

May 10, 2004

**THE DURHAM ZONING ORDINANCE  
AS ADOPTED BY THE DURHAM TOWN  
COUNCIL ON MAY 10, 2004  
AND AMENDED ON  
NOVEMBER 15, 2004 AND MAY 2, 2005**

**CHAPTER 175  
ZONING**

**PART A. ADMINISTRATIVE PROVISIONS**

**ARTICLE I  
GENERAL PROVISIONS**

**175-1. Title.**

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

**175-2. Authority.**

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

**175-3. Purpose.**

The provisions of this chapter are intended to regulate the use of land for the purpose of protecting the public health, safety, convenience and general welfare of the residents of the Town of Durham. This chapter is adopted in accordance with and in order to implement the Master Plan and other policies designed to promote the orderly growth of the Town of Durham. Among other purposes, this chapter is specifically adopted to preserve air and water quality; to conserve open space and agricultural resources; to protect natural and scenic resources from degradation; to provide for recreational needs; to protect life and property from flooding and other natural hazards; to preserve historic sites and structures; and to ensure that development is commensurate with the character and physical limitations of the land. Further, this chapter is designed to ensure that the timing,

location and nature of new development takes into account the immediate and long-range financial impacts of proposed uses and enhances the achievement of the town's economic development goals.

**175-4. Applicability.**

- A. No land shall be used and no building or structure shall be erected, structurally altered, enlarged, moved, or used unless such use or activity is in conformity with the provisions of this chapter, except as provided in Section 175-5.
- B. No building permit shall be issued for any proposed use, construction or activity which is not in compliance with the Zoning Ordinance of the Town of Durham.

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

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

- A. **Written Notification.** The state agency, county, municipal agency, university, school district or other governmental entity identified in RSA 674:54 shall provide the Planning Board with written notification of any use of its property or facilities that constitutes a substantial change in use or a substantial new use. This notification shall be provided to the Town Planner at least sixty (60) days prior to the start of construction and shall contain plans, specifications, and explanations of the proposed use and an assessment of the potential impacts of the use on the community. The notification for any project involving the University of New Hampshire shall be in accordance with the adopted "Process for Coordination and Communication" between the University and the Town. The Planning Board may hold a public hearing on the proposed use. If a hearing is held, the hearing shall be held within thirty (30) days of the receipt of the written notification and at least two (2) weeks after publication of a notice thereof in a paper of general circulation in the town. The purpose of such hearing shall be to bring to light possible problems of traffic circulation, parking, provision of utilities, the protection of persons and property or any other problems affecting the town or the neighborhood. A representative of the governmental entity or UNH shall be present at the hearing to present the plans, specifications, and construction schedule, and to provide explanations. The Planning Board may issue nonbinding written comments relative to conformity or nonconformity of the proposal with normally applicable land use regulations to the government entity or university within 30 days after the hearing, together with any recommendations for minimizing any adverse impacts of the project on the community.
- B. Any use of land or buildings for governmental or university purposes that is located on land or in buildings or structures that are not owned by the governmental entity or university but for which the entity acquires only the right to use, whether by rental, lease or other beneficial interest, may not be used for any other purpose not otherwise permitted by this chapter.
- C. Any use, construction, or development of land, buildings, or other facilities on governmentally owned or occupied land including UNH, that is not used for a governmental or university use

as defined in RSA 674:54 shall comply with the provisions of this chapter including, but not limited to, the requirements for site plan review and the issuance of building and other permits.

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

## **ARTICLE II DEFINITIONS**

### **175-6. Meaning of Words.**

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, 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 ordinary accepted meanings or such as the context may imply.

### **175-7. Definitions.**

A. As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY AGRICULTURAL ACTIVITIES** – Non-commercial agricultural activities such as gardening and the raising of flowers and ornamental plants conducted by the occupants of a residence primarily for their own use or consumption. These activities shall not include any use that is defined as animal husbandry, commercial agriculture, or the keepings of pigs, chickens, or fowl. The excess products of this activity may be sold so long as the volume of sales does not result in excessive noise, traffic, or other adverse impacts on the neighborhood or constitute a commercial operation that requires the filing of a Schedule F as part of the owner's or operator's federal income tax return.

**ACCESSORY APARTMENT** – A dwelling unit located in a single family residence as an accessory use.

**ACCESSORY DWELLING UNIT** – A dwelling unit located in an accessory structure in conjunction with a single-family residence as an accessory use.

**ACCESSORY STRUCTURE** – A structure detached from a principal building on the same lot and incidental and subordinate to the principal building.

**ACCESSORY USE** – A use of land or a building or a portion thereof which is incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

ACRE – A measurement of area equal to forty three thousand five hundred sixty (43,560) square feet.

ADULT DAY CARE FACILITY – A nonresidential facility for the care of adults.

AGRICULTURAL BUILDING, EXISTING – Any building or structure constructed prior to the adoption of this chapter and designed, used or adapted for agricultural purposes.

AIRPORT, COMMERCIAL – A facility used for landings and takeoffs by commercial and private fixed wing or rotary wing aircraft. Such a facility typically includes aircraft parking and service facilities.

AIRPORT, PRIVATE – A tract of land used for landings and takeoffs by fixed winged or rotary wing aircraft belonging to the owner or lessor of the land or to a third party using the tract of land with the permission of the owner or lessor of the land.

ALL TERRAIN VEHICLE – Any motor-driven vehicle which is designed or adapted for travel over surfaces other than maintained roads with one or more tires designed to hold not more than 10 pounds per square inch of air pressure, having capacity for passengers or other payloads, not to exceed 1,000 pounds net vehicle weight, and not to exceed 50 inches in width.

ALL TERRAIN VEHICLE/OFF HIGHWAY RECREATIONAL VEHICLE FACILITY – A facility or site where people who do not own the site or reside on the site are allowed to operate all terrain vehicles or off highway recreational vehicles with or without compensation. A trail that crosses a parcel and that is used by all terrain vehicle or off highway recreational vehicle operators that do not own or reside on the parcel is an all terrain vehicle/off highway recreational vehicle facility.

ALTERATION – A change or rearrangement in the structural parts of a building or structure or in the means of egress or an enlargement, whether by an extension on a side or by an increase in height, or the moving from one location or position to another.

ANIMAL FEEDLOT – A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock in accordance with USDA regulations. Any activity that requires the filing of a Schedule F as part of the owner's or operator's federal income tax return shall constitute a commercial operation.

ANIMAL HUSBANDRY, ACCESSORY – The breeding and/or raising of livestock or fowl for noncommercial purposes in conjunction with a residence.

ANIMAL HUSBANDRY, COMMERCIAL – The commercial breeding and/or raising of livestock. Animal husbandry does not include any activity that is defined as a kennel, stable, animal feed lot, or the keeping of pigs, chickens, and fowl for commercial purposes. Any activity that requires the filing of a Schedule F as part of the owner's or operator's federal income tax return shall constitute a commercial operation.

APARTMENT – See "dwelling unit."

**AQUACULTURE** – The commercial growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**AQUIFER** – A geologic formation, group of formations or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies. Aquifer includes both bedrock aquifers and stratified drift aquifers.

**AQUIFER, BEDROCK** – Bedrock comprised of a high concentration of interconnected fractures, fissures, or cracks that is able to produce a high quantity of water.

**AQUIFER, STRATIFIED DRIFT** – A geologic formation of predominantly well-sorted sediments deposited by or in bodies of glacial melt water, including gravel, sand, silt or clay, that contains sufficient saturated permeable materials to yield significant quantities of water to wells.

**AQUIFER PROTECTION DISTRICT** – The recharge area of designated aquifers. The "Aquifer Protection District" is shown on an overlay to the Official Zoning Map of the town.

**AQUIFER RECHARGE AREA** – The area in which water is absorbed that eventually reaches the zone of saturation in one or more aquifers.

**AREA OF SPECIAL FLOOD HAZARD** – A designated A0, AH, or V0 zone on the Flood Insurance Rate Map (FIRM) with a one-(1) percent or greater annual possibility of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.

**ASSEMBLY, LIGHT** – The assembly of already manufactured parts into complete or semicomplete units. Such process shall not be detectable at the property line. All manufactured and premanufactured parts and the final product should be limited in size, bulk and weight so that they could be handled by one (1) worker without the aid of machines. All activity shall occur indoors with no outside storage.

**AUTOMOBILE SERVICE STATION** – Any building or premises used primarily for the retail sale of gasoline and lubricants but which may also provide for the incidental servicing of motor vehicles and small engine repair, including grease racks, tire repairs, battery charging, hand-washing of automobiles and the sale of merchandise and supplies related to the servicing of motor vehicles, but excluding body and fender work, engine overhauling, painting, storage of autos not in operating condition or other work involving noise, fumes, glare or smoke.

**BASAL AREA** – The area of a tree trunk (or stems or other vegetation) measured in cross-section. "Total basal area" is the sum of the "basal areas" of all vegetation in the zone.

**BASE FLOOD** – The flood level having a one-percent possibility of being equaled or exceeded in any given year.

**BASEMENT** – Any area of a building having its floor subgrade on all sides.

**BED AND BREAKFAST** – An owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner's family, not more than four (4) individual sleeping rooms, without cooking facilities, for the purpose of providing to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for no longer than two (2) consecutive weeks.

**BOARDINGHOUSE** – An owner-occupied residential building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and having common cooking and dining facilities.

**BOATYARD/BOAT CLUB** – Waterfront facilities for recreational boating, launching facilities and other water-related activities, but excluding the sale of products and accessories associated with boating needs.

**BUFFERING** – The use of landscaping (other than grass on flat terrain), or the use of landscaping along with berms, walls or decorative fences that at least partially and periodically obstructs the view.

**BUILDABLE AREA** – That portion of a building site, exclusive of the required yard areas, on which a structure or building improvement may be erected.

**BUILDING** – Any structure designed or intended for the support, enclosure, shelter or protection of persons, domestic animals, chattels or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" shall include all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures.

**BUILDING FOOTPRINT** – The total area of the ground surface enclosed within the foundation of a building or within the downward projection of the exterior walls of a building.

**BUILDING HEIGHT** – The vertical distance from the mean grade elevation (average grade around the perimeter of the building) to the mean roof elevation [one-half (1/2) of the vertical distance from eave to ridge].

**BUILDING INSPECTOR** – All references to Building Inspector are the same as if they were Code Enforcement Officer.

**BULK STORAGE** – Storage of materials intended for wholesale distribution or for use in a manufacturing or repair facility.

**BUSINESS SERVICES** – Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, building maintenance, employment service, management and consulting services, protective services, office equipment rental and leasing, commercial research, development and testing, photo finishing and personal supply services.

**CAMPGROUND** – Any area or tract of land used or designed to accommodate two (2) or more camping parties, including tents, camping trailers, recreation vehicles or other camping outfits, and includes the necessary accessory uses normally associated with such use.

**CARETAKER APARTMENT** – A dwelling unit that is incorporated into, and is accessory to, a nonresidential use and is occupied by an owner or an employee of the business occupying the principal use and having a gross floor area of less than two thousand (2,000) square feet.

**CATEGORY OF USE** – Any use listed in Section 175-53, the Table of Land Uses or listed as permitted or conditional use in a zoning district.

**CHILD CARE HOME** – A nonresidential facility for the care of preschool and/or school aged children that is located within the residence in which the primary care provider resides.

**CHILD CARE CENTER** – A nonresidential facility for the care of preschool and/or school aged children that is not located within a home or other residence.

**CHILD CARE NURSERY** – A nonresidential facility for the care of children under three years of age that is not located within a home or other residence.

**CLUB** – A building or portion thereof, used by a group of people organized for a common purpose to pursue common goals, interests or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings and a constitution and bylaws.

**COMMERCIAL AGRICULTURE** – The use of land for commercial agricultural purposes including tilling of the soil, raising of crops, pasturage, and including the necessary accessory structures and uses normally associated with such uses. Commercial agriculture includes the raising of flowers but does not include any activity that is defined as animal husbandry, a plant nursery or the keeping of pigs, chickens, and fowl. Any activity that requires the filing of Schedule F as part of the owner's or operator's federal income tax return shall constitute a commercial operation.

**THE COMMERCIAL PROCESSING OF WOOD** – The use of a parcel of land, with or without permanent facilities, for the commercial cutting, sawing, splitting, and/or chipping of wood. Any processing activity that involves more than ten (10) days in any six (6) month period shall be considered commercial wood processing.

**COMMERCIAL USE** – A nonresidential use operated for profit or compensation.

**COMMON OPEN SPACE** – Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements.

**COMMUNITY CENTER** – A community or publicly owned building that accommodates recreational, education, entertainment, and cultural activities primarily for use by residents of the community.

**CONDITIONAL USE** – Those uses which because of peculiar characteristics or because of size, technological processes or equipment or because of the exact location with reference to surroundings, streets and existing improvements or because of demands upon public facilities, require a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same area.

**CONDITIONAL USE PERMIT** – An authorization to conduct a conditional use when such authorization is required by these regulations and when established according to the procedures outlined in Article VII of these regulations.

**CONDOMINIUM** – A building or group of buildings in which units are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional undivided basis. Condominiums shall be considered a subdivision and reviewed accordingly.

**CONFERENCE CENTER** – A facility used for conferences and seminars, which may include accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms. If sleeping accommodations are part of the facility, transients that are not attending activities at the center may occupy not more fifty percent (50%) of the accommodations at any time.

**CONSERVATION ACTIVITIES** – Non-structural activities involved with the maintenance of the natural resource value of land, including forest management activities that do not involve the creation of motorized vehicle ways or the disturbance of the soil. Activities to stabilize erosion or address emergency conditions are part of this use.

**CONSERVATION SUBDIVISION** – A subdivision meeting the requirements of Section 175-107 in which a substantial portion of the site is set aside as common open space.

**CONVENTIONAL RESIDENTIAL SUBDIVISION** – A residential subdivision in which all or most of the area of the parcel is put into lots and roads with little or no common open space.

**CORNER CLEARANCE** – An unobstructed area at street intersections free from any object, vegetation or slope which impedes visibility within a triangle, two (2) of whose sides extend twenty (20) feet from the intersection along the street lines and between two (2) planes three (3) feet and seven (7) feet above the level of the traveled way.

**DAY CARE** – A use which provides daytime care and supervision of any number of children or handicapped, disabled or elderly adults not related by blood or marriage and licensed by the appropriate state agency.



**DEVELOPER** – An owner, the owner’s agent, or any other person, firm or organization with authorization from the owner, who intends to improve or to construct improvements upon his/her property.

**DEVELOPMENT** – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**DIAMETER AT BREAST HEIGHT (DBH)** – The diameter of a tree trunk at a height of four and one-half (4.5) feet.

**DORMITORY** – A building occupied by a resident manager and used, designed and adapted to provide housing for more than ten (10) occupants. 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.

**DRIVE THROUGH FACILITY** – A service facility designed for the convenience of the motoring public that is intended to enable the customer to transact business with a person located within a structure or a machine without exiting the motor vehicle.

**DRIVEWAY** – A private, vehicular access connecting a house, parking area, garage or other building with the street.

**DUST-FREE** – The maintenance of a dust free environment by paving with one of the following methods: bituminous paving, concrete, compacted crushed rock or gravel, or other suitable materials.

**DWELLING GROUP OR CLUSTER** – A pattern of residential development where units are grouped together on a single lot around access courts with the remainder of the lot left in its natural condition or as common open space.

**DWELLING UNIT** – One (1) or more rooms arranged, designed or used for residential purposes for one (1) household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use for residential purposes.

**EDUCATIONAL FACILITIES** – A building or part thereof principally used, designed or adapted for educational use or instruction and operated by an educational institution approved by the New Hampshire Postsecondary Educational Commission.

**ELDERCARE FACILITY** – Housing principally used, designed, or adapted for use by elderly citizens, fifty-five (55) years of age and older that are not capable of living independently and that that require assistance in activities of daily living (ADL’s), and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire. Residents of an eldercare facility shall receive a package of services to meet their needs. An “eldercare facility” may be contained in a single building or group of buildings and may

include assisted living facilities or nursing home facilities. A “life care community” or other retirement community that provides a continuum of care including both independent living units and units for residents that require assistance, shall be considered to be an eldercare facility.

**ELDERLY HOUSING** – Housing principally used, designed or adapted for use by elderly citizens, fifty-five (55) years of age and older who are capable of living independently, and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire, as amended. “Elderly housing” may be contained in a single building or groups of buildings and may include dwelling units that do not include services for the residents and/or congregate housing that includes services such as meals, housekeeping, recreational programs and related management support systems.

**EXCAVATION** – A land area that is used, or has been used, for the commercial taking of earth, including all slopes. This includes removal from its natural location of soil, sand, gravel, rock, topsoil, loam, clay, peat, or other mineral deposits. This does not include the excavation of material incidental to approved construction of buildings, driveways, or parking areas; or the excavation of material incidental to and at the site of construction or repair of streets.

**FLOOD or FLOODING** – A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM)** – An official map of a community on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** – An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

**FLOODPLAIN or FLOOD-PRONE AREA** – Any land area susceptible to being inundated by water from any source. (See definition of "flood or flooding.")

**FLOODPROOFING** – Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY, REGULATORY** – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation.

**FLOOR AREA, GROSS** – The sum of the areas of all floors of a building as measured from the exterior dimensions, but not including cellars, attics, porches, garages or areas occupied by heating and ventilating equipment.

**FLOOR AREA, HABITABLE** – Heated areas used daily for living, eating, cooking or sleeping, but excluding garages, circulation areas, storage areas, etc. For the purposes of this chapter, "habitable floor area" is deemed to be seventy (70) percent of the gross floor area of a given building unless evidence sufficient to rebut that presumption is submitted to the Durham Code Enforcement Officer. 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 the town authorities concerned. (It is recognized that, under these definitions, it is possible for the "habitable floor area" to exceed the gross.)

**FOUNDATION, PERMANENT** – A continuous perimeter foundation of masonry or concrete constructed in accordance with the Building Code of the Town of Durham.

**FRATERNITY/SORORITY** – A fraternal organization officially recognized by the University of New Hampshire, and organized to benefit the Durham/University of New Hampshire community through the efforts of its members, who are students currently enrolled at the University of New Hampshire.

**FRATERNITY/SORORITY HOUSE** – A building used primarily to provide lodging facilities for the members and employees of a fraternity or sorority.

**FRONTAGE** – See "lot frontage."

**GALLERY** – A business involving the display and sale of objects of art such as paintings, sculpture, assemblies, and collages. A gallery may include the studio of one or more artists.

**GOLF COURSE** – A tract of land laid out with at least nine holes for playing the game of golf and improved with fairways, greens, landscaping, and/or hazards. A golf course may include a club house that provides services to golfers and/or members including, but not limited to, the sale and repair of golf equipment and food and beverage service, and accessory buildings and structures necessary for the operation of the course.

**GOVERNMENT USE** – The use or development of a parcel of land or building by a governmental body, agency, or organization or by a quasi-governmental agency or organization carrying out a recognized governmental function.

**GREENWAY** – A network of connected common open spaces and/or other conservation land that typically extends along or around a natural feature such as a stream, pond, wetland, or wildlife travel corridor, or includes an area with significant scenic, historic, archeological, or cultural value, or provides for passive or active recreation such as trails or similar linear facilities.

**GROUNDWATER** – All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

**GROUNDWATER RECHARGE** – The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

**GROUND COVER** – Low plants ranging from ground level to three (3) feet which grow to form a continuous cover over the ground, such as vinca, English ivy or like material.

**HELIPORT** – A facility used for landings and takeoffs by helicopters.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HIGH-WATER LEVEL** – On saltwater bodies, the seasonal high-water level (the wrack line where tidal debris is deposited at seasonal high tides); on freshwater rivers and streams, the average springtime high-water level, including contiguous wetlands; or for dammed streams, the height of the dam.

**HOME OCCUPATION** – Any occupation, profession, activity or use which is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood and is further defined as follows:

1. **FIRST-CLASS HOME OCCUPATION** – A home occupation meeting the following requirements:
  - a. It occupies no more than five hundred (500) square feet of floor area.
  - b. The principal operator resides on the premises, employs not more than one (1) other person and does not sell on-site any principal manufactured products prepared by others.
  - c. There is no indication of such occupation visible on the exterior of the building or on the lot, except permitted signs.
  - d. 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.
2. **SECOND-CLASS HOME OCCUPATION** – A home occupation meeting the following requirements:
  - a. It occupies no more than one thousand (1,000) square feet of floor area, with the exception of existing farm structures, which may utilize one hundred (100) percent of the floor area.
  - b. The principal operator resides on the premises, employs not more than three (3) other persons and does not sell on-site any principal manufactured products prepared by others.

- c. The activity, except for outdoor storage, is completely enclosed in a building. Outdoor storage of materials or equipment shall not be located in any required setback or yard area and shall be at least ten (10) feet from any lot line and so screened as not to be visible from any public way or shoreline or public park.
- d. 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.

**HOSPITAL** – An institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

**HOTEL** – A building containing seven (7) or more individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities for stays of less than two (2) consecutive weeks, to the general public for compensation, with or without meals, and usually providing on-site recreational services, function rooms, housekeeping, laundry and related services. Access to individual guest rooms is provided through interior corridors.

**HOUSEHOLD** – A group of occupants of a dwelling unit restricted to the following two (2) categories:

- 1. **FAMILY** – An individual or two (2) or more persons related within the second degree of kinship by civil law or by marriage or adoption or foster care arrangement living together as a single housekeeping unit, including necessary domestic help such as nurses or servants not to exceed three (3) in number.
- 2. **UNRELATED HOUSEHOLD** – Any household not conforming to the definition of a "family," provided that no such household shall have a number of members in excess of the figure provided in Table II-1.

**Table II-1. DWELLING DENSITY BY TYPE**

<b>Dwelling type</b>	<b>Maximum number of occupants in unrelated household per 300 square feet of habitable floor area</b>
Single-family dwelling	1
Duplex or townhouse	1
Apartment, including accessory	1.5

apartments	
Rooming/boarding, including accessory rooming/boarding	2
Dormitory	3
Fraternity or sorority	2
Nursing home	2
Elderly housing	1.5

Notes: No more than three (3) unrelated occupants may occupy a dwelling unit in an R, RA, RB, RC or LB Zoning District.

**IMPERVIOUS SURFACE** – A material with low permeability that impedes the natural infiltration of moisture into the ground so that the majority of the precipitation that falls on the surface runs off or is not absorbed into the ground. Common impervious surfaces include, but are not limited to, roofs, concrete or bituminous paving such as sidewalks, patios, driveways, roads, parking spaces or lots, and storage areas, compacted gravel including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers, wood, and swimming pools.

**IMPERVIOUS SURFACE AREA** – The total area of a site or parcel that is covered by impervious surfaces. The area covered by a deck or similar structure shall be included in the impervious surface area unless the surface of the deck or structure provides for precipitation to pass through it and reach the ground in a dispersed pattern and the material under the deck or structure is not an impervious surface.

**IMPERVIOUS SURFACE RATIO** – The impervious surface area of a site or parcel divided by the total area of the site or parcel expressed as a percentage.

**INN** – An owner-occupied, single-family residence containing, in addition to living accommodations for the owner and her family, not more than six (6) individual sleeping rooms, without cooking facilities, for the purpose of providing to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for no longer than two (2) consecutive weeks.

**JUNKYARD** – An area of land used for the storage, outside of a completely enclosed building, of used and discarded materials, including but not limited to wastepaper, rags, metal, building materials, furnishings, machinery, vehicles or parts thereof. "Junkyard" also means any business or any place of storage or deposit which has stored or deposited two (2) or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles, or old iron, metal, glass, paper, cordage or other waste, or discarded or secondhand material which has been a part or is intended to be a part of any motor vehicle, the sum of which parts shall be equal in bulk to two (2) or more motor vehicles.

**KEEPING OF PIGS, CHICKENS, AND FOWL FOR COMMERCIAL PURPOSES** – The commercial breeding and/or raising of pigs, hogs, chickens, ducks, turkeys, and similar fowl. Any activity that requires the filing of a Schedule F as part of the owner's or operator's federal income tax return shall constitute a commercial operation.

**KENNEL** – Any lot or premises on which four (4) or more dogs, cats or similar small animals, or a combination thereof, which are in excess of four (4) months of age, are boarded for compensation or bred for sale. A kennel shall not include licensed veterinary medical facilities.

**LANDSCAPE BUFFER** – See "solid planting" in landscaping definitions.

**LANDSCAPING** – Some combination of planted, living trees, shrubs, hedges, vines, ground cover and flowers suitable for the climate, exposure and site condition. In addition, the combination or design may include earth sculpture, cobble, bark, mulch, edgers, flower tubs, rock and such structural features as foundations, pools, artworks, screens, walls, fences or benches, but such objects alone shall not meet the requirements of this provision. The selected combination of objects and plans for landscaping purposes shall be arranged in a manner compatible with the building and its surroundings.

**LEACHABLE WASTES** – Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes, that are capable of releasing contaminants to the surrounding environment.

**LIBRARY** – A place in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, and prints are kept for reference or reading.

**LIGHT ASSEMBLY** – See "assembly, light."

**LIGHT MANUFACTURING** – See "manufacturing, light."

**LIVESTOCK** – Horses, ponies, mules, donkeys, oxen, cattle, sheep, goats, swine, buffalo, llamas, emus, ostriches, alpacas, and any other large animal raised primarily in the outdoors or in unheated structures and that serve as a beast of burden or a source of meat or wool.

**LOT** – A legally recorded and defined parcel of land or two (2) or more contiguous parcels to be used as a unit under the provisions of these regulations.

**LOT AREA** – The total horizontal area within the confines of the boundary lines of a lot. The "lot area" shall not include any part of a public right-of-way which it fronts or abuts.

