indirectly.

Marquee means any hood or awning of permanent construction projecting from the wall or roof of a building or structure above an entrance or extending over a public way.

Neon - Any tubular gas filled lights or lighting device.

Neon Sign - Any lighted sign using exposed neon tubes for illumination or display.

Non-Accessory Sign means any sign advertising business or businesses at other locations.

Private Directional Sign means those signs of a permanent nature that direct the traveling public to specific buildings, areas, people or things.

Projecting Sign means any sign which is attached to a building or other structure and extends more than twelve (12) inches beyond the line of the said building or structure or beyond the surface of that portion of the building or structure to which it is attached.

Public Clock and Thermometer means any time piece or thermometer erected upon a standard upon the sidewalk or ground or on the exterior of a building or structure for the convenience of the public.

Pylon or Pole Sign means a sign supported by or suspended from a freestanding column or columns of structural steel, pipe, or poles.

Roof Sign means any sign erected upon or over the roof of any building.

Sidewalk means any public or private way or thoroughfare, paved or unpaved, intended for the use of pedestrians or foot traffic.

Size of Sign means the total exposed surface area in square feet. Where a sign is composed of fabricated letters attached to a wall, the size of the sign shall be determined as twice the average height of the letters times the length of the message.

Snipe Sign means any sign of a non-permanent nature or construction attached to trees, poles, posts, or sides of buildings or structures.

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

Temporary Sign means any sign, banner, pennant, valance, or advertising display constructed of cloth, canvas, light fabric, cardboard or wallboard or other light materials, with or without frames, intended to be displayed for a short period of time only.

7.30 GENERAL PROVISIONS

7.31 Application. Application for erection permit shall be made in writing to the Building Inspector for all signs in excess of six (6) square feet of total exposed surface area, vending machines, awnings, marquees, canopies, public time pieces, and thermometers, and such application shall contain the following information:

- a. name, address, and telephone number of applicant;
- b. location and position of sign or structure;
- c. plans or drawings with specifications;
- d. written consent of owner of building or land;
- e. such other information as the building inspector may require.

7.32 Inspection. The owner of any sign shall inspect annually each sign belonging to him and it shall be the duty of said owner to keep his sign(s) in good repair and in good appearance at all times.

7.33 Placement.

- a. All signs shall be prohibited within public rights-of-way areas except as provided and except traffic control devices and directional signs deemed essential for the public welfare and safety authorized by municipal and state agencies.
- b. No sign shall be so designed or so placed as to endanger, obscure, or confuse or otherwise create a hazardous condition to motor vehicles.
- c. No sign shall project above the roof or parapet line of a building.
- d. Vending machines shall not be permitted on the exterior surface of any building or structure except within the Business B district or on any sidewalk or thoroughfare. (See Article 4.23a2)

7.34 Illumination.

- a. Signs may be illuminated only by continuous indirect white light sources so placed that they will not constitute a hazard to street or highway driving by glare.
- b. No flashing or animated signs, or signs with visible moving parts or intermittent lighting to create the visual effect of movement shall be permitted.
- c. No neon or tubular gas filled signs shall be allowed in any district.
- d. Signs will be illuminated only during business hours.

7.35 Message.

Signs shall refer only to a use or activity conducted on the lot upon which they are situated, except that a limited number of signs, each sign not exceeding two square feet in area on each of two sides and intended solely to provide directional information may be permitted by the Selectmen for a limited period of time.

7.36 Condition.

- a. Signs other than permitted temporary or snipe signs shall be constructed of durable materials and shall be maintained in good condition and repair. Where by reason of neglect a sign becomes hazardous, unsightly, or otherwise tends to depreciate its surroundings, the same shall constitute a public nuisance.
- b. Any clock or thermometer displayed for the public convenience shall be accurate.

7.40 PERMITTED SIGNS, BY DISTRICT

7.41 Number of Signs. Not more than two signs shall be permitted for each business establishment, except for signs as may be required by State or Federal regulations

7.42 Snipe Signs. The use of snipe signs is permitted on private property only for non-commercial events and elections. Such signs are limited to a period of 45 days preceding and 7 days after the relevant event, provided further:

- a. the size of any snipe sign shall not exceed 12 square feet;
- b. the number of such signs is limited to one per lot in Residence A, B, and C districts, and to two per lot in other districts;
- c. Such signs are not permitted on public property or in public ways.

7.43 Temporary Signs. One temporary sign such as used by real estate agents, contractors, architects, painters, or other artisans may be permitted on a lot in any district, provided:

- a. it is unlighted;
- b. it is set back at least one-half the required depth of the street yard;
- c. it does not exceed twelve (12) square feet in size;
- d. its proper appearance is maintained;
- e. it is removed upon completion of the work or transaction.

7.44 Residential Accessory Signs. Signs stating the name and nature of a permitted home occupation may be displayed on a lot in any district provided such signs:

- a. are unlighted;
- b. are set back at least one-half the required depth of the street yard or are attached to the building;
- c. do not exceed two in number, each of no more than six (6) square feet in size in the Rural district, or one in number of no more than one square foot in size in the Residence A, B, or C district.

7.45 Projecting Signs. Within the Business A and B districts, only one accessory projecting sign shall be permitted for each business ownership; it shall not project horizontally in excess of six (6) feet; it shall be erected at a height of not less than eight (8) feet above the sidewalk or ground level; and it shall not exceed twenty (20) feet in surface area on each of two sides nor a total of 40 square feet on all sides.

7.46 Pole Signs. Within the Business B district, only one accessory pole sign is permitted for automobile service establishments, provided:

- a. it shall not exceed forty square feet in surface area on each of 2 sides nor a total of 80 square feet on all sides;
- b. any portion of such pole sign shall be set back at least fifteen feet from any street or side lot line;
- c. it shall be erected in such a manner that no portion of it shall be more than twenty-five feet above ground elevation at its base.

7.47 Roof Signs. No such sign shall be permitted.

7.48 Wall Signs. Within the Business A district no wall sign shall exceed ten percent of the area of the building face to which it is attached, but in no case shall it exceed 48 square feet in size. Within the Business B District the cumulative size of permitted signs on any one business establishment shall not exceed ninety-six square feet.

7.49 Number and Type of Signs Permitted, by District, for Each Business. (See Articles 7.31, 7.41 and 7.48)

Type of Sign	RA	RB	RC	R	BA	BB	OR	CR
Pole						1		
Projecting					1	1		
Residential Accessory	1	1	1	2	2	2	2	1
Snipe	1	1	1	2	2	2	2	1
Temporary	1	1	1	1	1	1	1	1
Wall					1	1	1	

7.50 CONSTRUCTION

7.51 Glass Requirements. Any glass forming a part of a sign shall be of safety glass and where any single piece or pane of glass has an area of more than three (3) square feet, it shall be constructed of wired glass securely held in place.

7.52 Wind Pressure and Dead Load. The supporting structure of and fasteners for all signs shall be designed to withstand five times the combined effect of wind pressure and dead load. A wind pressure of 25 pounds per square foot on the maximum horizontally projected area of the sign shall be such assumed; dead load shall be the weight of the sign.

7.53 Obstructions to Doors and Windows. No sign shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window, or fire escape.

7.54 Marquees. No marquee shall be erected unless designed by a structural engineer and approved by the Building Inspector; it may extend over the sidewalk across the street line to the curb line provided it has a minimum height above the sidewalk of ten feet above the curb level; it shall not exceed five feet in height; it must be able to support a live load of not less than one hundred pounds per square foot; any sign attached to or hung from a marquee shall fully comply with this ordinance.

7.55 Canopies. Canopies may be constructed of cloth or metal hood, provided, however, all frames and supports shall be of metal; the lowest portion of any canopy shall be not less than eight feet above the level of the sidewalk or public thoroughfare; they must be designed by a structural engineer and be approved by the Building Inspector.

7.56 Awnings. Awnings may be constructed of cloth or metal, provided, however, all frames and supports shall be of metal; the lowest portion thereof shall be not less than seven feet above the level of the sidewalk; it may extend beyond the street line but not nearer than eighteen inches to the curb line; they must be approved by the Building Inspector.

