

THE DURHAM ZONING ORDINANCE
Article II – DEFINITIONS
Prospective Amendments
For Planning Board Discussion – for June 14, 2023
STARTING AT LETTER “O”

Proposed additions by Town Planner are shown like this.

~~*Proposed deletions by Town Planner are shown like this.*~~

➤ *Directions are shown like this (from Town Planner)*

[Comments from the Town Planner are shown like this.]

- **Comments from the Planning Board and others are shown like this. GEORGE.** All comments are from Planning Board members (using first names) except where stated otherwise.

- Comments from Robin Mower are shown like this: **ROBIN MOWER** (her comments for the entire document are included here).

WORDS WITH DEFINITIONS THAT DO NOT APPEAR ANYWHERE ELSE IN THE ZONING ORDINANCE ARE SHOWN LIKE THIS

ROBIN MOWER: Second round of comments, made circa February 23, 2023, are in olive green.

OVERALL #2_____

- 1) Has the Board discussed whether to include terms that are (a) not used in the ordinance, (b) used but not regulated, or (c) for which a need is anticipated for the near future? I note instances of all three.
- 2) If the answer to any of the above is YES, would someone please systematically confirm that the terms included in the definitions are used elsewhere in the ordinance?
- 3) Has anyone checked definitions used in comparable/neighborhood towns’ ordinances? It is a good opportunity to (a) not reinvent the wheel, and (b) determine whether we are reasonably in sync where appropriate.
- 4) It appears that some definitions combine uses and physical descriptions.

*Comments from Planning Board member Tom DeCapo shown like this (added June 13).
Comments go through letter N and will be reviewed later.*

*Note that definitions are descriptive and not prescriptive. Therefore, definitions should not include words such as “shall.” They may, however, operate in a prescriptive manner. For example, a proposed caretaker apartment with an area of 2,500 square feet would not meet the definition of “caretaker apartment,” which is limited to 2,000 square feet, and therefore would not be permitted.

ROBIN MOWER: OVERALL_____

1. Coordinate with Site Plan Regulations !!!

2. Punctuation and capitalization.

(a) Check existing code for consistency, e.g., multi-unit vs multiunit. Likewise, the *dashes* used to separate a definition entry from its definition are inconsistent in type (hyphen or the slightly longer n-dash; in my opinion, they should be m-dashes, the longest).

(b) The terms "i.e." and "e.g." are always separated by periods and followed by commas.

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~~ *article*, they shall have their ordinary accepted meanings or such as the context may imply. The words "shall" and "must" are mandatory, the word "may" is permissive, and the word "should" indicates a preferred or encouraged, but not necessarily a required, course of action. *Some definitions may incorporate the term itself in the definition, in which case that term as referenced has the customary meaning (See "Nursing Home," for example.)*

➤ **Wherever a term has changed, replace the old term in the ordinance with the new term. For example, if "accessory apartment" is changed to "accessory dwelling unit – detached (or "detached accessory dwelling unit") change "accessory apartment" wherever it appears in the ordinance.**

175-7. Definitions.

As used in this chapter, the following terms shall have the meanings indicated. The inclusion of a particular use in this section does not *necessarily* indicate that the use is allowed anywhere in the town of Durham; some terms are included for general reference only. *These definitions do not incorporate requirements per se. They are descriptive rather than prescriptive. However, they often act in a prescriptive manner. For example, if a proposed home occupation does not comport with the definition then it is not a home occupation and thus not allowed as shown in the Table of Uses.*

ROBIN MOWER: Why use "comport with," which is less modern and straightforward than MEET

[See the proposed zoning amendments related to housing which include a number of changes to definitions.]

ACCESSORY DWELLING UNIT – *ATTACHED* – A dwelling unit located in, or attached to, a single-family residence as an accessory use. A single-family residence with an accessory dwelling unit is considered a single-family residence (not a duplex residence). See Article XX

[As proposed in the housing amendments.]

- **ACCESSORY DWELLING UNIT** - A question on how to differentiate between an ADU and a second primary unit. Could we set a size limit that triggers an ADU into a second primary unit? PAUL

- This seems to imply that an accessory dwelling units can only be associated with a single-family residence. JAMES

ACCESSORY *APARTMENT DWELLING UNIT – DETACHED* – A dwelling unit located in an accessory structure in conjunction with a single-family residence as an accessory use. A single-family residence with an accessory *apartment dwelling unit* is considered a single-family residence (not a duplex residence). See Article XX

[As proposed in the housing amendments.]

~~ACCESSORY SHED – A small shed for the storage of items in conjunction with a residential use. See Article XX~~

SHED – A small accessory structure used for storage.

Tom DeCapo: Neither Shed nor Accessory Shed appear to be used in the Zoning Ordinance. A Shed does seem to come within the definition of Accessory Structure. Does that mean we do not need the definition of Shed, or that we should be carving out a Shed from some or all of the accessory structure requirements?

ACCESSORY STRUCTURE – A structure that is detached from the principal building; situated on the same lot as the principal building and use; incidental, subordinate, and related to the principal building and use; and customarily found as (or reasonably considered to be) an accessory to the type of principal building and use that is situated on the property.

ACCESSORY USE – A use of land or a building or structure which is situated on the same lot as the principal use; incidental, subordinate, and related to the principal use; and customarily found as (or reasonably considered to be) an accessory to the type of use that is situated on the property.

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

- Do we really need to define Acre? See Alteration. JAMES

~~ADAPTIVE REUSE – The repurposing of an existing building for a new type of use in which the exterior appearance and the structural and architectural elements of the building remain essentially unchanged except for minor renovations needed to provide access or to comply with code requirements.~~

ADAPTIVE REUSE – The repurposing of an existing building for a new type of use in which the overall form and exterior appearance remain largely unchanged except for changes needed to provide access or to comply with code requirements and other minor enhancements.