**LOT, CORNER** – A lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty-five (135) degrees. A "corner lot" shall be considered to be in that block in which the lot fronts. [See "lot line," Subsection (1)(a).]

**LOT COVERAGE** – The aggregate gross ground floor area of all buildings on a lot expressed as a percentage of the total lot area, excluding parking facilities, sidewalks and driveways.

LOT FRONTAGE – A lot line dividing the lot from a street right-of-way.

LOT LINE:

1. LOT FRONT – The front property line of a lot shall be determined as follows:
  - a. CORNER LOT – The front property line of a corner lot shall be the shorter of the two (2) lines adjacent to the streets as platted, subdivided or laid out. Where the lines are equal, the front line shall be that line which is obviously the front by reason of the prevailing custom of the other buildings on the block. If such front is not evident, then either may be considered the front of the lot, but not both. Where such front property line is not obviously evident, the Zoning Administrator shall determine the front property line.
  - b. INTERIOR LOT – The front property line of an interior lot shall be the line bounding the street frontage.
  - c. THROUGH LOT – The front property line of a through lot shall be that line which is obviously the front by reason of the prevailing custom of the other buildings in the block.
2. LOT REAR – The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line shall be assumed to be a line not less than ten (10) feet long lying within the lot and parallel to the front property line. In the event that the front property line is a curved line, then the rear property line shall be assumed to be a line not less than ten (10) feet long lying within the lot and parallel to a line tangent to the front property line at its midpoint.
3. LOT SIDE – The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

LOWEST FLOOR – The lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Chapter.

MAINTENANCE – The replacing or repair of a part or parts of a building or structure which have been made unusable, unsafe, or unsightly, or have been damaged by ordinary wear or tear or by the weather.

MANUFACTURED HOUSING – Any structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating



and electrical heating systems contained therein. Manufactured housing shall not include presite built housing as defined in RSA 674:31-a.

**MANUFACTURING, LIGHT** – Establishments engaged in the mechanical or chemical transformation of materials or substances into new products in which all processing and storage occurs within a building. Light manufacturing includes the assembling of component parts, the manufacturing of products, and the blending of materials such as oils, plastics, resins, or liquors.

**MARINE SALES AND SERVICE** – A business establishment located on a navigable water within the Town of Durham providing boat sales, rental and storage, marine supplies and equipment, marine engine and hull repairs, construction and outfitting of pleasure craft, fuel and oil, electricity, freshwater, ice, and other supplies for owners and crew.

**MASTER PLAN** – The Town of Durham Master Plan, and any amendments which may be made thereto, adopted by the Durham Planning Board as a guide to the prudent development and protection of the resources of the community.

**MEAN SEA LEVEL** – The National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**MEDICAL CLINIC** – A structure or group of structures occupied by one or more medical practitioners for the purpose of providing health services to people on an outpatient basis.

**MINING** – Activities performed in the extraction of minerals including the excavation of pits, removal of minerals, removal of dimension stone, removal or quarrying for the production of construction aggregate, disposal of overburden, and the construction of roads for the haulage of mining materials but not including removal activities that are part of development projects that have received site plan or subdivision approval or that are undertaken only for the purpose of improvement of or use on the owner's property in which there will be no removal of materials from the site.

**MOTEL** – A building containing seven (7) or more individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities for stays of less than two (2) consecutive weeks, to the general public for compensation, with or without meals, and usually providing on-site recreational services, function rooms, housekeeping, laundry and related services. Access to individual guest rooms is provided directly from the outside or from exterior corridors, walkways, or balconies.

**MUSEUM** – A nonprofit institution operated principally for the purpose of preserving, acquiring, and exhibiting objects of historical, cultural, scientific, or artistic interest and which may also engage in the incidental retail sales of items related to its principal purpose.

**NEIGHBORHOOD** – An area of land local to the use concerned, generally lying within a radius of one thousand (1,000) feet, which has a set of unifying characteristics such as housing

style or quality, similar income strata, topographic features, water features, local recreational facilities or convenience shopping. Factors such as a railroad and highway rights-of-way, major streets, rivers, water bodies and severe topographic constraints may form boundaries and serve to separate "neighborhoods."

**NONCONFORMING BUILDING** – A structure or building, the size, dimensions and location of which were lawful prior to the adoption, revision or amendment of a Zoning Ordinance but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

**NONCONFORMING LOT** – A lot, the area, dimensions and location of which were lawful prior to the adoption, revision or amendment of the Zoning Ordinance but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

**NONCONFORMING USE** – A lawful use of a building, other structure or use of land which predated the adoption of the zoning use regulations now and/or previously in effect and which would not be a use authorized in the district designation currently applied to that site.

**NONMUNICIPAL WELL** – Any well not owned and operated by the Town of Durham or its agent.

**NURSERY OR PRE-SCHOOL** – A school for children primarily between the ages of three and five that provides preparation for elementary school.

**NURSING HOME** – A facility licensed by the State of New Hampshire as a nursing home and that provides intermediate and/or skilled nursing care to individuals, who by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves.

**OCCUPANCY** – The predominant use classification of a building, structure or land.

**OFF HIGHWAY RECREATIONAL VEHICLE** – Any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle. All legally registered motorized vehicles when used for off highway recreational purposes shall fall within the meaning of this definition; provided that, when said motor vehicle is being used for transportation purposes only, it shall be deemed that said motor vehicle is not being used for recreational purposes.

**OFFICE, BUSINESS** – A place of business where activities such as general management, bookkeeping, accounting, telephone sales, and telecommunications take place, but where no "walk-in" consumer retail sales of physical products occur. A business office may include research and development activities, software development, and information transfer and management activities but shall not include the production of physical products for sale or distribution.

**OFFICE, PROFESSIONAL** – A building containing one (1) or more offices in which there is no display of unrelated stock or wares in trade commodity sold, nor any commercial use conducted other than the professional offices of a doctor, dentist, lawyer, architect, engineer and related laboratories, insurance agent, realtor or other similar professional services, but excluding barbershops, beauty salons or similar services.

**OLDER SINGLE-FAMILY RESIDENCE** – A single-family residence that has been at its current location since 1950.

**ONE-HUNDRED-YEAR FLOOD** – See "base flood."

**OPEN SPACE** – Land such as, but not limited to, recreational areas, playgrounds, and conservation land that contains no structures other than those incidental to recreation or agriculture.

**OVERSTORY** – Vegetation ranging from fifteen (15) feet to the top of the canopy.

**OWNER** – An individual, firm, association, syndicate, partnership or corporation having sufficient proprietary interest to seek development of land.

**PARKING SPACE** – A space within or without a building, exclusive of driveways, meeting the minimal requirements of this chapter, used to temporarily park a motor vehicle and having access to a public street or driveway.

**PERFORMANCE GUARANTY** – Any security acceptable by the town as a guaranty that improvements required as part of an application for development are satisfactorily completed.

**PERMITTED USE** – A use specifically permitted or analogous to those specifically permitted as set forth in the Table of Uses or the zoning district standards.

**PERSONAL SERVICES** – Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

**PLANT NURSERY** – The commercial cultivation and/or raising of flowers, ornamental and greenhouse plants, and other vegetation including the necessary accessory structures and uses normally associated with such uses. A plant nursery may include the retail sale of plant materials raised on the premises together with related accessory items.

**PRESITE BUILT HOUSING** – Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this subdivision, presite built housing shall not include manufactured housing as defined in RSA 674:31.

**PRINCIPAL USE** – The primary or predominant use to which the property is or may be devoted and to which all other uses on the premises are accessory.

**PROHIBITED USE** – A use which is not specifically permitted.

**PUBLIC UTILITY** – A public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, telephone, television cable, gas and transportation for persons and freight.

**RECREATIONAL FACILITY, INDOOR** – A building or structure enclosed by walls and a roof designed and equipped for the conduct of indoor sports, leisure activities, and other customary and usual recreational activities. These include, by way of example only, skating rinks, gymnasias, bowling alleys, fitness centers, and arcades.

**RECREATIONAL FACILITY, OUTDOOR** – A place or structure designed and equipped for the conduct of outdoor sports, leisure activities, and other customary and usual outdoor recreational activities. An outdoor recreational facility shall not involve the use of individual motorized vehicles, all terrain vehicles, off highway recreational vehicles, motorized rides, or fire arms. Outdoor recreation facilities include, by way of example only, miniature golf courses, cross country ski centers, stadia, tennis courts, and ball fields.

**RECREATIONAL PLAYING FIELDS, OUTDOOR** – Non-commercial outdoor playing fields for organized practices like soccer, field hockey, baseball and similar outdoor sports as approved by the Planning Board of the Town of Durham through Site Plan Review. No structures allowed except for necessities like small sheds for maintenance and portable toilets. No lighting, voice amplification equipment or paved parking lots or areas shall be permitted.

**RECREATIONAL VEHICLE** – A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.

**REFERENCE LINE** – The regulatory limit of a surface water or wetland determined as follows:

- Wetlands – the interface of the identified wetland and upland
- Tidal waters – the highest observable tide line or the furthest landward limit of tidal flow not including storm events
- Natural fresh water bodies – the natural mean high water level
- Impoundments – the waterline at full pond as determined by the elevation of the spillway crest or by the limits of flowage rights
- Rivers and streams – the ordinary high water level or mark

**RELIGIOUS USE/FACILITY** – A structure or place in which worship ceremonies, rituals and education pertaining to a particular system of beliefs are held.

**REPAIR SERVICES** – Businesses providing for the repair of personal and business property such as radios and televisions; electrical and electronic equipment; watches, clocks, and jewelry; furniture and upholstery; sporting equipment; small engines and equipment; and similar items but not including the repair of motor vehicles, boats, recreational vehicles, or heavy equipment. Retail sales of parts and supplies shall be included provided such sales are accessory to the repair service.

**RESIDENCE, DUPLEX** – A building and accessories thereto principally used, designed or adapted with two (2) dwelling units, each of which is completely separate.

**RESIDENCE, MULTI-UNIT** – A building and accessories thereto principally used, designed or adapted with three (3) or more dwelling units. A multi-unit residence includes “townhouse” style attached dwelling units even if the units are separated by a fire wall.

**RESIDENCE, SINGLE-FAMILY** – A building and accessories thereto principally used, designed or adapted as a single dwelling unit.

**RESTAURANT** – A commercial establishment open to the general public where food and beverage are prepared, served and consumed primarily within the principal building. Adequate seating shall be provided. Drive-thru facilities are prohibited.

**RESTAURANT, CARRYOUT** – A commercial establishment open to the general public which, by design of physical facilities or by service or packaging procedures, permits or encourages the purchase, either within or outside the premises, of prepared ready-to-eat foods intended to be consumed either on or off the premises. Drive-thru facilities are prohibited.

**RESTAURANT OR CAFETERIA ACCESSORY TO AN OFFICE BUILDING** – A food service establishment that primarily serves occupants and other users of an office building or complex rather than the general public.

**RETAIL SALE OF FARM PRODUCTS** – The sale directly to the consumer of agricultural products grown or raised on the premises or on other land that is part of the same agricultural business including processed products that are made from products grown or raised on the premises or related land.

**RETAIL STORES** – Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

**ROOMING HOUSE** – An owner-occupied building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and without individual or owner-provided cooking and dining facilities.

**SAWMILL, TEMPORARY** – A portable facility for the sawing, milling, planing, or similar processing of timber or other wood products harvested from the site upon which the temporary sawmill is located. A portable sawmill use shall not include the retail sale of lumber or other wood products on the site.

**SCHOOLS** – See "educational facilities."

**SCREENING** – A device or materials used to conceal one (1) element of a site from other elements or from adjacent or contiguous sites. "Screening" may include one (1) or a combination of the following materials of sufficient mass to be opaque or which shall become opaque after twelve (12) months and which shall be maintained year-round in an opaque condition: walls, fences, berms or plantings.

**SETBACK** – The required horizontal distance, in feet, from a lot line or shoreline to any structure.

**SHOREFRONTAGE** – The width of a lot bordering on a waterbody or wetland measured in a straight line between the intersections of the lot lines with the reference line.

**SHORELAND PROTECTION ZONE** – Encompasses all land within one hundred fifty (150) feet of the high-water level of Great and Little Bays, including tidal sections of their tributaries; the Oyster River; Lamprey River; Follett's Brook; and seventy-five (75) feet from all other perennial brooks, excluding College Brook and Pettee Brook. These water bodies are designated on the Durham Shoreland Protection Zone Overlay Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.

**SIGN** – 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** - Any sign relating to a business on the premises on which the sign is located.

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

**COMBINATION SIGN** - Any sign which combines the characteristics of two or more types of signs.

**CURB LEVEL** - The elevation of the street curb as established in accordance with an ordinance.

**CURB LINE** - The vertical plane of the street side of a curb.

**DAILY SPECIALS READER BOARD** - A sign that is flush mounted, does not exceed three (3) square feet in size and provides a fixed location for the advertisement of daily specials.

**FLASHING SIGN** - Any sign that moves, flashes, contains traveling lights, or gives the impression of any movement or flashing.

**FREE STANDING OR GROUND SIGN** - Any sign which is not a part of or attached to any building but is located elsewhere on a lot. It shall not exceed six (6) square feet in size and five (5) feet in height, including supports.

**IDENTIFYING SIGN** - 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** - Any sign that is lighted by electricity either directly or indirectly.

**MARQUEE** - 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 light sign using exposed neon tubes for illumination or display.

**NON-ACCESSORY SIGN** - Any sign advertising business or businesses at other locations.

**PRIVATE DIRECTIONAL SIGN** - Any sign of a permanent nature that directs the traveling public to specific buildings, areas, people or things.

**PROJECTING SIGN** - 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** - Any time piece or thermometer erected upon a structure upon the sidewalk or ground or on the exterior of a building or structure for the convenience of the public.

**PYLON OR POLE SIGN** - A sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.

**ROOF SIGN** - Any sign erected upon or over the roof of any building.

**SANDWICH BOARD SIGN** - A portable sign with a message area that does not exceed six (6) square feet in size on each side of a two sided sign. The Sandwich Board Sign shall be no wider than two (2) feet and/or no taller than three (3) feet.

**SIDEWALK** - Any public or private way or thoroughfare, paved or unpaved, intended for the use of pedestrians or foot traffic.

**SIZE OF SIGN** - 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** - Any sign of a non-permanent nature or construction attached to trees, poles, posts or sides of buildings or structures.

**STREET LINE** - The line dividing a lot from a street right-of-way.

**TEMPORARY SIGN** - 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.

**SITE PLAN** – A plan of a lot, tract or parcel of land showing the specific location of all existing and proposed features, such as buildings, other structures, driveways, parking, landscaping, easements, utilities, drainage, etc.

**SLUDGE** – Residual materials produced by the sewage treatment process.

**SOIL SURVEY, HIGH INTENSITY** – A soils map and related materials prepared and certified by a New Hampshire Certified Soil Scientist in accordance with the most recent standards for high intensity soils surveys and/or mapping published by the Society of Soil Scientists of Northern New England.

**SOLID WASTE** – Any discarded or abandoned material, including refuse, putrescible material, septage or sludge, as defined by New Hampshire Solid Waste Rule He-P 1901.03. "Solid waste" includes solid, liquid, semisolid or gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations.

**SPECIAL EXCEPTION** – 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 chapter and only after public hearing and determination by the Board of Adjustment.

**SPECIAL FLOOD HAZARD AREA** – See definition of Area of Special Flood Hazard.

**STABLE** – Any lot or premises on which four (4) or more horses, ponies, or similar equines, or combination thereof, are boarded for compensation or bred for sale.

**START OF CONSTRUCTION** – The date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations on the property or accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

**STREET, ARTERIAL** – A major street that is functionally classified as an arterial with moderate to fast speeds, high volume, designed to provide access to the regional transportation system and move traffic through or around the town or from one general area of the town to another. "Arterial streets" include Madbury Road, U.S. Route 4, Route 108, Route 155A and Route 155.

**STREET, COLLECTOR** – An street which is functionally classified as a "collector" and that collects local traffic from neighborhoods and moves it to an adjacent neighborhood or transfers the traffic to the arterial system.

**STREET, PRIVATE** – A private right-of-way for vehicles which provides a principal means of access to two (2) or more lots and is subject to an easement for ingress and egress running with the land to the benefit of all lots having frontage thereon. Such easement shall define the parties responsible for maintenance, the collection of trash and recyclables, and snow removal.

**STREET, PUBLIC** – A dedicated public right-of-way for vehicles which affords a principal means of access to abutting properties.

**STRUCTURAL PARKING** – Any structure for the parking or garaging of five (5) or more motor vehicles that is not surface parking.

**STRUCTURE** – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. "Structures" include but are not limited to a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. It shall not include a minor installation such as a fence under six (6) feet high, a mailbox, a flagpole, or an accessory shed.

**STRUCTURE** (For Floodplain Management Purposes) – A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBDIVISION** – The division of the lot, tract or parcel of land into two (2) or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent or lease. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

**SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** – Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**SURFACE PARKING** – A parking lot or other at-grade, uncovered facility for the parking of five (5) or more motor vehicles.

**TEMPORARY** – A period of less than ninety (90) days when in reference to a time frame and not having or requiring permanent attachment to the ground when in reference to structures.

**TIMBER HARVESTING** – The cutting and removal of trees from their growing site, and/or the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid roads, and haul roads.

**THEATER** – A building or part of a building devoted to showing motion pictures or dramatic, musical or live performances.

**TOXIC OR HAZARDOUS MATERIAL** – Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant actual or potential hazard to water supplies or other hazard to human health if such substance or mixture were discharged to land or waters of this town. "Toxic or hazardous materials" include, without limitation, volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids

and alkalis and include, without limitation, products such as pesticides, herbicides, solvents and thinners and such other substances as defined in New Hampshire Water Supply and Pollution Control Rules Section WS 410.04(1), in New Hampshire Solid Waste Rule He-P 1901.03 (v) and in the Code of Federal Regulations 40 CFR 261, as amended. The more-restrictive rules shall apply in all cases. Wastes such as, but not limited to, toxic or poisonous types, flammable or reactive solvents, oils or corrosive oils generated by the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board:

- A. Airplane, boat and motor vehicle service and repair.
- B. Chemical and bacteriological laboratory operations.
- C. Dry cleaning.
- D. Electronic circuit manufacturing.
- E. Metal plating, finishing and polishing.
- F. Motor and machinery service and assembly.
- G. Painting, wood preserving and furniture stripping.
- H. Pesticide and herbicide application.
- I. Photographic processing.
- J. Printing.

UNDERSTORY – Vegetation ranging from three (3) feet to fifteen (15) feet in height.

UNSUITABLE AREA – The area of a parcel that must be subtracted from the gross area of the parcel to determine the usable area of the parcel (see definition of usable area).

USE – The specific purpose for which a building or lot is arranged, intended, designed, occupied or maintained.

USABLE AREA – The area of any parcel, including conventional lots and all subdivisions, that is suitable, in its natural state, for development or intensive use and, therefore, can be used in determining the allowed density of development. The usable area of a parcel of land shall be determined in accordance with the provisions of 175-55.

USABLE BUILDING VOLUME – The sum of the volume of all spaces enclosed within the portions of a building used or intended to be used for human habitation not including garages, attics, storage areas, and non-habitable basement spaces.

VARIANCE – A variation from the terms of this chapter, not otherwise permitted within the district concerned, which may be granted by the Zoning Board of Adjustment pursuant to its discretionary power.

VETERINARY CLINIC/GROOMING – A facility where animals or pets are given medical or surgical treatment or where animals and pets are groomed, and in which the boarding of animals is short-term and incidental to the medical care or grooming.

WATER SURFACE ELEVATION – The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

WETLANDS – Areas where soils, land types and the vegetational community consist of any of the following:

1. Poorly drained and very poorly drained soils. In addition to the definitions contained herein, soil scientists shall use the “Key to Soil Drainage Classes” found in the SSSNNE document High-Intensity Soil Maps for N.H., 5/23/86.
  - a. POORLY DRAINED SOILS – Soils where water moves so slowly that the water table is at or within twelve (12) inches of the ground surface for six (6) to nine (9) months of the year.
  - b. VERY POORLY DRAINED SOILS – Soils in the area where water is removed so slowly from the soil that the water table is at or within twelve (12) inches of the ground surface for nine (9) to ten (10) months of the year. Wherever reference is made to "very poorly drained soils," this shall also include:
2. Wetlands associated with saltwater, defined as lands:
  - a. Subject to tidal action or which border on, are connected to or were formerly connected to tidal waters, whose elevation does not exceed three and one-half (3 1/2) feet above local mean high tide; and
  - b. Which are capable of, or do support any of the vegetation listed in RSA 483-A:1-a.
3. Surface waters, defined as salt- or freshwater ponds, lakes, creeks and bays and perennial rivers or streams, the boundaries of which are the local mean high tide or mean seasonal high-water level, or for dammed streams, the height of the dam.

YARD – Any open space that lies between the principal building or group of buildings and the nearest lot line and is unoccupied by any structure, unless specifically permitted, and is further defined as front yard, side yard, rear yard and shorefront yard.

B. The following definitions apply to Personal Wireless Service Facilities:

ANTENNA – The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.

ANTENNA ARRAY – A collection of antennas attached to a mount to send and receive radio signals.

**AVERAGE TREE CANOPY HEIGHT** – An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area, such as the area delineated in Section 175-103.A.4.

**CAMOUFLAGED** – A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

**CARRIER** – A company that provides personal wireless services, also sometimes referred to as a provider.

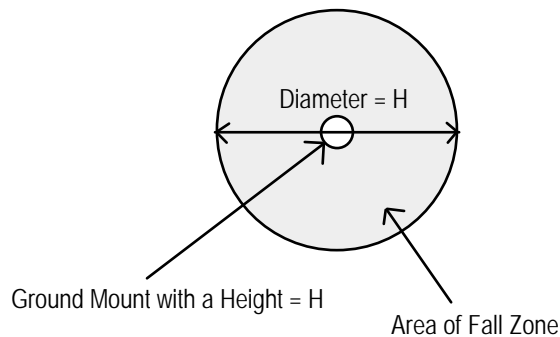
**CO-LOCATION** – The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

**ENVIRONMENTAL ASSESSMENT (EA)** – A document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

**EQUIPMENT SHELTER** – An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

**FALL ZONE** – The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal the height of the facility, including any antennas or other appurtenances, as set forth in Figure II-1. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**Figure II-1**



**GUYED TOWER** – A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

**HEIGHT** – The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

LATTICE TOWER – A type of mount with multiple legs and structural cross-bracing between the legs that is self supporting and free-standing.

MAST – A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

MONOPOLE – A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

MOUNT – The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. Roof-mounted. Mounted on the roof of a building.
- B. Side-mounted. Mounted on the side of a building.
- C. Ground-mounted. Mounted on the ground.
- D. Structure-mounted. Mounted on a structure other than a building.

PERSONAL WIRELESS SERVICE FACILITY – Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment.

PERSONAL WIRELESS SERVICES – The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

RADIO FREQUENCY (RF) ENGINEER – An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO FREQUENCY RADIATION (RFR) – The emissions from personal wireless service facilities.

SECURITY BARRIER – A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

SEPARATION – The distance between one carrier's array of antennas and another carrier's array.

C. The following definitions apply to landscaping and buffering provisions:

DAMAGE – Includes any intentional or negligent act which will cause vegetation to decline and die within a period of five (5) years, including but not limited to such damage inflicted upon the root system by the operation of heavy machinery, the change of the natural grade above the root system or around the trunk of a tree and damages from injury or from fire inflicted on vegetation which results in or permits infection or pest infestation.

HAZARD TREE – Any tree that has the potential to have parts of or the entire tree fall under moderate to mild environmental changes, conditions or man-made forces.

HISTORIC OR SPECIAL-INTEREST TREE – A tree which has been found by the Tree Warden to be of notable interest because of its age, type, size or historic association.

LANDSCAPED AREA – That area within the boundaries of a given lot which is devoted to and consists of landscaping material, including but not limited to grass, trees, shrubs, flowers, vines and other ground cover, native plant materials, planters, brick, stone, natural forms, water forms, aggregate and other landscape features; provided, however, that the use of brick, stone, aggregate or other inorganic materials shall not predominate over the use of organic plant material.

LANDSCAPE DEVELOPMENT – Trees, shrubs, ground cover, vines, grass and other materials as listed in the definition of "landscaped area" above installed in planting areas for the purpose of fulfilling the requirements of these regulations.

LANDSCAPED STREET YARD – The area of a lot which lies between the street right-of-way line and the actual front wall line of the building, parallel to the street, until such imaginary extensions of such front building wall line intersect the side property lines. In determining the actual building wall of the building for the purposes of this definition, steps and unenclosed porches shall be excluded, but such building wall line shall follow and include the irregular indentations of the building. Further, for the purposes of these regulations, canopies, gas pump islands, overhangs and similar extensions will be figured as part of the "landscaped street yard." A front building wall is a building wall fronting on a street or publicly used area.

- A. On corner lots, the "landscaped street yard" shall consist of all of the area of such lot between all abutting street right-of-way lines and their corresponding actual front building wall lines, as such lines are imaginarily extended in the manner provided above.
- B. When there are multiple buildings on a lot, the "landscaped street yard" shall consist of all the area of the lot between the street right-of-way line(s) and an imaginary line beginning at one side of the property line, running parallel to the street, connecting to the frontmost corner of the building wall, fronting the street and nearest such side property line, then following and connecting the frontmost walls of all buildings fronting on the street and then extending to the other side property line, running parallel to the street. If a building has a rounded front, the front building wall corners shall be the points closest to the side boundaries.
- C. The delineation of the "landscaped street yard" is illustrated by the diagrams accompanying these regulations as Exhibit A and made a part thereof.
- D. Notwithstanding all of the foregoing, on land used only for parking purposes or only as a commercial or private parking lot, the "landscaped street yard" shall consist of the area between the street right-of-way line and the back property line.