7.60 ENFORCEMENT

7.61 Notification and Removal. It shall be the duty of the Selectmen upon notification by the Building Inspector of any violation of the provisions of this section to notify the violator and/or building owner of such condition in writing, and if such condition is not corrected in five days from the date of notification the Selectmen shall take legal action to have removed immediately the sign, vending machine, awning, marquee, canopy, public time piece, thermometer, structure, or machine. The owner shall be liable for any costs incurred for such removal. Any such use in violation hereof, after such notice duly given, is hereby declared to be a public nuisance (as in any other use or violation which is otherwise hereby declared to be such a public nuisance), and the Selectmen are authorized to abate the violation by application for injunction or other lawful means. Nothing herein shall prevent the Selectmen from causing prosecutions to be had for violations to obtain or impose fines for such violations, either as supplemental or alternative corrective action.

7.62 Penalties. Any person violating any of the provisions of this Article shall be subject to the penalties as provided by Article 10.16.

7.63 Appeal. Any person aggrieved by a decision taken under this Article shall have the right to appeal the making of said decision to the Zoning Board of Adjustment, as provided in Article 11.20

ARTICLE 8

MOBILE HOME PARKS

8.10 DEFINITIONS

Mobile Home is a single-family habitation designed for transportation, after fabrication, on streets and highways on its own wheels and arriving at the site where it is to be occupied as a habitation complete and ready for occupancy, except for minor and incidental unpacking and assembly operation, location on jacks or permanent foundations, connection to utilities and the like. No mobile home not located in a mobile home park, whether or not set on a continuous supporting wall of masonry, masonry units, concrete or other similar material shall be allowed on any lot in any zone, and such mobile home shall not be considered a building or dwelling within the terms of this ordinance.

Mobile Home Park is land upon which two or more mobile homes are parked and occupied for living purposes, whether or not a charge is made for such accommodations.

Mobile Home Space is a plot of ground within a mobile home park designed for the accommodation of one mobile home.

8.20 GENERAL REQUIREMENTS

No mobile home park will be allowed in a designated zone except by Special Exception and will require site reviews. All mobile home parks shall conform to the following minimum requirements.

8.21 Location. All mobile home parks shall be located on a site graded to insure adequate and sanitary drainage of surface water, sub-surface water, and sewage. All such parks shall be in areas free from marshes, swamps, stagnant pools, or other potential breeding places for insects or rodents.

8.22 Buffer Yard. There shall be not less than two hundred feet between any exterior lot line of the park and any mobile home space or other structure or parking area within the park. Where the buffer yard is not naturally wooded, an appropriate wall, fence or hedge at least 6 feet high shall be provided as necessary to screen the mobile home park from view at all exterior lot lines.

8.23 Area. The area of the mobile home park shall be large enough to accommodate:

- a. the designated number of mobile home spaces which shall not exceed one space per the same square foot requirement for a minimum lot (see 5.18). Areas of land which, by reason of poor drainage, are unsuitable for residential use shall be excluded from consideration in the overall area;
- b. necessary streets, walkways, and public utilities;
- c. parking areas for motor vehicles (see 8.40);
- d. necessary service buildings to house such facilities as are prescribed by applicable state and local ordinances and regulations;
- e. recreational area (see 8.50).

8.30 DESIGN OF MOBILE HOME SPACES

8.31 Area and Width. Each mobile home space shall be clearly defined and delineated. No mobile home shall occupy an area in excess of 10% of the mobile home space; however, each mobile home space shall contain a minimum of 10,000 square feet, and shall be at least 100 feet wide; provided, however, that parks which, at the time of the adoption of these regulations, existed lawfully with mobile home spaces that do not comply with the foregoing minimum area and width requirements, may continue to operate and shall be excused from such compliance.

8.32 Internal Yards.

- a. There shall be a minimum of 20 feet clearance between each mobile home. No mobile home shall be located closer than 20 feet from any building within the park, or closer than 30 feet from any park road.
- b. When applying the 20 foot clearance figure, awning, vestibules, patios or other attached added structures or accessory buildings shall be considered an integral part of the mobile home.

8.33 Access.

- a. All mobile home spaces shall abut upon a park roadway of not less than 30 feet in width, which shall have unobstructed access to a public street or highway.
- b. Walkways of not less than three feet in width shall be provided from the park roadway to each mobile home space and to the service buildings.

8.34 Administration and/or Service Buildings. The administration and/or service building shall be located on a space which remains an integral part of the mobile home park. However, for dimensional control purposes it shall be treated as a building lot subject to the requirements of the zone in which it is located. The Planning Board requires a site review.

8.40 PARKING SPACES

Vehicle parking spaces shall be provided in sufficient number to meet the needs of the occupants of the park and their guests without interference with the normal movement of traffic.

8.41 Number and Location. Such facilities shall be provided at the rate of at least one and $\frac{1}{2}$ vehicle space for each mobile home space, plus an additional vehicle space for each four spaces to provide for guest parking, for two-car tenants and for delivery and service vehicles. Insofar as practicable, one vehicle space shall be located on each mobile home space and the remainder located in adjacent parking bays. All vehicle parking spaces shall be located for convenient access to the mobile home spaces. All vehicle parking spaces located on a mobile home space shall have a minimum width of 10 feet and a minimum length of 20 feet.

8.42 Design of Parking Bays. All off-street parking bays shall conform to the following minimum specifications:

Parking Angle	Curb Length per Vehicle	Minimum Bay Depth*
90 degrees	9.0 feet	18 feet
60 degrees	12.5 feet	17 feet
45 degrees	13.5 feet	16 feet

*Perpendicular to curb line

8.50 RECREATIONAL AREA

Recreational areas shall be provided on land suitable for such use; and shall be restricted to such use. These areas shall be protected from the park roadways and from parking areas. No single recreation area shall contain less than 10,000 square feet. Recreational area requirements shall conform to the following minimum specifications: 10,000 square feet for every 20 mobile home spaces up to 100. For each additional mobile home space above 100 a minimum of 500 square feet of recreational area shall be provided.

8.60 CONSTRUCTION

The provision of this ordinance and of the building regulations of the Town of Durham shall apply to all construction, alterations, repairs, and additions to mobile homes and structures within the mobile home park unless otherwise modified herein.

8.61 Skirting. The skirting of mobile homes is permitted to achieve better heating of the unit, but skirting should not provide a harborage for rodents, nor create a fire hazard. Skirting, cabanas, awnings, porches,

or other additional shall not be attached to the mobile home unless they are manufactured only for mobile home use, constructed of fire-resistant materials in a workmanshiplike manner, and are approved by the Building Inspector.

8.62 Fuel Pipes. All piping from outside fuel storage tanks or liquefied petroleum gas cylinders to the mobile home shall be copper or other acceptable metallic tubing mechanically connected, and shall be permanently installed and securely fastened in place. All fuel storage tanks or cylinders shall be securely fastened in place and shall not be located inside or beneath the mobile home or less than five (5) feet from any mobile home exit. Racks to hold all fuel tanks or cylinders shall be of a design which will prevent tipping or accidental overturning.

8.63 Fire Protection. Every park shall be equipped at all times with fire extinguishing equipment in good working order, of such type, size and number and so located within the park as to satisfy applicable regulations of the fire department. No open fires shall be permitted except in accordance with state and local statutes.

8.64 Electrical Installations. No main power supply line shall be permitted to lie on the ground, or to be suspended less than 18 feet above the ground. All electrical installations shall be constructed of new materials and all parts thereof shall comply with all applicable state and local electrical codes and ordinances. The line may, however, be buried underground in accordance with applicable regulations. In the absence of local or state codes, or where such codes are deemed inadequate by the Building Inspector, installations shall comply with the applicable provisions of the National Electrical Code unless otherwise modified herein.

8.65 Telephone System. Where telephone service to mobile home spaces is provided, the distribution systems may be overhead or underground, but shall be in general conformance with the placement of the electrical distributions system.

