

Part I. General Provisions

Article 1. Authority

Pursuant to the authority vested in the Durham Planning Board, by the legislative body of the Town of Durham, in accordance with previously adopted subdivision regulations under RSA 674:36, the Durham Planning Board is empowered under RSA 674:43 to review and approve or disapprove site plans. This review authority shall be applied to the development of parcels of tracts for non-residential uses and for residential multi-family dwelling units which are defined as any structure containing more than two (2) dwelling units per structure, whether or not such development includes a subdivision or re-subdivision of a site.

Article 2. Title

These regulations shall be known and may be cited as the “Site Plan Regulations of the Town of Durham, New Hampshire,” as adopted and subsequently amended.

Article 3. Purpose

The purposes of these Regulations are to:

- 1) Further the safe and orderly development of the Town;
- 2) Promote sustainable design and development that supports long-term economic vitality and ecological integrity;
- 3) Achieve high-quality site appearance that conserves and protects natural resource systems, helps to reduce infrastructure costs, conserves energy, and provides for a pleasant, walkable environment for the future users and residents;
- 4) Encourage site design techniques that protect water quality and natural hydrology, prevent increases in the quantity of stormwater runoff, and manage stormwater runoff at the source;
- 5) Protect abutters against hazards, unsightliness, and nuisances detrimental to property values;
- 6) Ensure that development of land is appropriate for the public and private services and facilities available;
- 7) Ensure that pedestrian, bicycle, vehicular circulation, and public transit can be accommodated in a safe manner;
- 8) Preserve and enhance the historic and cultural character of the community;

- 9) Encourage attractive, harmonious, and high-quality design that is compatible with the architectural heritage of the town of Durham, the state of New Hampshire, and New England;
- 10) Prevent scattered and/or premature development;
- 11) Include such provisions as will tend to create conditions favorable for health, safety, convenience, prosperity, and general welfare; and
- 12) Implement the goals of the Durham Master Plan.

Article 4. Compliance

Compliance with these Site Plan Regulations does not relieve the applicant from compliance with the Zoning Ordinance, Subdivision Regulations, Building and Fire Codes, Historic District Ordinance, specifications of the Department of Public Works, or any other local, state, or federal ordinance, regulation, code, or statute that pertains to the proposed development.

The standards contained in these regulations shall be interpreted as minimum requirements, and compliance with these minimum requirements shall not obligate the Planning Board to approve any particular application solely on that basis. The Planning Board may at its discretion require higher standards in individual cases or may waive certain requirements for good cause in accordance with the procedures outlined in these regulations. Only after the Planning Board is reasonably satisfied that a proposed application complies with all pertinent requirements of the Site Plan Regulations and other applicable requirements and objectives, may the application be approved.

Article 5. Waivers

Section 5.1	General
Section 5.2	Conditions
Section 5.3	Procedures

Section 5.1 General

- 5.1.1 In accordance with RSA 674:44 III. (e) the Planning Board may grant a waiver from any provision of these regulations provided the Board finds that either:
- (a) Strict conformity with the specific provision would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; or
 - (b) Specific circumstances relative to the site plan, or conditions of the land in the site plan, indicate that the waiver will properly carry out the spirit and intent of these regulations.

(Note that a variance is granted from the Zoning Ordinance, whereas a waiver is granted under Site Plan Regulations. There are different criteria for variances.)

5.1.2 Unless “unnecessary hardship” is defined otherwise in applicable case or statutory law, it is defined herein as a situation where practical difficulties or unnecessary expense would result from strict compliance with the requirement, and where the applicant would be unduly burdened by the requirement as opposed to merely inconvenienced. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

- (a) Topography;
- (b) Existing site features;
- (c) Geographic location of the property; and
- (d) Size/magnitude of the proposed project.

5.1.3 Unless defined otherwise in applicable case or statutory law, the Planning Board shall consider the following in determining whether a waiver would “not be contrary to the spirit and intent of the regulations” (per waiver provision 5.1.1 (a), above) or “properly carry out the spirit and intent of these regulations” (per waiver provision 5.1.1 (c), above):

- (a) whether granting the waiver will be detrimental to the public safety, health, or welfare, or injurious to other property,
- (b) whether granting the waiver will promote the public interest; and
- (c) whether granting the waiver is consistent with the provisions of the Durham Zoning Ordinance, Durham Master Plan, and any official maps.

Factors to be considered shall include, but not be limited to:

- (1) Topography;
- (2) Existing site features;
- (3) Geographic location of the property; and
- (4) Size/magnitude of project being evaluated.

Section 5.2 Conditions

In approving waivers, the Board may impose such conditions as it deems appropriate to secure the purpose of the particular requirement being waived.