LANDSCAPED YARD AREA – The front, side and rear yard areas as established below. In defining the side and rear yard area, the property line shall replace the street right-of-way line defined in the landscaped street yard.

MAINTAIN or MAINTENANCE – In reference to landscaping, includes pruning, mulching, mowing, spraying, fertilizing, propping, bracing, treating for disease or injury, snow removal and any other similar act which promotes the life, growth, health or beauty of the landscape vegetation.

PUBLIC AREA – Includes parks, playgrounds, areas around public buildings and all other areas under the supervision and maintenance of the town.

SHRUB – A bushy, wooden plant, usually with several permanent stems and usually not over ten (10) feet high at its maturity.

SOLID PLANTING – A planting of evergreen trees and/or shrubs which will prevent the penetration of sight and light to a minimum height of five (5) feet.

SPECIMEN TREE – A tree which has been determined by the judgment of the Tree Warden to be of high value because of its type, age or other professional criteria.

TREE – Any self-supporting, woody perennial plant which has a trunk diameter of two (2) inches or more when measured at a point of four and one-half (4 1/2) feet above the ground level and which normally attains an overall height of at least ten (10) feet at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of ash and others.

TREE WARDEN – The person whose duties shall include the inspection of landscaping installations according to the Town of Durham performance guaranty guidelines, and to ensure that the landscaping provisions of this chapter are being carried out and installed according to the plans submitted and approved.

VEGETATION – Includes a tree, plant, shrub, vine or other form of plant growth.

### **ARTICLE III ADMINISTRATION AND ENFORCEMENT**

#### **175-8. Administrative Officer.**

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



**175-9. Zoning Administrator.**

- A. The Zoning Administrator, his assistant or designee shall:
1. Enforce any and all provisions of this chapter.
  2. Keep complete, accurate and secure records.
  3. Accept applications and ensure their appropriateness and completeness.
  4. Accept and remit fees as established in the adopted administrative procedures.
  5. Update these regulations and the Official Zoning Map as directed by the Town Council.
  6. Provide for the accuracy and security of the Official Zoning Map.
  7. Undertake any other administrative function appropriate to the office of the Zoning Administrator.
  8. Report to the Town Planning Board any recommendations for changes and improvements in these regulations and the procedures therein.
  9. Issue any permit granted by the Planning Board or ordered by the Board of Adjustment and make periodic inspections to verify that all conditions of such granted permit are complied with by the applicant or his agent.
  10. Receive and investigate allegations of noncompliance or violation of these regulations, report findings to the Town Council and file a complaint where such allegations are based in apparent fact.
  11. Refer any matters under appeal to the Zoning Board of Adjustment for its action.
  12. Make recommendations to the Planning Board in connection with any conditional use permit or to the Board of Adjustment in connection with any application for variance or appeal and recommend such conditions as may be necessary to fully carry out the provisions and intent of this Zoning Ordinance.
  13. Take the most conservative or restrictive approach in applying or interpreting these regulations.
- B. The Zoning Administrator shall not:
1. Make any changes in the uses categorically permitted in any zoning classification or zoning district, or make any changes in the terms of this Zoning Ordinance, or make any changes in the terms, classifications or their boundaries on the Official Zoning Map.
  2. Issue any conditional use permit or variance without the specific direction to do so from the authorizing body.

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

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

**ARTICLE IV  
INTERPRETATION, AMENDMENTS, AND LEGAL PROVISIONS**

**175-11. Scope and Interpretation.**

In interpreting and applying the provisions of this chapter, 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 chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern. Any use not specifically permitted or permitted by conditional use permit is prohibited.

**175-12. Administrative Appeals.**

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

**175-13. Severability.**

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

#### **175-14. Amendment Procedure.**

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

- A. ***Amendments Initiated by the Planning Board.*** The Planning Board may, upon its own initiative, from time to time, consider amendments to the Zoning Ordinance, including its overlay districts, and submit recommendations thereon to the Town Council. The referral shall be made in writing by the chair of the Planning Board. Such amendments shall be developed pursuant to the notice and public hearing requirements contained in Subsection D below.
- B. ***Amendments Initiated by the Town Council.*** The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the chair of the Town Council. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their referral.
- C. ***Amendments Initiated by Citizens.*** Citizens submitting amendments to the Zoning Ordinance, including its overlay districts, shall forward their proposed changes to the Planning Board for its consideration. Such submission shall be by typed petition signed by not fewer than fifty (50) properly registered voters of the Town of Durham, and shall set out the language of the proposed amendment or the proposed change to the Official Zoning Map. The Planning Board shall have the request placed on the agenda for its next regularly scheduled meeting. It shall, after following the notice and public hearing requirements contained in Subsection D below, make its recommendation concerning such request to the Town Council within sixty (60) days of the date of the Planning Board's initial consideration. A thirty (30) day extension of the above time limit may be granted by the Town Council.
- D. ***Public Notice and Hearing Requirements.***
  1. **Notice.** Notice shall be given for the time and place of the public hearing at least ten (10) days before the hearing. The notice required under this section shall not include the day notice is posted or published or the day of the public hearing. Notice of each public hearing shall be published in a newspaper of general circulation in the municipality and shall be posted in at least two (2) public places.
  2. **Text of Ordinance.** The full text of the proposed amendment to the Zoning Ordinance need not be included in the notice if an adequate statement describing the proposal and designating a place where the proposal is on file for public inspection is stated in the notice.

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

F. **Action by Town Council.**

1. Agenda. The proposed amendment shall be placed on the agenda of the Council at the next regularly scheduled Council meeting for first reading.
2. First Reading. If the Council votes not to pass at the first reading, the proposed amendment dies. If the Council votes to pass the amendment to second reading, it shall be scheduled for a public hearing before the Council. The Council may, however, refer an amendment initiated by petition that has not passed at the first reading to the Planning Board to be revised and resubmitted to the Town Council for reconsideration. Such reconsideration shall be considered to be the first reading of the amendment.
3. Notice and Public Hearing Requirements. Prior to final Council action, the notice provisions contained in Subsection D above shall be followed.
4. Minor Revisions. After the public hearing, the Council may make minor changes to the proposed amendment, so long as the proposed amendment remains substantially the same as that which was advertised for the public hearing.
5. Second Reading. Following the second reading and public hearing, the Council shall vote on the proposed amendment.
6. Majority Vote Required. Any proposed amendment shall require a majority affirmative vote of Council members present in order to pass.
7. Recording of Amendment. If passed by the Council, the ordinance amendment shall be recorded, authenticated, indexed and printed in accordance with the provisions of the municipal charter.

G. **Protest Process.** Pursuant to RSA 675:5, concerned property owners may protest proposed amendments to the Zoning Ordinance.

1. Required Signatures. All protest petitions must be signed by either:
  - a. The owners of twenty (20) percent of the area of the lots included in such proposed change; or

- b. The owners of twenty (20) percent of the area within one hundred (100) feet immediately adjacent thereto or across a street therefrom.
2. Requirements for Council Consideration of Protest Petition(s).
    - a. In order to have any protest considered:
      - (1.) The owners signing the petition shall identify themselves on the petition by name and address and by address of the property involved or by lot and map number or by whatever other means is used within the town to identify the land in question so that the Durham Town Council may identify such others as interested and affected parties.
      - (2.) The signed protest petition shall be submitted to the Durham Town Council at least ten (10) days prior to the next Town Council meeting; provided, however, that each protest petition shall apply to that petition only. The Chairman of the Durham Town Council shall announce at the opening of the Council meeting that a protest petition has been received.
    - b. Required Council Action. Any such amendment or repeal developed pursuant to this subsection shall not become effective except by the favorable vote of two-thirds (2/3) of all Council members present at its second reading. (See Subsection F above.)

## **ARTICLE V PLANNING BOARD**

### **175-15. Planning Board.**

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

### **175-16. Powers and Duties.**

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

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

**175-17. Delegation of Site Review Authority.**

The Planning Board is empowered to delegate to a Technical Review Committee, its site review powers for minor site plan reviews of permitted uses (those listed without an asterisk in the zoning district standards or listed as permitted in the Table of Uses). The Technical Review Committee shall, at a minimum, consist of the Code Enforcement Officer/Zoning Administrator, and the Director of Planning and Community Development. The membership of the Technical Review Committee may expand at the discretion of the Code Enforcement Officer/Zoning Administrator and the Director of Planning and Community Development to include staff representatives from other town departments, including but not limited to, the Public Works, Police, and Fire Departments. The Technical Review Committee shall insure compliance with the provisions of the Town of Durham Site Plan Review Regulations. The Committee shall have the power to grant waivers under Section 12.02 of the Site Plan Review Regulations. The Technical Review Committee shall approve, disapprove, or make a recommendation to the Planning Board on site plans reviewed by it. For each site plan reviewed by the Technical Review Committee, the Planning Board shall be provided, at its next regularly scheduled meeting, a written report of the Technical Review Committee's decisions. Decisions rendered by this Committee may be appealed to the full Planning Board, provided that a notice of appeal is filed within thirty (30) days of the Committee's decision. The Planning Board shall hold a public hearing on the appeal. The review by the Planning Board shall be based upon the materials submitted to the Technical Review Committee, the record of the committee action, and testimony at the public hearing. The Planning Board may affirm or change the decision of the committee. All provisions of RSA 676:4 shall apply to actions of the Technical Review Committee.

**ARTICLE VI  
ZONING BOARD OF ADJUSTMENT**

**175-18. Appointment.**

- A. ***Appointment.*** There shall be a Zoning Board of Adjustment appointed by the Town Council, consisting of five (5) members in accordance with Sec. 11.2. of the Town Charter and state law each serving a three-year term and three (3) alternates each serving a three-year term. Such terms shall be staggered. The Town Council shall fill any vacancy for the period of the unexpired term.
- B. ***Disqualification of Board Member.*** No member of the Zoning Board of Adjustment shall sit upon the hearing on any question which the Board is to decide in a judicial capacity who would be disqualified from any case, except exemption from service and knowledge of the facts involved gained in the performance of his official duties, to act as juror upon the same matter in any action at law.

**175-19. Powers and Duties.**

- A. The Zoning Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the efficient administration and enforcement of this chapter. In addition, the Zoning Board of Adjustment shall have the following powers:
  - 1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter.
  - 2. To authorize, upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.
  - 3. The Board shall hear and decide requests for special exceptions only when the granting of a special exception is specifically provided for in this chapter. No other special exceptions shall be granted. The request for the special exception and the Board's action on the request shall reference the specific section whereby the granting of the special exception is provided for in this chapter. Appropriate conditions may be placed on special exception approvals when necessary to meet the standards of this chapter.
  - 4. To hear and decide requests for equitable waivers of dimensional requirements as provided for in RSA 674:33-a.
- B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

- C. The concurring vote of three (3) voting members of the Board shall be necessary to reverse any action of such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.

**175-20. Meetings.**

- A. A 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 times as the Board may determine.
- C. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings in accordance with RSA 91-A as amended, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Town Office and shall be a public record.

**ARTICLE VII  
CONDITIONAL USE PERMITS**

**175-21. Conditional Use Permits.**

- A. The purpose and intent of a Conditional Use permit is to allow certain uses that are not normally permitted under conventional zoning provisions, provided that these uses are determined by the Planning Board to be of benefit to the town. Specifically authorized conditional uses appear in section 175-53, Table of Land Uses. A Conditional Use is determined to be of benefit to the town if the application is found to be in compliance with the approval criteria in Section 175-23. Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use Permit will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town. The Planning Board shall make a finding of fact, based on the evidence presented by the applicant, Town staff, and the public, that the Conditional Use is or is not of benefit to the town in a specific case as defined by location and the details of the specific plan.
- B. No structure, building or land requiring a conditional use permit shall be used, constructed, altered or expanded unless a conditional use permit specifically required by this chapter has been authorized by the Planning Board and issued by the Zoning Administrator.
- C. Any use that was lawfully established prior to the adoption, extension or application of this chapter and is now permitted by this chapter subject to a conditional use permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of



this chapter. A conditional use permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot on which said use is located.

- D. Structures or buildings devoted to any use which is permitted under the terms of this chapter subject to the securing of a conditional use permit, may not be altered, added to, enlarged, expanded or moved from one location to another on the lot without securing a new conditional use permit.

## **175-22. Procedures.**

### **A. *Application.***

1. Application for a conditional use permit may be made by the owner of the affected property, or his designated agent, on a form obtainable from the Zoning Administrator.
2. The completed application and fee as set by the Town Council shall be submitted to the Zoning Administrator or his designee. Said fee is nonrefundable.

### **B. *Procedure for Consideration.***

1. After receipt by the Zoning Administrator or his designee, the completed application shall be transmitted to the Planning Board staff for their review and evaluation.
2. The planning staff shall set a public hearing date and publish a notice which advertises the public hearing before the Planning Board in a newspaper of general circulation. Public notice shall be made at least ten (10) calendar days prior to the meeting of the Planning Board at which the application is to be considered.
3. The planning staff shall also mail written notice, by certified mail, to all abutting and adjacent property owners within three hundred (300) feet of the subject property and a sign measuring two by three (2 x 3) feet shall be placed on the property by the applicant not less than ten (10) calendar days prior to the time of the public hearing by the Planning Board. The sign shall remain on the property until the conclusion of the public hearing. This sign shall be visible from the most heavily traveled street right-of-way adjacent to the property. The sign shall state the date of the public hearing, the time, the location and the action to be considered. (Where the subject property abuts a public right-of-way, the three hundred (300) foot measurement shall be in addition to the right-of-way along the abutting side.)
4. Any written comment shall be specific when maintaining that the granting of the conditional use permit would adversely or injuriously affect the writer's personal and legal interests.
5. The Planning Board shall consider the application at its next regular meeting following the public notice process.
6. Where development approval for a conditional use includes subdivision or site plan approval by the Planning Board, the application and review procedure for a conditional use

permit shall be made concurrently and in accordance with the procedures specified in the Subdivision Regulations or Site Plan Regulations as applicable to the particular development.

- C. ***Approval of Application and Granting of Conditional Use Permit.*** At least five (5) members must vote in favor of the issuance of a Conditional Use Permit for an application to be approved. Upon rendering a decision to grant a conditional use permit with conditions of approval that must be adhered to by the applicant, the Planning Board shall notify the Zoning Administrator of its decision and he shall issue a conditional use permit with the conditions of approval referred to and itemized in brief on the face of the permit. The application and all subsequent information, correspondence, evaluations, recommendations and decisions shall then be placed on permanent file in the office of the Zoning Administrator. The Conditional Use Permit application and Findings of Fact and Conditions of Approval shall be recorded at the Strafford County Registry of Deeds.
- D. ***Revocation.*** In the event of a violation of any of the provisions of these regulations or amendments thereto or in the event of a failure to comply with any prescribed condition of approval or stipulations placed upon such approval, the Zoning Administrator shall suspend any conditional use permit immediately, shall notify the Planning Board and shall set a date for a hearing to determine if such suspensions shall be lifted or if the conditional use permit shall be revoked. The Planning Board shall be the hearing body. In the case of a revocation of a conditional use permit, the determination of the Planning Board shall be final, unless recourse is sought in a court of competent jurisdiction.
- E. ***Termination and Transferability.*** Once granted, a conditional use permit, with its terms and conditions, shall:
1. Run with the lot, building, structure or use and shall not be affected by changes in ownership.
  2. Terminate twelve (12) months from the date of authorization if the authorized use has not begun:
    - a. Unless otherwise spelled out in the conditions of approval; or
    - b. Unless the applicant can demonstrate good reason(s) at a public hearing before the Planning Board why the permit should be extended.
  3. Terminate after twelve (12) consecutive months of nonuse.
- F. ***Denial of application.*** In the event that an application is denied by the Planning Board, no resubmittal of an application for a conditional use permit for the same or similar use may be made for one (1) year from the date of said denial, unless sufficient new evidence or conditions are offered to the Zoning Administrator to demonstrate that the circumstances have altered and that further consideration of the application is warranted. In such an event, the resubmitted

application shall follow the same procedures as the original and shall be treated as a new application.

### **175-23. Approval Criteria.**

- A. *Planning Board Decision Based on Findings.*** Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a conditional use permit shall be based upon findings of fact and conditions of approval. The findings of fact and conditions of approval shall be supported in the records of its proceedings. The criteria enumerated in Subsection C are required to be met in any matter upon which the Planning Board is required to pass under these regulations. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall be deemed not to be in compliance with these regulations.
- B. *Burden on applicant.*** The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence, through testimony, or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.
- C. *Criteria Required for Consideration of a Conditional Use Permit.*** A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following conditional use permit criteria:
1. Site suitability: The site is suitable for the proposed use. This includes:
    - a. Adequate vehicular and pedestrian access for the intended use.
    - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
    - c. The absence of environmental constraints (floodplain, steep slope, etc.).
    - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
  2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.
  4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.
  5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.
  6. Impact on property values: The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.
  7. Availability of Public Services & Facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
  8. Fiscal impacts: The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.
- D. **Conditions of Approval.** Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary to further the objectives of this ordinance and the Master Plan, or which would otherwise allow the general conditions of this article to be satisfied. Conditions of approval shall be stated in writing in the issuance of a permit. The conditions may include, but are not limited to, the following:

1. Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.
3. Landscaping in excess of any minimum requirements of this Ordinance.
4. Modification of the exterior features of buildings or other structures.
5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
6. Footprint or lot coverage less than the allowed maximum of this Ordinance.
7. Limitations on the number of occupants and methods and times of operation.
8. Grading of the premises for proper drainage.
9. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
10. Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance.
11. Other performance standards as appropriate.

**175-24. Appeals.**

Any persons aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5 III)

**ARTICLE VIII  
VARIANCES AND SPECIAL EXCEPTIONS**

**175-25. Variances.**

- A. *Types of Variances.* The Zoning Board of Adjustment may grant variances from the requirements of this ordinance as provided for in state law.
- B. *Standards for the Granting of Variances.* The Zoning Board of Adjustment shall grant a variance only if it finds that the request meets the criteria set forth in state law.
- C. *Accommodation of Persons with a Recognized Physical Disability.* The Zoning Board of Adjustment may grant a variance from the dimensional standards of this ordinance without finding a hardship when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

1. Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

2. In granting any variance under this paragraph, the Zoning Board of Adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

**D. *Variances from Flood Hazard Overlay District Provisions.*** For applications for a variance from the provisions of Article XV, the applicant shall have the burden of showing, in addition to the usual variance standards, the following:

1. The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

2. If the variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

3. The variance is the minimum necessary considering the flood hazard, to afford relief.

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

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

2. Such construction below the base flood level increases risks to life and property.

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

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

#### **175-26. Special Exceptions.**

**A. *Criteria for the Granting of Special Exceptions.*** The Zoning Board of Adjustment shall grant a special exception only if it finds that all of the following criteria are met. For the purposes of this chapter, 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.

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious, noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes of conditions.
4. As to all nonresidential uses subject to site review by the Planning Board or Technical Review Committee pursuant to RSA 672 through RSA 677, that written approval by the Planning Board or Technical Review Committee of the applicant's site plans must be on file with the Board of Adjustment.

## **ARTICLE IX NONCONFORMANCE**

### **175-27. General Provisions.**

- A. ***Change of Ownership.*** Nonconforming uses, lots, and buildings and structures may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming lot, building or structure subject to the provisions of this article.
- B. ***Repair and Maintenance.*** The normal upkeep and maintenance of nonconforming uses, buildings, and structures including repairs or renovations that do not involve structural changes or expansion of the building, structure, or paving are permitted subject to the provisions of this article. Routine maintenance includes activities such as the replacement of roofing, siding, windows, and deck surfaces and the repaving of existing paved areas.

### **175-28. Nonconforming Uses.**

- A. ***Routine Maintenance.*** Routine maintenance and repairs of the building or structure housing the nonconforming use as well as those modifications required by applicable health and safety codes shall be permitted by the Zoning Administrator.
- B. ***Nonconforming Status of Projects Under Construction.*** Any use of a building for which a building permit has been issued prior to the adoption or amendment of these regulations and the erection of which is in conformity with the plans submitted and approved for such permit, but that does not conform to the use provisions of these regulations, shall be a nonconforming use, and may be continued or modified in accordance with the following provisions.
- C. ***Continuation of a Nonconforming Use.*** Any nonconforming use may be continued, except that if any such nonconforming use is abandoned or desisted or voluntarily or by

legal action caused to be discontinued for a period of one (1) year, then any subsequent use of the building, other structure or use of the land shall be required to be in conformity with the provisions of these regulations.

- D. ***Enlargement of a Nonconforming Use.*** A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit, within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.
- E. ***Conversion of a Nonconforming Use to an Allowed Use.*** A nonconforming use may be converted to a permitted use or conditional use permitted with a conditional use permit in the zone in which it is located. Once a nonconforming use is converted to a conforming use, it may not revert to a nonconforming status. A building or structure containing a nonconforming use may be enlarged, extended, reconstructed or structurally altered if said use is changed to a permitted use or a conditional use for which a conditional use permit has been issued and the building or structure completely conforms to the provisions of these regulations.
- F. ***Change of a Nonconforming Use to Another Nonconforming Use.*** A nonconforming use may, upon approval and issuance of a conditional use permit, be changed to another nonconforming use of the same or a more-restricted use classification, if no structural alterations are made to the building or other structure provided that said new nonconforming use is less deleterious to the neighborhood, considering all factors, than was the previous nonconforming use.

#### **175-29. Nonconforming Lots.**

- A. ***Single, Vacant Nonconforming Lots.*** A nonconforming vacant lot which, at the time of passage of this chapter, 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 chapter may be used for a single family dwelling in the RA, RB, RC, and R districts and for a permitted use in a non-residential district provided that:
  - 1. The lot is in a district where the proposed use is permitted.
  - 2. The requirements of this chapter regarding setbacks, yards and height are met.
  - 3. The arrangements for sewage disposal and water supply are approved by the Code Enforcement Officer in accordance with the provisions of state law.
  - 4. The lot contains a minimum of 5,000 (five thousand) square feet of area unless a Special Exception has been granted by the Zoning Board of Adjustment.
- B. ***Requirements for Individual Nonconforming Vacant Lots in the WCO and SPO Districts.*** The erection of a structure or septic system on an existing vacant lot within the Wetlands Conservation District or Shoreland Protection Overlay District may be permitted by special



exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this Article was posted and published in the town.
2. The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District or Shoreland Protection Overlay District without undue hardship.
3. Due to the provisions of the Wetland Conservation District or Shoreland Protection Overlay District, no reasonable and economically viable use of the lot can be made without the exception.
4. The location and design of the building(s) and all structures shall provide for the maximum setback from the reference line consistent with reasonable use of the property considering the size, shape, slope, and natural conditions of the lot including, but not limited to, soils, flood hazard areas, and wetlands.
5. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
6. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.
7. All other state, federal and local approvals required for the septic system have been obtained.
8. Where site review is required, prior approval shall be obtained from the Planning Board.

At the time of submission of the special exception application to the Zoning Board of Adjustment, the Conservation Commission, the Health Officer, and the Planning Board shall be informed of the application for special exception.

- C. ***Nonconforming Lots in Contiguous Ownership.*** Where two (2) or more adjacent nonconforming lots are held by the same fee title or beneficial ownership when this chapter 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 chapter. This provision shall not apply to lots within a subdivision previously approved by the Planning Board under this Chapter or prior Durham Zoning Ordinances.
- D. ***Alteration or Expansion of a Conforming Structure or Building on a Nonconforming Lot.*** An alteration or expansion of a conforming structure or building on a nonconforming lot shall be permitted by the Zoning Administrator as long as the structure or building

remains conforming with respect to height, setbacks, and coverage and does not further deviate from this chapter.

**175-30. Nonconforming Structures and Buildings.**

- A. ***Continuance of a Nonconforming Building or Structure.*** Any lawful nonconforming building or structure in existence when this chapter is passed may continue unchanged but may not be altered or extended in any way which will result in a new and increased violation.
- B. ***Restoration and Reconstruction of a Nonconforming Building or Structure.*** Nothing herein shall prevent the substantial restoration or reconstruction within one (1) year of a building or structure destroyed in part or whole by fire or other casualty so long as this does not result in a new or increased violation.
- C. ***Alteration of a Nonconforming Building or Structure.*** A building or structure that is nonconforming with respect to height, setback or coverage may be altered or extended if the alteration or extension does not further deviate from this chapter except as provided in D. below.
- D. ***Requirements for Nonconforming Buildings and Structures in the WCO and SPO Districts.***
  - 1. Legally nonconforming buildings and structures existing prior to the date on which this Article was enacted may be continued, provided that such buildings and structures shall not be expanded further to encroach upon the wetland, water body, or designated buffer zone.
  - 2. Where an existing building or structure within the Wetland Conservation Overlay District or Shoreland Protection Overlay District is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall be of the same size and built in the same location as the original building or structure, not extend closer to the wetland, water body, or buffer zone than the original foundation and the result will not be a new or increased threat to the wetland or water body.
  - 3. The construction of attached additions or other expansions to nonconforming one- and two-family dwellings shall be permitted within the Wetland Conservation Overlay District and Shoreland Protection Overlay District provided that:
    - a. The dwelling lawfully existed prior to the date on which this Article was enacted.
    - b. The number of dwelling units shall not be increased.
    - c. The building footprint existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than fifteen (15) percent.
    - d. The usable building volume existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than thirty (30) percent.

- e. The proposed construction shall conform to all other applicable ordinances and regulations of the Town of Durham.

## **PART B. ZONING DISTRICTS**

### **ARTICLE X GENERAL ZONING DISTRICT PROVISIONS**

#### **175-31. Establishment of Districts.**

The Town of Durham shall be divided into zones as set forth in Article XI. The use of land, buildings, and structures shall conform to the provisions of the zone in which it is located except as otherwise specifically provided for in this ordinance.