ROBIN MOWER: Delete TYPE OF, resulting in *NEW USE,* and delete *LARGELY*

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

AGRICULTURE – Including but not limited to all uses, accessory uses, structures, functions, and events as defined in RSA 21:34-a - Farm, Agriculture, Farming, as amended. (See the Table of Uses and Article XX.1 for specific standards and restrictions.)

Accessory Uses. The following are considered accessory uses to an allowed agricultural use:

- 1) The storage, use of, and spreading of soil amendments, as defined in this section.
- 2) The use and application of agricultural chemicals pursuant to state requirements.
- 3) The preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market of any products and materials from the farm.
- 4) The transportation of farm workers.
- 5) The marketing and selling at wholesale or retail of any products from the farm, on-site and off-site, where not otherwise prohibited or regulated.
- 6) Irrigation of growing crops from private water supplies or public water supplies.
- 7) The use of dogs or other livestock guard animals for herding, working, and guarding livestock.
- 8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.
- 9) A farmstand situated on farm land owned by the operator of the farmstand provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms owned by the operator of the farmstand. Items not produced on the farm or farms owned by the operator are limited to agriculture-related products, specialty foods, gift items, crafts, and items reflecting agriculture and rural America.
- 10) Use of new technologies recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and appropriate agencies of the United States Department of Agriculture.
- 11) Agritourism, as defined in this section.

Agricultural Sales, Commercial. Sale of items specifically including agriculture-related products, trees, specialty foods, gift items, crafts, and items reflecting agriculture and rural America. (This use need not be located on a farm property, in contrast to Farmstand, Accessory, below.)

Agritourism. Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, and active involvement in the activity of the farm.

Animal Feedlot. A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock.

Aquaculture. The commercial raising, harvesting, and sale of fish and other aquaculture products.

Aquaculture – Accessory Use. The noncommercial raising and harvesting of fish and other aquaculture products for personal consumption.

Bees, Keeping of. The raising of bees and cultivation and sale of bee products.

Bees, Keeping of - Accessory Use. The raising and breeding of bees for noncommercial purposes, other than incidental sales of bee products produced on the premises, in conjunction with a residence.

Best Management Practices For Agriculture (BMPs) – Those practices and procedures described in the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed and periodically updated by the New Hampshire Department of Agriculture, Markets, and Food, as revised. BMPs also include other practices and procedures recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and the United States Department of Agriculture. Other documents providing guidance for agricultural practices and procedures endorsed by the Durham Agricultural Commission as appropriate references for best management practices are also deemed BMPs.

[Reference - <http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>]

Chickens and Turkeys, Keeping of - Accessory Use. The breeding and raising of chickens and turkeys for noncommercial purposes in conjunction with a residence. (Note that Poultry, keeping of as a principal use is not restricted to chickens and turkeys.)

Crop Cultivation. The cultivation, conservation, and tillage of the soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, viticultural, and horticultural crops and any other plant including greenhouse and high-tunnel crops and tree products and any other plant that can be legally grown and harvested extensively for profit or subsistence.

Farm or Farming. Any land, buildings, or structures on or in which agriculture and farming activities are conducted, including the residence(s) of owners, occupants, and

employees located on the subject land. This includes all farm outbuildings and any other structures used in the farm operations. An operation may be deemed a commercial farm where at least \$10,000 of agricultural products is produced and sold in a year.

Farmers' Market. An event or series of events at which two or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale include, but are not limited to, products of agriculture, as defined in RSA 21:34-a. A farmers' market does not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

Farmstand, Accessory. A farmstand as defined under Accessory Uses, above. (Contrast to Agricultural Sales, Commercial, above.)

Forestry. The production, cultivation, growing, harvesting, and sale of any trees or nursery stock.

Fur-bearing Animals, Keeping of. The raising, breeding, and sale of domesticated strains of fur-bearing animals, such as mink, ermine, and chinchilla.

Goats and Sheep, Keeping of. The raising, breeding, and sale of goats and sheep.

Goats and Sheep, Keeping of – Accessory Use. The raising and breeding of goats and sheep for noncommercial purposes in conjunction with a residence.

Horses, Keeping of. The commercial breeding, boarding, raising, training, riding instruction, and selling of horses, mules, donkeys, and other equidae.

Horses, Keeping of - Accessory Use. The noncommercial breeding, boarding, raising, and riding of horses, mules, donkeys, and other equidae.

Livestock - Large, Keeping of. The raising, breeding, or sale of beef and dairy cattle, steer, oxen, domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).

Livestock – Large, Keeping of – Accessory Use. The raising and breeding of large livestock, specifically including the animals listed above, for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.

Poultry, Keeping of. The raising, breeding, and sale of poultry, including chickens, turkeys, ducks, geese, and gamebirds. (Note that Chickens and Turkeys, keeping of – Accessory Use is restricted to only those two types of poultry.)

Rabbits, Keeping of. The raising, breeding and sale of rabbits.

Rabbits, Keeping of – Accessory Use. The raising and breeding of rabbits for noncommercial purposes in conjunction with a residence.

Soil Amendments. Including commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.

Swine, Keeping of. The raising, breeding, or sale of swine and swine products.

Swine, Keeping of – Accessory Use. The raising and breeding of swine for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.

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 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 – Any motor-driven vehicle designed or adapted for travel over ground surfaces other than maintained roads.

- Should ‘other than’ be ‘as well as’? JAMES

ROBIN MOWER: (1) Hyphenate ALL TERRAIN and OFF HIGHWAY (these are modifiers), resulting in ALL-TERRAIN and OFF-HIGHWAY. (2) Aren’t all-terrain vehicles designed specifically to be used OFF maintained roads? (3) Unlike Paul, I believe the definitions SHOULD distinguish between traditional all-terrain vehicles and e-bikes. The damage to ground traveled is different due to weight and size, including tire size. Also—and I could be wrong—aren’t all-terrain vehicles capable of much greater speeds than e-bikes?

