

SOLAR ENERGY SYSTEMS ORDINANCE
Durham, New Hampshire
Amendments to the Zoning Ordinance
Adopted by Town Council on February 6, 2023

Wording that was added to the ordinance is shown with **underscored** type.

❖ ***Make the following changes in Article II. Definitions.***

- ***Add this new section for “Solar Energy Systems.” Place this section right before “Solid Waste” and retain the order as shown here.***

SOLAR ENERGY SYSTEMS – Specific definitions pertinent to solar energy systems follow.

Building-Mounted Solar Energy System – A solar energy system attached to and completely supported by a building that does not extend more than 5 feet beyond the building footprint. The system may include necessary accessory equipment that is ground mounted.

Freestanding Solar Energy System – A ground-mounted solar energy system, including a stationary or tracking system (either single axis or dual axis). A Solar Photovoltaic (PV) Parking Canopy is not a Freestanding Solar Energy System.

Group Net Metering Host, Small – A Solar Photovoltaic (PV) System less than or equal to 100 KW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Group Net Metering Host, Large – A Solar Photovoltaic (PV) System greater than 100 KW and less than 5 MW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Multi-unit Residential or Nonresidential Solar Energy System– An accessory use designed to provide solar energy for the principal and accessory uses of Multi-Unit Residential, mixed Use with Residential and other Nonresidential uses.

Name Plate Rating - The maximum sustained electric power-generating capacity of the Solar Energy System.

Solar Energy – Radiant energy emitted by the sun.

Single-Family or Duplex Residential Solar Energy System – A Solar Energy System that is an accessory use designed to generate energy for use at the property. A Single-Family or Duplex Residential Solar System may also be a Small Group Net Metering Host up to the size limits specified in 175-109.N.4.

Solar Energy System – A structure and the related components used to transform solar energy into electricity (through a solar photovoltaic system) or heat (through a solar thermal system).

Solar Photovoltaic (PV) Parking Canopy – An elevated structure that supports solar panels over a parking area. A solar photovoltaic parking canopy is not a carport. The structure is not used with single-family and duplex uses, nor is it considered *structured parking*.

Solar Photovoltaic (PV) System – A solar collection, mounting, inversion, storage and distribution system that converts sunlight into electricity.

Solar Thermal System – A solar collection system that directly heats a heat-transfer medium.

Utility-Scale Solar Energy System, Small - A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity equal to or less than 100 kW that generates energy for use off site by customers. A Small Utility-Scale Solar Energy System does not function as a Small Group Net Metering Host.

Utility-Scale Solar Energy System, Large – A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity of greater than 100 kW and less than 5 MW that generates energy for use off site by customers. A Large Utility-Scale Solar Energy System does not function as a Large Group Metering Host

➤ ***Add this new section in Article II Definitions***

CARPORT – A roofed structure designed to shelter motor vehicles and that is open on at least two sides. A carport may be a freestanding structure or attached to a building.

❖ *Modify the Table of Uses as follows:*

Add the new uses below in the Table of Uses in Section 175-53 under Subsection VI. Utility & Transportation Uses at the end after Personal Wireless Services Facility:

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
VI. UTILITY & TRANSPORTATION USES													
Single family or duplex residential solar energy system - accessory use (See Article XX)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Multi-unit residential or nonresidential solar energy system - accessory use (See Article XX)													
• Building-mounted	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
• Freestanding	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe s Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
<u>Small Utility-Scale solar energy system - principal use (See Article XX)</u>													
• <u>Building-mounted</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
• <u>Freestanding</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Large Utility-Scale solar energy system – principal use (See Article XX)</u>													
• <u>Building-mounted</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
• <u>Freestanding</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>CU</u>	<u>CU</u>	<u>X</u>
<u>Small Group Net Metering Host - principal use (See Article XX)</u>													
• <u>Building-mounted</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
• <u>Freestanding</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Large Group Net Metering Host - principal use (See Article XX)</u>													
• <u>Building-mounted</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe s Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
<ul style="list-style-type: none"> Freestanding 	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>CU</u>	<u>CU</u>	<u>X</u>
Solar PV Parking Canopy - accessory use to surface parking (See Article XX)	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Small Group Net Metering Host - accessory use to a single-family or Duplex residence (See Article XX)													
<ul style="list-style-type: none"> Building-mounted 	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<ul style="list-style-type: none"> Freestanding (The limits specified in Section 175-109 N.4.a apply) 	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