#### **175-32. Zoning Map.**

- A. ***Official Zoning Map.*** The Official Zoning Map of the Town of Durham shall show the location of the various zones set forth in Article XI. The Official Zoning Map, dated January 23, 2004, as amended, is hereby incorporated as part of this chapter 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 chapter as if all were fully described herein.
- B. ***Changes to the Zoning Map.*** In accordance with the provisions of this chapter, if changes are made in zone district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Town Council. The entry on the Official Zoning Map shall indicate the ordinance number and the date adopted.

#### **175-33. Zoning Boundaries.**

- A. ***Location of District Boundaries.*** The location of the zones shall be as shown on the Official Zoning Map. Where uncertainty exists with respect to the boundaries of the various zones as shown on the Zoning Map, the following rules shall apply in determining the location of the boundary:
  - 1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
  - 2. Boundaries indicated as approximately following well established lot lines shall be construed as following such lot lines, even if the location of such lines is inaccurately represented on the Zoning Maps or Tax Maps;

3. Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
4. Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural change in the shoreline, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center line;
5. Boundaries indicated as being parallel to or extensions of features indicated in paragraphs 1. through 4. above shall be so construed.
6. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.
7. Any conflict between the Zoning Map and a description by metes and bounds in a deed shall be resolved in favor of the description by metes and bounds;
8. Where the location of a physical feature existing on the ground such as a wetland, water body, road, or utility right-of-way deviates from those shown on the Zoning Map, the actual location on the ground shall be used to determine the location of the zone boundary.

Where uncertainty exists as to location of any zoning district boundary, the Zoning Administrator shall make a written determination based upon these rules. If the Zoning Administrator is unable to make a determination or if a property owner does not agree with the Zoning Administrator's determination, the Planning Board shall determine the location of the Zone Boundary.

#### **175-34. Special Provisions.**

- A. ***Lots in More Than One Zone.*** Where a Zoning District boundary as established in this ordinance and as shown on the Official Zoning Map divides a lot that existed at the time of enactment of this provision, the use, dimensional, and other requirements applying to the portion of the lot in the zone with the less restrictive requirements may be applied to the portion of the lot in the more restrictive zone for a maximum of fifty (50) feet beyond the zoning district boundary. This provision shall not apply to any overlay district.
- B. ***Lots with Multiple Uses.*** When a lot contains more than one principal use, each use shall comply with all of the applicable requirements of this chapter except as otherwise specifically provided.
- C. ***Lots Crossed by Town Lines.*** Pursuant to RSA 674:53, when part of a lot in a single or joint ownership lies outside the Town of Durham, that portion of the lot within Durham shall conform to the use regulations of this chapter. 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 XI  
ESTABLISHMENT OF ZONES**

**175-35. Zoning Districts.**

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

**A. Residential Districts:**

RA	Residence A
RB	Residence B
RC	Residence Coastal
R	Rural

**B. Nonresidential/Mixed Use Districts:**

CB	Central Business
LB	Limited Business
OR	Office and Research

**175-36. Overlay Districts.**

In addition to the zoning districts identified in Section 175-35, there are six (6) overlay districts as follows:

WCO	Wetlands Conservation Overlay District
SPO	Shoreland Protection Overlay District
FHO	Flood Hazard Overlay District
APO	Aquifer Protection Overlay District
HO	Durham Historic Overlay District
PWSFO	Personal Wireless Service Facilities Overlay District

Each of these overlay districts establishes requirements in addition to the requirements of the underlying zoning district. The requirements of both the underlying zoning district and the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

**ARTICLE XII  
ZONE REQUIREMENTS**

The use of land, buildings, and structures shall conform to the provisions of the zone in which it is located except as otherwise specifically provided for in this ordinance.

## **175-37. Rural District (R).**

### ***A. Purpose of the Rural District.***

The purpose of the Rural District is to preserve the rural character of the areas of Durham that have historically been rural, that are low density, that are not served or intended to be served by public water and public sewerage, and that Master Plan 2000 identifies as areas that should remain rural and their agricultural heritage preserved. In this district, customary rural land uses will be preserved and all development will be carried out with the objective of preserving the natural and scenic environment of the district. Residential development will be limited to housing that is designed so that the character of the district is maintained, the scenic quality is protected, and a significant amount of open space is permanently preserved.

### ***B. Permitted Uses in the Rural District.***

Any use shown as a Permitted Use in the Rural District in the Table of Land Uses in Section 175-53 shall be permitted in the Rural District.

### ***C. Conditional Uses in the Rural District.***

Any use shown as a Conditional Use in the Rural District in the Table of Land Uses in Section 175-53 shall be permitted in the Rural District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

### ***D. Prohibited Uses in the Rural District.***

Any use that is not listed as a Permitted Use or a Conditional Use in the Rural District in the Table of Land Uses in Section 175-53 is prohibited.

### ***E. Dimensional Standards in the Rural District.***

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Rural District shall be used in accordance with the dimensional standards for the Rural District as shown in the Table of Dimensional Requirements in Section 175-54.

### ***F. Development Standards in the Rural District.***

In addition to the dimensional standards, development in the Rural District shall conform to the following additional requirements:

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Rural District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least fifty percent (50%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources, or pre-existing legal restrictions applicable to the lot.

***G. Performance Standards Applicable to the Rural District.***

Uses within the Rural District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

***H. Coordination with Overlay District Provisions.***

1. Areas within the Rural District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
2. Areas within the Rural District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
3. Areas within the Rural District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.

4. Areas within the Rural District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
5. Areas within the Rural District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

**175-38. Residence A District (RA).**

***A. Purpose of the Residence A District.***

The purpose of the Residence A District is to maintain the integrity of existing high density residential areas that are predominately served by public water and sewerage while ensuring that new development, redevelopment, or expansions of existing buildings and structures are consistent with and maintain the established character of these neighborhoods.

***B. Permitted Uses in the Residence A District.***

Any use shown as a Permitted Use in the Residence A District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence A District.

***C. Conditional Uses in the Residence A District.***

Any use shown as a Conditional Use in the Residence A District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence A District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

***D. Prohibited Uses in the Residence A District.***

Any use that is not listed as a Permitted Use or a Conditional Use in the Residence A District in the Table of Land Uses in Section 175-53 is prohibited.



***E. Dimensional Standards in the Residence A District.***

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Residence A District shall be used in accordance with the dimensional standards for the Residence A District as shown in the Table of Dimensional Requirements in Section 175-54.

***F. Development Standards in the Residence A District.***

In addition to the dimensional standards, development in the Residence A District shall conform to the following additional requirements:

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Residence A District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least thirty percent (30%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources, or pre-existing legal restrictions applicable to the lot.
3. No parking shall be permitted in the area between the front property line and the front wall of the principal building except on a driveway in conformance with the provisions of Article XXI.

***G. Performance Standards Applicable to the Residence A District.***

Uses within the Residence A District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

#### **H. *Coordination with Overlay District Provisions.***

1. Areas within the Residence A District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
2. Areas within the Residence A District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
3. Areas within the Residence A District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
4. Areas within the Residence A District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
5. Areas within the Residence A District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
6. Areas within the Residence A District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
7. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

#### **175-39. Residence B District (RB).**

##### ***A. Purpose of the Residence B District.***

The purpose of this district is to maintain the integrity of existing medium-density residential areas while ensuring that new development, redevelopment, and expansions of existing buildings and structures are consistent with and maintain the established character of these neighborhoods.

***B. Permitted Uses in the Residence B District.***

Any use shown as a Permitted Use in the Residence B District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence B District.

***C. Conditional Uses in the Residence B District.***

Any use shown as a Conditional Use in the Residence B District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence B District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

***D. Prohibited Uses in the Residence B District.***

Any use that is not listed as a Permitted Use or a Conditional Use in the Residence B District in the Table of Land Uses in Section 175-53 is prohibited.

***E. Dimensional Standards in the Residence B District.***

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Residence B District shall be used in accordance with the dimensional standards for the Residence B District as shown in the Table of Dimensional Requirements in Section 175-54.

***F. Development Standards in the Residence B District.***

In addition to the dimensional standards, development in the Residence B District shall conform to the following additional requirements:

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Residence B District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least forty percent (40%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact

on wetlands or other natural resources, or pre-existing legal restrictions applicable to the lot.

3. No parking shall be permitted in the area between the front property line and the front wall of the principal building except on a driveway in conformance with the provisions of Article XXI.

***G. Performance Standards Applicable to the Residence B District.***

Uses within the Residence B District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

***H. Coordination with Overlay District Provisions.***

1. Areas within the Residence B District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
2. Areas within the Residence B District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
3. Areas within the Residence B District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
4. Areas within the Residence B District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
5. Areas within the Residence B District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.

6. Areas within the Residence B District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
7. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

**175-40. Residence Coastal District (RC).**

***A. Purpose of the Residence Coastal District.***

The purpose of the Residence Coastal District is to protect the water quality of the community's principal surface waters and to preserve the rural character and scenic beauty of these coastal areas including the view of the shore as seen from the water. In this district, all development will be carried out in a manner that preserves the natural and scenic environment of the district. Residential development will be limited to housing that is designed so that the character of the district is maintained, the scenic quality of coastal areas is protected, and a significant amount of open space is permanently preserved.

***B. Permitted Uses in the Residence Coastal District.***

Any use shown as a Permitted Use in the Residence Coastal District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence Coastal District.

***C. Conditional Uses in the Residence Coastal District.***

Any use shown as a Conditional Use in the Residence Coastal District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence Coastal District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

***D. Prohibited Uses in the Residence Coastal District.***

Any use that is not listed as a Permitted Use or a Conditional Use in the Residence Coastal District in the Table of Land Uses in Section 175-53 is prohibited.

***E. Dimensional Standards in the Residence Coastal District.***

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Residence Coastal District shall be used in accordance with the dimensional

standards for the Residence Coastal District as shown in the Table of Dimensional Requirements in Section 175-54.

***F. Development Standards in the Residence Coastal District.***

In addition to the dimensional standards, development in the Residence Coastal District shall conform to the following additional requirements:

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Residence Coastal District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least fifty percent (50%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources or pre-existing legal restrictions applicable to the lot.

***G. Performance Standards Applicable to the Residence Coastal District.***

Uses within the Residence Coastal District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

***H. Coordination with Overlay District Provisions.***

1. Areas within the Residence Coastal District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
2. Areas within the Residence Coastal District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall

comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.

3. Areas within the Residence Coastal District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
4. Areas within the Residence Coastal District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
5. Areas within the Residence Coastal District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

**175-41. Central Business District (CB).**

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

B. *Dimensional controls.* Dimensional controls shall be as follows:

<b>Type of control</b>	<b>Dimension</b>
Minimum lot area	5,000 square feet
Each additional dwelling unit	2,500 square feet per unit
Minimum lot frontage	50 feet
Maximum height permitted	30 feet
Permitted with Planning Board approval under RSA 676:4	50 feet

C. *Permitted uses.* Permitted uses shall be as follows (NOTE: An asterisk [\*] denotes that the permitted use requires Planning Board approval under the provisions of RSA 676:4):

1. Accessory structures.
2. Accessory Apartment.
3. Bed and Breakfast, up to and including six (6) sleeping rooms.
4. \*Boarding House
5. \*Rooming House
6. Accessory uses.
7. Retail stores and personal services.
8. \*Restaurant.
9. Hotels and motels.
10. Professional offices.
11. Banks.
12. Day care, any number of people.
13. Theaters and clubs.
14. Parking facilities.
15. Elderly housing.
16. Light assembly and light manufacturing.
17. Religious uses.
18. Educational facilities.
19. Business services.

D. *Uses which may be permitted by conditional use permit.* Conditional uses shall be as follows:

1. Multiunit dwellings.
2. Fraternities and sororities.
3. Dormitories.
4. Restaurant, Carryout.
5. Recreational facility.



- E. **Other requirements.** For other requirements, see:
1. Article XXI, Off-Street Parking and Loading.
  2. Article XXII, Landscaping.
  3. Article XIV, Shoreland Protection Overlay District.
  4. Article XX, Performance Standards

**175-42. LB Limited Business District.**

A. The purpose of this district is to provide for a transition from the existing uses to a district providing governmental, professional, institutional, cultural and limited retail activity.

B. **Dimensional controls.** Dimensional controls shall be as follows:

<b>Type of control</b>	<b>Dimension</b>
Minimum lot area	10,000 square feet
Minimum lot frontage	100 feet
Setback requirements	
Front yard	20 feet
Side yard	10 feet
Rear yard	20 feet
<b>Type of control</b>	<b>Dimension</b>
Shore yard	150 feet
Maximum height permitted	30 feet
Permitted with Planning Board approval under RSA 676:4	35 feet
Percent coverage	50%

C. **Permitted uses.** Permitted uses shall be as follows (NOTE: An asterisk [\*] denotes that the permitted use requires Planning Board approval under the provisions of RSA 676:4):

1. Single detached dwellings: only one (1) per existing lot of record [maximum of three (3) unrelated individuals].
2. Duplex dwellings: only one (1) per existing lot of record [maximum of three (3) unrelated individuals].
3. Accessory Apartment.
4. Home occupations, first-class.
5. Accessory structures.

6. Accessory uses.
7. Professional offices.
8. Banks.
9. Day care, any number of people.
10. Elderly housing.
11. \*Restaurant.
12. Bed and Breakfast, up to and including six (6) sleeping rooms.
13. Religious use.

D. *Uses which may be permitted by conditional use permit.* Conditional uses shall be as follows:

1. Hotels and motels.
2. Retail sales and personal services (no outdoor display or storage).
3. Hospitals.
4. Restaurant, Carryout.
5. Automobile service stations.
6. Business services.

E. *Other requirements.* For other requirements, see:

1. Article XXI, Off-Street Parking and Loading.
2. Article XXII, Landscaping.
3. Article XIV, Shoreland Protection Overlay District.
4. Article XX, Performance Standards

**175-43. Reserved.**

**175-44. Reserved.**

**175-45. Reserved.**

**175-46. Reserved.**

**175-47. OR Office and Research District.**

***A. Purpose of the Office and Research (OR) District.***

The purpose of the Office and Research (OR) District is to provide for office and research facilities in areas served by major highways.

***B. Permitted Uses in the Office and Research (OR) District.***

Any use shown as a Permitted Use in the Office and Research (OR) District in the Table of Land Uses in Section 175-53 shall be permitted in the Office and Research (OR) District.

***C. Conditional Uses in the Office and Research (OR) District.***

Any use shown as a Conditional Use in the Office and Research (OR) District in the Table of Land Uses in Section 175-53 shall be permitted in the Office and Research (OR) District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

***D. Prohibited Uses in the Office and Research (OR) District.***

Any use that is not listed as a Permitted Use or a Conditional Use in the Office and Research (OR) District in the Table of Land Uses in Section 175-53 is prohibited.

***E. Dimensional Standards in the Office and Research (OR) District.***

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Office and Research (OR) District shall be used in accordance with the dimensional standards for the Office and Research (OR) District as shown in the Table of Dimensional Requirements in Section 175-54.

***F. Development Standards in the Office and Research (OR) District.***

In addition to the dimensional standards, development in the OR District shall conform to the following additional requirements:

1. No off-street parking or loading facilities shall be located within the required front, side, and rear yard setbacks.
2. All off-street parking shall be located to the side or rear of the building. No off-street parking including parking stalls and access aisles shall be located in the area extending the full width of the lot between a property line adjacent to a public street and the closest point on a building.

***G. Performance Standards Applicable to the Office and Research (OR) District.***

Uses within the Office and Research (OR) District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

***H. Coordination with Overlay District Provisions.***

1. Areas within the Office and Research (OR) District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research (OR) District.
2. Areas within the Office and Research (OR) District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research (OR) District.
3. Areas within the Office and Research (OR) District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research (OR) District.
4. Areas within the Office and Research (OR) District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research (OR) District.
5. Areas within the Office and Research (OR) District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research (OR) District.
6. Areas within the Office and Research (OR) District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research (OR) District.
7. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

**175-48. Reserved.**

**175-49. Reserved.**

**175-50. Reserved.**

**175-51. Reserved.**

**175-52. Reserved.**

**175-53. Use Standards.**

A. *Table of Uses.* Table 175-53, Table of Land Uses shows the uses that are allowed in the Rural, Residence A, Residence B, Residence Coastal, and Office and Research (OR) Districts.

**TABLE 175-53. TABLE OF LAND USES (Residential and OR Zones)**

The following Table of Land Uses identifies allowed uses of land, buildings, or structures in the residential and office and research zoning districts. Permitted Uses are indicated by a “P” in the appropriate column. Uses permitted only with the issuance of a Conditional Use permit are indicated by a “CU”. Uses not permitted in that district are marked with an “X”. Uses indicated with a CUA are Conditional Uses that are allowed only as an adaptive reuse of an existing building. Any use that is not listed as a Permitted Use or a Conditional Use is prohibited in the district even if it is not specifically listed as a use that is not permitted.

All projects involving the construction or enlargement of a building or structure that will be used for a nonresidential use or a multi-unit residence or that will create two (2) or more dwelling units (not including accessory apartments and accessory dwelling units) or that involves the erection of a personal wireless service facility are subject to review and approval by the Planning Board in accordance with the provisions of the Site Plan Review Regulations of the Town of Durham, New Hampshire. A nonresidential use includes any use listed below as a Rural Use, an Institutional Use, a Recreational Use, a Utility and Transportation Use, or a Commercial and Industrial Use.

In addition, a change in the occupancy of an existing building is also subject to Site Plan Review by the Planning Board if the change in use is:

1. from one category of nonresidential use to another category of nonresidential use;
2. from a residential use to a nonresidential use;
3. from a nonresidential use to a multiunit residential use; or
4. from a single-family residential use to a multiunit residential or a nonresidential use.

CATEGORIES OF USES	RESIDENTIAL ZONES				OR ZONES
	RURAL	RA	RB	RC	OR
<b>I. NATURAL RESOURCE USES</b>					
<b>A. Principal Uses</b>					
Conservation activities	P	P	P	P	P
Excavation and/or mining	X	X	X	X	X
<b>II. RURAL USES</b>					
<b>A. PRINCIPAL USES</b>					
Commercial agriculture	P	X	X	P	P
Commercial animal husbandry	P	X	X	P	P
The keeping of pigs, chickens, and fowl for commercial purposes	X	X	X	X	X
Animal feedlot	X	X	X	X	X
Plant nursery	P	X	X	P	P
Kennel	CU	X	X	CU	CU

CATEGORIES OF USES	RESIDENTIAL ZONES				OR ZONES
	RURAL	RA	RB	RC	OR
Stable	P	X	X	P	P
Timber harvesting in accordance with the provisions of Article XX	P	P	P	P	P
Temporary sawmill in accordance with the provisions of Article XX	P	P	P	P	P
Commercial processing of wood	X	X	X	X	X
Aquaculture	X	X	X	X	X
Reuse of an existing agricultural building in accordance with the provisions of Article XX	CUA	X	X	CUA	P
<b>B. Uses Accessory to Commercial Agriculture and Animal Husbandry</b>					
Retail sales of farm products	P	X	X	P	P
<b>III. RESIDENTIAL USES</b>					
<b>A. PRINCIPAL USES</b>					
Residence, single-family	P	P	P	P	X
Residence, duplex	X	X	X	X	X
Residence, multi-unit	X	X	X	X	X
Elderly housing, single family	P	P	P	P	X
Elderly housing, duplex	P	P	P	P	P
Elderly housing, multiunit	P	P	P	P	P
Manufactured housing	P	X	X	X	X
Eldercare facility	P	CU	CU	P	P
<b>B. Uses Accessory To Any Residential Use</b>					
Home occupation (first class)	P	P	P	P	P
Home occupation (second class)	P	X	X	P	P
Accessory structure	P	P	P	P	P
Accessory agricultural activities in accordance with the provisions of Article XX	P	P	P	P	P
Accessory animal husbandry in accordance with the provisions of Article XX	P	P	P	P	P
<b>C. Uses Accessory To a Single Family Residential Use</b>					

CATEGORIES OF USES	RESIDENTIAL ZONES				OR ZONES
	RURAL	RA	RB	RC	OR
Boarding or rooming house	X	X	X	X	X
Accessory apartment in accordance with the provisions of Article XX	P	P	P	P	P
Accessory dwelling unit in accordance with the provisions of Article XX	P	X	X	P	P
Child care home for not more than six children	P	P	P	P	P
Child care home for more than six children subject to the provisions of Article XX	P	P	P	P	P
<b>IV. INSTITUTIONAL USES</b>					
<b>A. PRINCIPAL USES</b>					
Child care center or nursery in accordance with the provisions of Article XX	P	X	X	P	P
Adult day care facility	P	P	P	P	P
Nursery or pre-school	P	X	P	P	P
Community Center	X	X	X	X	X
Educational facility	X	X	X	X	CU
Government facility	P	P	P	P	P
Museum	CU	X	X	CU	CU
Religious use/facility	CU	CU	CU	CU	CU
<b>V. RECREATIONAL USES</b>					
<b>A. PRINCIPAL USES</b>					
Campground	X	X	X	X	X
Golf course	CU	X	X	CU	X
Recreational facility, indoor	X	X	X	X	P
Recreational facility, outdoor	CU	X	X	CU	CU
Recreational playing fields, outdoor	P	P	P	P	P
All Terrain Vehicle/Off Highway Recreational Vehicle facility	X	X	X	X	X
<b>VI. UTILITY &amp; TRANSPORTATION USES</b>					
<b>A. PRINCIPAL USES</b>					
Airport, private	X	X	X	X	X
Airport, commercial	X	X	X	X	X



CATEGORIES OF USES	RESIDENTIAL ZONES				OR ZONES
	RURAL	RA	RB	RC	OR
Heliport	X	X	X	X	X
Structural parking	X	X	X	X	X
Surface parking	X	X	X	X	X
Public utility facility	CU	X	X	CU	P
Personal Wireless Service Facility in accordance with the provisions of Article XVIII	P	P	P	P	P
<b>VII. COMMERCIAL &amp; INDUSTRIAL USES</b>					
<b>A. PRINCIPAL USES</b>					
Reuse of an older single-family residence for a low impact nonresidential use in accordance with the provisions of Article XX	CUA	X	X	CUA	CUA
Bed & breakfast	P	P	P	P	CUA
Inn	P	X	X	P	CUA
Conference center	X	X	X	X	P
Business services	X	X	X	X	P
Gallery	P	X	X	P	X
Medical clinic	X	X	X	X	P
Office, business	X	X	X	X	P
Office, professional	X	X	X	X	P
Repair services	X	X	X	X	CUA
Research facilities and labs	X	X	X	X	P
Veterinary clinic/grooming	CU	X	X	CU	P
Assembly, light	X	X	X	X	P
Manufacturing, light	X	X	X	X	CU
Marine sales and service	X	X	X	CU	CU
Boatyard/Boat Club	X	X	X	CU	CU
<b>VIII. USES ACCESSORY TO AN ALLOWED NON-RESIDENTIAL USE</b>					
Drive through facility accessory to an allowed use other than a restaurant	X	X	X	X	X
Caretaker apartment within a non-residential use	X	X	X	X	P

CATEGORIES OF USES	RESIDENTIAL ZONES				OR ZONES
	RURAL	RA	RB	RC	OR
Accessory buildings and structures	P	P	P	P	P
Restaurant or cafeteria accessory to an office building	X	X	X	X	P
<b>IX. USES ACCESSORY TO ANY ALLOWED USE</b>					
Off street surface or structural parking on the lot to serve the allowed use	P	P	P	P	P

B. *General use regulations* - The following additional standards apply to the specific uses listed below:

1. Occupancy of Residences. No more than three (3) unrelated occupants shall occupy a dwelling unit located in a residence in an R, RA, RB, RC, or LB District.
2. Junkyards. Junkyards are prohibited in all districts.
3. 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 that such system satisfies all local and state ordinances, statutes and regulations.
4. Inoperative motor vehicles. The outdoor storage of unregistered or inoperative motor vehicles shall be prohibited in all zones except as follows:
  - a. Not more than one (1) such vehicle may be stored on any lot during any calendar year, for a period not to exceed ninety (90) days except for lots used for permitted motor vehicle related businesses.
  - 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 the same according to law. (See RSA 236.)
5. Combination of uses. Any combination of uses contemplated as a single enterprise may be established in only those districts in which all such uses are permitted. Any establishment having combination of uses must meet all the requirements of each use as outlined by the

Durham Zoning Ordinance. In the case of conflicting duly adopted rules, regulations or ordinances, the more restrictive shall apply.

6. Airports and Heliports. Private and commercial airports and heliports shall be prohibited in all Zoning Districts within the Town of Durham, unless otherwise expressly permitted in a Zoning District.

**175-54. Dimensional Standards.**

Table 175-54, Table of Dimensional Requirements shows the dimensional provisions that apply to buildings and structures in the Rural, Residence A, Residence B, Residence Coastal, and Office and Research (OR) Districts.

