

PROSPECTIVE AMENDMENTS – ZONING ORDINANCE

Height, Stories, Uses, and Density in the Central Business District; Method for Determining Building Height; and Drive-Through Facilities

\*REFERENCE ONLY\*. Revision showing changes recommended by Planning Board on February 10, 2021 from original Town Council version

Proposed additions to current language are shown like this.

~~Proposed deletions of current language are shown like this.~~

~~Proposed additions by the Planning Board to version initiated by Town Council are shown like this.~~

~~Proposed deletions by the Planning Board from version initiated by Town Council are shown like this.~~

[Explanatory comments are shown like this]

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ARTICLE II – DEFINITIONS

➤ Make the indicated changes.

~~**BUILDING HEIGHT**—The vertical distance from the mean grade elevation (average grade around the perimeter of the building) to the mean roof elevation. For sloped roofs this is equal to one-half (1/2) of the vertical distance from eave to ridge. For flat roofs, including those with parapets, this is measured to the surface of the roof. Approved roof-mounted appurtenances such as solar arrays, utilities, and telecommunications structures are not considered part of the “building height.”~~

**BUILDING HEIGHT** – See Section 175-56. General Dimensional Standards. for procedure to determine building height.

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-through 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-through facilities are prohibited.~~

STORY - The complete horizontal division of a building, situated at or above ground level, comprising the usable space or room(s) on one level. Each such division is considered one full story, except for the top level when it is under a sloped roof, which is considered a half story. For the purpose of determining the total number of permitted stories, a sloped roof that does not contain usable space (other than crawl-type storage space) is not considered a half story. For the purposes of this ordinance, a lower level is considered to be a story if the front exterior wall of the lower floor level rises more than two feet above the finished grade. Cupolas with areas of 100 square feet or less do not count as a story.

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ARTICLE XII - BASE ZONING DISTRICTS

175-42. Central Business District (CB)

- Make the indicated changes.

B. *Development Standards in the Central Business District*

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

6. Maximum number of stories – The maximum number of permitted stories is four except as restricted in sections 8 and 9, 9 and 10, below.

*However, the maximum number of permitted stories in the remainder of the district outside of the area covered in sections 8 and 9, below may be increased by one story to five stories subject to all of the following provisions:*

a. Adding a story is permitted by conditional use.

~~b. In the case of buildings limited to three stories in sections 8 and 9, below, this provision allows for a fourth story. In other cases, this provision allows for a fifth story.~~

c. The provisions regarding percentage of office/retail use apply.

a. The additional ~~top~~ fifth story must be set back from the first floor by at least ten feet on all sides that front a public street. However, where a side of the building fronts Main Street or faces an adjacent lot (not separated by a street) situated in the section of the Central Business District that is restricted to three stories (Section 175-42 B. 8. and 9., or as those subsections may be renumbered in the future), the additional fifth story must be set back from the first floor by at least 20 feet. [The Planning Board recommends that this figure be a minimum of 20 feet and that the Town Council determine the appropriate figure, to be 20 feet or greater, e.g. "at least 20 feet," "at least 25 feet," "at least 30 feet," etc.]

b. The Planning Board must determine that the additional story will not have an adverse impact upon the streetscape, giving particular consideration to scale and mass (See Architectural Regulations for guidance).

c. Building height. When an additional story is incorporated under this section the maximum building height is 60 feet.

7. ~~Configuration of Required office/retail uses for a mixed-use with residential building –Where the building fronts on a public road, the portion of the building facing the road must be office/retail to a depth of at least 50 feet. In addition, the minimum percentage of gross floor area that is office/retail is based on the number of building stories as follows:~~

a. ~~One-story building: 100% of the gross floor area must be office/retail. A mixed-use with residential use is not allowed in a one-story building.~~