8.66 Landscaping. Lawn and ground cover shall be provided where needed to prevent erosion of slopes and on other areas to obtain usable yards. Trees, shrubs and vines shall be required to the extent needed to provide for:

- a. screening of objectionable views such as garbage and trash cans;
- b. adequate shade; and
- c. a suitable setting for the mobile homes and other facilities.

8.67 Paving and Lighting. All park roadways, walkways, and parking bays or spaces within the park shall be hard surfaced and lighted so as to reasonably provide for public safety.

8.70 OPERATION

8.71 Register. Every owner, operator, attendant, or other person responsible for the operation of a mobile home park shall maintain a register containing a record of all mobile homes and occupants using the park. Such register shall be available to any authorized person inspecting the park, and shall be preserved for the period required by the Board of Selectmen. Such register shall contain:

- a. the names of all mobile home occupants in the park;
- b. the make, model and license number of motor vehicles;
- c. the dates of arrival and departure of each mobile home.

8.72 Supervision. The owner, operator or other person responsible for the operation of a mobile home park shall visit the mobile park each day the park is occupied and shall do whatever may be necessary to keep the park and its equipment in a clean and sanitary condition, to maintain order and see that all applicable zoning and sanitary regulations are observed. The management of each park shall assume responsibility for maintaining in good repair all buildings, streets, walks, sanitary facilities and utilities within the park and shall take such action as is necessary to prosecute or eject from the grounds any person who willfully or maliciously fails to comply with these and other applicable regulations.

8.80 LICENSING

8.81 License Required. It shall be unlawful for any person to operate or maintain a mobile home park within the limits of the Town of Durham unless he holds a valid license issued annually by the Board of Selectmen in the name of such person for the specific mobile home park.

8.82 License for Existing Parks. A license, upon written request therefore, and payment of the proper fee, shall be issued by the Board of Selectmen for every park in existence upon the effective date of this ordinance, permitting the park to be maintained and operated for the period of one year after passage of this ordinance. Upon issuance of such license, the aforesaid parks shall be deemed to be in conforming use.

8.83 License Fee. The annual license fee for each park shall be fifty dollars (\$50.00) for up to and including 40 mobile home spaces, plus two dollars for each additional mobile home space therein.

8.84 Application for License.

a. Application for initial mobile home park license shall be filed with the Board of Selectmen. The application shall be in writing, signed

by the applicant, and shall include the following:

1. the name and address of the person making application;
 2. the location and legal description of the mobile home park;
 3. a complete set of plans in conformity with the requirements of this ordinance;
 4. plans and specifications of all improvements, buildings, streets, recreational areas, walks, sewer, water and other facilities constructed within the park;
 5. the area and dimensions of the tract of land whereon the proposed park is to be located;
 6. such further information as may be requested by the Board of Selectmen to enable it to determine if the proposed park will comply with the provisions of this ordinance and all other applicable legal requirements. The application and all accompanying plans and specifications shall be filed in triplicate. The Board of Selectmen shall inspect the application and proposed plans and specifications. If the proposed mobile home park will, when constructed or altered in accordance with such plans and specifications, be in compliance with all the provisions of this ordinance and all other applicable ordinances, statutes, and regulations, the Board of Selectmen shall approve the application and, upon completion of the park according to plans, shall issue the license.
- b. Application for the renewal of a license shall be made in writing to the Board of Selectmen by the holder of the license, and shall contain the following:
1. any change in the information submitted since the time the original license was issued or the latest renewal granted;
 2. such other information as the Board of Selectmen may require. Upon approval of the application for renewal of a license fee, the Board of Selectmen shall issue a certificate renewing such license for another year.

8.85 Revocation of License. A violation of, or variation from the terms, conditions or authorization of a license to operate or maintain a mobile home park by the holder thereof or his agent, architect, or contractor shall be cause for the revocation of said license. Such revocation shall be made at the discretion of the Board of Selectmen and an appeal from such action may be made at the discretion of the Board of Selectmen and an appeal from such action may be made as provided in Article 11 of this ordinance.

8.86 Posting of License. The license certificate shall be conspicuously posted in the office of or on the premises of the park at all times.

8.87 Notice of Transfer. No license shall be transferable. Every person holding a valid license shall give notice in writing to the Board of Selectmen thirty days prior to any proposed sale, gift or other disposition of interest in or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park.

8.88 Performance Bond. A bond will be posted with the Selectmen sufficient to cover the expenses which would be incurred for removing all physical improvements from the land, should the mobile home park be discontinued or abandoned.

ARTICLE 9

EARTH REMOVAL REGULATIONS

9.10 APPLICABILITY

9.11 General. Whether or not a permit for earth removal is otherwise required, no premises shall be graded or stripped of sod in such a manner as to be detrimental or injurious to a developed neighborhood because of dust, erosion, standing water or uncontrolled drainage for a period of longer than reasonably necessary for completion of the project, or because of hours and manner of the operation of equipment, or other cause.

9.12 Required Permit. The removal from any premises of more than ten cubic yards of sod, loam, sand, gravel or quarried stone in any one year shall be prohibited except when incidental to and in connection with the construction of a building or street or other activities legally permitted within Durham unless authorized by the Board of Selectmen in accordance with the following requirements.

9.20 REQUIRED PLAN

A plan of the land involved shall be prepared by a registered land surveyor or engineer showing all man-made features, property lines, vegetative cover, topography by five-foot contour intervals including land within 100 feet of the property where the proposed excavation is to take place and the area to be excavated. Said plan shall also show:

- a. temporary and permanent drainage and the proposed topography at two-foot contours upon completion of the excavation;
- b. the estimated quantity of loam to be stripped, stockpiled and replaced. The volume of the loam shall be measured.

9.30 CONDITIONS OF PERMIT

Any permission granted by the Selectmen shall specify the conditions pertaining to but not limited to:

- a. the finished level and grading; except in a stone quarry, the finished slopes shall not exceed a grade of one foot vertical distance for each two feet of horizontal distance unless the petitioner agrees to approved methods of sodding, grassing, riprapping, the use of retaining walls;
- b. the placing of loam upon completion of excavation, to a depth of not less than 4 inches, seeding, and planting with approved

materials to restore the area to a usable condition; where slopes in a stone quarry exceed one foot vertical rise for each two feet of horizontal distance, such loam placement and planting shall not be required.

- c. control of temporary and permanent drainage;
- d. disposition of boulders, vegetation stumps and other debris including unused material and any structures used in connection with the operation;
- e. the construction of necessary fencing to protect against hazards;
- f. vegetation to remain as a visual barrier;
- g. hours of operation;
- h. routes for transportation of materials.

9.35 LIMITATIONS ON PERMIT

Any earth removal application proposing the removal of more than 500 cubic yards of sod, loam, sand, gravel or quarried stone in any one year will be granted only if the Selectmen specifically find, after public hearing pursuant to 9.51, that;

- a. such proposed earth removal will not be detrimental or injurious to the neighborhood,
- b. will not unreasonably strip the land nor unreasonably damage the local watershed,
- c. will not otherwise harm the future use potential of the land concerned.

9.40 LIMITATION ON EXISTING ACTIVITY

Earth removal activities in lawful operation at the time this ordinance is passed may continue or until abandoned for more than twelve consecutive months. However, unless specifically authorized by a new permit:

- a. the depth of the excavation shall not be increased below the grade of the lowest point excavated on the effective date of this ordinance;
- b. the total horizontal area of excavation shall not be increased by more than twenty-five per cent of its area on said effective date.

9.50 ADMINISTRATION

9.51 Hearing on Permit. Earth shall not be removed from any area except in accordance with the provisions of this ordinance and the written permission of the Board of Selectmen, after a public hearing is held upon 7 days due notice in a local newspaper having a circulation within the

town and notices by registered or certified mail are sent to the abutters of record (as of the most recent tax list) from which such material is to be removed. The Selectmen shall impose any restrictions necessary to protect the interests of the town.