**TABLE 175-54 TABLE OF DIMENSIONAL REQUIREMENTS**

STANDARD	ZONES				
	RA	RB	RC	Rural	OR
<b>Minimum Lot Size</b> - Single-Family Residence that is not part of a Conservation Subdivision - Allowed Nonresidential Use - Any Other Allowed Use	20,000 SF 20,000 SF 20,000 SF	40,000 SF 40,000 SF 40,000 SF	150,000 SF 150,000 SF 150,000 SF	150,000 SF 150,000 SF 150,000 SF	40,000 SF 40,000 SF 40,000 SF
<b>Minimum Usable Area Per Dwelling Unit</b>	20,000 SF	40,000 SF	150,000 SF	150,000 SF	30,000 SF
<b>Minimum Lot Frontage</b>	100 FT	150 FT	300 FT	300 FT	150 FT
<b>Minimum Front Yard Setback</b> - Minor Street <sup>1</sup> - Collector Street - Arterial Street	30 FT 30 FT 40 FT	30 FT 30 FT 40 FT	30 FT 30 FT 40 FT	30 FT 30 FT 40 FT	30 FT 30 FT 100 FT
<b>Minimum Side Yard Setback</b>	10 FT	20 FT	50 FT	50 FT	20 FT
<b>Minimum Rear Yard Setback</b>	20 FT	30 FT	50 FT	50 FT	20 FT
<b>Minimum Shoreland Shorefrontage</b>	200 FT	200 FT	200 FT	200 FT	200 FT
<b>Maximum Permitted Building Height</b>	30 FT	30 FT	30 FT	30 FT	35 FT
<b>Maximum Permitted Building Height with Planning Board Approval under RSA 676 :4</b>	35 FT	35 FT	35 FT	35 FT	50 FT
<b>Impervious Surface Ratio</b>	33%	30%	20%	20%	50%

NOTES: 1. When the average front yard setback of other buildings within three hundred (300) ft each way on the same side of a minor street is less than thirty (30) feet, the front yard setback may be reduced to the average existing setback.

2. Any single-family lot in the R and RC Districts existing as of July 1, 2003, including lots in approved subdivisions, shall only be required to have a minimum lot area of 120,000 square feet and shall not be subject to the minimum usable area per dwelling unit requirement. Pre-existing lots with a minimum of 120,000 square feet of area shall be deemed to be conforming lots for the purpose of the minimum lot size and minimum usable area provisions but shall conform to all other current applicable standards for the district in which they are located.

### **175-55. General Dimensional Controls.**

- A. ***Limitation on occupants.*** The number of unrelated occupants is subject to the provisions of Article II, 175-53.B.1., and to the off-street parking requirements of Article XXI.
- B. ***Permitted uses in required yards.*** No building or parking is permitted within the minimum yards required for the district, except as otherwise allowed below. All required minimum yards, except for driveways and walkways, shall be landscaped or left with natural vegetation, with the following exceptions:
  - 1. Up to twenty-five (25) percent of the area of street yards of noncommercial residential lots may be used for accessory parking.
  - 2. Structures accessory to residential uses shall occupy no more than thirty (30) percent of the required yard and be no closer than ten (10) feet to any lot line nor more than twenty (20) feet high.
- C. ***Corner clearance.*** No object, vegetation or slope which impedes visibility at street intersections shall be allowed within a triangle, two (2) of whose sides extend twenty (20) feet from the intersection along the street lines and between two (2) planes three (3) feet and seven (7) feet above the level of the traveled way.
- D. ***Changes in lot dimensions.*** Any change made to the dimensions of an undeveloped lot shall meet all the requirements of this Article in effect at the time of the proposed change. In the case of a legal nonconforming lot which has been developed, the lot dimensions may be changed to decrease the violation of the dimensional requirements of this chapter.
- E. ***Minimum contiguous usable area.*** At least fifty percent (50%) of each newly created lot in a conventional or conservation subdivision that is located in the RA, RB, RC, and Rural Districts shall consist of a rectangle of Useable Area that ranges in shape from square to a least one-half as wide as it is long.
- F. ***Calculation of useable area.*** The usable area of a parcel of land shall be determined by subtracting the following unsuitable areas from the gross area of the parcel. A High Intensity Soil Survey (HISS) shall be used to determine the unusable areas of soils set forth below. The unsuitable areas shall be deducted in the following order and no geographic area shall be deducted more than once:

1. All very poorly drained, poorly drained, and somewhat poorly drained soils as identified on the HISS.
2. All floodways and all non-wetland portions of the 100-year floodplain.
3. All areas with ledge outcroppings, shallow depth-to-ledge soils (0" to 20" to bedrock), and variable depth-to-ledge soils (0" to 40" to bedrock) as identified on the HISS.
4. Fifty (50) percent of the area with moderate depth-to-ledge soils (20" to 40" to bedrock) as identified on the HISS.
5. All areas with a slope of twenty-five (25) percent or greater as identified on the HISS.
6. Fifty (50) percent of the area with a slope between fifteen (15) and twenty-four (24) percent as identified on the HISS.
7. Areas within rights-of-way or easements that impose restrictions on the use of the area such as to make it unavailable for building purposes or intensive use as part of the development.
8. All land under existing private streets.
9. Stream channels as measured from the top of the banks and other water bodies as measured by the normal high water mark.
10. Any otherwise usable area that is fragmented or isolated by unsuitable areas such that the contiguous area of usable land is less than ten thousand (10,000) square feet or is narrower than fifty (50) feet.

**175-56. Special Situations Affecting Dimensions.**

**A. Lot area.**

1. Lots for elderly housing. The minimum area of lots for elderly housing may be varied by the Zoning Board of Adjustment by special exception, provided that the lot meets the off-street parking requirements of Article XXI plus the following areas per dwelling unit: four hundred (400) square feet of habitable floor area and one hundred (100) square feet of open space.

**B. *Lot frontage.***

1. Frontage variation. The minimum frontage otherwise required may be varied by the Zoning Board of Adjustment by special exception for plots of land of unusual shape or at corners where an increased setback can provide the same effective spacing of the usable portion of a lot, whether or not the lot is part of a subdivision plan.

**C. *Front yards.***

1. Average setbacks along minor streets. When the average front yard of other buildings within three hundred (300) feet each way on the same side of a minor street is less than thirty (30) feet, the street yard may be reduced accordingly.
2. Central Business District fronting on a minor street. The front yard requirement for a Central Business lot fronting on a minor street may be varied by the Zoning Board of Adjustment by special exception.

**D. *Side and rear yards.***

1. Nonresidential or multiunit structures abutting or within residence districts. No nonresidential or multiunit structures, other than permitted signs, and no parking shall be permitted within seventy (70) feet of a side or rear lot line abutting a residence district or use unless screened as provided in Article XXII.
2. Within business districts. Side and rear yards in the CB District may be omitted where buildings are separated by fire partitions meeting the requirements of the Durham Building Code and/or where the remainder of the yard is occupied by publicly maintained parking, circulation or landscaping.
3. Shorefrontage. Any building lot which abuts on the Great or Little Bay and significant rivers and brooks shall conform to the following additional requirements:
  - a. The minimum length of the shorefrontage shall be two hundred (200) feet, exclusive of the width of creeks at mean low tide.
  - b. The minimum shorefront yard setback for any building other than a marina or boatyard shall be in accordance with Article XIV.

**175-57. *Porkchop Subdivisions.***

- A. ***Optional porkchop subdivisions in RC and R Districts.*** Developers of residential subdivisions of two (2) or three (3) lots in the RC and R Districts on existing town roads as of the date this chapter is enacted that are not conservation subdivisions, may elect to follow the requirements for porkchop subdivisions in Table 4-1, provided that all lots are entered from a common driveway whose maintenance is guaranteed in the deeds to the lots concerned. A common

driveway to a porkchop subdivision will only serve a maximum of three (3) lots. Adjacent porkchop subdivisions will not share a common driveway. Each porkchop subdivision will have a common driveway independent from any other subdivision.

**Table 4-1. Requirements for Optional Porkchop Subdivisions**

<b>Porkchop subdivision lots</b>	<b>Minimum area (square feet)</b>	<b>Minimum frontage area (feet)</b>
Smallest lot	80,000	200
Porkchop lot	160,000	50
Average, all lots	120,000	125*

\*NOTE: The Planning Board is empowered to reduce the average frontage to not less than one hundred (100) feet in the case of a porkchop subdivision of a nonconforming lot into not more than three (3) lots, provided that the requirement for minimum area is met.

**ARTICLE XIII  
WETLAND CONSERVATION OVERLAY DISTRICT**

**175-58. Description.**

- A. The Wetland Conservation Overlay District (see "wetlands" definition in Section 175-7) is hereby determined to be those areas identified as poorly drained or very poorly drained soils, defined in the publication Key to Soil Drainage Classes, found in the Society of Soil Scientists of Northern New England document High Intensity Soil Maps For New Hampshire, May 23, 1986; surface waters; and wetlands associated with saltwater, and including the buffer requirements of Section 175-65. The Wetland Conservation Overlay District, as herein defined (see "wetlands" definition in Section 175-7) 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. The Wetland Conservation Overlay District Map is to be used as a guide only. The precise location of a wetland boundary in any particular case must be determined by on-site inspection of soil types and vegetation by a state certified soil scientist.
- B. In all cases where the Wetland Conservation Overlay 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.

**175-59. 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:

- A. 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 or toxic substances.
- B. Prevent unnecessary or excessive expense to the town in providing and maintaining essential services and utilities as a result of inharmonious use of wetlands.
- C. 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.
- D. Encourage those uses that can be appropriately and safely located in wetland areas.
- E. Protect presently existing natural wetland wildlife habitats.
- F. Prevent damage to abutters' structures and properties.

**175-60. Permitted Uses.**

Permitted uses shall be as follows:

- A. For very poorly drained soil group areas:
  - 1. Any use that does not involve the erection of a structure or does not alter the surface configuration of the land by the addition of fill or dredging, except common agricultural land drainage, provided that such use is otherwise permitted in the use district which this district overlays.
  - 2. Forestry or tree farming.
  - 3. Agriculture, including grazing, farming, truck gardening and harvesting of crops.
  - 4. Water impoundments and the construction of well water supplies.
  - 5. Drainageways such as streams, creeks or other paths of normal runoff.
  - 6. Wildlife habitat development and management.
  - 7. Parks and recreation uses, excepting such as may be inconsistent with the purpose and intent of Section 175-59.
  - 8. Conservation areas and nature trails.



9. Open space in accordance with the Subdivision Regulations and other sections of this chapter.

B. For poorly drained soil group areas:

1. Any use permitted under Subsection A, with the addition of the construction of temporary forestry-related, unpaved access roads when using management practices which protect streams from damage and prevent sedimentation.

**175-61. Conditional Uses.**

A. Under the provisions of RSA 674:21, Subdivision II, the Planning Board may grant approval for the construction of streets, roads and other accessways and utilities, including pipelines, power lines and other transmission lines, provided that all of the following conditions are found to exist:

1. No alternative location outside the wetland, or which has less detrimental impact on a wetland, is feasible.
2. The proposed construction is essential to the productive use of other land which is not within the Wetland Conservation Overlay District.
3. Design, construction and maintenance methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
4. Economic advantage is not the sole reason for the proposed location of the construction.

B. Structures may be erected on poorly drained soils as a common treatment of land associated with a permitted use under Section 175-60.B, if determined by the Planning Board to have no adverse impact on the wetland. The conditions in Subsection A(1) and (3) above must be met in order to receive Planning Board approval for such uses. Structures erected in association with permitted uses shall not include residential structures.

**175-62. Special Exceptions for Existing Lots.**

A. On an existing lot, the erection of a structure or septic system within the Wetlands Conservation Overlay District may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this Article was posted and published in the town.

2. The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District without undue hardship.
  3. Due to the provisions of the Wetland Conservation Overlay District, no reasonable and economically viable use of the lot can be made without the exception.
  4. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
  5. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground- or surface water, or damage to surrounding properties.
  6. All other state, federal and local approvals required for the septic system have been obtained.
- B. Prior approval shall be obtained from the Planning Board where site review is required. At the time of submission to the Zoning Board of Adjustment, the Conservation Commission, the Health Officer and the Planning Board shall be informed of the application for special exception.

**175-63. Provisions for Existing Uses.**

- A. Structures and uses existing prior to the date on which this Article was enacted may be continued, provided that such uses shall not be expanded further to encroach upon the wetland or designated buffer zone.
- B. Notwithstanding other provisions of this Article, the construction of attached additions to one- and two-family dwellings shall be permitted within the Wetland Conservation Overlay District, provided that:
  1. The dwelling lawfully existed prior to the date on which this Article was enacted.
  2. The number of dwelling units is not increased.
  3. The proposed construction conforms to all other applicable ordinances and regulations of the Town of Durham.
- C. Where an existing building within the wetland or buffer zone is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall not extend further into the wetland or buffer zone than the original foundation and the result will not be a new or increased threat to the wetland.

**175-64. Lot Size Determination in Wetlands.**

No areas of surface water, wetlands associated with saltwater or areas designated as very poorly drained, poorly drained, or somewhat poorly drained soil may be used to satisfy minimum lot sizes or the minimum usable area per dwelling unit requirement.

**175-65. Buffer Zone.**

- A. No septic system, leach field or other waste-disposal facility shall be installed within seventy-five (75) feet of the edge of any wetland. No other building activity, including but not limited to structures, roads and parking areas, shall be permitted within fifty (50) feet of any poorly drained soil, except as provided in Section 175-63., nor shall such building activity be permitted within seventy-five (75) feet of any very poorly drained soil or surface water.
- B. A failed septic system within seventy-five (75) feet of any wetland must be replaced on land outside the buffer zone, unless the Health Officer makes a determination that such placement is not physically possible.

**175-66. Reclassification of Soils.**

- A. *Challenge of classification.* If the soil classification is challenged by the applicant, an abutter, a landowner, the Code Enforcement Officer, the Conservation Commission or the Planning Board, petition shall be made, in writing, by the challenger to the Zoning Administrator. The Zoning Administrator shall determine whether a state certified soil scientist should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in written form to the Zoning Administrator, which evidence shall form the basis for the final decision.

**175-67. Restoration of Altered Soils.**

Any wetland altered in violation of this chapter shall be restored at the expense of the violator(s), as provided by RSA 483-A:5.

**175-68. Additional Information.**

No approval or waiver of permits by state or federal agencies shall preempt the ability of the Planning Board or the Zoning Board of Adjustment to seek additional information or to make an independent judgment as to the acceptability of a lot or alteration of land.

**175-69. Inharmonious Use of Wetlands.**

"Inharmonious uses of wetlands" shall be defined as those uses incompatible with the purposes of this chapter, i.e., the regulations listed in Section 175-59.B, provided that, in cases of uncertainty, the use shall be denied and determined upon appeal to the Zoning Board of Adjustment in the usual manner provided by statute.

**ARTICLE XIV**  
**SHORELAND PROTECTION OVERLAY DISTRICT**

**175-70. Designation of Zone.**

The Shoreland Protection Overlay District shall encompass all land within one hundred fifty (150) feet of the high-water level of Great and Little Bays, including tidal sections of their tributaries; the Oyster River; Lamprey River; Follett's Brook; and seventy-five (75) feet from all other perennial brooks, excluding College Brook and Pettee Brook. These water bodies are designated on the Durham Shoreland Protection Overlay District Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.

**175-71. Purpose and Intent.**

The purpose and intent of the Shoreland Protection Overlay District and accompanying regulations are to protect and promote the public health, resource conservation and the general welfare. Specifically, these regulations serve to:

- A. Protect the water quality of current and future public drinking water supplies from pollutants such as septage, pesticides, herbicides and fertilizers.
- B. Protect water bodies from sedimentation, such as that caused by erosion.
- C. Maintain shorelands as habitats and travelways for wildlife.
- D. Prevent destruction of aesthetic qualities of the shores, thus protecting property and recreational values.
- E. Protect the Great Bay Estuary from pollution by its tributaries or from uses of its shoreland.

**175-72. Setbacks and Permitted Uses.**

- A. The required setback for all septic systems is one hundred fifty (150) feet in the Shoreland Protection Overlay District. There shall be a one-hundred-twenty-five-foot setback in the one-hundred-fifty-foot zone and a seventy-five-foot setback in the seventy-five-foot zone for all other structures.
- B. Landowners are allowed use of shoreland frontage sufficient for developing one (1) access point to the water and a maximum of ten (10) percent of the total owned frontage dedicated to a boat dock, ramp or other facility. Any such facilities must conform to all other town, state and federal requirements applicable.
- C. Under the provisions of RSA 674:21, Subdivision II, the Planning Board may grant approval for the construction of streets, roads and other accessways and utilities, including pipelines, power lines and other transmission lines, provided that all of the following conditions are found to exist:

1. No alternative location outside the shoreland or which has less-detrimental impact on a shoreland is feasible.
2. The proposed construction is essential to the productive use of other land which is not within the Shoreland Protection Overlay District.
3. Design, construction and maintenance methods will be such as to minimize detrimental impact upon the shoreland and will include restoration of the site as nearly as possible to its original grade and condition.
4. Economic advantage is not the sole reason for the proposed location of the construction.

**175-73. Pollution Prevention.**

Pollution prevention requirements shall be as follows:

- A. There shall be no use which uses or stores hazardous or potentially polluting substances, including underground storage of petroleum products, uncovered road salt, fertilizers or leachable wastes.
- B. There shall be no animal feedlots.
- C. There shall be no use of fertilizers, pesticides or herbicides within seventy-five (75) feet of the high-water level.
- D. There shall be no tilling of soil within seventy-five (75) feet of the high-water level.
- E. There shall be no excavation or filling of the land within the Shoreland Protection Overlay District.

**175-74. Vegetation Management.**

- A. The preservation of natural shoreland vegetation is intended to stabilize banks to prevent erosion, maintain wildlife habitats, minimize pollution of the water and preserve the scenic quality of shoreline properties.
- B. No trees over six (6) inches in DBH [nineteen (19) inches in circumference] shall be cut within the Shoreland Protection Overlay District.
- C. The cutting or pruning of the overstory, understory and ground cover shall be permitted so long as the existing undisturbed natural vegetation is left in place on at least fifty (50) percent of the shorefront.
- D. Where vegetation is removed, including pruning, it shall result in well-distributed stands with varying levels of maturity and vegetative cover, to include overstory, understory and ground cover. No clear-cutting shall be permitted in the Shoreland Protection Overlay District.

**175-75. Procedures for Existing Uses.**

- A. Structures and uses existing prior to the date on which this Article was enacted may be continued, provided that such use shall not be expanded further to encroach upon the shoreland or designated buffer zone.
- B. Notwithstanding other provisions of this Article, the construction of attached additions to one- and two-family dwellings shall be permitted within the Shoreland Protection Overlay District, provided that:
  - 1. The dwelling lawfully existed prior to the date on which this Article was enacted.
  - 2. The number of dwelling units is not increased.
  - 3. The proposed construction conforms to all other applicable ordinances and regulations of the Town of Durham.
- C. Where an existing building within the shoreland or buffer zone is destroyed or in need of extensive repair, it may be rebuilt, provided that:
  - 1. Such building is completed within one (1) year of the event causing destruction.
  - 2. The new or rebuilt structure shall not extend further into the shoreland or buffer zone than the original foundation.
  - 3. The result will not be a new or increased threat to the shoreland.
- D. Preexisting landscaping, including lawns and cultivated bushes and trees, may be maintained, but fertilizers, herbicides and pesticides shall not be used within seventy-five (75) feet of the high-water level.
- E. On existing lots of record, the erection of a structure within the Shoreland Protection Overlay District may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:
  - 1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this Article was posted and published in the town.
  - 2. The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Shoreland Protection Overlay District without undue hardship.
  - 3. Due to the provisions of the Shoreland Protection Overlay District, no reasonable and economically viable use of the lot can be made without the exception.
  - 4. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Article.
- F. Because of the potential threat to public health, safety and welfare, whenever additions or alterations are made to a septic system located within the Shoreland Protection Overlay

District, the system must be made to comply with the requirements of this Article as nearly as possible. This includes complete relocation of the system where feasible.

- G. When a property with a nonconforming septic system is sold or otherwise transferred, the septic system must be inspected and, if inadequate, replaced as per the preceding Subsection F.
- H. Property owners are encouraged to consult with the appropriate town officials about landscaping recommendations within the Shoreland Protection.

## **ARTICLE XV FLOOD HAZARD OVERLAY DISTRICT**

### **175-76. Applicability.**

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its Flood Insurance Study for the County of Strafford, New Hampshire, dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps (FIRM) dated May 17, 2005 or as amended, which are declared to be a part of this chapter and are hereby incorporated by reference.

### **175-77. Building Permit Required.**

All proposed development in any special flood hazard area shall require a building permit.

### **175-78. General Design Standards.**

The Code Enforcement Officer shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction or substantial improvements shall be:

- A. Designed, or modified, and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. Constructed with materials resistant to flood damage.
- C. Constructed by methods and practices that minimize flood damages.
- D. Constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### **175-79. Water and Sewer Systems.**

Where new or replacement water and sewer systems, including on-site systems, are proposed in flood-prone areas, the applicant shall provide the Code Enforcement Officer with assurance that these systems will be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste-disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

**175-80. Certification Records.**

The Code Enforcement Officer shall maintain for public inspection and furnish upon request any certifications of floodproofing and the as-built elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures and include whether or not such structures contain a basement. If the structure has been floodproofed, the as-built elevation, in relation to mean sea level, to which the structure was floodproofed must be furnished by the applicant.

**175-81. Review of Proposed Developments.**

The Code Enforcement Officer shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.S. 1334. It shall be the responsibility of the applicant to certify these assurances to the Code Enforcement Officer.

**175-82. Watercourses.**

- A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Code Enforcement Officer. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Enforcement Officer.
- B. The applicant shall submit to the Code Enforcement Officer certification provided by a registered professional engineer assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.
- C. Along watercourses with a designated regulatory floodway, no encroachments, including fill, new construction, substantial improvements and other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Code Enforcement Officer shall obtain, review and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meet the floodway requirements of this section.
- D. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development, including fill, shall be permitted within Zones AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed



development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

**175-83. One-Hundred-Year-Flood Elevation.**

- A. In special flood hazard areas, the Code Enforcement Officer shall determine the one-hundred-year-flood elevation in the following order of precedence according to the data available:
  - 1. In Zones AH and AE, he shall refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
  - 2. In unnumbered A Zones, the Code Enforcement Officer shall obtain, review and reasonably utilize any one-hundred-year-flood elevation data available from federal, state, development proposals submitted to the community (i.e., subdivisions or site approvals) or other sources.
- B. The Code Enforcement Officer's one-hundred-year-flood elevation determination will be used as criteria for requiring in Zones A and that:
  - 1. All new construction or substantial improvements of residential structures have the lowest floor, including basement, elevated to or above the one-hundred-year-flood elevation.
  - 2. All new construction or substantial improvements of nonresidential structures have the lowest floor, including basement, elevated to or above the one-hundred-year-flood level or, together with attendant utility and sanitary facilities, shall:
    - a. Be floodproofed so that below the one-hundred-year-flood elevation the structure is watertight with walls substantially impermeable to the passage of water.
    - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
    - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
  - 3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

4. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that they meet the following requirements:
  - a. The enclosed area is unfinished or flood-resistant, usable solely for the parking of vehicles, building access or storage.
  - b. The area is not a basement.
  - c. They shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
    - (1.) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
    - (2.) The bottom of all openings shall be no higher than one (1) foot above grade.
    - (3.) Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
5. Recreational vehicles placed on sites within Zone AE shall: (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet all standards of section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in paragraph (c) (6) of Section 60.3.

## **ARTICLE XVI AQUIFER PROTECTION OVERLAY DISTRICT**

### **175-84. Authority and Purpose.**

Pursuant to RSA 674:16-21, the Town of Durham adopts an Aquifer Protection Overlay District and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies and related groundwater recharge areas within the town. The objectives of the Aquifer Protection Overlay District are:

- A. To protect the public health and general welfare of the citizens of Durham.
- B. To prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifers.
- C. To provide for future growth and development of the town, in accordance with the Master Plan, by ensuring the future availability of public and private water supplies.
- D. To encourage uses that can appropriately and safely be located in the aquifer recharge areas.

## **175-85. District Boundaries.**

### **A. Location.**

1. The Aquifer Protection Overlay District is defined as the area shown on the map entitled "Aquifer Protection District" and is hereby adopted as part of the Official Zoning Map of the Town of Durham. The Aquifer Protection Overlay District includes the area delineated by the 1988-89 United States Geological Survey aquifer delineation studies or other site-specific engineering studies.
2. The Aquifer Protection Overlay District is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying district. In all cases, the more restrictive requirements shall apply.

### **B. Appeals.**

1. When the actual boundary of the Aquifer Protection Overlay District is in dispute by any landowner or abutter actually affected by said boundary, the Planning Board, at the landowner's/abutter's expense and request, may engage a professional geological or hydrologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question. This report shall include but not be limited to the following:
  - a. A two-foot-interval topographic layout prepared by a registered land surveyor of the subdivision and/or area to be developed.
  - b. A high-intensity soils map of the subdivision and/or area to be developed prepared by a soil scientist qualified in hydrologic studies, including a written report of his/her on-site field inspection and test boring data.
  - c. The Aquifer Protection Overlay District boundary shall be overlaid on the plat, and the newly proposed boundary location shall be indicated on the same plat by a broken line.
  - d. Evidence derived from a pumping test(s) or a sufficient number of test borings, test pits, observation wells and groundwater elevations to clearly demonstrate that the area in question does not meet the definition of "aquifer" or "recharge area."
  - e. Any additional mapping, hydrogeologic reports or information which becomes available as a result of recent or ongoing scientific investigation(s) of the locations and extent of aquifers performed by this United States Geological Survey, New Hampshire State agencies or boards, the Town of Durham or agents of any of the above.
2. The Planning Board may, based upon any findings or reports submitted under this section, adjust the boundary or area designation of the Aquifer Protection Overlay District to more correctly define the aquifer(s) and recharge area(s) on a site-specific, case-by-case basis.