Tom DeCapo: *I agree that ebikes should be distinguished from all terrain vehicles and treated differently for purposes of the recreational facility definition.*

The definition would also seem to include motorized wheel chairs in general, and certainly those modified for use on trails. Subjecting those to the Recreational Vehicle Facility prohibition may present an ADA issue. Even if it does not, do we want to define and exclude?.

The definition would also seem to include tractors and other forms of farm, tree and lawn equipment. As written, the Recreational Vehicle Facility definition would seem to be triggered if a land owner allowed an employee, independent contractor, utility company or anyone other than a owner or resident to operate such vehicles. We should exclude such vehicles from the vehicle definition, or uses for such purposes from the facility definition

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.

[This use is prohibited in all zoning districts.]

- ALL TERRAIN VEHICLES vs OFF HIGHWAY RECREATIONAL VEHICLES vs EBIKES and other electric motor wheeled devices used for transportation. Why do we need these definitions? The lines between all of these are heavily blurred. For ATV's should add the word "primarily" before "for travel over". PAUL

ALLOWED USE – Any use that is legally permissible on a given site under this zoning ordinance (subject to all other approvals which may be required such as site plan approval, issuance of a building permit, granting of state permits, etc.), including permitted uses, conditional uses when a conditional use is approved, uses allowed by special exception when a special exception is granted, uses that have been approved through a variance, and legal nonconforming uses.

ROBIN MOWER: Should this definition reference Section 175-53, the Table of Land Uses?

~~*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.*~~

[The dictionary definition is probably sufficient.]

Tom DeCapo: I would keep Alteration for fear that some non structural changes might trigger certain zoning ordinances that this dsefinition would not trigger.

AND – When used in a series of allowed activities, such as “Dogs may be used for herding, working, and guarding livestock,” means “and/or,” such that any and all of the activities are allowed, individually or in combination.

~~*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.*~~

[A definition is included under Agriculture, above.]

APARTMENT – ~~See "Accessory Dwelling Unit."~~ *A residential dwelling unit contained within a multiunit residential building or a nonresidential building or situated on a lot with other uses. An apartment is typically, but not necessarily, rented from the property owner.*

- I think 'ther' should be 'other'. How is a 'mother-in-law apartment over the garage classified since it may have been approved with the initial building permit and not as an attached structure? JAMES

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ROBIN MOWER: Are there really instances in which someone other than the property owner rents out an apartment?

Tom DeCapo: The phrase "or situated on a lot with other uses" seems to cause this definition to overlap with Accessory Dwelling Unit-Unattached. In response to James question, I understand a mother in law apartment over the garage to be an Accessory Dwelling Unit-Unattached, not an Apartment. Is that correct? In response to Robin, I understood the definition to mean that an apartment need not be rented. Perhaps we delete "from the property owner",

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, BEDROCK – Bedrock composed of a high concentration of interconnected fractures, fissures, or cracks that can 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 and is described in detail in Section 175-85 of this Ordinance.~~

AQUIFER PROTECTION DISTRICT – Recharge areas of designated aquifers as shown on an overlay to the Official Zoning Map of the Town. and is described in detail in Section 175-85 of this Ordinance. See Article XVI.

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

AREA MEDIAN INCOME (AMI) -The median income of the greater region, the HUD Fair Market Rent Area to which Durham belongs, as is established and updated annually by the US Department of Housing and Urban Development. Income considers both wage income and assets.

[As proposed in the housing amendments.]

- Not sure why "Area Median Income" is included b/c I couldn't find the term used anywhere in the proposed ZO--perhaps meant to be used in the Workforce Housing definition? EMILY

ROBIN MOWER: IF this term is to be included (and I agree with Emily Friedrich's position), then I suggest this language: The median family income of the "greater region," i.e., the HUD Fair Market Rent Area to which Durham belongs, as established and updated annually by the U.S. Department of Housing and Urban Development. Median Family Income as defined by HUD considers both wage income and assets. << QUERY: How are assets defined? Investments? Sailboats or rental property? And where can one find that definition? I see no mention of assets here <<https://www.huduser.gov/portal/datasets/il/il23/Statement-on-FY-2023-Income-Limits.pdf>>

~~**ART CENTER—A facility for the display or sale of objects of art, the teaching of art, or the creation of works of art.**~~

ART CENTER – A facility focused on arts education or small-scale arts and crafts production, which may include classrooms, studios, workshops, exhibit spaces, and small retail spaces related to its primary functions.

[Changed per request of board on February 8 for Chuck to look at art center, craft shop, gallery, and museum.]

Tom DeCapo: *I do not know the history behind the February 8 change, but I am concerned at how comparatively restrictive this new definition is. I feel that encouraging art, like agriculture, has many benefits to the community. To curtail the retail aspect of an art center undercuts the funding of the center and thus likely dissuades many people who would look to open or maintain a center. Does this achieve the board's goals: A facility focused on the arts that, in addition to any retail art sale use, engages in arts education and/or small-scale arts and crafts production for members of the community, and provides classrooms, studios, workshops and/or exhibit spaces for community use related to the arts.*

AUTOMOBILE CAR WASH – A facility equipped for washing cars *and other vehicles* manually or automatically.

➤ Change Automobile/car wash in the Table of Uses to Automobile car wash.

Tom DeCapo: *Note that Automotive Service Station includes car wash, but limits that to hand wash. As the two have the same table of uses status, does this difference make sense? Should Automobile Car Wash be limited to hand wash? Should an Automotive Service Station include automatic wash?*

AUTOMOTIVE 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.

- Check out the def. for Automotive Services Facility and compare it to Motor Vehicle Services Facility. See if there might be a way to pare that down to one.
BARBARA

Tom DeCapo: the two definitions are very similar but also are inconsistent in important ways. They have the same table of uses status and neither is addressed elsewhere in the Zoning Ordinance, so it would seem to make sense to rationalize them.