- b. ~~Two-story building stories: A minimum of 50% of the gross floor area~~ The entire first floor must be office/retail.
- c. ~~Three stories: Frontage—three, four, or five-story building: Where the building fronts on a public road, the first floor of the portion of the building facing the road must be office/retail to a depth of at least 50 feet. A minimum of 33-1/3% of the gross floor area must be office/retail.~~
- d. Three- or four- story building: The entire first floor must be office/retail. Alternatively, office/retail uses may be located anywhere on the first, second, third, and fourth floors provided: 1) the amount of office/retail equals or exceeds the square footage of the first floor and 2) the requirement regarding frontage in c, above, is met where the building fronts on a public road, the first floor of the portion of the building facing the road must be office/retail to a depth of at least 50 feet.
- e. Five-story building: The entire first floor must be office/retail. Also, one additional floor (any floor) or an area equal to the square footage of the fifth story must be office/retail.
- f. ~~Three Stories – Increased Nonresidential Option: For a three-story building where a minimum of 66-2/3% of the gross floor area is used for office/retail, the habitable square footage per occupant for unrelated households is established as specified in Section 175-56 – General Dimensional Standards.~~
- g. ~~Four stories: A minimum of 50% of the gross floor area of the building must be office/retail. Alternatively, the entire first floor plus one other entire floor must be office/retail.~~
- f. For a building where there are distinct sections with a different number of stories and for sites where there are multiple buildings, the required minimum overall office/retail gross square footage is determined by the sum of the minimum office/retail area required by each distinct section, or by each separate building, using the required office retail space specified above. For these sites ~~where there are multiple buildings~~, the disposition of office/retail and residential space on the site is flexible provided ~~this minimum percentage of office/retail area is met~~ the minimum overall amount of office/retail required is included and the Planning Board determines that the configuration of the building and its uses meets the intent of this subsection 7.
- g. Outdoor public use areas. Outdoor space on the subject property that is dedicated in perpetuity to public use may be used to meet the office/retail square footage requirement on a one-to-one basis provided that: a) the Planning Board determines that the design, location, management, and other aspects of the space will add a significant public amenity to the project; and b) the outdoor space may be used to meet a maximum of 50% of the overall required office/retail square footage.

8. Maximum Height of Mixed-Use Buildings, Section of Main Street – No building in the Central Business District on any lot with frontage along either side of Main Street, from and including Tax

Map 2, Lot 14-4 to the easterly boundary of the district, shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 14-4; Tax Map 4, Lot 7-0; Tax Map 4, Lot 6-0; Tax Map 4, Lot 5-0; Tax Map 4, Lot 4-0; Tax Map 4, Lot 3-0; Tax Map 4, Lot 2-0; Tax Map 4, Lot 1-0; Tax Map 5, Lot 1-0; Tax Map 5, Lot 1-2; Tax Map 5, Lot 1-3; Tax Map 5, Lot 1-17; Tax Map 5, Lot 1-4; Tax Map 5, Lot 1-5; Tax Map 5, Lot 1-6; Tax Map 5, Lot 1-7; and Tax Map 5, Lot 1-8. *(See 6. b, above for exception.)*

- 9. Maximum Height of Mixed-Use Buildings, Madbury Road – No building in the Central Business District on any lot with frontage along Madbury Road shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 12-0; Tax Map 2, Lot 12-2; Tax Map 2, Lot 12-3; Tax Map 2, Lot 12-4; Tax Map 2, 12-5; Tax Map 4, Lot 1-0; Tax Map 4, Lot 11-0; Tax Map 4, Lot 12-0; Tax Map 4, Lot 13-0UNH; and Tax Map 4, Lot 14-0. *(See 6. b, above for exception.)*

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ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

Section 175-53. Table of Land Uses.

- Delete line 5. following the second paragraph as shown below and renumber lines 6. 7. and 8. accordingly.

The following uses are specifically prohibited in all zoning districts:

5. Drive-through facilities other than as an accessory to a financial institution as set forth in the table below

*[The Town Council version included the deletion of line 5., above, but the Planning Board recommends retaining the current language in the ordinance.]*

- Make the following changes to the Table of Land Uses under **VIII. Uses Accessory to an allowed non-residential use:**

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)
Drive through facility accessory to a financial institution	X	X	X	CU	CU	X	CU	X	X	X	CU	CU

[The Planning Board recommends that no changes from the existing ordinance for drive through facilities above be made. The Town Council’s original version is shown below.]