**175-86. Use Regulations.**

- A. ***Minimum lot size.*** The minimum lot size shall be governed by the dimensional controls outlined in the applicable zoning district.
- B. ***Maximum lot coverage.*** Within the Aquifer Protection Overlay District, no more than twenty-five percent (25%) of a lot used for residential/commercial purposes shall be rendered impervious to groundwater infiltration.
- C. ***Site drainage.*** All runoff from impervious surfaces shall be directed into an underground storm sewer system and directed to a detention/holding pond outside of the aquifer and aquifer recharge area. This includes roof and foundation drains, if present. The design and the construction of any detention or holding pond must be located down flow of the path of the water flowing in the aquifer, and the design must be approved by the Public Works Department and approved by the Town Council.
- D. ***Use of deicing chemicals.*** There shall be minimal use of deicing chemicals on all public and private roads and parking lots within the district. The use of these chemicals shall be free of sodium and chloride to the greatest extent possible.
- E. ***Prohibited uses.*** The following uses shall not be permitted in the Aquifer Protection Overlay District and the secondary recharge area, except where permitted to continue as a nonconforming use:
  - 1. Disposal of all solid waste.
  - 2. All on-site handling, disposal, storage, processing or recycling of hazardous toxic materials.
  - 3. Disposal of liquid or leachable wastes from all residential, commercial or industrial systems.
  - 4. Subsurface storage of petroleum and other refined petroleum products, except as regulated by the New Hampshire Water Supply and Pollution Control Commission (WS 411, Control of Nonresidential Underground Storage and Handling of Oil and Petroleum Liquids). The placement of residential tanks underground for the storage of petroleum and other refined petroleum products shall not be allowed unless in conformance with New Hampshire State guidelines applicable to commercial uses.
  - 5. All industrial uses.
  - 6. Outdoor unenclosed or uncovered storage of road salt and other deicing chemicals.
  - 7. Dumping of snow containing deicing chemicals brought from outside of the Aquifer Protection Overlay District.
  - 8. Commercial animal feedlots where animals are kept.
  - 9. Automotive service and repair shops, and junk- and salvage yards.

10. Injection wells that dispose of waste in the ground.
  11. Mining of land, unless it is incidental to a permitted use; sand and gravel excavation and other mining that is permitted, provided that such excavation or mining is not carried out within eight (8) vertical feet of the seasonal high-water table and that periodic inspections are made by the planning staff or its agent to determine compliance.
- F. **Permitted uses.** The following uses are permitted, provided that they are conducted in accordance with the purposes and intent of this Article:
1. All uses permitted in the underlying zoning district, regulated as conditional uses. There must also be hookup to the town's water and sewer systems and the installation of an underground storm sewer system in accordance with Subsection C above.
  2. Maintenance and repair of any existing structure in conformance with the regulations of this Article.
  3. The expansion of a nonconforming use as long as it complies with the nonconforming use section of this chapter.
  4. Farming, gardening, nursery, forestry, harvesting, grazing and recreational uses, provided that fertilizers, pesticides and other management practices are deemed safe by the Strafford County Conservation District. These uses of land in the Aquifer Protection Overlay District and the secondary recharge area must not cause groundwater contamination that is deemed harmful to the aquifer, as determined by the Town of Durham and its consultants.
- G. **Nonconforming uses.** Any nonconforming use may continue and may be maintained, repaired and improved, unless such use is determined to be an imminent hazard to public health and safety by the Town Council or the Health Officer.

### **175-87. Hydrogeologic Study.**

Within the Aquifer Protection Overlay District, a hydrogeologic study shall be required for developments involving the subdivision of ten (10) lots or greater.

- A. **Standards.** Hydrogeologic studies shall be performed by a qualified hydrogeologist. These studies shall be sufficiently detailed to evaluate the development's impacts to groundwater within the parcel to be developed and the surrounding land. All hydrogeologic studies shall include at least the following:
1. An adequate number of subsurface borings in order to determine the site geology and stratigraphy. Boring requirements are as follows:

- a. For sites up to thirty (30) acres, the parcel shall contain a minimum of one (1) boring per three (3) acres, with a minimum of three (3) borings for a site. For sites greater than thirty (30) acres, additional borings of at least one (1) per ten (10) acres are required.
  - b. At least twenty (20) percent of the borings shall be sampled utilizing the split-spoon sampling technique.
  - c. At least one (1) boring shall be dug to bedrock.
2. Identification of water table contours and groundwater flow directions, with water table measurements using a series of shallow observation wells screened at the water table. The number of observation wells required shall be the same as the number of borings required.
  3. Water quality sampling and analysis to determine existing conditions, measuring the following parameters: nitrate-nitrogen (NO<sub>3</sub>-N), ammonia-nitrogen (NH<sub>3</sub>-N), pH and specific conductance.
  4. An analysis of cumulative impact nitrogen loading employing a saturation build-out model. The analysis shall include verification that the development will not cause the nitrate-nitrogen (NO<sub>3</sub>-N) concentration to exceed five (5) milligrams per liter in the groundwater at the down-gradient property boundary.

**175-88. Design and Performance Standards.**

- A. **Nitrate loading.** No development shall cause the nitrate-nitrogen (NO<sub>3</sub>-N) concentration to exceed five (5) milligrams per liter in the groundwater beyond the site.
- B. **Safeguards.** Provision shall be made to protect against toxic or hazardous material discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as spill control provisions in the vicinity of chemical- or fuel-delivery points, secured storage areas for toxic or hazardous materials and indoor storage provisions for corrodable or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interior of any structure, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
- C. **Location.** Where the premises are partially outside of the Aquifer Protection Overlay District, potential pollution sources such as on-site waste-disposal systems shall be located outside and on the downgrade of the zone to the extent feasible.

**175-89. Administration.**

The provisions of the Aquifer Protection Overlay District shall be administered by the planning staff and the Durham Town Council. All development proposals shall require a conditional use permit if located in the Aquifer Protection Overlay District and the secondary recharge area, in accordance with the rules and regulations of this chapter. Such review and approval shall precede the issuance of any building permit by the Town of Durham.

**ARTICLE XVII**  
**DURHAM HISTORIC OVERLAY DISTRICT**

**175-90. Purpose.**

The purpose of this district shall be to:

- A. Safeguard the heritage of the town as it is represented in structures of historical and architectural value.
- B. Preserve a district in the town which reflects elements of its cultural, social, economic and political history.
- C. Foster civic beauty.
- D. Promote the use of an Historic Overlay District for the education, pleasure and welfare of the citizens of our town.

**175-91. Characteristics.**

The Historic Overlay District established herewith and from time to time amended in the manner prescribed by New Hampshire law has one (1) or more or any combination of the following characteristics and qualifications, without limitation as to cultural or chronological period:

- A. 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 Overlay 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.
- B. Structures or sites importantly associated with historic personages.
- C. Structures or sites importantly associated with historic examples of a great idea or ideal.
- D. 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.
- E. Structures contributing to the visual continuity of the district.

**175-92. Boundaries.**

The Durham Historic Overlay District is defined as that area made up of the lots listed below as laid out on the Durham Tax Maps. The district is also to include all town property necessary to make a continuous district.

- A. Sheet 4: Lots, 1, 59, 56, 55, 54-3, 54-4, 53 and 52.
- B. Sheet 5: Lots 1-4 through 1-10, 1-12, 2-0 through 2-7, 3-1, 3-2, 4-0, 4-2 [seventy-five (75) feet from the center line of Newmarket Road], 4-10, 4-11, 5-11 and 5-10.
- C. Sheet 6: Lots 9-1 through 9-5, 9-6 and 9-8 [two hundred fifty (250) feet from the center line of Newmarket Road], 9-7, 11-1, 11-2, 11-6, 11-3 [two hundred fifty (250) feet from the center line of Newmarket Road and Durham Point Road], 11-4, 11-5 and 12-1 through 12-8.
- D. Sheet 15: Lot 17-1.

**175-93. Historic District Commission.**

- A. Members of the Historic District Commission shall be appointed by the Town Council.
- B. The Historic District Commission shall consist of seven (7) members. All members shall be residents of the Town of Durham, and one (1) shall be a member of the Town Council, and one (1) shall be a member of the Durham 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 chapter.
- C. The members of the Historic District Commission shall be appointed for three-year terms, except that 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 (2) 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.
- D. The Historic District Commission shall annually elect a Chairman, Vice Chairman and Secretary from among its own membership.
- E. The Historic District Commission shall adopt and may from time to time amend such rules and regulations as are not inconsistent with the intention of this chapter and of state enabling legislation.
- F. The Historic District Commission shall develop and submit an annual request for funds to the Town Council. Subject to appropriations or other income, the Commission may employ clerical and technical assistants or consultants and may accept gifts of money or services, or grants, and may hold or expend such gifts or grants for the purposes of this chapter.
- G. The decisions of the Commission shall be by vote of the majority of the Commission members.

**175-94. Authority Granted.**

The Historic District Commission is empowered to regulate the construction, alteration, repair, moving or demolition of structures within the Historic Overlay District. (See RSA 674:46.)



### **175-95. Permitted Uses.**

Uses permitted in the Durham Historic Overlay District shall be those set forth in the Durham Zoning Ordinance. Any change in a permitted use requires the approval of the Durham Planning Board.

### **175-96. Certificates of Approval.**

Within the Historic Overlay District, no buildings or structures shall be constructed, reconstructed, altered, restored, moved or demolished without the approval of the Durham Historic District Commission. A certificate of approval from the Commission is required for such work even though a building permit may not be required.

- A. ***Application procedure.*** A written application for a certificate of approval shall be submitted to the Durham Historic District Commission. The application shall be in the form prescribed by the Commission and shall as a minimum, state the purpose and intent of the proposed project and identify in exact detail the nature and extent of the work to be performed. The application shall be accompanied by copies of any site plans, building plans, photographs, topographic plans and any other information required by the Commission.
- B. ***Consideration of an application.*** The Historic District Commission shall make a determination as to the appropriateness of the work proposed to be accomplished by an applicant by determining whether or not the proposal is in compliance with the purpose and intent of the district and the guidelines of this chapter. This determination shall be based on the following:
  1. Professional advice. The Commission may seek advice from such professional, educational, cultural or other sources as is deemed necessary.
  2. Public hearing. The Commission may hold a public hearing during which opinions of abutters and interested citizens shall be heard, as well as such professional advice as has been requested. Notice of the public hearing shall be sent to abutters and others not less than ten (10) days prior to the date of the hearing.
  3. Consultation. The Commission shall consult with the applicant and may make suitable recommendations for changes or modifications to the applicant's proposal. Such recommendations shall be for the purposes of historic preservation and the prevention of changes that are incongruous with the Historic Overlay District, its buildings, sites and surroundings, particularly those features of the district that are subject to public view.
- C. ***Action on an application.*** The Historic District Commission shall act to approve or disapprove an application within sixty (60) days after said application has been filed with the Commission, unless the applicant agrees, in writing, to extend this time limit. The Commission shall determine whether the action or usage proposed will be appropriate in the Historic Overlay District and shall file a certificate of approval or disapproval with the office of Town

Administrator. Failure by the Commission to act within the specified period of time shall be deemed to constitute approval of the application.

1. Conditional approval. Notwithstanding that the action or usage proposed by the applicant may be deemed inappropriate owing to conditions especially affecting the lot, building or structure involved, but not affecting the Historic Overlay District generally, the Commission may find that failure to issue a certificate of approval will involve a peculiar and unusual hardship (physical, financial or otherwise) to the applicant and that such certificate may be issued without substantial derogation of the intent and purposes of historic preservation in Durham. If the Commission determines that a proposed action or usage is not appropriate, owing to conditions aforesaid, but that failure to issue a certificate of approval causes substantial hardship, the Commission may file a certificate of approval in which the Commission may impose conditions.
2. Disapproval. When an application is disapproved, the reasons for such disapproval shall be clearly stated in the record of proceedings of the Commission.
3. Notification. The Commission shall notify the applicant and the Town Council of its determination and shall furnish the applicant a summary of the reasons for the action taken and its recommendations, if any, as appearing in the records of the Commission.

#### **175-97. Appeals.**

Appeals may be taken to the Durham Zoning Board of Adjustment by any owner or tenant of property wholly or partly within the Durham Historic Overlay District, as well as by any other person, agency or group, if aggrieved by a ruling of the Durham Historic District Commission. The Durham Zoning Board of Adjustment shall hear and act upon such appeals within the periods of time prescribed by New Hampshire statute.

#### **175-98. Guidelines.**

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

- A. ***Criteria for appropriateness (existing buildings).*** When determining the appropriateness of proposed alterations, restorations or remodeling of existing structures, the criteria listed below shall be used. It is possible that in some instances several criteria will apply to a particular application, in which case the applicant shall suggest on the application the criterion being used, and the Commission shall consider the applicant's suggestion but shall make the final decision on which criterion or criteria, if any, apply.
  1. Structures which are of importance because of a moment in history, such as the date of occupancy by a celebrated personage or the happening of an event. Such structures should be altered only so as to be more in conformity with the appearance at that moment in time.

2. Structures which are of importance because of their date of construction. Such structures should be altered to restore features to their original appearance, unless the structure was altered at some later time and the Commission determines that the alteration is in keeping with the character of the Historic Overlay District or is notable in its own right. In such case, the altered appearance should be maintained.
  3. Structures which are important in the history of architecture as unique or exceptionally fine examples of their style. Such structures should be altered only so as to retain their original appearance.
  4. Structures which are merely typical of their age and style. Such structures should be altered in a fashion of that age or style, if in keeping with the character of the Historic Overlay District.
- B. ***Criteria for conformance (new structures)***. New structures and buildings and those being moved into the Historic Overlay District must conform to the existing structures in the district in terms of general size and scale but need not conform in precise architectural style. In addition:
1. Unless waived by the Commission, a structure must conform, within a variation of ten percent (10%) to an average of the dimensions of its nearest neighbors as follows:
    - a. Height.
    - b. Length.
    - c. Width.
    - d. Street frontage.
    - e. Setback from the street.
    - f. Number of stories.
  2. Such a structure shall conform to the general style of the Historic Overlay District by being similar to neighboring structures in the criteria listed below, unless waived by the Commission:
    - 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 rooflines, i.e., slopes and shapes.
    - d. Similarity of architectural details, i.e., cornices, lintels, arches, porches, balustrades, wrought iron work, chimneys, etc.

- e. Similarity of landscaping and ground coverings, i.e., grass, trees, shrubs, brick, granite, etc.
- C. **Demolition or removal.** No existing building or other structure may be demolished or moved out of the Historic Overlay District until approval has been granted by the Historic District Commission. An application which includes a detailed plan for the reuse of the site shall be submitted, and the Commission shall determine the appropriateness of the plan. A 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 in the Historic Overlay District. Financial hardship of the owner of the property shall not constitute a hardship for this purpose.
- D. **Construction.** Construction that will not have any visible impact on buildings or structures in the Historic Overlay District is permitted, provided that the Historic District Commission is notified at least thirty (30) days in advance of such construction. Such construction shall not begin if the owner is notified that an application to the Commission is required.
- E. **Painting.** Painting, staining and other exterior decorative work not involving exterior construction shall be in accordance with the character of the Historic Overlay District. The Commission shall be notified thirty (30) days in advance of such exterior decorative work. Such work shall not begin if the owner is notified that an application to the Commission is required.
- F. **Routine repairs.** Routine repairs to existing structures not involving any other exterior changes shall be deemed to be of no interest. Parties interested in promoting the spirit and intent of the Historic Overlay District are encouraged to seek informal guidance from the Commission in the selection of historically appropriate colors or details.

## **ARTICLE XVIII**

### **PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT**

#### **175-99. Purpose and Intent.**

It is the express purpose of this Article to permit carriers to locate personal wireless service facilities within particular areas of the Town of Durham consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town. Compatibility with the visual features of Durham is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed personal wireless service facility. This Article enables the review of the locating and siting of personal wireless service facilities by the Town of Durham so as to eliminate or mitigate the visual and environmental impacts of personal wireless service facilities. This Article is structured to encourage carriers to locate on existing buildings and structures whenever possible. New ground mounted personal wireless facilities are permitted, but only when

the use of existing structures and buildings is found to be infeasible. Co-location is encouraged for all personal wireless service facility applications and the review of a personal wireless facility shall be on the basis of the site being built using all positions on the mount.

**175-100. Applicability.**

The terms of this Article and the Site Plan Review Regulations shall apply to personal wireless service facilities proposed to be located on property owned by the Town of Durham, on privately owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

**175-101. District Regulations.**

- A. **Location:** Personal wireless service facilities shall be permitted in all Zoning Districts, except as restricted by this Article. Applicants seeking approval for personal wireless service facilities shall first evaluate existing structures for the siting of personal wireless service facilities. Only after finding that there are no suitable existing structures pursuant to Section 175-101. C. herein, shall a provider propose a new ground mounted facility.
- B. **Existing Structures – Policy:** Personal wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
- C. **Existing Structures - Burden of Proof:** The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent applicable:
  - 1. The applicant shall submit to the Department of Planning and Community Development a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board or Department of Planning and Community Development informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
  - 2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered “Return Receipt Requested” forms from the U.S. Post office shall be provided for each owner of existing structures that was contacted.
  - 3. If the applicant claims that a structure is not capable of physically supporting a personal wireless service facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service

facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.

- D. ***Ground Mounted Facilities – Policy:*** If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping, and placement within trees.
- E. ***Locations for Ground Mounted Facilities:*** Ground mounted personal wireless service facilities shall be prohibited from those areas identified on the “Town of Durham, NH Visual Sensitivity Project - Composite Overlay,” dated December 15, 1997, and prepared by Complex Systems Research Center, Institute for the Study of Earth, Oceans, and Space, University of New Hampshire. The “Town of Durham, NH Visual Sensitivity Project - Composite Overlay” is hereby adopted as an overlay to the official Zoning Map of the Town of Durham and incorporated in this Article by reference.

#### **175-102. Use Regulations.**

A personal wireless service facility shall require a building permit in all cases and may be permitted as follows:

- A. ***Existing Tower Structures:*** Subject to the issuance of a building permit that includes review by the Director of Planning and Community Development, carriers may locate a personal wireless service facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Article, or on any personal wireless service facility previously approved under the provisions of this Article so long as the co-location complies with the approved site plan. All the Performance Standards from this Article shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, site plan review is required.
- B. ***Reconstruction of Existing Tower Structures:*** An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Article may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Article are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than two hundred (200) feet to exceed two hundred (200) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.
- C. ***Existing Structures:*** Subject to the provisions of this Article and site plan review and except as otherwise permitted under Section 175-101.A, a carrier may locate a personal wireless service facility on an existing structure, building, utility tower or pole, or water tower.
- D. ***Ground Mounted Facility:*** A personal wireless service facility involving construction of a ground mount shall require site plan review and be subject to the provisions of this Article.

### **175-103. Dimensional Requirements.**

#### **A. Personal wireless service facilities shall comply with the following requirements:**

1. **Height, Maximum:** In no case shall a personal wireless service facility exceed two hundred (200) feet in height, unless the mount for the facility was greater than two hundred (200) feet in height prior to the adoption of this Article.
2. **Height, Existing Structures and Utility Poles:** Carriers that locate new personal wireless service facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than a twenty (20) feet. This increase in height shall only be permitted once for each structure.
3. **Height, Other Existing Structures:** The height of a personal wireless service facility shall not increase the height of a structure by more than ten (10) feet, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a personal wireless service facility on a building that is legally non-conforming with respect to height, provided that the provisions of this Article are met.
4. **Height, Ground-Mounted Facilities:** Ground-mounted personal wireless service facilities shall not project higher than (10) ten feet above the average tree canopy height within a one hundred and fifty (150) foot perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
5. **Setbacks:** All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. Fences shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six (6) feet or more in height.
6. **Fall Zone for Ground Mounts:** In order to ensure public safety, the minimum distance from the base of any ground-mount of a personal wireless service facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review.
7. **Fall Zone for Non-Ground Mounts:** In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-

conforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformities.

- B. ***Planning Board Flexibility:*** Heights - In reviewing a site plan application for a personal wireless service facility, the Planning Board may permit an increase in the height of a ground mounted facility up to twenty (20) feet above the average tree canopy height, if no material increase in visual or environmental impacts will result from the increased height. The visual and environmental criteria of this Article and the Site Plan Review Regulations shall be the guidelines in making this determination.

#### **175-104. Performance and Design Standards.**

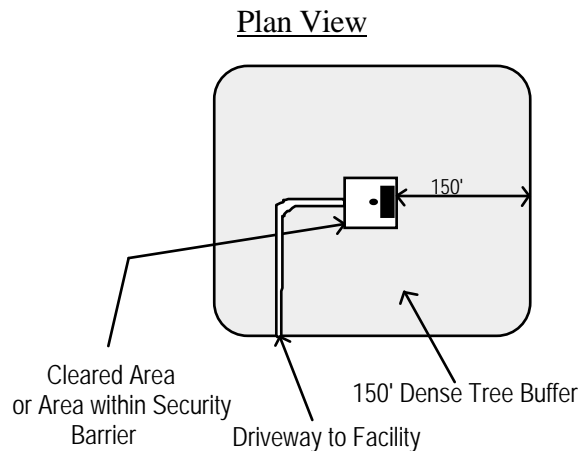
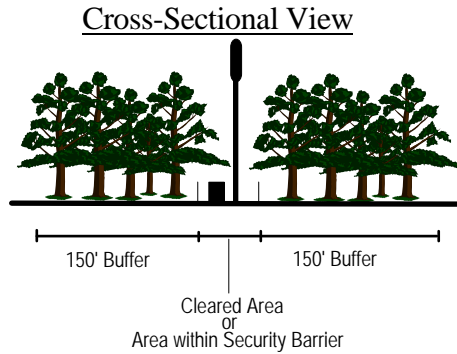
##### **A. *Visibility***

1. Visual impacts are measured on the basis of:
  - a. Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within their proposed surroundings.
  - b. New visible elements proposed on a contrasting background.
  - c. Different colors and textures proposed against a contrasting background.
  - e. Use of materials that are foreign to the existing built environment.
2. Enhancements are measured on the basis of:
  - a. Conservation of opportunities to maintain community scale, e.g., buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
  - b. Amount and type of landscaping and/or natural vegetation.
  - c. Preservation of view corridors, vistas, and viewsheds.
  - d. Continuation of existing colors, textures, and materials.
3. Visibility focuses on:
  - a. Eliminating or mitigating visual impact.
  - b. Protecting, continuing, and enhancing the existing environment.
4. Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts: When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.



5. Camouflage for Facilities on Existing Buildings or Structures - Side Mounts: Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.
6. Camouflage for Ground Mounted Facilities: All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions, as set forth in Figure XVIII. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.

**Figure XVIII**



- B. **Color** - To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color which blends with the background or surroundings.
- C. **Equipment Shelters** - Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:
1. Equipment shelters shall be located in underground vaults; or
  2. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the personal wireless service facility; or
  3. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board

shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or

4. If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

**D. *Lighting, Signage, and Security***

1. Lighting:

- a. The mounts of personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA).
- b. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot candles.

2. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Article XXIII of the Durham Zoning Ordinance.

3. Security Barrier: The Planning Board shall have final authority on whether a ground mounted personal wireless service facilities should be surrounded by a security barrier.

**E. *Historic Buildings and Districts***

1. Any personal wireless service facility located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
2. Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.
3. Personal wireless service facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
4. Personal wireless service facilities located in the Durham Historic Overlay District shall comply with the provisions of Article XVII.

- F. *Scenic Landscapes and Vistas*** - Personal wireless service facilities shall not be located within open areas that are visible from public roads, recreational areas, or abutting properties. All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth as per Section 175-103.A.6.

- G. *Driveways*** - Existing entrances and driveways to serve a personal wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a personal wireless

service facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.

- H. **Antenna Types** - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.
- I. **Ground and Roof Mounts** - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 175-102.B.
- J. **Hazardous Waste** - No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.
- K. **Noise** - Personal wireless service facilities shall not generate noise in excess of that permitted under the Durham Noise Ordinance.
- L. **Radio Frequency Radiation (RFR) Standards** - All equipment proposed for a personal wireless service facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines), under *Report and Order*, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

#### **175-105. Monitoring and Maintenance.**

- A. **Maintenance** - The owner of the facility shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.
- B. **Monitoring** - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Durham may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provides them the opportunity to accompany the Town representatives when the measurements are conducted.
- C. **Security for Removal** - Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 175-106.B. The amount of the security shall be based upon the removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural

evaluation prepared by a professional civil engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.

**175-106. Abandonment or Discontinuation of Use.**

- A. **Notification** - At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.
- B. **Removal** - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  3. Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- C. **Failure to Remove** - If the owner of the facility does not remove the facility upon the Zoning Administrator's order, then the Town Council shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Town Council. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

## PART C. STANDARDS

### ARTICLE XIX CONSERVATION SUBDIVISIONS

#### 175-107. Conservation Subdivisions.

The Town of Durham's Master Plan 2000 recommends that conservation subdivisions, in which a substantial portion of the site is set aside as permanent, common open space, be the primary form of residential development in the community. The provisions of this section govern the design and development of conservation subdivisions. The process for the design of conservation subdivisions, as set forth in the Town's Subdivision Regulations, requires that key natural, historic, archeological, and cultural features on the site be identified for protection and the development planned to protect these resources.

- A. **Purpose.** The purposes of these provisions are to assure that conservation subdivisions developed in the Town of Durham:
1. Preserve those areas of the site that have the highest value for conservation purposes;
  2. Preserve identified historic, known archeological and identified cultural features located on the site;
  3. Locate the buildings and structures on those portions of the site that are most appropriate for development considering both the development suitability of the site and its conservation value;
  4. Create continuous open spaces or "greenways" by linking the common open spaces in adjoining subdivisions wherever possible; and
  5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.
- B. **Applicability.** All residential subdivisions in the Residence A District, Residence B District, Residence Coastal District and the Rural District shall be developed as Conservation Subdivisions in accordance with the provisions of this section and the Town's Subdivision Regulations unless the subdivision is exempt from this requirement based upon subsection C. below.