9.52 Record of Restrictions. Any restrictions or conditions imposed by the Board of Selectmen shall be attached to the letter of permit and copies of said permit and attached restrictions shall be sent to the Planning Board, the Superintendent of Public Works, the Zoning Board of Adjustment, the Conservation Commission, and the Health Officer.

9.53 Duration and Renewal of Permit. No removal permit shall be issued for a period of less than six months or more than 24 months. A permit may be renewed without a public hearing by majority vote of the Board of Selectmen.

9.54 Performance Bond. The Board of Selectmen may, at its discretion, require a bond, certified check or some other security for compliance with the conditions of this ordinance.

9.55 Revocation of Permit. The Board of Selectmen may, after a public hearing on proof of violation of any condition of this ordinance or restriction imposed by the Board of Selectmen, revoke any permit or permits issued by them.

9.56 Penalty. The penalty for violation of this ordinance shall be as follows: Ten dollars for each offense, and for the second offense by the same person or permit holder, immediate revocation of permit.

ARTICLE 10
ADMINISTRATION

10.10 ENFORCEMENT

10.11 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.

10.12 Administrative Responsibility. Authority to administer these ordinances is hereby vested in the Board of Selectmen who are also empowered to appoint a Building Inspector annually and to fix his salary.

10.13 Building Inspector Responsibilities. The Building Inspector shall be responsible for the performance of duties listed in Section 10.14 and such other duties pertinent to the enforcement of Zoning, Building, Fire and Health regulations as the Selectmen may determine. The salary or compensation of this officer shall be fixed by the Selectmen.

10.14 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 permit applications are made to the Selectmen. 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.

10.15 Violations. 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.

- a. Should the Building Inspector or Selectmen fail to take action on an application for a building permit within 15 days of the 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 11 of this ordinance or as provided in Article 10.29 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 the appearance of a proposed structure, as 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) business 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.

10.16 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 \$50.00 or such other penalty which may, from time to time, be authorized by state law unless otherwise specified elsewhere in this

ordinance, 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.

10.20 PERMITS

10.21 Permit Required. 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 approved by the Board of Selectmen.

10.22 Site Review on Non-Residential Uses. No building permit shall be issued for the development of tracts for any non-residential use until the applicant has submitted his application and site plan to the Planning Board for site review in accordance with Section 10.30 of this Ordinance, and may not be issued in any case unless the Planning Board approved such site plans.

10.23 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 subdivision. 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.

10.24 Plot Plan. A plot plan shall accompany the application and shall show the following:

- a. lot dimensions and area;
- 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(s);
- 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. proposed use of building and land;
- i. rights-of-way and easements on or adjoining the lot;
- j. provision for parking and loading spaces where applicable;
- k. 5-foot contour lines, existing and proposed;
- l. such other information as may be required by the Building Inspector. The drawings shall be at the scale and in the form required by the Building Inspector.

10.25 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.

10.26 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.
- e. No building permit shall be issued or become effective for non-residential land use without site review by the Planning Board (see 10.30).

10.27 Permit Fees. The permit fee shall be based on the estimated cost of construction and shall be equal to one-tenth of one percent thereof, but in no case shall the permit fee be less than \$10.00.

10.28 Certification for Use. 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 with the plans and specifications of the building permit for the use concerned or, as to any other type of use that the Building Inspector shall have certified the proposed use of structure, when finished, complies with a use permitted in the zone concerned.

10.29 Revocation or 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 11 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.

10.30 SITE REVIEW

10.31 Authorization. In addition to its power to regulate residential subdivision, the Planning Board, in accordance with Chapter 36.19a of the New Hampshire Revised Statutes Annotated, 1955, as amended, is empowered to review, and approve or disapprove, site plans for the development of tracts for non-residential uses whether or not such development includes a subdivision or re-subdivision of the site.

10.32 Site Review Required: Appeals. The Planning Board shall require site plans be submitted to it for review by any applicant seeking any new or altered non-residential use, whether or not such application is one for which a building permit, special exception or variance is required. Planning Board approval of such site plans shall be a necessary prerequisite to issuance of any building permit, special exception or variance for such a use. Disapproval of such site plans by the Planning Board shall be subject to appeal to the Superior Court in the same manner as provided for appeals from decisions of the Planning Board in R.S.A. 36:34, as amended or revised, unless otherwise prescribed by law.

10.33 Purposes of Review. The Planning Board shall determine whether the following purposes are met:

- a. the purposes of this ordinance as set forth in Article 1.10;
- b. appropriateness of the general location and specific site for the buildings and uses proposed;

- c. safety and adequacy of traffic circulation to and at the site and of parking on the site;
- d. protection of residential abutters against undue noise, glare, unsightliness or other nuisance detrimental to property values;
- e. landscaping and preservation of open area.

10.34 Site Review Regulations. The Planning Board is further empowered by this ordinance to adopt Site Review Regulations to establish procedures and such further standards and conditions for site review as it deems to be in reasonable conformity with the intent of this ordinance and with the comprehensive plan of the Town of Durham.

ARTICLE 11

ZONING BOARD OF ADJUSTMENT

11.10 ORGANIZATION

11.11 Members. The Zoning Board of Adjustment in office at the time of the passage of this ordinance is hereby continued, and its members shall continue in office for the remainder of their terms. 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.

11.12 Disqualification of Board Member. No member of the Zoning Board of Adjustment shall sit upon the hearing on any question which the Board is to decide in a judicial capacity who would be disqualified from any case, except exemption from service and knowledge of the facts involved gained in the performance of his 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.

11.13 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.

11.14 Powers. 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. (See Article 10.32)
- 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. See Article 10.32.
- 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 31, Sections 60-89, and Chapter 36, Sections 26 and 31, of the Revised Laws of New Hampshire, as amended.

11.20 APPEALS

11.21 Method of Appeal. 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.

11.22 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 be 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.

11.23 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.

CLUSTER DEVELOPMENT

12.10 PURPOSE AND OBJECTIVES

12.11 PURPOSE As an alternative to the development of land for residential uses following strict adherence to basic provisions of this Ordinance, an applicant may voluntarily elect to undertake a Cluster Development. The purpose of making such a development possible is to encourage better site planning than would normally occur by the lot-by-lot method following conventional subdivision procedures, including the preservation of open space and the natural surface drainage system of an area.

12.12 OBJECTIVES It is the objective of this ordinance to promote:

- Improved Residential Subdivision Design - increased flexibility in subdivision design with preservation of natural and scenic qualities of the land being subdivided.
- Conservation - preservation of open space for the benefit of the community-at-large.
- Efficiency - a layout which may shorten streets and utility lines, lessen grading, respect the natural character of the land, and reduce Town problems of maintenance, drainage and erosion control.
- Adequate Sanitary Services - provision for central sewer and water services.
- Orderly Growth - in relationship to the Durham Comprehensive Plan of 1969.

12.20 DEFINITION OF TERMS

Cluster Development, Cluster Subdivision

A purely residential subdivision of a tract where, instead of subdividing an entire tract into house lots of conventional size, a similar number of housing units may be clustered on lots of reduced dimensions. The remaining land in the tract which has not been built upon is reserved for common area to be held in some form of ownership or easement which will prevent it from ever being subdivided. The requirements of the Subdivision Regulations must be satisfied.

Common Area

Any parcel of land and/or area of water set aside as a result of the alternate dimensional controls and designed and intended for the benefit and enjoyment of the residents of a cluster development or the community at large. These areas may contain accessory structures and improvements necessary and appropriate for educational, recreational, cultural, social or other non-commercial uses plus any utility services used by the owners of the common area, or may be Open Space as defined in this Ordinance.

Conventional Lot Size, Frontage and Other Dimensional Controls

The prevailing zoning requirements for any particular district following regular lot-by-lot subdivision procedures.

Conservation Land

Land given to a public body dedicated to conservation of forests, park land, etc. or to a private conservation trust, with the intent of preserving it in its original ecological condition, safeguarding water supplies, or diminishing flood danger.