❖ ***Modify the Wetland Conservation Overlay District and Shoreland Preservation Overlay District as follows:***

175-60. Permitted Uses in the WCOD.

A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the WCOD provided that they do not alter the surface condition or configuration of the land by the addition of fill, do not obstruct or alter the natural flow or infiltration of surface water, and comply with the regulations of WCOD:

1. The planting of native or naturalized species and wetland vegetation as identified in “The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands: New Hampshire” within a wetland and native or non-native, non-invasive vegetation in the upland buffer in conjunction with the landscaping of lot;
2. The installation and observation of monitoring wells;
3. Conservation activities;
4. Accessory agriculture subject to the performance standards of 175-65.C;
5. The removal of dead, diseased, unsafe, or fallen trees;
6. The maintenance of existing vegetation including shrubs, lawns, and fields except as provided in 175-65.A.
7. Forestry in accordance with Performance Standard 175-65.D.
8. A pier or dock, including the replacement or expansion of an existing pier or dock, provided the structure is approved by the appropriate state agency (Otherwise it is considered a conditional use).
9. The maintenance of an existing pier or dock.
10. [A solar-energy system mounted on a building, where the building is pre-existing or otherwise approved \(separate from the solar-energy system\).](#)

175-62. Prohibited Uses in the WCOD.

Any use that is not identified as a permitted use in 175-60 or a conditional use in 175-61 shall be a prohibited use. [Freestanding solar energy systems are prohibited in the WCOD.](#)

175-71. Permitted Uses in the SPOD.

A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the SPOD provided they do not alter the surface condition or configuration of the land, do not obstruct or alter the natural flow or infiltration of surface or ground water, and comply with the regulations of the SPOD:

1. The planting of native or naturalized species and wetland vegetation as identified in “The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands: New Hampshire” and other native or non-native, non-invasive vegetation in conjunction with the landscaping of a lot;
2. The installation and observation of monitoring wells;

3. Conservation activities;
4. Accessory agriculture subject to the performance standards of 175-75.1. A and B;
5. The removal of dead, diseased, unsafe or fallen trees;
6. The maintenance of existing vegetation including shrubs, lawns, and fields, except as provided in 175-75.1, A.
7. Forestry in accordance with Performance Standard 175-75.1.C.
8. A pier or dock, including the replacement or expansion of an existing pier or dock, provided the structure is approved by the appropriate state agency (Otherwise it is considered a conditional use).
9. The maintenance of an existing pier or dock.
10. Aquaculture.
11. [A solar-energy system mounted on a building, where the building is pre-existing or otherwise approved \(separate from the solar-energy system\).](#)

175-73. Prohibited Uses in the SPOD.

Any use that is not identified as a permitted use in 175-71 or a conditional use in 175-72 shall be a prohibited use. Notwithstanding this limitation, the erection of a structure or septic system on an existing lot within the SPOD may be permitted by special exception in accordance with the provisions and standards of 175-29.B.