Section 5.3 Procedures

5.3.1 A request for a waiver shall be submitted in writing by the applicant along with the application for Board review. The applicant shall address how any waiver request comports with one of the two justifications for granting waivers, in Subsection 5.1.1.

5.3.2 The Planning Board minutes shall include any waivers that are granted, including the basis for granting the waiver.

- 5.3.3 Any approved waiver, including a description of the waiver, shall be noted in the Notice of Approval and/or on the plans, as determined by the Planning Board.

Article 6. Administration, Enforcement, and Appeals

- Section 6.1 Administration
- Section 6.2 Enforcement and Penalties
- Section 6.3 Appeals

Section 6.1 Administration

These regulations shall be administered by the Planning Board.

Section 6.2 Enforcement and Penalties

The enforcement of these regulations is vested in the Durham Code Enforcement Officer and the Durham Town Council. The Code Enforcement Officer and the Town Council are designated as the local authorities to institute appropriate action under the provisions of RSA 676:17. Any violation of these regulations may be subject to a civil fine as provided in RSA 676:16 and 676:17, as amended.

Section 6.3 Appeals

In accordance with RSA 677:15, any person(s) aggrieved by any decision of the Board concerning a site plan review application may present to the superior court a petition, duly verified, setting forth that such decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within 30 days after the Board's final decision regarding the site plan application.

Article 7. Validity

- Section 7.1 Conflicting Provisions
- Section 7.2 Saving Clause

Section 7.1 Conflicting Provisions

Where any specific provision contained in these regulations conflicts with another specific provision in these regulations, or with any other local, state, or federal regulation, ordinance, code, or statute, the requirement imposing the greatest restriction or highest standard shall apply, unless otherwise provided.

Section 7.2 Saving Clause

If any section, clause, provision, or portion of these regulations shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or impair any other section, clause, provision, or portion of these regulations.

Article 8. Amendments

These regulations may be amended by the Planning Board in accordance with RSA 675:6, as follows:

- 1) The Board shall hold a public hearing on the proposed amendment. Notice of the time and place of the hearing shall be as provided in RSA 675:7.
- 2) The amendment shall not take effect until copies of it are certified by a majority of the Board and filed with the Town Clerk (unless otherwise provided by law).

Article 9. Word Usage

In these regulations, words used in the present tense shall include the future, the singular includes the plural and the plural includes the singular, the word "building" shall include the word "structure," the word "shall" is mandatory, and the word "may" is permissive. The word "person" includes an individual, partnership, firm, association, corporation, organization, or institution.

Where terms are not defined in Article 10 or within a given Article, they shall have their ordinary accepted meanings or such as the context may imply.

Article 10. Definitions

Note that there are special definitions sections in several sections in the Site Plan Regulations, specifically: Part I, Article 10 - Definitions and Part III, Article 2 – Architectural Design Standards, Article 5 – Landscaping and Screening Standards, Article 6 – Lighting Standards, and Article 16 – Stormwater Management Standards.

Wherever these words and terms, below, are found, they shall have the following meanings.

AASHTO. American Association of State Highway and Transportation Officials

Adaptive Management. Management of resources that is a structured, iterative process of robust decision making in the face of uncertainty, with an aim to reducing uncertainty over time via system monitoring. In this way, decision making simultaneously meets one or more resource management objectives and, either passively or actively, accrues information needed to improve future management.

Best Management Practices (BMP). Methods and means that have been determined to be the most effective, practical, commonly accepted approaches to meeting a specific objective. Regarding stormwater management, BMPs control, treat, or prevent pollution and detrimental impacts from stormwater runoff. BMPs for stormwater management may be structural (engineered) or nonstructural (strategies implemented to control stormwater runoff that focus on pollution prevention such as alternative site design, zoning and ordinances, education, and good housekeeping measures).

Buffer. A vegetated area or zone separating a development from a sensitive resource or neighboring property.

Commercial Core. The land area encompassed by these 5 zoning districts: Central Business, Church Hill, Coe's Corner, Courthouse, and Professional Office.

Deer Yard. A small area of land that attracts a large number of deer during winter months. These areas are usually attractive to deer because of the shelter and proximity of food sources.

Development. Any man-made change to improved or unimproved land, including but not limited to changes to buildings or other structures, paving, adding or eliminating parking spaces or driveways, excavation or mining, dredging, significant filling or grading, drilling operations, storage of materials or equipment, or significant change of use.

Disturbance *[also under Stormwater]*. Any activity that significantly alters the characteristics of the terrain in such a manner as to alter the hydrology, impede the natural runoff pattern, or create an unnatural runoff.