Mandatory Home Association

A private, non-profit corporation, association, or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Cluster Development. Membership in said Association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the Common Area when applicable and may charge dues to cover expenses, which may include tax liabilities of common area, recreational, or utility facilities. Articles of Association or Incorporation must be acceptable to the Planning Board after legal review.

Open Space

Land unbuilt upon to be kept permanently in that condition.

Open Space Easement

Land whose development rights have been legally restricted, either by deed or public purchase of those rights. The easement may be so worded as to permit or restrict public access, to allow or disallow recreational development, and so on. Easements are tied to the title of the land, regardless of its subsequent ownership.

Public Open Land

Land given to the Town of Durham for parks, playgrounds, or an undeveloped open space, generally with the intention of making it accessible for public use.

12.30 PERMITTED USES

12.31 Cluster developments shall be permitted only for residential and appropriate recreational uses specified by zoning district in Table 4.28 and defined in sections 1.40, 4.21 and 4.22 of this ordinance as modified below and stated as follows:

a. 4.21

1. Single household
2. Duplex household
3. Apartment dwelling
4. Accessory lodging use
 - a) Accessory apartment
 - b) Accessory rooming
 - c) Accessory boarding
5. Accessory home occupation
 - a) First class
6. Accessory buildings

b. 4.22

1. Outdoor recreation, such as a riding stable, golf course, swimming beach, skating rink and other forms of predominantly outdoor recreation, except shooting ranges, provided:

a) spectator events are incidental and not operated as a business;

b) accessory service buildings are limited to those necessary to the pursuit, on the premises of the sport;

c) no area developed for active recreation is within 100 feet of any residential lot line. This buffer is a minimum. The actual siting of all outdoor recreational facilities is subject to Site Review Procedures.

2. The keeping of personal riding horses or other large animals (i.e. cattle, goats, sheep, etc.) for non-commercial purposes, provided;

a) the keeping of such animals is ordinarily permitted in that zoning district;

b) the exact area shall be appropriate for the size and number of said animals;

c) no separate shelter for such animals or outdoor storage of odor producing substances shall be less than 75 feet from any lot line;

d) such use shall not result in noise, odors, unsightly or dangerous activities which are injurious or detrimental to the neighborhood;

e) riding horses are maintained only for use of the owner's household and his personal non-paying guests.

12.32 The uses listed in 12.31 above are allowed in each and every zone where they are permitted under Table 4.28.

12.40 REQUIREMENTS

12.41 Cluster Developments, Cluster Subdivisions

As defined in this ordinance, shall be allowed by Special Exception only, on parcels of land with a minimum area of 400,000 sq. ft. in all zones where residential uses are permitted. The Special Exception shall require prior approval of the Subdivision Application by the Planning Board and shall be passed in compliance with the requirements set forth in this Ordinance and the Durham Subdivision Regulations.

12.42 Density (the number of dwelling units per unit of land) Requirements for a Cluster Development shall be the same overall as for any other subdivision within any given zoning district. If a proposed Cluster Development encompasses land located in more than one zoning district, then the total number of dwelling units allowed within the tract shall be the sum of those allowed for the portion of land lying within each zoning district. Allowances for increased density when public utilities are provided shall be as stated in Table 5.18.

When computing the area allowed to be subdivided for density determination, deductions shall be made for the street rights-of-way, utilities, and substandard areas in accordance with the following formula;

$$\text{Number of allowed residential units} = \frac{\text{Developable Land Area} - \text{Utility Area(s)}}{\text{Effective Minimum Lot Area}}$$

For the purposes of this formula, the following terms are defined:

Developable Land Area for residential development shall be that comprised of the area of the entire tract to be subdivided less that classified either Very Poorly Drained or Poorly Drained in the Strafford County Soil Survey (March 1973 or as amended), or as further delineated by qualified personnel after on-site inspection.

Utility Area(s) shall be that area(s) of land set aside for common utility structures and facilities, including common sewerage and/or water systems.

Effective Minimum Lot Area shall be the minimum lot area for the zoning district as set forth in Table 5.18 of this Ordinance plus the product of twenty-five (25) feet and the minimum lot frontage requirement in feet in the Zoning District as set forth in Table 5.18.

12.43 Dimensional Controls

The dimensional controls shall be those set forth in Table 5.18 of this Ordinance (including applicable notes) with the following exceptions:

Minimum Lot Area	- multiply by 0.5
Minimum Frontage	- multiply by 0.5
Minimum Yard Dimension	- multiply by 0.5
Maximum Coverage	- multiply by 2.0

However, in no case may separate residential structures be closer than fifteen (15) feet or one half (0.5) of the average building height of the adjacent structures, whichever is greater.

The minimum frontage requirements may be further reduced for wedge or irregularly shaped lots if the front setback is measured from a line, parallel to the street, which line meets the minimum frontage requirements when traversing from one side line to the other.

The Common Area for any Cluster Development or Subdivision shall not be less than twenty-five percent (25%) of the total area of the tract to be so subdivided.

12.44 Specific Design Requirements

1. Cluster Development shall be allowed only if Town sewer and water facilities are provided. Such Town facilities shall include facilities which are constructed by the developer to standards set forth by the Town of Durham and the State of New Hampshire, if said facilities are deeded to and accepted by the Town of Durham.
2. All service utilites shall be installed underground wherever possible.
3. The Common Area within a Cluster Development shall be owned by and bound by one or more of the following:
 - a. A Mandatory Homes Association (as previously defined in this Ordinance) which may use it for common recreational facilities or designate it as Open Space, or may grant a public body an Open Space Easement. The specific designation must be made prior to approval of the subdivision application by the Planning Board.
 - b. A public body which shall use it as Conservation Land or Public Open Land. Accessory structures and improvements which are appropriate to the area may be provided.
- 3.1 Provisions for common land ownership shall be part of the site review or subdivision approval by the Planning Board, and must be in effect before any dwelling unit is leased or sold. Articles of Association or Incorporation must be acceptable to the Planning Board after legal review. The Common Area provisions must be in perpetuity. Any proposed changes require review and approval of the Planning Board.
4. The site and orientation for each proposed structure shall be accurately delineated on the plat before receiving Planning Board approval.
5. Natural surface drainage channels shall be either incorporated into the overall design or shall be preserved as part of the required Common Area. The developed area shall be served by storm sewers and gutters and/or curbing. All surfaces shall be treated to prevent the erosion of soil.
6. The Planning Board is empowered to require pedestrian walks which shall interconnect all dwelling units and the Common Area(s).
7. A Cluster Development or Cluster Subdivision shall comply with all applicable requirements of the Subdivision Regulations and other pertinent ordinances, regulations and policies of the Town of Durham.
8. Except for the requirement of section 12.43.10, the specific setback requirements of section 5.20 shall be followed.
9. Parking requirements shall be as specified in section 6.41 and 6.42 of the Durham Zoning Ordinance.
10. All Cluster Developments shall have a minimum of a fifty (50) foot perimeter buffer between any structure and a perimeter property line of the proposed subdivision.

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Zoning Ordinance 1975

1 40 DEFINITIONS OF GENERAL TERMS - Add the following:

Dwelling Unit

Classes of Dwelling Units	<u>Dwelling Unit</u>				Max. no. of occupants in unrelated households per 300 sq. ft. habitable floor space
	<u>Sleeping</u>	<u>Dining/ Cooking</u>	<u>Sanitary</u>	<u>Social</u>	
Condominiums	H	H	H	M	1.5

Dwelling

- j. Amended to read: Townhouse means a residential structure containing three or more single nondetached dwelling units separated by a common vertical wall. Each Townhouse structure as a whole, shall conform to the dimensional controls of this ordinance.
- k. Revised to read: Condominium means a multiple dwelling building or group of buildings having a total of five or more dwelling units, the dwelling units of which are intended for, used or occupied under separate ownership, and which comply with all requirements of the "unit ownership of real property" statute, RSA 479-A, but excluding unit ownership by long term leasing as provided for in RSA 479-A.