Drive through facility serving prepared food or beverages

X   X   X   X   X   X   X   P   X   X   X   X   X

Any drive through facility other than one serving prepared food or beverages ~~Drive-through facility accessory to a financial institution~~

X   X   X   X   ~~CU~~ P   ~~CU~~ P   X   ~~CU~~ P   X   X   X   ~~CU~~ P   ~~CU~~ X

**Section 175-54. Table of Dimensions.**

- *Change the standard for Minimum Lot Area Per Dwelling Unit in Square Feet in the Central Business District as follows:*

~~450~~   NA

- Change the standard in the left column as follows:

Maximum Permitted Building Height in Feet by special exception in the four residential zones and by conditional use in the other zones.

- Change the maximum permitted height in feet by conditional use in the Central Business (CB) District as follows:

~~50~~ 60.

- Change note 7 as follows:

7. No building along the sections of Main Street or Madbury Road delineated in Subsections 175-42(B) ~~(9) and (10)~~ (8) and (9) shall exceed thirty five (35) feet in height ~~except by conditional use in Subsection 175-42-B-6.~~

**Section 175-56. General Dimensional Standards.**

- Make the following changes in Table 175-56 B.

Apartment (but not including *apartments in the CB District as delineated in Section 175-42 (B) (8) and (9)*, accessory apartments, and apartments in the ORLI and MUDOR districts, ~~and apartments in the CB District conforming to the provisions of Section 175-42 B.8.d~~). 400

~~Three-story apartment in the CB District conforming to the provisions of Section 175-42 B.8.d. — 300~~

Apartment in the Central Business District (excluding *apartments in the CB District as delineated in Section 175-42 (B) (8) and (9) and* accessory apartments) where the number of unrelated occupants does not exceed two 300

➤ Add the provision below and reletter the subsections that follow accordingly.

C. Building height. The height of the building may not exceed the maximum permitted height.

1. Measuring height. Building height shall be measured as the vertical distance from the mean elevation of the finish grade, six feet offset from the building foundation (or at the property line if the building is less than six feet from the property line), around the perimeter of the building to the following points for the various roof types shown:

a. gable, hip, and curved roofs: the midpoint between the ridge/high point and the corresponding eave;

b. gambrel and mansard-type roofs and roofs that are fully dormered: the deck or curb line (the top of the lower roof slope) or the eave above the dormer for fully dormered roofs;

c. flat roofs (including those with parapets) and situations where there is no discernible roof (such as the higher wall under a shed roof): the eave, cornice, or fascia at the top of the wall.

2. Appurtenant elements. Cupolas and towers with an area of 100 square feet or less and roof-mounted appurtenances such as solar arrays, utilities, roof decks, and telecommunications structures are not considered part of the building height. However, these elements may not exceed the maximum permitted building height by more than 15 feet (unless otherwise explicitly permitted).

3. Additions. For new building additions, the mean grade elevation shall be measured around the addition only.

4. Difference in elevation. Where there is more than an eight foot difference in elevation between the highest and lowest points along the finish grade, six feet offset from the building foundation around the perimeter of the building, the mean elevation shall be calculated separately for appropriate sections or sides of the building.

5. Excavations. Where an area is excavated adjacent to the foundation to provide a light well or outdoor use area for a lower level, such that the excavated area would not be prominently visible from any property line, the grade may be measured to the ground surface beyond the excavated area.

6. Spot elevations. Measurements of the elevation of the grade around the foundation may be taken at specific points as directed by the zoning administrator.

There definitions are included for reference only:

STORY - The complete horizontal division of a building, situated at or above ground level, comprising the usable space or room(s) on one level. Each such division is considered one full story, except for the top level when it is under a sloped roof, which is considered a half story. For

the purpose of determining the total number of permitted stories, a sloped roof that does not contain usable space (other than crawl-type storage space) is not considered a half story. For the purposes of this ordinance, a lower level is considered to be a story if the front exterior wall of the lower floor level rises more than two feet above the finished grade.

**BASEMENT** – That portion of a building that is fully below existing grade or partly below and up to two feet above existing grade.