The following uses are deemed to pose a particular threat to the water quality of the adjacent shoreland or waterbody or downstream waterbodies and are prohibited in the SPOD even if they are permitted or conditional uses in the underlying zoning district:

- a. the establishment or expansion of salt storage yards;
- b. automotive junk or salvage yards;
- c. the storage or handling of hazardous wastes;
- d. the bulk storage of chemicals, petroleum products, or hazardous materials;
- e. use of any fertilizer, pesticide, or herbicide except in conjunction with accessory or commercial agriculture as provided for in 175-75.1. B.;
- f. the processing of excavated materials;
- g. the dumping of snow or ice removed from roads or parking lots;
- h. the disposal, handling, or processing of solid wastes including transfer stations, recycling facilities, and composting facilities;
- i. animal feedlots;
- j. the disposal of septage or other liquid or leachate wastes except for an approved septic system;
- k. construction on upland slopes which exceed 15%;
- l. dumping, spreading or any other application or use of treated soils or sludge from a sewage treatment plant.
- m. [Freestanding solar energy systems.](#)

❖ *Add the following as a new section in Article XX – Standards for Specific Uses, Section 175-109, and re-letter N. Temporary Sawmill*

N. **Solar Energy Systems.** Solar energy systems shall be allowed in conformance with the following standards and procedures (See Definitions for solar energy systems).

1. **Authority.** This ordinance is adopted pursuant to RSAs 362-F, 374-G, 477:49, 672:1 III-a, and 674:17 (I)(j).

2. **Purpose.** The purpose of this ordinance is to:

- a. Encourage the implementation of solar energy systems in accordance with the recommendations stated in the Energy Chapter of the 2015 Durham Master Plan;
- b. promote environmental sustainability while respecting the rural character and scenic landscape of Durham and the use of productive agricultural lands; and
- c. comply with and support the State of New Hampshire’s goal of developing clean, safe, renewable energy resources as provided for in the statutes referred to in 175-109. N.1 above.

3. **Applicability.** Solar installations that are designed to generate less than one kilowatt and are not connected to the electrical grid are not covered by this ordinance, though they may be subject to other regulations.

4. **Single-Family or Duplex Residential Solar Energy System – accessory use.** The following provisions apply to single-family or duplex residential solar energy systems.

- a. Basic requirements. This accessory use serves single-family or duplex residences situated on the same lot. A Freestanding Solar Energy System may have a nameplate capacity rating of 30 kW or occupy a ground area of up to 1,800 square feet.
- b. Special Exception. A proposed Single-Family or Duplex Residential Solar Energy System that does not conform with 175.109.N.4. c. below may be approved by a special exception.
- c. Placement – A Freestanding Solar Energy System shall be placed in a location meeting one or more of the following criteria.

- (1) The system is placed where it is largely not visible from a public road abutting the property, as determined by the Code Enforcement Officer, due to topography or existing structures or vegetation that are expected to be maintained until the Solar Energy System is decommissioned.
- (2) The system is placed 150 feet or more from any portion of a public road.
- (3) When a system is equal to or less than 12 feet in height and does not meet the requirements of 175-109.N.4.b. (1) or (2) above, the system shall be placed behind the fully enclosed part of the residence closest to the public road. Systems in the Rural and Rural Coastal Zones must also comply with 175-109.N.4.b (5) below.
- (4) When a system is greater than 12 feet in height and does not meet the requirements of 175-109.N.4.b. (1) or (2) above, the system shall be placed behind the fully enclosed part of the residence that is furthest from the public road. Systems in the Rural and Rural Coastal Zones must also comply with 175-109. N.4.b (5) below.
- (5) Systems in the Rural and Rural Coastal Zones should meet the placement criteria 175-109.N.4.b (1) or (2) above. The system may be placed in accordance with 175-109.N.4.b (3) or (4) above but shall not extend more than 40' beyond the side of the residence.

- d. Carport Mounted Solar Energy System – A solar energy system may be mounted on a carport when the carport is attached to the single-family or duplex residence and the carport is located beyond the fully enclosed part of the residence closest to the public road.

5. Multi-unit or Nonresidential Solar Energy System – accessory use.
The following standards and procedures apply to freestanding multi-unit residential or non-residential systems.

- a. Site plan review and approval by the Planning Board is required.
- b. A proposed system that does not conform with 175-109.N.5. c. below, may be approved by a special exception.
- c. No part of the system may be placed closer to the front property line (and side property line in the case of a corner lot) than the part of the fully enclosed principal building closest to the street. In addition, for a system that exceeds 12 feet in height (any part of the system), no part

of the system may be placed closer to the front property line (and side property line in the case of a corner lot) than the fully enclosed part of the principal building furthest from the street.