- C. **Exempt Subdivisions.** A subdivision shall be exempt from the Conservation Subdivision requirement if the Director of Planning and Community Development determines that the proposal meets one of the criteria set forth in subsection D. below. If the Director determines that a subdivision is exempt, the Director shall provide written notice to the applicant, all abutters, the chair of the Planning Board, and the chair of the Conservation Commission within five (5) business days after making the determination. An applicant, an abutting property owner, or the Conservation Commission may appeal the Director's determination to the Planning Board. The appeal shall be made in writing within thirty (30) days of the Director's determination. The Planning Board shall hold a public hearing on the appeal. The review by the Planning Board shall be based upon the materials submitted to the Director and the testimony at the public hearing. The Planning Board may affirm or change the decision of the Director. Until the appeal is decided, the Planning Board shall not process an application for the approval of a conventional residential subdivision for the subject site.
- D. **Exemption Criteria.** The Director of Planning and Community Development shall find that a proposed subdivision is exempt from the requirement that a subdivision be developed as a Conservation Subdivision only if the proposed subdivision meets one of the following criteria. In determining if the criteria are met, any lot that has been or will be transferred to a qualified conservation organization as such term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (Code) or any successor section, and the regulations promulgated thereunder, which organization is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, and will be restricted to conservation use in perpetuity, shall not be counted as a lot for the purpose of this provision.
1. The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots, or
  2. The subdivision will consist of lots, all of which will have a minimum lot area of four hundred thousand (400,000) square feet , and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots, or
  3. The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units, there is additional land that may be developable in the future for which a Conceptual Long Range Development Plan meeting the requirements of subsection N. will be prepared, all lots being created as part of the exempt subdivision will be consistent with and incorporated into the long range plan as part of a conservation subdivision, and no additional lots will be created in the

future that are not part of a conservation subdivision, or

4. The subdivision will create not more than one additional lot accommodating one (1) dwelling unit and no other lots have been created from the parcel within the preceding seven (7) year period.
- E. **Maximum Development Density.** The maximum number of dwelling units that may be developed in a Conservation Subdivision shall be determined by dividing the calculated Usable Area of the parcel by the required Minimum Usable Area Per Dwelling Unit for the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) and rounding down to the maximum allowed whole number of units. If the parcel is located in more than one district, the maximum number of units allowed on the portion of the parcel in each district shall be calculated separately and the allowed maximum number of units (including fractional units) in each district shall be added together and then rounded down to the allowed number of whole units. If the subdivision involves only part of a parcel, the Usable Area shall be calculated for that portion of the parcel proposed to be included in the subdivision and the determination of the maximum number of dwelling units within the subdivision determined based upon that Usable Area. The Planning Board shall not approve a plan for a Conservation Subdivision that provides for the development of more dwelling units than the maximum number determined by this section.
- F. **Lots in a Conservation Subdivision.** Residences in a Conservation Subdivision may be located on individual residential lots, or on common lots with more than one dwelling unit on a lot, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot, and the units thereon, shall be detailed as part of the subdivision application and those arrangements shall be subject to approval by the Planning Board in accordance with the Subdivision Regulations.
- G. **Individual Lot Sizes.** If individual lots are created as part of a Conservation Subdivision, the lots shall conform to the following minimum lot size requirements:
1. Any lot that has its required lot frontage on a public street that existed as of July 1, 2003 shall conform to the minimum lot size requirement for the district in which it is located (see Section 175-54, Table of Dimensional Requirements).
  2. Any lot that has its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high quality living environment for the residents of the subdivision and



provide for adequate sewage disposal, but in no case shall any lot served by a private wastewater disposal system be less than ten thousand (10,000) square feet in area.

H. **Individual Lot Frontages.** If individual lots are created as part of a Conservation Subdivision, the lots shall conform to the following minimum lot frontage requirements:

1. Any lot that has its required lot frontage on a public street that existed as of July 1, 2003 shall conform to the minimum lot frontage requirement for the district in which it is located (see Section 175-54, Table of Dimensional Requirements).
2. Lots that have frontage on a public street shall be laid out to minimize the number of curb cuts onto the public street through the use of shared or common driveways or other methods. In no case, shall two adjacent driveways be located on a public street that existed as of July 1, 2003 unless the driveways are separated by at least one hundred (100) feet or such other greater distance as required by other provisions of this ordinance.
3. Any lot that has its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may have less frontage than the required minimum lot frontage for the district in which it is located. The amount of frontage for the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot frontages will allow for the creation of a high quality living environment for the residents of the subdivision and provide adequate access to the residences and other facilities, but in no case shall any lot have less than fifty (50) feet of lot frontage.

I. **Common Open Space.** A Conservation Subdivision shall provide for the permanent set aside and protection of common open space meeting the following requirements:

1. The amount of common open space provided within the subdivision shall be equal to or greater the sum of the following:
  - a. the percentage of the calculated Usable Area set forth below, plus
  - b. the unsuitable area of the parcel that is deducted from the gross area of the site to determine the Usable Area.

The minimum percentage of the usable area that shall be set aside for common open space shall be as follows:

Residence A District	Thirty (30) percent
Residence B District	Forty (40) percent

Residence Coastal District	Fifty (50) percent
Rural District	Fifty (50) percent
All other districts	Fifty (50) percent

If the parcel is located in two or more districts, the percentage of the usable area located in each district shall be calculated and the required minimum percentage of the usable area set aside for open space determined based upon the weighted average of the percentages for the various districts.

2. The location and layout of the common open space shall conform to the standards and process set forth in the Subdivision Regulations.
3. The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:
  - a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, identified cultural or historic features such as stone walls, graveyards or cemeteries, and similar identified features or resources
  - b. Passive and active outdoor recreation uses and facilities included related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that any building shall have a gross floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1000) square feet
  - c. Indoor community or recreational facilities that primarily serve residents of the subdivision, have a total gross floor area for all such facilities of less than two thousand (2,000) square feet, and are compatible with the overall scale and character of the subdivision
  - d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval
  - e. Support facilities necessary for the subdivision including community wells, stormwater management facilities, underground utility lines and related facilities such as sewer pump stations, small community storage buildings, and similar buildings and structures that are needed for the operation of the subdivision but not including personal storage buildings or sheds
  - f. Individual or group underground wastewater disposal systems or parts thereof,

provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities

- g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board
4. Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.
5. Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Subdivision Regulations, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.

**J. *Front Yard Setbacks.***

1. The minimum front yard setback for any lot with its required lot frontage on a public street in existence as of July 1, 2003 shall be the required minimum setback for the type of street and the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) or thirty (30) feet whichever is greater.
2. The minimum front yard setback for any lot with its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may be less than that required by the district regulations. The size of the minimum setback shall be shown on the subdivision plan, may vary from lot to lot or in different areas of the subdivision, and shall be subject to Planning Board approval based upon its finding that the setbacks will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate privacy and public safety.
3. If the approved front yard setback for any lot is less than that required by the requirements of the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements), any garage with garage doors that face the street, whether attached or detached, shall be located so that the front wall of the garage is located at least two (2) feet behind the front wall of the principal building. This requirement shall not apply to a garage located in the basement of a single-family home.
4. If the approved front yard setback for any lot is less than that required by the requirements of the district in which the subdivision is located (see Section 175-54,

Table of Dimensional Requirements), any accessory building shall be located so that

the front wall of the accessory building is located at least two (2) feet behind the front wall of the principal building.

**K. *Side and Rear Yard Setbacks.***

1. When a side or rear yard of a lot containing a residence or other building abuts the external perimeter or property line of a Conservation Subdivision, the minimum side and rear yard setbacks shall be the required minimum setback for the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) unless the streetscape buffer requirements of L. result in a greater setback .
2. The minimum side and rear yard setbacks from internal property lines within a Conservation Subdivision may be less than the required setbacks established by the district regulations (see Section 175-54, Table of Dimensional Requirements). The size of the minimum setbacks shall be shown on the subdivision plan, may vary from lot to lot or in different areas of the subdivision, and shall be subject to Planning Board approval based upon its finding that the setbacks will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate privacy and public safety.
3. In all cases, the separation distance between principal buildings within the subdivision, whether on the same lot or on different lots, shall conform to the requirements of the Town's building code and the NFPA fire protection codes based upon the type of construction and the use of the buildings.

- L. *Streetscape Buffer Adjacent to Existing Public Streets.*** A vegetated buffer strip shall be maintained along any public street existing as of July 1, 2003 that is adjacent to a Conservation Subdivision to minimize the visual impact of the Conservation Subdivision on the streetscape. The depth of the buffer strip shall be at least three times the minimum front yard setback requirement for the zoning district in which the parcel is located and the type of street (see Table of Dimensional Requirements) or one hundred (100) feet whichever is greater. This provision shall be reduced to twenty-five (25) feet for individual residential lots that front on public streets that existed as of July 1, 2003. No parking, buildings, structures, or recreational facilities shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in accordance with the landscaping provisions of Article XXII and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board as part of the approval of the subdivision, to assure that the buffer strip will be permanently protected and maintained.

- M. ***Perimeter Buffer.*** A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least the minimum setback requirement for the zone in which the subdivision is located. If the subdivision abuts a water body or wetland, the width and treatment of the buffer shall be consistent with the requirements of the Wetland Conservation Overlay District and/or the Shoreland Protection Overlay District. No parking, buildings, structures, access roads or driveways, or recreational facilities shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped in accordance with the landscaping provisions of Article XXII and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained.
- N. ***Conceptual Long Range Development Plan.*** When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a Conservation Subdivision. This plan shall show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for Conservation Subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

**175-108. Stewardship Fund.**

Payments to the Town to provide for the periodic monitoring of conformance with the conservation restrictions on common open space shall be deposited in the Town's Stewardship Fund. The Stewardship Fund shall be maintained as a separate trust account and shall be used only for the monitoring of conservation restrictions. The use of the Fund shall be managed by the Town's Conservation Commission. The Commission shall provide the Town Council with an annual accounting of the use of the fund.

**ARTICLE XX**  
**PERFORMANCE STANDARDS**

**175-109. Compliance Required.**

This article establishes performance standards for specific uses. These standards must be met for all activities involving the specified uses.

- A. ***Accessory Agricultural Activities.*** Accessory Agricultural Activities shall conform to the following standards:
1. The total area cultivated shall not be more than thirty-five (35) percent of the total lot area.
  2. The amount of herbicides, pesticides, and similar chemicals stored on the property shall not be greater than the amount associated with normal residential usage.
  3. Any facilities for the sale of excess agricultural products shall be temporary, shall be located so as not to create a traffic hazard or obstruct vehicular or pedestrian traffic, and shall be used only during the period of the actual harvesting of the product.
  4. No products that are not grown, raised, or produced on the premises shall be displayed or sold.
- B. ***Accessory Animal Husbandry.*** Accessory Animal Husbandry shall conform to the following standards:
1. The lot on which the use is located shall have a minimum lot size of one hundred twenty thousand (120,000) square feet of area
  2. No area or structure for the housing, stabling, or feeding of animals shall be located within one hundred (100) feet of any property line
  3. No animals shall be pastured within twenty-five (25) feet of any property line
- C. ***Accessory Apartments and Dwelling Units.*** Accessory apartments and accessory dwelling units shall conform to the following standards:
1. Only one accessory apartment or one accessory dwelling unit shall be located on a lot with a single-family residence. The location of an accessory apartment and an accessory dwelling unit in conjunction with one single-family residence shall not be permitted.

2. An accessory apartment shall contain at least three hundred (300) square feet of floor space, but shall not contain more than twenty-five (25) percent of the total floor space of the dwelling in which it is located, and shall be an integral part of the dwelling.
  3. An accessory dwelling unit shall contain at least three hundred (300) square feet of floor space, but shall not contain more than twenty-five (25) percent of the total floor space of the single-family residence to which it is accessory.
  4. If the occupancy of the single family dwelling including the integral accessory apartment or accessory dwelling unit becomes an unrelated household, the total occupancy is limited to three unrelated persons for the entire occupancy.
  5. The location and design of the accessory apartment or dwelling unit shall maintain the single-family character of the premises.
- D. **Accessory Structures.** Accessory structures shall be limited to a maximum of two (2) accessory buildings per lot plus one (1) additional accessory building for each eighty thousand (80,000) square feet over the required minimum lot size.
- E. **Child Care Center.** A child care center shall conform to the following standards:
1. Any outside play area shall be fenced and shall not be located within required yard setbacks.
  2. Provisions shall be made for the safe drop-off and pick-up of children such that this activity will not create a traffic hazard, obstruct vehicular or pedestrian traffic, or adversely impact adjacent properties including those located on the other side of the street.
  3. A child care center shall not be located on a minor street that is residential in character unless the Zoning Administrator finds that such a use will not create traffic in excess of what would be typically found on a residential street based upon a traffic study prepared by the applicant.
- F. **Child Care Home.** All child care homes shall conform to the following standard:
1. Provisions shall be made for the safe drop-off and pick-up of children such that this activity will not create a traffic hazard, obstruct vehicular or pedestrian traffic, or adversely impact adjacent properties including those located on the other side of the street,

In addition, child care homes licensed to accommodate more than six children at any time shall conform to the following standards:



1. Any outside play area shall be fenced and shall not be located within required yard setbacks.
2. The child care home shall not be located on a minor street that is residential in character unless the Zoning Administrator finds that such a use will not create traffic in excess of what would be typically found on a residential street based upon a traffic study prepared by the applicant.

G. ***Hotels and Motels.*** Hotels and motels shall conform to the following standards:

1. No occupant may stay in a hotel or motel as a guest for more than fourteen (14) days in any thirty (30) day period.

H. ***Manufactured Housing.*** A manufactured housing unit shall conform to the following construction and siting standards in addition to any state requirements:

1. It was constructed after June 15, 1975, and certified as meeting the mobile home construction and safety standards of the Department of Housing and Urban Development.
2. It is at least twenty (20) feet wide at the narrowest point.
3. The roof pitch shall be not less than a two-foot rise for each twelve (12) feet of horizontal run [two to twelve (2:12)], and the roof shall have minimum six-inch eaves or eaves and gutter.
4. It has roofing materials which are generally acceptable for site-built housing. Any roofing material may be used, provided that it has the appearance of a nonmetallic shingle, shake or tile roof.
5. It has siding material which has the appearance of wood, masonry or horizontal metal siding. Reflection from horizontal metal siding shall be not greater than that from siding coated with white gloss enamel.
6. It has a perimeter skirting that resembles a conventional house foundation and is constructed of brick, concrete, concrete block or pressure-treated wood.
7. It is placed on a permanent foundation approved by the Code Enforcement Officer.
8. The hitch and tongue of the manufactured home shall be removed.

I. ***Reuse of an Existing Agricultural Building.*** Any reuse of an agricultural building for a use other than an agricultural use shall conform to the following standards:

1. Any residential reuse shall conform to the use and dimensional requirements for residential uses for the zone in which it is located including, but not limited to, minimum lot size and minimum usable area per dwelling unit.
2. Any nonresidential reuse shall conform to the following standards:
  - a. There shall be no retail sale of goods not otherwise allowed in the zone.
  - b. The nonresidential activity shall occur completely within the agricultural building and there shall be no outside storage of material, equipment, or products.
  - c. The architectural character of the building shall be maintained.
  - d. Exterior changes to the building shall be limited to minor changes or additions needed to provide access or comply with code requirements.

J. ***Reuse of an Older Single-Family Home for a Low Impact Nonresidential Use.*** Any reuse of an older single-family home or residence shall conform to the following standards:

1. The nonresidential activity shall occur completely within the building and there shall be no outside storage of material, equipment, or products. The nonresidential activity may occupy all of the building or a portion of the building together with a single-family residential use.
2. The architectural character of the building shall be maintained.
3. Exterior changes to the building shall be limited to minor changes or additions needed to provide access or comply with code requirements.
4. The volume of traffic generated by the use shall not be more than twice the volume resulting from a typical single-family residence.
5. Any off-street parking created to serve the reuse shall be located to the side or rear of the building and shall be buffered from any abutting residential use by a landscaped buffer at least twenty (20) feet in width that meets the requirements of Article XXII.
6. No noise, odors, dust, vibrations, or similar factors shall be produced in amounts greater than those typically resulting from a typical single-family residence.

K. ***Temporary Sawmill.*** A temporary sawmill shall conform to the following standards:

1. The sawmill shall not be located or used on a property for more than thirty (30) days in any calendar year.
2. The sawmill shall be not located in any required front, side, or rear yard setback and shall be at least two hundred (200) feet from any residence on an abutting lot.

3. Processed materials shall not be stored on the site for more than two weeks.
  4. Upon the cessation of processing activity, the location of the sawmill, storage and processing areas, and vehicle areas shall be re-graded and seeded to restore the original condition of the site.
- L. ***Timber Harvesting.*** All timber harvesting activities shall be conducted in accordance with a management and harvesting plan prepared by a licensed forester and filed with the Zoning Administrator at least five (5) business days prior to commencement of operations. Within one hundred (100) feet of any property line or road right-of-way, harvesting shall be limited to selective cutting which removes not more than 20% of the basal area in any five (5) year period.

## ARTICLE XXI OFF-STREET PARKING AND LOADING

### **175-110. Compliance Required; 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 chapter 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 chapter.

### **175-111. General Requirements.**

- A. ***Standard vehicle parking space size.*** A standard vehicle parking space shall measure no smaller than nine by eighteen (9 x 18) feet.
- B. ***Compact parking space size.*** A compact parking space shall be no smaller than eight by sixteen (8 x 16) feet. No more than twenty percent (20%) of the off-street parking requirement shall be met by the use of compact spaces, and all such spaces shall be suitably marked on the site.
- C. ***Storage.*** The parking or storage of any truck or truck trailer in excess of one (1) ton for more than twenty-four (24) hours in any three-day period shall not be allowed in the front or side yard setback.
- D. No driveway in the front yard setback shall be wider than twenty-two (22) feet.
- E. Parking spaces, excluding employee parking, shall be on the same lot with the main building.
- F. ***Minimum requirements.***
  1. All parking areas and access driveways shall have, at a minimum:

- a. A smoothly graded stabilized dust-free gravel surface for single-family and duplex dwelling units.
  - b. A paved hard surface (concrete, asphalt, interlocking brick, etc.) for:
    - (1.) All multiunit dwelling units, fraternities, sororities and rooming and boarding houses.
    - (2.) All nonresidential uses.
  - c. Adequate drainage to prevent runoff flowing onto adjacent property, sidewalks and public roads.
  - d. Appropriate bumper guards or curbs where needed to define parking spaces or limits of paved areas or to prevent vehicles from projecting into any setback or other portion of a lot where parking is prohibited.
2. Parking lots for ten (10) or more vehicles shall be clearly marked with properly painted lines or other method approved by the Durham Public Works Department.
  3. Parking serving single-family and duplex units will be permitted in the front yard setback for up to three (3) vehicles per household.
  4. Parking is allowed in the side yard setbacks and rear yard to serve residential uses and all nonresidential uses, provided that:
    - a. A five-foot landscaping and solid screening area is provided and maintained adjacent to the adjoining property boundary or a public right-of-way.
    - b. A commercial residential or commercial use does not abut a single-family or duplex household.

**175-112. Required Parking.**

Parking shall be required as follows:

<b>TYPE OF USE</b>	<b>NUMBER OF REQUIRED PARKING SPACES</b>
<b><i>Residential</i></b>	
Single-family duplex or multiunit dwellings	2 per dwelling unit
<b>OR</b>	
Dwelling units where permitted to be occupied by 3 or more unrelated individuals	0.75 per resident
Rooming or boarding houses, fraternities, sororities, dormitories, or congregate housing	1 per resident
Elderly housing	1 ½ per dwelling unit or lodging unit, plus 1 per employee
Homes for aged, disabled, or handicapped	1 per 5 beds, plus 1 per employee of the maximum shift
Educational facilities	1 per staff member, plus 1 for 4 seats in the largest public assembly room
<b><i>Commercial</i></b>	
Bed and breakfasts	2 for the resident family or manager, plus 1 per room rented, plus 1 for each 2 outside employees on the maximum shift
Hotels and motels	1 per guest room or suite, plus 1 per 2 employees on the maximum shift, plus 1 per 75 square feet of meeting place
Veterinary clinics or commercial kennels	1 per 400 square feet of gross floor space; minimum of 4

<b>TYPE OF USE</b>	<b>NUMBER OF REQUIRED PARKING SPACES</b>
Auditoriums, theaters, churches, or other places of assembly with fixed seating	1 per 4 seats or 40 square feet of gross floor area used for assembly purposes; whichever is greater
Libraries, museums, and art galleries	1 for every 500 square feet of gross floor area.
Day care	1 per 6 supervised children or adults, plus 1 per employee
Carryout restaurants	1 per 80 square feet of gross floor area, with a 10-space minimum
Less than 4,000 square feet	1 per 100 square feet of seating area, plus 1 per employee on the maximum shift
Over 4,000 square feet	40, and 1 per 200 square feet of gross floor area in excess of 4,000 square feet
Banks and financial institutions	1 per 250 square feet of gross floor area
Professional offices	1 per 250 square feet of gross floor area
Medical and dental offices	1 per 250 square feet of gross floor area, plus 1 per employee
Offices not providing customer service	1 per employee, but not fewer than 1 per 400 feet of gross floor area
Retail or personal service stores	1 per 250 square feet of gross floor area
Service stations	3 per service bay, plus 1 per employee
Manufacturing uses, research testing and processing, assembling, all industries	1 per 1.5 employees on a maximum shift, but not less than 1 space for every 400 square feet of gross floor area

<b>TYPE OF USE</b>	<b>NUMBER OF REQUIRED PARKING SPACES</b>
Other uses/combined commercial customers, patrons, and employees	Adequate spaces to accommodate uses as determined by the Zoning Administrator

**175-113. Loading Spaces or Bays.**

- A. 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 two thousand (2,000) square feet, an off-street loading space or bay shall be provided on the premises. In the OR District, at least one (1) off-street loading space or bay shall be provided for the first twenty-five thousand (25,000) square feet of gross floor area and two (2) such spaces or bays for the first fifty thousand (50,000) square feet of gross floor area.
- B. No required loading space or bay shall be less than fourteen (14) feet high and twelve (12) feet wide. The length shall be not less than fifty (50) feet for retail stores nor less than thirty (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.

**175-114. Landscaping and Screening.**

All parking areas for over five (5) vehicles shall meet the following conditions below and the requirements in Diagrams 8-1 and 8-2:

- A. A minimum of five percent (5%) of the total parking and driveway area, including a minimum five-foot buffer strip abutting a public right-of-way, shall be landscaped.
- B. Parking aisles shall not contain more than ten (10) cars in a row. The total parking area required shall be broken into sections not to exceed forty (40) cars.
- C. The perimeter landscape buffer along a street shall consist of planting materials or planting materials and man-made features to create at a minimum a three-foot-high visual relief screen in the form of a hedge, fence, planter box, berm, dividers, shrubbery or trees, or a combination thereof. All landscaping to form such visual relief shall create a two-foot-tall minimum screen at planting.
- D. All islands, peninsulas and medians required in the parking areas shall be more or less evenly distributed throughout such parking areas. The distribution and location of landscaped areas may be adjusted to accommodate existing trees or other natural features so long as the total area requirement for landscaped islands, peninsulas and medians for the respective parking area is satisfied.
- E. There shall be a six-foot-high solid screen when bordering or adjacent to a residential zone.

- F. Corner clearance, as defined in Section 175-7, shall be observed regarding all landscaping or screens.
- G. Trees for parking lots shall be species selections recommended for the Durham area. They shall be selected to endure urban environment, shall be tolerant of salt, shall be resistant to disease and shall require little maintenance. Trees that drip sap or drop large seeds or blossoms onto parked vehicles shall not be used.
- H. All trees and other vegetation within parking lot landscaped areas are subject to maintenance requirements as outlined in Section 175-124. Maintenance Requirements. All trees and other vegetation are also subject to protection during construction as outlined in Section 175-123.
- I. A performance bond or letter of credit is required to insure compliance with this section and to cover maintenance for a period not to exceed one (1) year after the time of planting.

**175-115. Lighting.**

Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or residential use.

**175-116. Driveway Permits; Penalty; Fees.**

**A. Access to town roadways.**

- 1. A written permit from the Director of Public Works is required prior to the construction or alteration of any driveway, entrance, exit or approach within the limits of right-of-way of the Durham roadway system.
- 2. A written construction permit application must be obtained from and filed with the Durham Public Works Department by any abutter intending driveway work as per Subsection A(1) above. Said permit shall have been reviewed and a construction permit issued prior to any site review or building permit approval.

**B. Construction requirements.**

- 1. Driveway construction shall meet the requirements of the Public Works Department. The latest Policy and Procedure for Driveways and Other Accesses to the State Highway System, as published by the New Hampshire Department of Transportation, will be used for design guidelines.
- 2. Engineered construction plans shall be required for commercial or industrial enterprises and all subdivisions.

**C. Number of curb cuts.**

- 1. In the RA, RB, RC and R Zoning Districts, there shall be not more than one (1) driveway where the frontage is less than two hundred (200) feet. One (1) additional driveway for each additional one hundred (100) feet or major fraction thereof may be permitted by the Public Works Department should site conditions warrant.



2. In the OR, CB and LB Zoning Districts, a maximum of two (2) driveways per lot may be permitted by the Public Works Department should site conditions warrant.

D. ***Maintenance responsibility.***

1. The total cost of all construction and maintenance of the work specified shall be borne by the applicant, his/her grantees, successors and assigns. With the exception of certain drainage structures constructed according to permit specifications by the applicant, the Department of Public Works will assume the maintenance responsibility for:
  - a. The driveway culverts carrying surface water in roadside ditches under driveways within the town right-of-way.
  - b. Catch basins constructed at the end of cross-road culverts under the town roadway system.
  - c. Drainage systems along existing roadways constructed for the purpose of disposing of roadway drainage.
2. In the case where adjoining property has been or is being developed which requires the extension of a pipe, ditch or drainage system, it is the responsibility of the abutting property owner to construct according to permit specifications and maintain said extensions. The Department assumes the responsibility of maintenance for the catch basin at the roadside (in the ditch or gutter line within the town right-of-way), and the abutting landowner is responsible for extensions from said catch basin.

