

COMMENTS BY K. BUBAR AND R. MOWER:

PART 1

TOWN OF DURHAM, NEW HAMPSHIRE



DRAFT

SITE PLAN REGULATIONS

September 17, 2014

Adopted by the Durham Planning Board: DATE

Most Recently Amended:

Part I. General Provisions

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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 Site Plan Regulations under RSA 674:43, 674:44, and 675:6, the Durham Planning Board is empowered under RSA 674:43 to review and approve or deny site plans. This review authority shall be applied to the development of parcels of land for non-residential uses and for residential multi-unit dwelling units, which are defined as any structure containing three (3) dwelling units or more 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 for 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 Durham, New Hampshire, and New England;
10. Prevent scattered and/or premature development; and
11. Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity.

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, will 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:

- 1) 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
 - 2) 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.
- 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 1, above) or “properly carry out the spirit and intent of these regulations” (per waiver provision 2, above):
- 1) whether granting the waiver will be detrimental to the public safety, health, or welfare, or injurious to other property,
 - 2) whether granting the waiver will promote the public interest; and
 - 3) 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:
- a) Topography;
 - b) Existing site features;
 - c) Geographic location of the property; and
 - d) 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, above.
- 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 Interpretation
- Section 7.2 Conflicting Provisions
- Section 7.3 Saving Clause

Section 7.1 Interpretation

[These Site Plan Review Regulations in no way relieve a developer, agent or individual from compliance with the Zoning Ordinance, Subdivision Rules and Regulations, Building Codes, Historic District Commission, standard construction plans and specifications of the Department of Public Works, or any other local ordinance, regulation, or code that pertains to the proposed development.](#)

The standards contained in these regulations shall be interpreted as minimum requirements, and compliance with said minimum requirements shall in no instance 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 fully satisfied that a proposed application is in accordance with the Durham Master Plan and Durham Town Ordinances [MAY/WILL] the application be approved.

Comments from Bubar and Mower: This language is reinforces the authority of the Board

Section 7.2 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 7.3 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 provide 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; 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.

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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 in which proposed development is restricted or prohibited.

Comments from Bubar and Mower: Buffers should be identified and defined by type. For example, add a definition for Buffer, Riparian.

Commercial Core	The land area encompassed by these 5 zoning districts: Central Business, Church Hill, Coe's Corner, Courthouse, and Professional Office.
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<u>Deer Yard</u>	<u>Softwood cover that provides cover for deer in winter. SOURCE</u>
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<http://woodlot.novascotia.ca/book/export/html/241>
ALTERNATIVELY: "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."
SOURCE:
<http://www.foremosthunting.com/Deer/Library/DeerHuntingTerms.aspx>]

Development

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

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Disturbance *[also under Stormwater]*

Any activity that significantly alters the characteristics of the terrain in such a manner as to impede or alter the hydrology or natural runoff pattern, or creates an unnatural runoff.

Disturbed Area / Area of disturbance *[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.

Comment by Bubar and Mower: This definition should coordinate with Part III, Subsection 5.13.1 and acknowledge that some "green" roofs may not be vegetated but that all must meet a SRI standard, presumably by using a "green technology." Perhaps the term "green technology roof," "cool roof," or "heat island roof" could be used, since a main purpose is to provide cooling; a second purpose may be to manage stormwater. One resource is the U.S. Department of Energy's "Guidelines for Selecting Cool Roofs," accessible from <<http://www1.eere.energy.gov/femp/pdfs/coolroofguide.pdf>> Another resource may be found at <http://www.greenrooftechology.com/leed/leed_Greenroofs>

Heat Island Effect: Roof—Use alternative surfaces (e.g., vegetated roofs, pervious pavement, grid pavers) and nonstructural techniques (e.g., rain gardens, vegetated swales, disconnection of imperviousness, rainwater recycling) to reduce imperviousness and promote infiltration and thereby reduce pollutant loadings.

Heat Island Effect: Roof—Install a vegetated roof for at least 50% of the roof or Install high albedo and vegetated roof in combination (Area of SRI roof/0.75) + (Area of Veg Roof/0.50) ≥ Total Roof Area

5.13.1 Green Roofs. Applicants are encouraged to use roofing materials that have a Solar Reflective Index (SRI) of at least 29 (greater for roofs with a slope of 2:12 or more) or to install vegetated roofs.

Impervious Cover or Surface *[also Storm.]*

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. SOURCE: <http://www.vtfishandwildlife.com/cwp_elem_spec_ms.cfm>

Maximum Extent Practicable *[also Storm.]*

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.

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Native plants or vegetation *[also Storm & 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 Stormwater]* New Hampshire Department of Environmental Services

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

Porous pavement and pavers *[also Stormwater]* Alternatives to conventional asphalt that utilize a variety of porous media, often supported by a structural matrix, concrete grid, or modular pavement, which allow 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 parking spaces or driveways, excavation or mining, dredging, significant filling or grading, drilling operations, or storage of equipment or materials, or significant change of use.

Comments from Bubar and Mower: Definitions for DEVELOPMENT and REDEVELOPMENT should be identical except for “previously improved land.”

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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	<u>Ability of sunlight to strike a solar energy system.</u>
Solar orientation	<u>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, i.e., a wall facing due southeast has an orientation of 45 degrees east of south.</u>
Solar zone	Spaces on a roof that are unshaded, un-penetrated, and free of obstructions and may thus serve as a suitable place where solar panels can be installed at a future date. Systems may be installed in the future without need for the property owner to return to any Durham land use board.
Stormwater [<i>also Stormwater</i>]	Water that originates from precipitation events and accumulates on land.
Streetscape	<p><u>The view along a street from the perspective of a driver or pedestrian, particularly views of natural and built elements in the street right-of-way, including street trees, signs, street lights, above-ground utilities, sidewalks, bus shelters, bike racks, street furniture and public art. The quality of a streetscape has a major impact on the perception of an adjacent retail or mixed-use district. [SOURCE: City of Cleveland, OH, Planning Commission <http://planning.city.cleveland.oh.us/cwp/glossary/glossary.php>]</u></p> <p><u>STREETSCAPE: the urban element that establishes the major part of the public realm. The streetscape is composed of thoroughfares (travel lanes for vehicles and bicycles, parking lanes for cars, and sidewalks or paths for pedestrians) as well as the visible private frontages (building facades and elevations, porches, yards, fences, awnings, etc.), and the amenities of the public frontages (street trees and plantings, benches, streetlights, etc.). [SOURCE Tow Planning and</u></p>

Urban Design Collaborative, LLC
<<http://www.tpudc.com/glossary.asp>>

Vernal pool

Wetland or temporary pond that typically has ponded water only part of the year. Because the pool is temporary, it provides critical habitat for certain wildlife to breed and complete their life cycle. [SOURCE: <<http://des.nh.gov/organization/divisions/water/wetlands/vernal-pools.htm>>]