~~*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.*~~

~~*AWNING—A structure made of cloth or similar material supported on a frame and attached to a building projecting over a public way used for signage, for decorative purposes, or to protect pedestrians from adverse weather.*~~

[See “canopy” below.]

ROBIN MOWER: Suggest putting a period after PUBLIC WAY and starting a new sentence: IT MAY BE USED.... (Otherwise, it is the public way that is modified by USED FOR.)

Tom DeCapo: This seems like it requires a very careful study of the use of these terms throughout the Zoning Ordinance. Awning is used at least 11 times. Canopy is used at least 25 times. The existing definition of Canopy expressly excludes awnings. If someone has done the work to be sure combining the terms does not require major overhaul of these other sections that contemplated separate treatment, I'm all for it. If the work hasn't been done, it seems like a lot of work for a small benefit.

BASAL AREA – The cross sectional area of a tree measured at a height of 4-1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees. "Total basal area" is the sum of the "basal areas" of all vegetation in the zone.

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

- **Should ‘existing grade’ be ‘finished grade’? JAMES**

ROBIN MOWER: The second sentence is not sufficiently related to the first. And I agree with James Bubar's questioning the specific grade. In some cases, a basement is partially below a finished grade and partially below an existing grade; for example, consider walkout basements for structures built on a hillside.

Tom DeCapo: This does not seem like the right document location to address the issue in the second sentence.

BEDROOM – A fully enclosed room designed for sleeping.

~~**BOARDING HOUSE**—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. See “Rooming House.”~~

BOARDING HOUSE – A residential building providing living accommodations in multiple rooms or units that are not full dwelling units. Bathrooms may be provided in the units or in common areas. There are limited kitchen facilities, such as a sink and microwave, provided in the units. There may or may not be common cooking and dining facilities. (Also called a “Rooming House.”)

ROBIN MOWER: This is sloppily constructed; it could also lead to undesirable consequences. I hope the Board will have a thoughtful discussion about this concept and how it could “play out” in Durham. Questions to be addressed should include: Could the function of a boarding house be “housed” in a multi-use building? Also, I understand that there may be appropriate uses, but...

Tom DeCapo: I do not see these two definitions being used currently in the zoning ordinance, other than to cross reference each other. Am I missing something? I believe living facilities that would fall into this definition are becoming increasingly popular for young professionals and other new entries to the work force in high cost housing centers. Accommodating this concept in some way is important to attract young professionals in growing industries such as tech and life sciences. Also, agriculture employee housing would seem to fall into these definitions.

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.

➤ **Change Boatyard/Boat Club in the Table of Uses to Boatyard.**

BOG – A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

-From Webster’s “a poorly drained usually acid area rich in accumulated plant material, frequently surrounding a body of open water, and having a characteristic **flora** (as of sedges, heaths, and sphagnum)”. **JAMES**

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

BUFFERING – The use of landscaping, earthen berms, walls, fences or some combination serving to partially or fully block the view and mitigate the impacts from one site to another.

-The term ‘mitigate’ implies to me that as a neighbor I won’t have to look at something, but the use of 6’ fences, on the boundary or non-evergreens means that at times I will have to look at that something. Buffering should include the degree of transparency allowed or disallowed.

From Webster’s mitigate means “to make less severe or painful”. JAMES

Robin Mower (lengthy): Why don't we have a term BUFFER and then divide it into categories? I strongly urge that the Board address different types of *buffering,* tying into those that provide ecosystem functions such as *riparian buffers,* those that provide aesthetic buffers, and those that provide *nuisance* buffers, e.g., sound barriers.

I agree with James Bubar that these two definitions are related. I do not agree that SCREENING should be incorporated into BUFFERING.

Site plan regulations (Article 10):

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

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

Should SCREENING include some quantifiable element of degree or measurability of the screening? For example, if I remember correctly, landscaping standards include something like Site Plan Regs: **Pt. III. 5.9.3** When natural vegetation is used, it shall consist of evergreen shrubs and/or trees planted in a line to form a continuous screen that will grow to a minimum height of 6 feet within 3 years. Additional evergreen shrubs/trees may be planted in a second, staggered line to form a screen together with the first line.

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

BUILDABLE AREA – *That portion of a lot, exclusive of required setback areas and buffers in which a building or structure may be erected.*

- Does this need an ‘except impervious ordinance requirements may also limit building(s) size. JAMES

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

Tom DeCapo: *Should Building contain some element of permanency? Is a back-yard tent set up for a weekend birthday party a Building? The bouncy-ball enclosure? Is a dog house or goat lean-to a Building?*

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

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

BUILDING INSPECTOR. Also known as the Building Official, Code Enforcement Officer, and Code Administrator.

- Fire Marshall? JAMES

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.

ROBIN MOWER: Delete “primarily.” Either it is or it isn’t aa business.

Tom DeCapo: I do not think I would delete “primarily”. Is a law firm intended to be Business Services? It might do some commercial research. An investment adviser or broker dealer? It might do some management and consulting to the treasury function. A university research lab? It will do some development and testing for businesses and get paid.

***THE PLANNING BOARD REVIEWED TO THIS POINT, A AND B, BUT HAS NOT YET REVIEWED COMMENTS ABOVE FROM ROBIN MOWER FOR A AND B. COMMENTS FROM ROBIN BELOW ARE BEING REVIEW.**

~~**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.~~

CAMPGROUND – Any area or parcel of land used or designed to accommodate two or more camping sites, including tents, camping trailers, recreation vehicles or other camping outfits, including accessory uses normally associated with such use.

Tom DeCapo: I would encourage the board to consider a limited exception for camping tents or other seasonal shelters as an accessory activity related to agriculture, which includes: Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to . . . making overnight stays. Any exception might include density limits, such as no more than one tent per 1, 3 or 5 acres of land and no more than 4 adults per tent; min/max length of stay limitations such as no less than 2 nor more than 7 nights; an owner occupancy requirement; a requirement that the farm provide and maintain the tents; a requirement that farm programing be conducted on any day that guests are present, etc. This is a great low impact, concrete way to introduce people young to small scale local farming, its culture and its benefits.