E. ***Penalty.*** Whoever violates any provision of this section or the rules and regulations made under authority thereof shall be fined as set forth in Section 175-10 of this Code and, in addition, shall be liable for the cost of restoration of the roadway to a condition satisfactory to the person empowered to give such written permission.

F. ***Permit fees.*** Permit fees shall be as set by the Town Council from time to time and shall be payable upon the filing of the application.

**175-117. Central Business District Special Conditions.**

A. ***Exemptions.*** All permitted nonresidential uses shall be exempt from the parking requirements of this chapter within the Central Business District, provided that:

1. The site shall accommodate as much as practical the number of parking spaces required by this chapter.
2. A one-time parking impact fee as set by the Town Council is paid by the owner and/or developer for the number of spaces required less the number of on-site spaces provided. The parking impact fee shall be reviewed by the Durham Town Council on an annual basis.
3. Existing parking spaces shall not be eliminated by any proposed addition.

4. All landscaping shall comply with the landscaping requirements of this chapter.

## **ARTICLE XXII LANDSCAPING**

### **175-118. Preface.**

Trees are recognized as a valid asset to the community, providing a more healthful and beautiful environment in which to live. Trees and other vegetation provide oxygen; shade; protection from wind, glare and noise; view barriers; aesthetics; and a priceless psychological counterpoint to the man-made urban setting. Landscaping is economically beneficial in attracting new residents, visitors and industry. When grown on the right place and of proper varieties, landscaping enhances the value and marketability of property and promotes the stability of desirable neighborhoods and commercial areas.

### **175-119. Purpose and Intent.**

- A. The purpose of this Landscape Article is to establish procedures and practices governing the protection, installation and long-term maintenance of trees, vegetation and other landscape elements within the limits of the Town of Durham. The process of development, with its alteration of the natural topography and creation of impervious cover, can have a negative effect on the ecological balance of an area by causing increases in air temperature and by accelerating the processes of runoff, erosion and sedimentation.
- B. Development oftentimes requires the removal of trees and other plant material. The protection and enhancement of the natural beauty, environment and green space within the Town of Durham is an important aspect of the economic base of the community in that it is instrumental in attracting residents and nonresidents who come to visit, trade, vacation or attend conventions and educational programs.
- C. The purpose and intent of this Article is as follows:
  1. To aid in stabilizing the environment's ecological balance by contributing to the processes of air purification, oxygen regeneration, groundwater recharge and stormwater runoff retardation while at the same time aiding in noise, glare and heat abatement.
  2. To ensure that the local stock of native trees and vegetation is protected and replenished.
  3. To provide visual buffering and enhance the beautification of the town.
  4. To safeguard and enhance property values and to protect public and private investment.
  5. To preserve and protect the identity and environment of the Town of Durham and preserve the economic base attracted to the Town of Durham by such factors.
  6. To conserve energy.
  7. To protect the public health, safety and general welfare.

## **175-120. General Requirements.**

The objectives of this section are to encourage the planting and retention of existing trees and other vegetation to improve the appearance of off-street parking areas, yard areas and other vehicular use areas; to protect and preserve the appearance, character and value of surrounding properties and thereby promote the general welfare, safety and aesthetic quality of the Town of Durham; to establish buffer strips between properties of different land uses in order to reduce the effects of sight and sound and other incompatibilities between abutting land uses; and to ensure that noise, glare and other distractions within one area do not adversely affect activity within another area.

- A. No landscape plan submitted pursuant to this section shall be approved unless it conforms to the requirements of this Article.
- B. Landscape plans shall be submitted for all commercial and commercial residential uses. Said plans shall include dimensions and distances and shall clearly delineate the existing and proposed parking space or other vehicular use, access, aisles and driveways and the location, size and description of all landscape materials, including the quantity and botanical names of all plants. The Planning Board reserves the right to require landscape plans to a scale of one (1) inch equals twenty (20) feet.
- C. A detailed snow-removal plan shall be submitted with the landscape plan.
- D. Shrubbery, ground cover and other planting materials shall be used to complement the tree planting but shall not be the sole contribution to the landscaping. Effective use of earth berms, existing topography and existing trees is also encouraged as a component of the landscape plan and shall be considered as a part of the planting requirements.
- E. All shade trees to be used shall be a minimum of two (2) inches in diameter at breast height at planting. Inclusion in the landscape design of existing trees is encouraged.
- F. All shade trees to be planted shall be hardy for the Durham botanical zone.
- G. All required landscaping shall be provided with either:
  - 1. An underground sprinkling system; or
  - 2. An outside hose attachment.
- H. All landscaping which is in required landscaped areas and which is adjacent to pavement shall be protected with concrete or granite curbs or equivalent barriers (such as car bumpers, railroad ties, continuous border plants or hedgerows) when necessary to protect the vegetation from vehicular damage.
- I. Landscaping in landscaped areas shall not obstruct the view between the street and the access drives and parking aisles near the street yard entries and exits, nor shall any landscaping which creates an obstruction of view be located in the radius of any curb return. (See Section 175-55C.)

- J. Plant materials used in conformance with the provisions of this Article shall be of specimen quality and conform to the American Standard for Nursery Stock, American Standards Institute, Inc., 230 Southern Building, Washington, D.C. 20005.
- K. Landscaping, landscape maintenance and snow-removal plans shall be developed and approved as required in the Site Plan Review Regulations and Subdivision Regulations of Durham, New Hampshire. In the case where a question may arise between the town and the developer regarding a proposed landscape plan, a third party (qualified professional landscape authority), as approved by the town and the developer, may be called upon to make recommendations for the Planning Board's consideration; all costs to be borne by the developer.
- L. A guaranty or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscaping plan as submitted and approved.

**175-121. Commercial Areas.**

The existing natural landscape character shall be preserved to the extent reasonable and feasible. As an example of this, in a yard area containing a stand of trees, the developer shall use care to preserve such trees. In determining whether there is compliance, the Planning Board shall consider topographical constraints on design, drainage, access and egress, utilities and other factors reasonably related to the health, safety and welfare of the public which necessitated disturbance of the property without the disturbance of its natural character, the nature and quality of the landscaping installed to replace it and such other factors as may be relevant and proper. Clearing and stripping of the natural vegetation on a lot is prohibited prior to obtaining an approved landscaping plan.

**A. *Landscaped yard area requirements.***

- 1. The landscape plan will include a mix of tree species a minimum of two (2) inches in diameter at breast height at planting, to be planted at twenty-foot centers to provide for a tree canopy. The total number of trees necessary will be determined according to the combined footage of the front and side lines defining the landscaped yard as illustrated by the diagram accompanying this chapter as Exhibit A and made a part hereof.
  - 2. In cases where the zoning requires a buffer area, landscaping requirements under Subsection C below shall be followed.
  - 3. Shrubbery, ground cover and other planting materials shall be used to complement the tree planting but shall not be the sole contribution to the landscaping. Effective use of earth berms, existing topography and existing trees is also encouraged as a component of the landscape plan and shall be considered as a part of the landscaping requirement.
- B. All newly planted trees shall be planted in a permeable area of no less than a three-foot-wide radius from the base of the tree. Piles of snow shall be kept a minimum of five (5) feet away from the base of the tree.

- C. **Buffer/barrier.** Abutters will be protected against undue noise, glare, unsightliness or other nuisance detrimental to property values. Where a commercial lot abuts a residential area, a screen along the lot line must be provided consisting of either a row of evergreens at least four (4) feet in height at planting, which will grow into a thick hedge not less than six (6) feet high, or of an opaque and neatly maintained fence not less than six (6) feet in height.

#### **175-122. Subdivision Areas.**

During the development and construction process, wooded natural and nonwooded natural areas will be manipulated to maintain a healthy vegetative cover to maintain the soil structure, minimize soil erosion and enhance the quality of the proposed community. In wooded natural areas, the healthy forest cover will be retained to reduce the amount of stormwater running across the ground surface.

##### **A. Wooded natural areas.**

1. Plant community groupings or forest types will be identified, and the negative response to construction for plant groupings or forest types shall be identified based on forestry management principles.
2. Trees targeted for harvest/removal shall be clearly marked.
3. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators.
4. Trees of special interest, historic trees or trees having unusual silvicultural characteristics shall be flagged and located on the landscaping plan. These existing trees shall be protected during construction as outlined in Section 175-123.
5. The landscape plan will include a reforestation plan to establish trees in appropriate places, not to attempt to design finished landscaping near home sites. The plan is intended to establish and enhance forest cover in certain areas and/or create screens and buffer strips in critical locations, i.e., sewer/water easements. Proposed screening and buffer strips will receive plantings of evergreens three (3) to four (4) feet in minimum height, planting on ten-by-ten-foot centers (i.e., white pine, red pine or hemlock).
6. A site inspection by the Durham Tree Warden of trees marked for saving, cutting or clear-cutting is required prior to cutting of the lot.

B. **Nonwooded natural areas.** For subdivisions in open fields and other nonwooded areas, the landscape plan will include a mix of tree species to be planted on thirty-foot centers to provide for a tree canopy. The trees will be planted within the town right-of-way or on the private property boundary line adjacent to the town right-of-way.

C. **Roadway slopes.** In cases where the sloped areas extend more than ten (10) feet from the shoulder to the ditch line, the sloped areas must be landscaped and planted as determined by the Planning Board.

### **175-123. Protection During Construction.**

The Protection during construction section, as outlined below, will apply to commercial, subdivision, parking lot, roadway slopes and buffer/barrier zone sections of this chapter.

- A. Fencing or other protective barrier shall be used around trees near construction sites.
- B. Changes in the normal drainage patterns shall be avoided, and appropriate protection shall be provided for trees if a grade change is necessary in the surrounding area.
- C. Pedestrian and other traffic patterns should be kept away from trees to avoid soil compaction.
- D. Practices for the proper protection of trees on construction sites shall be in accordance with the guidelines in the following references:
  - 1. Tree Protection Manual for Builders and Developers, 1979, Florida Department of Agriculture and Consumer Services, Tallahassee, Florida.
  - 2. Protecting Shade Trees During Home Construction, United States Department of Agriculture, Home and Garden Bulletin No. 104, 1977, United States Government Printing Office, Washington, D.C. 20402.
  - 3. Environmental Do's and Don't's on Construction Sites, United States Department of Agriculture, Soil Conservation Service, Publication No. 1291, 1974.
- E. If the above guidelines are not followed and a tree is damaged or destroyed during construction, the developer shall be required to pay to the Town of Durham the assessed value of said tree, to a maximum of two thousand five hundred dollars (\$2,500.) per tree, the cost to be determined by guidelines in a Guide to Professional Evaluation of Landscape Trees, Specimens and Evergreens, 1982, International Society of Arboriculture, Urbana, Illinois, or per an updated version.
- F. Protection of existing vegetation during construction shall include, wherever possible, open field or non-treed areas.

### **175-124. Maintenance Requirements.**

The maintenance requirements as outlined below shall apply to commercial, subdivision, parking lot areas, Roadway slopes and Buffer/barrier zone sections of this chapter.

- A. All newly planted vegetative material shall be guaranteed to meet minimum American Standard for Nursery Stock standards at the time of planting and for one (1) year thereafter.
- B. Any agreement for long-term maintenance of any landscaping project must be negotiated prior to approval of a subdivision request based on the following criteria:
  - 1. Vegetation replacement.
  - 2. Irrigation.
  - 3. Pruning, fertilizing and insect and disease protection.

4. Litter or debris cleanup.
5. Drainage and tree protection if there is a grade change.
- C. A maintenance program shall be established. Pruning should be started early and kept up at regular intervals. Trees should be pruned and shaped to avoid splitting later in life. Broken tops and branches should be removed as soon as possible after injury. Broken, weak or diseased branches should be removed first, dead branches second and healthy branches last.
- D. Trees and shrubs should be protected against damage incurred with lawn mowers and garden equipment. Keeping grass away from tree trunks with the use of mulch is recommended.
- E. The use of road salt around the trees and shrubs should be avoided or minimized.
- F. Required landscaped areas shall be routinely maintained free of debris and litter and in good condition, with regular mowing of grass, so as to present a neat, healthy and orderly appearance. Maintenance shall include the replacement of all dead plant material within the guaranteed contract period. Practices for proper maintenance of landscape materials shall be done in accordance with the following standards:
  1. A Pictorial Primer for Proper Pruning by Dr. Alex L. Shigo, Forest Notes, Number 148, Spring 1982, pages 18-21.
  2. Standards of Practice of National Arborist Association, Inc., which includes Pruning, Fertilizing, Cabling, Pesticide Application and Lighting System Installation, National Arborist Association, 3537 Stratford Road, Wantagh, New York 11793.
  3. The Planting and Care of Shade Trees, Extension Publication Number 10, Cooperative Extension Service, University of New Hampshire, Durham, New Hampshire 03824.

#### **175-125. References.**

References shall be as follows:

- A. Tree Protection Manual for Builders and Developers, 1979, Florida Department of Agriculture and Consumer Services, Tallahassee, Florida.
- B. Protecting Shade Trees During Home Construction, United States Department of Agriculture, Home and Garden Bulletin No. 104, 1977, United States Government Printing Office, Washington, D.C. 20402.
- C. Environmental Do's and Don't's on Construction Sites, United States Department of Agriculture, Soil Conservation Service, Publication No. 1291, 1974.
- D. A Guide to Professional Evaluation of Landscape Trees, Specimens and Evergreens, 1982, International Society of Arboriculture, Urbana, Illinois.
- E. Tree Values, Council of Tree and Landscape Appraisers, Washington, D.C. (slide and tape program).
- F. Trees and Shrubs in New Hampshire, A Guidebook for Natural Beauty Projects, Cooperative Extension Service, University of New Hampshire, Durham, New Hampshire, 03824.

- G. American Standard for Nursery Stock, American Standards Institute Inc., 230 Southern Building, Washington, D.C. 20005.
- H. A Pictorial Primer for Proper Pruning by Dr. Alex L. Shigo, Forest Notes, Number 148, Spring 1982, pages 18-21.
- I. Standards of Practice of National Arborist Association, Inc., which includes Pruning, Fertilizing, Cabling, Pesticide Applications and Lighting System Installation, National Arborist Association, 3537 Stratford Road, Wantagh, New York 11793.
- J. The Planting and Care of Shade Trees, Extension Publication Number 10, Cooperative Extension Service, University of New Hampshire, Durham, New Hampshire 03824.

**ARTICLE XXIII  
SIGNS AND UTILITY STRUCTURES**

**175-126. Applicability.**

It is the purpose and intent of this article 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 general welfare of the Town of Durham.

- A. ***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 chapter shall be allowed to continue nonconforming. Nothing herein shall prevent the substantial restoration or reconstruction, within one year, of a sign destroyed in part or whole by fire or other casualty so long as this use does not result in a new or increased violation.
- B. ***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. Removal shall take place within fourteen (14) days after written notification from the Code Enforcement Officer, otherwise said sign shall constitute a public nuisance.

**175-127. General Provisions/Application Process.**

Application for a permit to erect a sign shall be made in writing to the Code Enforcement Officer, Town of Durham, 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. Proposed location and position of sign or structure;
- C. Plans or drawings with dimensions and specifications;
- D. Written consent of owner of the building or land;



- E. Such other information as the Code Enforcement Officer may require to include load calculations prepared and submitted by a Registered Professional Engineer.

**175-128. 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.

**175-129. Placement of Signs.**

- A. All signs shall be prohibited within public right-of-way areas except as provided and for traffic control devices and directional signs deemed essential for the public welfare and safety authorized by municipal and state agencies.
- B. The location of all sandwich board signs shall be limited to the outer edge of the sidewalk within the public ROW and within one (1) foot of the curb line.  

The sandwich board sign placement shall be placed within ten (10) feet of the primary entrance of the establishment, shall not obscure or impede pedestrian travel, and shall maintain a minimum of a four (4) foot travel lane along the side walk.
- C. No sign shall be so designed or so placed as to endanger, obscure or confuse or otherwise create a hazardous condition to motor vehicles.
- D. No sign shall project above the roof or parapet line of a building.
- E. Vending machines shall not be permitted on the exterior surface of any building or structure except within the Limited Business District or on any sidewalk or thoroughfare.

**175-130. Illumination of Signs.**

- A. Signs may be illuminated only by exterior white light sources so placed that they will not constitute a hazard to street or highway driving by glare. The minimum amount of lighting necessary shall be used to solely illuminate the sign, and the spillover of light beyond the sign surface shall be minimal to nonexistent.
- B. No flashing or animated signs, nor 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.

**175-131. Permitted Messages.**

- A. 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 (2) square feet in area on each of two sides and intended solely to provide directional information, may be permitted by the Zoning Administrator for a limited period of time.

- B. Farms shall be permitted by the Zoning Administrator to place not more than four (4) signs, each sign not exceeding six (6) square feet in area on each of two sides and intended solely to provide information about farm products for sale, as well as directional information.
- C. No sign which contains a registered trademark or name which portrays a specific commodity or service for sale will be allowed in any zone unless the trademark or name is of the principal commodity or service offered for sale by the establishment.

**175-132. Condition of Signs.**

- A. Signs other than permitted temporary or snipe signs shall be constructed of durable materials and shall be maintained in good condition and repair. When 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.

**175-133. Permitted Signs, by District.**

- A. **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. Each business establishment in the Central Business District is permitted one additional Sandwich Board sign or Reader Board sign.
- B. **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 seven (7) days after the relevant event, provided further:
  - 1. The size of any snipe sign shall not exceed twelve (12) square feet;
  - 2. The number of such signs is limited to one per lot in Residence A and B Districts and to two per lot in other districts; provided that this provision does not apply to signs that express political speech such as an endorsement of a candidate for office or an issue on an election ballot.
  - 3. Such signs are not permitted on public property or in public ways.
- C. **Temporary Signs.** One temporary sign such as used by real estate agents advertising property for sale or those used by contractors, architects, painters or other artisans advertising work in progress may be permitted on a lot in any district provided:
  - 1. It is unlighted;
  - 2. It is set back at least one-half the required depth of the street yard;
  - 3. It does not exceed twelve square feet in size;
  - 4. Its proper appearance is maintained;
  - 5. It is removed upon completion of the work or transaction;

- D. **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:
1. Are unlighted;
  2. Are set back at least one-half the required depth of the street yard or are attached to the building;
  3. Do not exceed one in number, and the sign is of no more than six (6) square feet in size in the Rural District, Limited Business, and Office and Research Districts, or no more than one (1) square foot in size in the Residence A, B and Coastal Districts;
  4. Professional offices and permitted commercial uses in Residence B and Residence Coastal and Rural Districts shall abide by the same regulations that apply to residential accessory signs in the Rural District except such signs may be lighted during normal business hours.
- E. **Projecting Signs.** Within the Central Business and Limited Business Districts and the Office and Research District, 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) square feet in surface area on each of two sides nor a total of forty (40) square feet on all sides.
- F. **Wall Signs.** Within the Central Business and Office and Research District, no wall sign shall exceed ten percent (10%) 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 Limited Business District, the cumulative size of permitted signs on any one business establishment shall not exceed ninety-six square feet.

**G. Number and Type of Signs Permitted, by District, for Each Lot.**

TYPE OF SIGNS	RA	RB	RC	R	CB	LB	OR
Projecting	0	0	0	0	1 <sup>1,2</sup>	1 <sup>1,2</sup>	1 <sup>1,2</sup>
Residen. Accessory	1	1	1	1	1	1	1
Snipe <sup>5</sup>	1	1	2	2	2	2	2
Temporary	1	1	1	1	1	1	1
Wall	0	0	0	0	1 <sup>1,2</sup>	1 <sup>1,2</sup>	1 <sup>1,2</sup>

TYPE OF SIGNS	RA	RB	RC	R	CB	LB	OR
Free Stand. or Ground	0	1	1	1	0	1	1
Sand. Board Sign	0	0	0	0	1 <sup>4</sup>	0	0
Reader Board Sign	0	0	0	0	1 <sup>4</sup>	0	0

NOTES:

1. The owner of a business which fronts on two town owned roads or a road and a municipal parking lot may have a wall sign facing each road or the road and the municipal parking lot.
2. The owner of a business which fronts on two town owned roads or a road and a municipal parking lot may elect to have two (2) projecting signs or two (2) wall signs in place of one of each kind, subject to the restrictions on such signs in other sections of this chapter.
3. Nothing in this chapter shall be construed as restricting the placements of signs, placards, posters or advertising displays on the interior of display windows provided such signs do not violate Section 12-3.4C of this chapter.
4. Only one sign -- either sandwich board or reader board -- is permitted per commercial use. A sign permit and proof of liability insurance is required for all sandwich board signs.
5. Except as provided for in 175-133(B)(2).

H. **Roof Signs and Pole Signs.** No such signs shall be permitted anywhere.

**175-134. Sign Construction.**

- A. **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.
- B. **Wind Pressure and Dead Load.** The supporting structure of and fasteners for all signs shall be designed to withstand five (5) 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 assumed; dead load shall be the weight of the sign.
- C. **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.
- D. **Marquees.** No marquee shall be erected unless designed by a registered structural engineer and approved by the Code Enforcement Officer. 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 and does not exceed five feet in height. The marquee must be able to support a live load of not less than one hundred pounds per square foot, and any sign attached to or hung from a marquee shall fully comply with this chapter.

- E. **Canopies.** Canopies may be constructed of cloth or metal, provided, however, that the lowest portion of any canopy shall not be less than eight (8) feet above the level of the sidewalk or public thoroughfare. Canopies must be designed by a registered structural engineer and be approved by the Code Enforcement Officer.
- F. **Awnings.** Awnings may be constructed of cloth or metal, provided, however, the lowest portion thereof shall be not less than seven (7) feet above the level of the sidewalk; they may extend beyond the street line but not nearer than eighteen inches to the curb line. Awnings must be approved by the Code Enforcement Officer.

**175-135. Enforcement.**

**Notification and Removal.** It shall be the duty of the Town Administrator, upon notification by the Code Enforcement Officer 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 (5) days from the date of notification, the Town Administrator 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 has been duly given, is hereby declared to be a public nuisance (as in any other use or violation which is otherwise hereby declared to be a public nuisance), and the Town Administrator is authorized to abate the violation by application for injunction or other lawful means. Nothing herein shall prevent the Town Administrator from causing prosecutions to be had for violations to obtain or impose fines for such violations, either as supplemental or alternative corrective actions.

**175-136. Penalties.**

Any person violating any of the provisions of this Article shall be subject to the penalties as provided by Section 175-10.

**175-137. 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 Section 175-19.

**ARTICLE XXIV  
SEPTIC SYSTEMS**

**175-138. Applicability.**

The standards of this article shall apply to the installation of a septic system or other on-site sewage disposal system on a lot created after the effective date of this article. These standards shall not apply to existing vacant lots of record, lots in a subdivision approved prior to the effective date of this article, or the replacement of a septic system on an existing lot.

**175-139. Suitability of the Location of the Leaching Field.**

The leach field or other component of the system designed to infiltrate the leachate into the ground shall be located within a rectangular area of suitable soils having a contiguous area of not less than five thousand (5000) square feet. The minimum width of the rectangular area shall be forty (40) feet. No portion of the required suitable area shall be located within one hundred twenty-five (125) feet of very poorly or poorly drained soils or a water body. To demonstrate the suitability of the area, the applicant shall dig a minimum of four (4) satisfactory test pits within the suitable area. The Town's independent soil scientist shall observe the digging of the pits and may require that additional pits be dug to demonstrate the suitability of the entire area. All test pits that are dug shall be recorded and the results of all test pits provided to the Town whether they are satisfactory or not.

The satisfactory test pits shall be located at least fifty (50) feet from any other satisfactory test pit. To be satisfactory, a test pit shall comply with the following criteria:

- a. The minimum depth to the estimated seasonal high water table shall be twenty-four (24) inches, and
- b. The minimum depth to ledge shall be five (5) feet.

**175-140. Duties of the Code Enforcement Officer.**

The Town's Code Enforcement Officer shall be responsible for the oversight of the installation of septic systems. In this capacity, she shall:

- a. Review the test pit information, suitability of the proposed leach field location, and design of the proposed septic system for conformance with the Town's requirements prior to submitting the application to the state. If the proposed system does not conform to the Town's requirements, the Code Enforcement Officer shall reject the application and notify the applicant of that decision in writing setting forth the reasons for the denial.
- b. Inspect the installation of the system to see that it conforms to the approved location and design.
- c. Retain an independent soil scientist to oversee the digging of the test pits and to verify the accuracy of the test pit data.

**175-141. Duties of the Independent Soil Scientist.**

The independent soil scientist shall be retained by the Town and shall be responsible to the Code Enforcement Officer. The soil scientist shall be responsible for observing the digging of the test pits and the recording of the information to determine if the test pit is “satisfactory”. The soil scientist shall review the test pit logs and other documentation to verify that they accurately portray the conditions on the site. In addition, the soil scientist may require that additional test pits be dug to demonstrate that the required area is suitable.

**175-142. Review Fee.**

Prior to the scheduling of the digging of any test pits, the applicant shall pay a review fee to the Town to cover the cost of the services of the independent soils scientist. The amount of the fee shall be equal to the Town’s actual cost for the services of the soil scientist. The Code Enforcement officer shall collect a deposit prior to the scheduling of any test pit observations. The amount of the deposit shall be 125% of the estimated cost of the services. Any unused balance of the deposit shall be returned to the applicant within thirty (30) days of the date of application for a permit to install the septic system.

**ARTICLE XXV  
IMPACT FEES**

**175-143. Reserved.**