Zoning Ordinance 1975
(see Index 1975 for other revised sections)

2-4.21
amended

4.21 Residential Uses Permitted - Add the following

- j. Condominiums, provided they comply with all requirements of this ordinance and state statute, RSA 479-A, but excluding unit ownership by long term leasing as provided for in RSA 479-A, and provided they receive site review approval under Section 10.30. See site review regulations, Section 2.2G.

Zoning Ordinance 1975
(see index 1975 for
other revised sections)

4.28 Table of Permitted Uses by Zoning Districts

Residential Uses - Add the following:

	RA	RB	RC	R	BA	BB	OR	CR
i. accessory lodging use								
2. accessory rooming								X
o. Condominiums				X(4)	X			X
p. Townhouses				X(4)	X			X

Notes: (4) Only where central water and municipally operated central sewer system are connected for use.

4.28 Retail and Personal Uses - Add the following:

g. offices for professional or personal services

OR

X

4.28 Table of Permitted Uses by Zoning Districts

Residential Uses - Add the following:

Zoning Ordinance 1975
(see index 1975 for
other revised sections)

	RA	RB	RC	R	BA	BB	OR	CR
2. accessory rooming								X
o. Condominiums				X(4)	X			X
p. Townhouses				X(4)	X			X

Notes: (4) Only where central water and municipally operated central sewer system are connected for use.

5.18 Table of Dimensional Controls by Zoning Distrists

Add the following

Note 16 under heading Minimum Lot Area

Note 16 to read: The minimum sized lot requirement for Condominium so allowable will provide at least 2,000 sq. ft. per dwelling unit and must contain at least 1,000 sq. ft. of habitable floor area.

Zoning Ordinance 1975
(see Index 1975 for other
revised sections)

ARTICLE 13

WETLAND CONSERVATION DISTRICT

13.10 DESCRIPTION

The Wetland Conservation Overlay* District is hereby determined to be those areas identified as poorly drained or very poorly drained soils, defined in the publication, "Soil Survey of Strafford County, New Hampshire", issued March 1973. The Wetland Conservation District as herein defined*, is shown on a map or maps designated as the Town of Durham Wetland Conservation Overlay District Map and is a supplement to the Zoning Map of the Town of Durham, New Hampshire.

In all cases where the Wetland Conservation District is superimposed over another zoning district in the Town of Durham, the regulations of both districts shall apply, but any conflict between such regulations shall be resolved by applying the more restrictive regulation.

* See Appendix definitions

13.20 PURPOSE

In the interest of wise land use, public health, safety, and welfare, the regulations of this district are intended to guide the use of areas of land with extended periods of high water tables. The regulations are intended to:

1. Control and regulate the development of structures, and of land use on naturally occurring wetlands which could contribute, if uncontrolled, to pollution of surface and ground water by sewage or septic systems;
2. Prevent unnecessary or excessive expenses to the Town in providing and maintaining essential services and utilities as a result of inharmonious use of wetlands;
3. Prevent the destruction of natural wetlands which provide flood protection and water storage, provide recharge of groundwater supply, and provide augmentation of stream flow during dry periods;

4. Encourage those uses that can be appropriately and safely located in wetland areas;
5. Protect presently existing natural wetland wildlife habitats.

13.30 PERMITTED USES

13.31 For very poorly drained soil group areas:

- a. Any use that does not involve the erection of a structure, or that does not alter the surface configuration of the land by the addition of fill or dredging, except common agricultural land drainage provided such use is otherwise permitted in the Use District which this District overlays;
- b. Forestry or tree farming;
- c. Agriculture, including grazing, farming, truck gardening and harvesting of crops;
- d. Water impoundments and the construction of well water supplies;
- e. Drainage ways such as streams, creeks, or other paths of normal runoff;
- f. Wildlife habitat development and management;
- g. Parks and recreation uses, excepting such as may be inconsistent with the purpose and intentions of 13.20;
- h. Conservation areas and nature trails;
- i. Open space in accordance with subdivision regulations and other sections of this ordinance.

13.32 For poorly drained soil group areas:

- a. Any use (including habitable structures) that is compatible with the intent and purpose of this ordinance is permitted, provided such use is otherwise permitted in the Use District which this District overlays. However, for any use other than the permitted uses, review and approval by the

Durham Planning Board in consultation with a qualified soil scientist*, is required.

- b. Forestry or tree farming;
- c. Agriculture, including grazing, farming, truck gardening and harvesting of crops;
- d. Water impoundments and the construction of well water supplies;
- e. Drainage ways such as streams, creeks, or other paths of normal runoff;
- f. Wildlife habitat development and management;
- g. Parks and recreation uses, excepting such as may be inconsistent with the purpose and intentions of Section 13.20;
- h. Conservation areas and nature trails;
- i. Open space in accordance with subdivision regulations and other sections of this ordinance.

13.33 For both soil group areas the following uses may be permitted after site review and approval by the Planning Board.

- a. Streets, roads and other access ways if essential to the productive use of land;
- b. Utility rights of way easements including power lines and pipelines.

13.40 RECLASSIFICATION OF SOILS

If the soil classification is challenged by the applicant, an abutter, or the Planning Board and adequate evidence to support that challenge is presented to the Planning Board by a qualified soil scientist*, the Planning Board may determine that the restrictions pertaining to the challenged soil classifications in this ordinance do not apply.

*Qualified soil scientist is interpreted to mean a person qualified in soils classification and who is recommended or approved by the Strafford County Conservation District Supervisors.

13.50 APPENDIX

13.51 Definitions

a. Wetlands

The United States Soil Conservation Service has defined wetlands as those areas composed of wetland soils. These are mineral and organic soils which are rated as poorly or very poorly drained; that is, those soils having a water table at or near the ground surface for seven or more months of the year.

The soils identified as very poorly drained are:

<u>Soil Symbol</u>	<u>Soil Name</u>
Be	Biddeford
Fa	Fresh Water Marsh
MI	Mixed Alluvial Land
Mp	Muck and Peat
Ru	Rumney
Ta	Tidal Marsh

The soils identified as poorly drained are:

LeA	Leicester
LrB	Leicester Ridgebury
Sb	Saugatuck
ScA, ScB	Scantic
SwA	Swanton

Very poorly drained soils, in this classification, are those in areas of periodic flooding and/or those having the most severe limitations because of high water table.

Poorly drained soils are those characterized as having high water tables, within which may be areas suitable for habitable development if well-planned drainage can be accomplished.

Note: Buxton (Bza-B) soils are borderline but not included in this wetlands definition although they have slow internal drainage.

A detailed description of soils is included in the publication, "Soil Survey of Strafford County, New

Hampshire", issued March 1973 which is on file with the Town Clerk, the Planning Board and the Zoning Board of Adjustment.

All pertinent notations, soil mapping unit designations, and other information shown in this publication, shall be as much a part of this ordinance as if the matters and things set forth by this document were fully described herein.

13.60 OVERLAY DISTRICT:

Refers to those areas in the Town as outlined on the Official Town Wetland Map, based on the U.S.D.A. Soil Survey of Strafford County, 1973 and as superimposed on other Use Districts under this Zoning Ordinance. For the purposes of this, and any other overlay district, where two or more district boundaries overlap, or are superimposed one upon another, the regulations of all such districts shall apply, and wherever there is a conflict between applicable regulations of different overlapping districts, the more restrictive regulation shall be applied.

13.70 INHARMONIOUS USE OF WETLANDS

Defined as those uses incompatible with the purposes of this ordinance; i.e., the regulations listed in Section 13.20, provided that, in cases of uncertainty, the use shall be denied, and determined upon appeal to the Board of Adjustment in the usual manner provided by statute.

ARTICLE 14

SHORELAND CONSERVATION ZONE

14.10 The Shoreland Conservation Zone shall be all land within fifty feet of the shores of Great and Little Bays and of the shore of year round natural flowing streams as designated by a qualified hydrologist. For the purposes of this ordinance shore shall be defined as the mean high water line of the said bodies of water at the water's edge.