ROBIN MOWER: The SITES do not include tents, et al. Suggest: "...more camping sites that can accommodate tents...outfits, as well as accessory uses..."

~~*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.*~~

~~*CANOPY—A permanent structure (made of hard materials in contrast to an awning) attached to a building projecting over a public way used for signage, for decorative purposes, or to protect pedestrians from adverse weather.*~~

CANOPY – A structure projecting from a building, constructed of a frame and cloth or hard materials, used for signage, decorative purposes, or protecting pedestrians from the weather. A canopy is typically, but not necessarily, placed above a window or entryway. A canopy typically, but not necessarily, extends over a public way.

[I incorporated a new suggested definition for "Canopy." The board discussed awning, canopy, and marquee at the February 8 meeting. This definition for "Canopy" would be broad enough to cover various situations and "awning" and "marquee" could be eliminated. I crossed out my earlier recommendation for "canopy" in blue above.]

- From Webster's public way defined as "any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the public and designed for travel by vehicle, on foot, or in a manner limited by statute (as by excluding pedestrians or commercial vehicles). JAMES

ROBIN MOWER: Perhaps edit as:...hard materials SUCH AS METAL... BUT: The existing definition as a role to play, since a canopy may also be temporary, such as a tent for an event, e.g., religious holidays, weddings. So I suggest that you differentiate between types and include qualifications, if the intent is to support the solar ordinance, for example.

~~*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.*~~

CARETAKER APARTMENT – A dwelling unit that is incorporated into and accessory to a nonresidential use and is occupied by an owner or an employee of the entity occupying the principal use. A caretaker apartment has a gross floor area of less than 2,000 square feet.

ROBIN MOWER: (1) "Incorporated into": Exactly what does that mean? (2) Why only nonresidential use? Sometimes caretakers are hired by homeowners who anticipate being away frequently or for extended periods or who simply want maintenance and/or oversight on site. For example, a *carriage house.* (3) Less than 2,000 square feet: Seriously? That is HUGE!

Tom DeCapo: why not detached also, like accessory dwelling units. I agree with Robin on not limiting to nonresidential use. I would expand "employee" to include independent contractor and tenant in exchange for caretaking responsibilities. As a practical matter these are usually free accommodations, perhaps with a subsidy, in exchange for on sight caretaking. In terms of size, I would eliminate the size limitation. For example, our property has a second house on it which I suspect exceeds 2,000 sqft. It was being used as a caretaker residence when we purchased. Sometimes you are stuck with what you have, it would have been unreasonable to require a remodeling to somehow eliminate existing squarer footage in order to qualify as a caretaker apartment

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.~~

Robin Mower: First, insert SPACE between "Section 175" above.... BUT: A "category" is different from a single "use." So, technically, the definition should read "Any category of use listed..."

Tom DeCapo: Just so I understand, why is the deleted language no longer needed.

CHILD CARE CENTER – A nonresidential facility for the care of preschool ~~and/or and~~ school aged children that is not located within a ~~home or other residence~~ *single-family house or other residential dwelling unit.* See Article XX

- Child Care Center - I think this could say Child Day Care Center - this would allow the detail of "nonresidential" to be removed. HEATHER

ROBIN MOWER: (1) Hyphenate SCHOOL-AGED; (2) RESIDENTIAL dwelling unit is tautological and not used in the ordinance. (Dwelling units are by definition residential.) Drop the word RESIDENTIAL.

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

- Child Care Home - I think this could say Child Day Care Center - this would allow the detail of "nonresidential" to be removed. HEATHER

ROBIN MOWER: (1) As above, avoid redundancy of "nonresidential" and "not in...residential unit/residence, etc." (2) Do state or federal regulations apply equally to the different types of child care "facilities?" Should these definitions reflect any such regulations?

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~~ *single-family house or other residential dwelling unit.*

- Child Care Nursery - Can't this be combined with Child Care Center? HEATHER

- CHILD-CARE CENTER/HOME/NURSERY - Where does Harmony Homes' child care for their employees fit in? PAUL

ROBIN MOWER: See above re: redundancy of “nonresidential” and “not in...residential unit/residence, etc.” CINEMA – A motion picture theater.

~~*CLUB—A building or portion thereof used by a group of people organized as a non-profit organization 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. A club includes the facilities occupied by a fraternal or similar organization.*~~

CLUB – A building or portion of a building used by a group of people established as a not-for-profit organization to pursue common goals, interests and activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws. A club includes the facilities occupied by a fraternal or similar organization.

ROBIN MOWER: WHOA! Has the time come when we should develop a definition for a commercial club, particularly one that might have a liquor license or extended operating hours, or offer karaoke, for example?

CO-HOUSING – An intentional community of private homes clustered around shared space. Each attached or single-family home has traditional amenities, including a private kitchen. Shared spaces typically feature a common house, which may include a large kitchen and dining area, laundry, and recreational spaces. Shared outdoor space may include parking, walkways, open space, and gardens. Neighbors also tend to share resources like tools and lawnmowers.

- CO-HOUSING - Consider adding utilities to the list of shared outdoor space usages. PAUL

ROBIN MOWER: (1) DELETE THE HYPHEN! See the Cohousing Association of the United States and AARP... (2) Cohousing communities do not necessarily consist of detached homes. They could be apartment buildings, duplexes, or townhouses, for example. Does the Board wish to limit the structure type? If so, include in the definition OR in performance standards. (Do not forget!) Should this definition include a recognition that “cohousing communities use a condominium structure, with a homeowners association and monthly dues”—or at least acknowledge that, since the Planning Board might need to review a covenant or bylaws. (3) according to my research, “Cohousing members typically own their homes’ interiors but not the exterior. They may or may not own the ground the building rests upon.”—which is similar to condo associations.