Disturbed Area *[also under Stormwater]*. An area in which the natural vegetative soil cover has been removed or altered and, therefore, is susceptible to erosion.

Ecosystem Services. The benefits of natural systems to individuals, communities, and economies. These benefits include provisioning services such as food and water; regulating services such as flood and disease control; cultural services such as spiritual, recreational, and cultural benefits; and supporting services such as nutrient cycling that maintain the conditions for life on Earth.

Environmental (natural resource) protection. Policies and procedures aimed at conserving natural resources, preserving the current state of natural environments and, where possible, reversing degradation. Any activity to maintain or restore environmental quality through preventing the emission of pollutants or reducing the presence of polluting substances in environmental media, and preventing physical removal or degradation of natural resources.

Green Roof. Also known as rooftop gardens, green roofs are planted over existing roof structures, and consist of a waterproof, root-safe membrane that is covered by a drainage system, lightweight growing medium, and plants. Green roofs reduce rooftop and building temperatures, filter pollution, lessen pressure on sewer systems, and reduce the heat island effect.

Impervious Cover or Surface *[also under Stormwater]*. 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.

Mast Stand. ‘Mast’ is a term commonly used by foresters and wildlife biologists to describe the seeds of shrubs and trees that are eaten by wildlife.

Maximum Extent Practicable *[also under Stormwater]*. To show that a proposed development has met a standard to the maximum extent practicable, the applicant must demonstrate the following: (1) all reasonable efforts have been made to meet the standard, (2) a complete evaluation of all possible management measures has been performed, and (3) if full compliance cannot be achieved, the highest practicable level of management is being implemented.

Mitigation *[also Stormwater]*. Activities, strategies, policies, programs, and actions that, over time, will serve to avoid, minimize, or compensate for (by treating or removing pollution sources) the deleterious impacts of a particular development or activity, such as the measures to treat or remove pollution from downgradient water resources.

Native plants or vegetation *[also under Stormwater & Landscaping]*. Plants that are indigenous to the region, adapted to the local soil and rainfall conditions, and require minimal supplemental watering, fertilizer, and pesticide application.

NHDES *[also under Stormwater]*. New Hampshire Department of Environmental Services

Pavement *[also under Stormwater]*. Areas of a site that are covered with pervious and/or impervious asphalt and concrete. [See “porous pavement and pavers.”]

Porous Pavement. Alternative to conventional asphalt that uses a variety of porous media, often supported by a structural matrix, concrete grid, or modular pavement, which allows water to percolate through to a sub-base for gradual infiltration.

Redevelopment. Any man-made change to previously improved land, including but not limited to changes to buildings or other structures, paving, adding or eliminating parking spaces or driveways, excavation or mining, dredging, significant filling or grading, drilling operations, storage of materials or equipment, or significant change of use.

Screen. A type of buffer that provides significant visual shielding of the subject site.

Site. A lot, tract or parcel of land on which a development is located that includes but is not limited to the proposed area of disturbance and development activities.

Solar Access. The access of a solar energy system to unobstructed, direct sunlight.

Solar Orientation. 1. Orientation of a structure in a way that encourages energy efficiency by creating optimum conditions for the use of passive and active solar strategies. 2. Orientation of a structure for controlled solar gain. 3. The relation of a building and its associated fenestration and interior surfaces to compass direction and, therefore, to the location of the sun. It is usually given in terms of angular degrees away from south, e.g., a wall facing due southeast has an orientation of 45 degrees east of south.

Solar-Ready Zone. A section or sections of the roof or building overhang designated and reserved for the future installation of a solar photovoltaic or solar thermal system, as referenced in Appendix RB of the 2015 IECC.

Stormwater [*also under Stormwater*]. Water that originates from precipitation events and accumulates on land.

Streetscape. The view along a street from the perspective of a driver, bicyclist, or pedestrian that conveys a sense of the character and quality of the visual environment. The streetscape is composed of and defined by buildings, building heights and setbacks, building entrances, porches and awnings, storefronts, sidewalks, street furniture and benches, above-ground utilities, bus shelters, street trees and other landscaping, public parks and plazas, public art, bicycle lanes and amenities, parking lanes and parked cars, and the width and number of travel lanes.

Urban Compact. The core area of Durham classified as such by the Commissioner of NHDOT in which state roads are classified as Class IV highways under RSA 229:5. The Town of Durham maintains Class IV highways and has jurisdiction over access onto those roads.

Vernal pool. A body of water, typically seasonal, that provides essential breeding habitat for certain amphibians and invertebrates, does not support viable fish population, and meets the criteria established by the New Hampshire Fish and Game Department, Nongame and Endangered Wildlife Program, Identification and Documentation of Vernal Pools in New Hampshire, rev 2004.