14.20 PERMITTED USES:

14.21 The intent is to protect the shoreland from structures used for temporary or permanent habitation; from the cutting of trees over 10 inches in diameter, and from destruction of the aesthetic qualities of the shore, for which purposes the following additional restrictions apply within the shoreland zone, namely:

- a. No structure to have running water or toilet facilities (see item 14.24)
- b. No standing live trees shall be cut that are over 10 inches in diameter. This does not include orchard trees. (See item 14.24.)
- c. No structure to be used for habitation. (see item 14.24)
- d. No permanent structures shall be built within the conservation area except those which are necessary for the legitimate use of the waters.

14.22 Landowners would be allowed use of shoreland river frontage sufficient for developing one access point to the waters not to exceed twenty percent of the total owned frontage for boat dock, ramp, or other facility. Any such facilities must conform to all other town, state, and federal requirements applicable.

14.23 Land in shoreland conservation area may be considered as part of a minimum lot size are required in Article 5 of this ordinance.

- 14.24 Existing lots of record with a depth of less than 150 feet from the shore of any such waters (as determined by a perpendicular line drawn from a straight line averaging the course of the shore) may have a special exception to the requirements of Section 14.21 above, provided the site and the building or structure proposed complies with all other terms of this ordinance, and if it does not, a variance shall be required for this purpose. A condition of any such special exception consideration shall be that the lot of record is a lot approved by the Planning Board on a plan duly recorded.
- 14.25 Building or structure permit applications shall comply with the requirements of Article 10 of this ordinance, and non-residential uses require site review by the Planning Board pursuant to Article 10, section 10.22 and 10.30. Appeals shall initially be to the Board of Adjustment for special exception provided in 14.24 above, or for variance, or otherwise.

ARTICLE 15
DURHAM HISTORIC DISTRICT

15.10 PURPOSE AND INTENT

1. To safeguard the heritage of the Town as it is represented in structures of historical and architectural value.
2. To preserve a District in the Town which reflects elements of its cultural, social, economic, and political history.
3. To foster civic beauty.
4. To promote the use of an Historic District for the education, pleasure, and welfare of the citizens of our Town.

15.20 QUALIFICATIONS

The Historic District established herewith and from time to time amended in the manner prescribed by New Hampshire law has one or more or any combination of the following characteristics and qualifications, without limitations as to cultural or chronological period.

- 15.21 Structures or sites at which events occur or have occurred that contribute to and are identified with or significantly represent or exemplify the broad cultural, political, economic, military, social or sociological history of the Durham Historic District and the nation, including sites and buildings at which visitors may gain insight or see examples either of particular items or of larger patterns in the North American heritage.
- 15.22 Structures or sites importantly associated with historic personages.
- 15.23 Structures or sites importantly associated with historic examples of a great idea or ideal.
- 15.24 Structures or structural remains and sites embodying examples of architectural types or specimens valuable for study of a period style or method of building

construction, of community organization and living, or of landscaping; or a single notable structure or a single site representing the work of a master builder, master designer, architect, or landscape architect.

15.25 Structures contributing to the visual continuity of the District.

15.30 HISTORIC DISTRICT BOUNDARIES

The Durham Historic District is defined as that area made up of the following lots, as defined on the Durham tax map.

Sheet 4; Lots 1, 59, 56, 55, 54, 54-3, 54-4, 53, 52

Sheet 5; Lots 1-4 through 1-10, 1-12, 2-0 through 2-6, 3-1, 3-2, 4-0, 4-2 (seventy-five feet from the center line of the Newmarket Road), 4-10, 4-11, 5-11, 5-10.

Sheet 6; Lots 9-1 through 9-5, 9-6 and 9-8 (two hundred and fifty feet from the centerline of New market Road), 9-7, 11-1, 11-2, 11-6, 11-3 (two hundred and fifty feet from the centerline of Newmarket Road and Durham Point Road), 11-4, 11-5, 12-1 through 12-8.

Sheet 15; Lot 17-1.

This district is also to include all Town property necessary to make a continuous District.

15.40 HISTORIC DISTRICT COMMISSION

1. Members of the Historic District Commission shall be appointed by the Board of Selectmen, and shall initiate appropriations each year for the activities of the Commission.
2. The membership of such commission shall consist of not less than five nor more than seven members. All members shall be residents of the city or town, and one shall be a member of the Planning Board. In determining the qualifications of a member of said commission, the appointing authority shall take into consideration her/his demonstrated interest and ability to understand, appreciate, and promote the purpose of this subdivision.

The members of said commission shall be appointed for three-year terms except the initial appointments shall be staggered so that subsequent appointments shall not recur at the same time. Members of said commission shall serve without compensation and shall serve no more than two successive terms. In the event of a vacancy on the commission, interim appointments may be made by the appointing authority to complete the unexpired term of such position.

3. Such commission shall elect annually a chairman, vice-chairman, and secretary from among its own membership. The decisions of the commission shall be by vote of a majority of the whole number of commission members.
4. Said commission for its purposes shall adopt and may from time to time amend rules and regulations not inconsistent with the intention of this ordinance and of the state enabling legislation.
5. The Durham Historic District Commission may, subject to appropriations or other income, employ clerical and technical assistants or consultants, and may accept money gifts, or gifts of services, grants, and may hold or expend the same for all or any of the purposes of the Durham Historic District.

15.50 AUTHORITY GRANTED

The Historic District Commission is empowered to regulate the construction, reconstruction, alteration, or demolition of structures within the Historic District. (Amended 31:89B)

15.60 USES PERMITTED

Uses permitted in the Historic District shall be those set forth in the Durham Zoning Ordinance provisions for the district except that within Historic Districts, no buildings or structures shall be constructed, reconstructed, altered, restored, moved or demolished unless a certificate of approval has been issued by the Durham Historic District Commission.

15.70 CERTIFICATES OF APPROVAL

In this Historic District, no building permit shall be issued for any construction, alteration, or demolition until

a corresponding certificate of approval has been issued by the Durham Historic District Commission.

- a. Certificates of approval are required before the construction, alteration, repair, moving, or demolition of any structure within the Historic District, even though a permit may not be required under the Zoning Ordinance of the Town of Durham.
- b. Application for Certificate of Approval will be obtained from the Board of Selectmen when obtaining a building permit.
- c. In cases where no building permit is required, the application for Certificate of Approval will be obtained from the Historic District Secretary.

15.71 Application Procedure

Written application for the Certificate of Approval shall be submitted to the Durham Historic District Commission stating the location, use, and nature of the matter or item for which such certificate is sought. Any site plans, building plans, elevations, samples, photographs, sketches, or other information reasonably required by the Commission to determine the "appropriateness" in question shall be made available to the Commission by the applicant.

1. The Historic District Commission in considering each such application shall consider the appropriateness of proposed features where such features are subject to public view.

In determining appropriateness, it shall be the duty of the commission to seek advice from such professional, educational, cultural, or other groups or persons as may be deemed necessary for the determination of a reasonable decision. The commission shall have the power to engage such technical assistance and consultants as may be deemed necessary to carry out the purpose of the District.

The Commission shall not make any recommendations or requirements except for the purposes of historic preservation and of preventing developments, constructions, or changes incongruous with the Historic District, its buildings, sites, and surroundings.

2. The Commission may, if deemed necessary, hold a public hearing prior to acting on the application for approval in the following manner; within ten (10) days after the filing of the application for approval, the Commission shall determine

the estates considered to be materially affected by such application and shall send notice by mail of a public hearing to be held for the purpose of hearing reasons why the application should or should not be approved. Notice of such public hearing shall be sent not less than ten (10) days prior to the hearing date.

15.72 Granting of Certificates of Approval

1. Within a period of forty-five (45) consecutive calendar days after the filing of such application, or within such further time as the applicant may in writing allow, the Commission shall determine whether the action or usage proposed will be appropriate in its opinion in the Historic District in accordance with the purposes of this section, and shall file a Certificate of Approval or Disapproval with the Durham Board of Selectmen. No building permit shall be issued without a Certificate of Approval. Failure to file said certificate by the commission within the specified period of time shall be deemed to constitute approval.