COMMERCIAL CORE – The Commercial Core includes five zoning districts: the Central Business District (CB), the Church Hill District (CH), the Coe’s Corner District (CC), the Courthouse District (C), and the Professional Office District (PO).

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

ROBIN MOWER: “Compensation?” Such as... ??? And if for compensation, isn’t that ALSO for profit?

Tom DeCapo: non-profits often receive compensation

COMMON OPEN SPACE – Land within or related ~~to a~~ *specifically to a conservation* 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, *or another effective method*. Common open space is not part of any house lot or developable lot within the subdivision and it not owned by the developer nor another resident in the subdivision. Rather, common open space is owned by the Town, another government entity, a nonprofit organization, or jointly/in common by the lot (*or unit*) owners in the subdivision.

[As proposed in the housing amendments, but changes in first line above added here.]

- Change definition of "Common Open Space" to "Land within or related to a **specifically to a conservation** 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,~~ **natural habitat for native species** 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, or another effective method. Common open space is not part of any house lot or developable lot within the subdivision and it **is** not owned by the developer nor another resident in the subdivision. Rather, common open space is owned by the Town, another government entity, a nonprofit organization, or jointly/in common by the lot (or unit) owners in the subdivision." EMILY

- 'it not' 8th line should be 'is not'. JAMES

ROBIN MOWER: (1) I believe that the Fitts Farm subdivision—which is NOT a “conservation subdivision, to my knowledge—includes “common open space.” (2) Add to the end: “...in the subdivision, such as by a homeowners association.”

COMMUNITY CENTER – A building that accommodates recreational, educational, entertainment, and ~~or~~ cultural activities primarily for use by residents of a subdivision, *an other specific development* or *by residents of* the community-at-large.

ROBIN MOWER: (1) “A building that accommodates recreational, educational, or cultural activities or entertainment primarily for use by residents of a subdivision, by another, specific development, or by the community at large.” [note: no hyphens here, because it is not an adjective]

~~**CONDITIONAL USE—Those uses that because of particular 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 – A use or activity which, due to its particular characteristics and potential for adverse impacts, requires a special degree of consideration to ensure that the use or activity will be compatible with neighboring uses and not cause undue adverse impact.

- This eliminates all the other elements of a Conditional Use evaluation such as natural resource protection, preservation of scenic vistas, noise, odor, economic impact on Town's operation, etc. These may be more significant than to bundle underneath 'undue adverse impact'. Perhaps a reference to the Conditional Use Criteria would be appropriate. JAMES

ROBIN MOWER: I absolutely agree with James Bubar. This is an oversimplistic definition for a concept with extensive legal and practical ramifications. I urge the Board to sequester this definition for a discussion separate from the other definitions.

~~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.~~

CONDITIONAL USE PERMIT – An approval of a conditional use application in accordance with the procedures outlined in Article VII of this ordinance.

~~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.~~

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

ROBIN MOWER: Query: Would this definition work for 74 Main Street?

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 who are not attending activities at the center may occupy not more than fifty percent (50%) of the accommodations at any time.

ROBIN MOWER: (1) ...and seminars. It may include...

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.

ROBIN MOWER: Please consult the Conservation Commission on this definitions.

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.

ROBIN MOWER: (1) Is it accurate to say “a substantial portion” or is that subjective?

CONTIGUOUS – Touching at a point or along a boundary; Adjoining.

CONTRIBUTING STRUCTURE – A property or structure in the Historic Overlay District that is part of Durham’s heritage and contributes to the district’s sense of time, place and historical development by virtue of its age, historical use, location, design, setting, materials, workmanship, aesthetics, or association, *as determined by the Historic District Commission*.

CONVENIENCE STORE WITH GASOLINE SALES – A retail store with less than five thousand (5,000) square feet of gross floor area that includes the retail sales of gasoline and similar petroleum products but provides no other automobile services such as repairs or washing.

ROBIN MOWER: This definition leads the reader to conclude that the only items for sale are petroleum-based. More typically, a convenience store sells grocery and “sundry” items. Adding the gasoline sales: Does that mean it has pump stations AND sells oil for vehicles/generators?

Tom DeCapo: I didn’t read it that way, I read retail store to cover grocery and sundry items, as well as other items, and that retail sales of gasoline and other petroleum products were necessarily included within the products offered

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.

- Should be allow for a neighborhood bar or bodega? JAMES

ROBIN MOWER: Ummm... Doesn’t that begin to approach a PUD? OR could a subdivision be an industrial park?

CORNER CLEARANCE – An unobstructed area at street intersections free from any object, vegetation or slope that 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.

ROBIN MOWER: I suggest running this by the Town Engineer. (Could it be outdated?)

CRAFTSHOP CRAFT SHOP WITH ACCESSORY PRODUCTION – A studio of a crafts person or group of crafts people. A **craftshop craft shop** may include the sale of crafts and the production of crafts for sale on the premises.

ROBIN MOWER: This is confusing. Should it be renamed “Craft studio with accessory shop?”

CRAFTSHOP – A facility for the sale of art or craft objects, which may include studio or workshop facilities for the production of those objects.

[This is suggested by Chuck Hotchkiss and me. The board asked Chuck to look at the definitions for art center, craft shop, gallery, and museum. Suggested changes are incorporate herein. Chuck noted, 'Combine "gallery" and "craft shop" definitions under "gallery", and eliminate "craft shop" as a category. The only distinction between the two terms now is whether something is considered an art (in the gallery definition) or a craft (in the craft shop definition). That line is blurry already (consider glassblowing, stained glass, etc.)...I think an art or craft is created individually, as opposed to being mass produced. Salmon Falls Pottery, for instance, produced crafts because items were hand painted.]