- d. The Solar Energy System shall be sized to provide up to the projected annual energy needs of the multi-unit or nonresidential use including approved ancillary uses.
- e. Where the nonresidential use is Commercial Farm, the system may be sized to generate up to 100 kW more than the projected annual energy needs of the Principal Use, and the Solar Energy System may function as a Small Utility-Scale Solar Energy System or Small Group Net Metering Host.

6. Small and Large Utility-Scale Solar Energy System – principal use.

The following standards and procedures apply to freestanding Utility-Scale Solar Energy Systems.

- a. Site plan review and approval is required.
- b. Freestanding systems shall be set back at least 100 feet from the front property line. The system shall be buffered from single family homes, neighboring roads and abutting properties in accordance with the Site Plan Regulations and as reasonably determined by the Planning Board.

7. Small and Large Group Net Metering Host – principal use.

The following standards and procedures apply to a freestanding Group Net Metering Host as a principal use but not to a Single-family or duplex residential solar energy system functioning as group net metering host.

- a. Site plan review and approval is required.
- b. Freestanding systems shall be set back at least 100 feet from the front property line. The system shall be buffered from single family homes, neighboring roads and abutting properties in accordance with the Site Plan Regulations and as reasonably determined by the Planning Board.

8. Solar PV Parking Canopy – accessory use.

- a. A Site plan review and approval is required.
- b. The parking must be an approved use specified in Section 175-53 “Table of Uses”.

- c. The height of the canopy, including panels, above the ground shall not exceed the height limit permitted in the zone and be no greater than 35 feet.
- d. A Solar PV Parking Canopy may function as a Multi-unit or Non-Residential Solar Energy System, a Utility-Scale Solar Energy System (Large or Small) or a Group Net Metering Host (Large or Small).

9. Other provisions. The following additional provisions apply to all solar energy systems.

- a. Building permit. A building permit is required for the installation of any system.
- b. Setbacks. Every part of a freestanding system, including components elevated above the ground, components that track and move, and necessary accessory equipment that is ground mounted, shall conform to required setbacks for the zoning district.
- c. Maximum height. For building-mounted systems, the maximum height for any part of the system is ten feet above the ridge of the roof of the primary building or ten feet above the highest part of the roof of the primary building where there is no ridge. The maximum height for freestanding systems is 25 feet (excludes Solar PV Parking Canopy).

A freestanding system exceeding 25 feet in height may be approved by special exception provided all of the following conditions are met:

- i. The system does not exceed 35 feet in height;
 - ii. The system is located in the Rural, Residence Coastal, Office Research – Route 108, Mixed Use and Office Research, Office Research Light Industry, or Durham Business Park district; and
 - iii. All other pertinent provisions for solar energy systems apply.
- d. Impervious surface. The maximum impervious surface ratio in the Table of Dimensions applies to what is on the ground under the solar panels. The solar panels themselves do not count toward impervious surface
 - e. Submission requirements. Applicants for projects that require a site plan shall submit all pertinent information, including specifications for the equipment, to the Planning Board, as specified in the Site Plan Regulations. Applicants for a special exception shall submit plans

showing all pertinent aspects of the project and all elements specified by the Zoning Board of Adjustment.

- f. Decommissioning. Applicants for a Solar Energy System that requires a Site Plan review shall submit a plan as part of that review for the removal of the structures and reclamation of the site when the system is no longer in use. It is expected that the decommissioning plan will specify the removal and disposal of photovoltaic panels using a means allowed by applicable state and federal regulations at the time of decommissioning.
- g. Historic District. Additional procedures and standards for proposed solar energy systems located within the Durham Historic District are contained in Article XVII of this ordinance.
- h. Site Plan Review is not required for any building mounted system.