2. Notwithstanding that the action or usage proposed may be deemed inappropriate, owing to conditions especially affecting the lot, building, or structure involved, but not affecting the Historic District generally, the Commission may find that failure to issue a Certificate of Appropriateness will involve a peculiar and unusual hardship, (physical, financial, or otherwise) to the applicant, and that such Certificates may be issued without substantial derogation from the intent and purposes of historic preservation in Durham as stated above.

If the Commission determines that a proposed activity is not appropriate, owing to conditions aforesaid but that failure to issue a certificate causes substantial hardship, the Commission shall forthwith approve such application and shall issue to the applicant a Certificate of Appropriateness in which the Commission may impose conditions.

3. If the Commission determines that a Certificate of Approval should not be issued, it shall place upon its records the reasons for such determination and may include recommendations respecting the proposed reconstruction, alteration, moving, or demolition.

4. Whatever its findings, the Commission shall forthwith notify the applicant and the Board of Selectmen of its determination and shall furnish the applicant in writing a copy of the reasons therefore and its recommendations, if any, as appearing in the records of said commission.

15.80 HISTORIC DISTRICT APPEALS

Appeals may be taken to the Board of Adjustment by any owner or tenant of property wholly or partly within an Historic District, and by any other person, agency, or group, if aggrieved by a ruling of the Historic District Commission. The Board of Adjustment shall hear and act upon such appeals within the periods of time prescribed by the New Hampshire Statute. (RSA 31:66-31:39)

15.90 GUIDELINES

The following are guidelines which shall be initially used by the Historic District Commission:

1. If the proposed construction will not have any visible impact on the exterior of the building or structure it shall be deemed of no interest.
2. Painting and other routine repair to existing structures not involving any other exterior changes shall be deemed of no interest. Parties interested in promoting the spirit and intent of the District are encouraged to come before the Commission for informal guidance in the selection of historically appropriate colors or details.
3. When determining the appropriateness of all other alterations, restorations, or remodeling of existing structures the following criteria shall be used: it is possible that in some instances several criteria will be appropriate, in which case the applicant shall state the criteria he is using and the Commission shall decide accordingly:
 - a. Structures of importance because of a moment in history, be it the date of occupancy by a celebrated personage, or the happening of an event, should be altered (only) so as to be more in conformity with the appearance at that moment in time.
 - b. Structures of importance because of their date of construction should be altered to restore features of their original appearance - unless the structure has been altered at some later time, and that alteration is in keeping with

the character of the District, or is notable in its own right, in which case as an alternative, such altered appearance shall be maintained.

- c. Structures which are important in the history of architecture as unique or exceptionally fine examples of their style should be altered only so as to retain their original appearance.
 - d. Structures merely typical of their age and style should be altered in a fashion of that age or style, if in keeping with the character of the District.
4. New structures and buildings and those being moved into the district from outside the district must conform in general size and scale but need not conform in precise architectural style to the existing structures within the district. Such a structure must be within 10% variation of the average of its nearest neighbors in the following specifications:
- a. Overall height and width
 - b. Street frontage
 - c. Set back from the Street
 - d. Number of stories

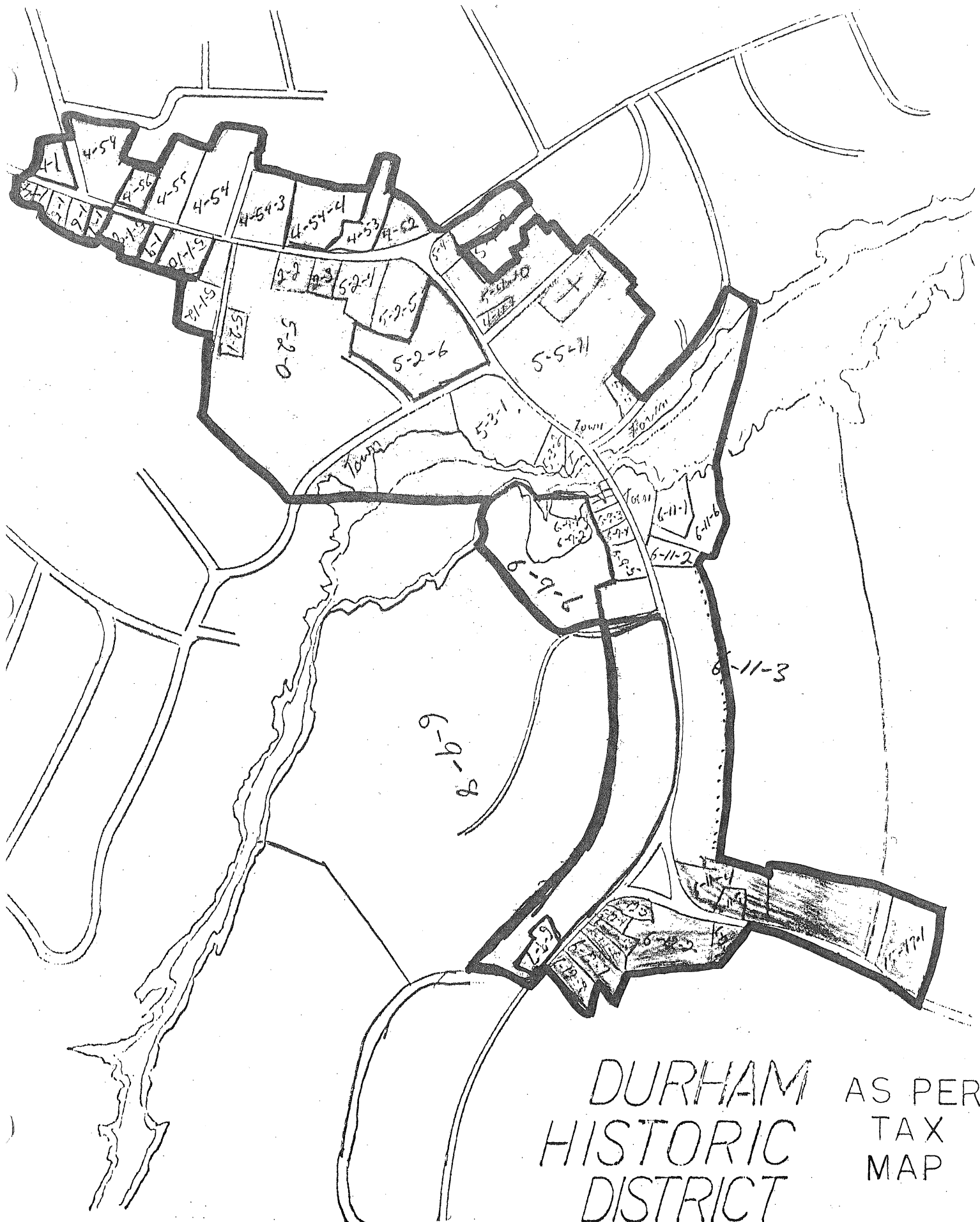
In addition, it shall conform to the general style of the district by being similar to the neighboring structures in three of five of the following criteria:

- a. Openings within the facade as a percentage of the facade: i.e. doors and windows
 - b. Similarity of construction materials and surface texture: i.e. rough, smooth, wood, brick, etc.
 - c. Similarity of roofs: i.e. slopes and shapes
 - d. Similarity of landscaping and ground coverings: i.e. grass, brick, granite, etc.
5. Before a building or other structure is demolished or moved out of the district, the applicant shall in good faith prepare a detailed plan for the reuse of the site which the Commission determines will meet the requirements for a Certificate of Approval. Such Certificate of Approval for demolition and reuse

shall only be granted upon a showing by the applicant that to deny such Certificate would result in a hardship unique to the property in question, and that such hardship is not common to neighboring properties within the district.

6. These guidelines may be from time to time changed by the Historic District Commission after due notice and public hearing.

Zoning Ordinance 1975



DURHAM HISTORIC DISTRICT AS PER TAX MAP