➤ *In the table of uses, eliminate "gallery" and change P to CU for "craft shop" in the two residential zones because the latter could include some production.]*

ROBIN MOWER: Not all galleries include an area for the creation or production of an item. I think we need to retain the distinction between uses.

Tom DeCapo: I agree with Robin, particularly if one is now P and the other CU

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.

***THE PLANNING BOARD REVIEWED TO THIS POINT ON FEBRUARY 22, 2023**

DAY CARE – ~~A use which provides daytime~~ *An operation providing 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.

- Does this have to be in a nonresidential facility as the child care definitions say? JAMES

ROBIN MOWER: PLEASE get away from using the word "handicapped." Why not "children or adults in need of care outside their homes...?" And should there be a size limit for the number of people the facility can accommodate, or perhaps different definitions for a "day care center" and for "family day care?"—or the number of staff? (The latter may be covered by the 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 or her~~ *their* property.

ROBIN MOWER: ...who intends to alter or construct improvements on their 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.~~

DEVELOPMENT – Significant construction, reconstruction, alteration, or enlargement of any building or structure; a significant change of use; the subdivision, resubdivision, or combination of lots or other units of a building or land; the adjustment of lot lines; and mining, excavation, landfill, and significant land disturbance.

- "Development" has typos--please clarify what is desired. EMILY

DISTURBED AREA – An area where natural vegetation is removed, exposing the underlying soil or where the ground surface is altered, in any significant manner.

- We going to need definition of 'significant'. JAMES

ROBIN MOWER: Ditto to James...

Tom DeCapo: My view is that common meaning of such a term is sufficient and preferable

DORMITORY – A building occupied by a resident manager and used, designed and adapted to provide housing for ~~more than ten (10)~~ ten or more 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. Occupants of a dormitory are employees or students or otherwise connected to an institution, such as a school, hospital, or church.

- between Dormitory, Dwelling Unit...it would be good here to perhaps review how we can more closely definition "student housing" as Hanover has done. HEATHER

ROBIN MOWER: Needs significant revision.

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 *or site* with the street.

- My driveway connects 3 private residences and that isn't uncommon in Durham. 'a house' should be 'houses'. JAMES

ROBIN MOWER: "A private vehicular access connecting the street to a dwelling unit, parking area, garage, or other building or site." This would cover James's situation and duplexes that each have a garage but share a driveway.

DUST-FREE SURFACE – The top of a road, driveway, parking area, walkway or other area covered in bituminous paving, concrete, compacted crushed rock or gravel, or other such stable materials.

- When and under what circumstances has this been an issue? JAMES

~~**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.~~

[See Residence, Single-Unit Cluster.]

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.

Tom DeCapo: many “nonresidential” businesses have both cooking and sanitary facilities. Any food related business, whether retail facing or not, and many offices of a decent size. It would seem something more than these two are needed for a structurer to be established conclusively as residential. Add regular overnight use? More?

EDUCATIONAL **FACILITIES FACILITY** – 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.

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.

ROBIN MOWER: Wouldn't it make sense to substitute the word REMOVAL for TAKING in the first sentence of the definition for EXCAVATION (above)?

EXTERIOR ARCHITECTURAL APPEARANCE – The architectural character, general composition, and arrangement of the exterior of the structure, including the kind, color, and texture of the building materials and type and character of windows, doors, light fixtures, signs, and appurtenant elements.

ROBIN MOWER: Would it be appropriate to reference the Site Plan Regulations? One could replace the final period above with a comma and append “examples of which may be found in the Town of Durham’s Site Plan Regulations, Part III., Article 2. Architectural Design Standards.”

FAMILY – See *“Dwelling Unit” and “Household.”*

Tom DeCapo: I do not understand the cross reference to Dwelling Unit

FINANCIAL INSTITUTION – A business or nonprofit organization providing retail financial services, including but not limited to banks, credit unions, financial exchanges, free-standing Automatic Teller Machines (ATM), and check cashing facilities.

Tom DeCapo: Do these have to be offered to the public at large without appointment in order to be treated as a Financial Institution, or do you intend to cover the likes of a local A.G Edwards or Schwab office that generally only sees people with a client relationship and who satisfy certain criteria.

ROBIN MOWER: Hyphenate CHECK CASHING, resulting in CHECK-CASHING. (It's a compound adjective modifying FACILITIES.) And delete the hyphen in FREE-STANDING, resulting in FREESTANDING.

FLOOD HAZARD OVERLAY DISTRICT – Specific definitions pertinent to the Flood Hazard Overlay District follow:

ROBIN MOWER: Coordinate with definitions elsewhere in the document, i.e., the “general” definitions. Either they should be the same, or there should be discrete language in this Flood Hazard section that makes clear why it is different from the “general” definition. “Substantial Improvement” is one example.

Tom DeCapo: If any of these are intended to be the same as the “general” definitions, consider cross referencing rather than setting out the definition. Better yet, just say here that any terms used with respect to the Flood Hazard Overlay District but not specifically defined here have the meaning set forth elsewhere in the definitions.

Area Of Special Flood Hazard - The land in the floodplain within the Town of Durham subject to a one percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the FIRM.

ROBIN MOWER: Minor point, since this is a more technical set of definitions, but OF in “Area Of Special Flood Hazard” should be lowercase. (“Of” except at the beginning of a sentence is rarely appropriately capitalized.)

Base Flood - The flood level having a one-percent possibility of being equaled or exceeded in any given year.

Base Flood Elevation - The water surface elevation 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.

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~~ *includes* all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. (Also see “Structure” for floodplain management purposes.)

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 or storage of equipment or materials.

FEMA - The Federal Emergency Management Agency.

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) - The official map incorporated with this ordinance, 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 "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 more than a designated height.

Highest Adjacent Grade - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure - Any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) by an approved state program as determined by the Secretary of the Interior, or
 - (ii) directly by the Secretary of the Interior in states without approved programs.

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 non-elevation design requirements of this Chapter.

Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

Manufactured Home Park Or Subdivision - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

ROBIN MOWER: Minor point: Do not capitalize OR. Question: Would it be appropriate to note that this is a term that replaces the outdated term "trailer park?"

Mean Sea Level - The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New Construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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.

ROBIN MOWER: This is a thorny definition. Given that one typically refers to what I believe is intended, the term "RV" is more common. But beyond that, this category also includes "campers, motorhomes, vans, and travel trailers." Those names will be more easily recognizable. If you want to keep the current definition, consider adding to it.

Special Flood Hazard Area - See "*Area of Special Flood Hazard.*"

Start Of Construction - Includes substantial improvements, and means 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 or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

ROBIN MOWER: Minor point: Do not capitalize OF.

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.

ROBIN MOWER: Minor point: Do not capitalize FOR.

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."

ROBIN MOWER: I imagine that the Board has had a thorough discussion about the above definition. What is the basis for the 50% threshold? And what about "substantial improvement" to undeveloped property, as opposed to an existing structure, particularly since this is for the Flood Hazard Overlay District, which may include such undeveloped property?

Violation - The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other

evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

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.

ROBIN MOWER: Isn't this a bit "off?" Given that livable areas may include cellars, attics, and porches. "Areas occupied by heating and ventilating equipment" reads to me as "utility rooms," as opposed to, say, an unheated laundry room in a basement area in which a furnace and hot water heater are also located. This definition should dovetail better with the below definition.

FLOOR AREA, HABITABLE – Heated areas used daily for living, eating, cooking or sleeping, including bathrooms and bedroom ~~closets;~~ *closets*, but excluding garages, circulation areas (stairways, hallways, corridors), *and* storage ~~areas;~~ *areas* (including but not limited to attics, unfinished basements, and utility rooms). 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 in the form of complete floor plans drawn to a standard scale is submitted to the Durham Code Enforcement Officer. This presumption ~~shall~~ *does* not apply in any instance where the owner or occupant(s) of the building ~~allow~~ *allows* inspection and measurement of such interior floor areas by the Code Enforcement Officer. It is recognized that under this definition it is possible for the "habitable floor area" to exceed 70 percent of the gross floor area.

FOOTPATH – *A public or private way, formal or informal, paved or unpaved, established for use by walkers. (See "Sidewalk" and "Trail.")*

ROBIN MOWER: Replace WALKERS with PEDESTRIANS. But note: Bicyclists may also have forged and continue to use these paths, with the result that they are more well-established.

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

FRANCHISE ARCHITECTURE – A stylized building design in which the shape, detailing, ornamentation, materials, or use of color is clearly identified with a specific brand or company.

ROBIN MOWER: Not used elsewhere in the ordinance nor in the Architectural Design Standards of the site plan regs.

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

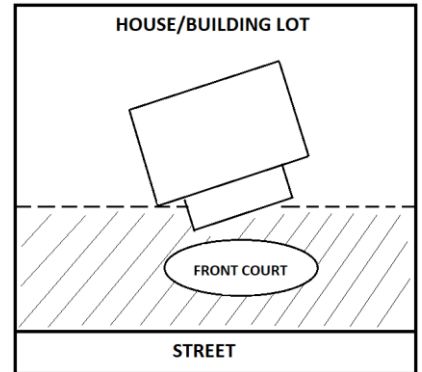
ROBIN MOWER: (1) minor: either delete AND after the first comma or and add THAT IS before ORGANIZED; (2) Is it definite that members are only currently enrolled students? Are alumni considered members?

FRATERNITY/SORORITY HOUSE – A building used to provide lodging facilities for the exclusive use of the bonafide members of a fraternity or sorority.

ROBIN MOWER: Minor: BONA FIDE is two words.

FRONT COURT – The portion of a lot in front of a house or the principal building demarcated by the front lot line, a line parallel to the front lot line running through the fully enclosed part of the building located closest to the front lot line, and sections of the two side lot lines that connect these two lines.

ROBIN MOWER: A diagram would be helpful. Perhaps the Board would like to consider where else diagrams would be useful. (FYI, Portsmouth uses images in its current zoning ordinance.)



FRONTAGE – See *“lot frontage.”* *“Lot Frontage.”*

FUNERAL HOME – An establishment where the dead are prepared for burial or cremation and where wakes and funerals may be held. A funeral home may include a chapel and ~~or~~ facilities for the storage of vehicles used in the business.

ROBIN MOWER: I am not certain but isn't a funeral held at a cemetery, so it should read “WHERE WAKES AND FUNERAL SERVICES MAY BE HELD.”

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

[See “craft shop.”]

ROBIN MOWER: See my comments above about “craft shop.” I believe we should retain a definition for GALLERY.

-It would be helpful to have a definition of “GARAGE” as we discussed before . . . i.e., “that portion of a building/structure that is for parking or storage of vehicles” some indication of a portion of a building meant for storage or parking would be access doors capable of allowing a vehicle to enter. . . and then, we can limit the “non-garage” space that is being developed for other uses to the 200s.f. similar to the shed size maximum. Would this help restrict finished living/habitable space above garages but allow for a garage ½ bath /workshop area? AUDREY CLINE

[I will go over this with Audrey.]

Tom DeCapo: For my benefit, why is it desirable to restrict finished living/habitable space above garage? Wouldn't they be squarely within Accessory Dwelling Unit?

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.

ROBIN MOWER: Minor, but replace the two words “club house” with the single word “clubhouse.”

GOVERNMENT FACILITY – A structure or parcel of land the use of which is governmental, as defined in RSA 674:54, *including facilities owned and operated by the federal government*. ~~As stated therein, the~~ *The* use, construction or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, or by a county, town, city, school district or village district, or any of their agents, *or the federal government*, for any public purpose which is statutorily or traditionally governmental in nature.

ROBIN MOWER: Addition of “including facilities owned and operated by the federal government” is redundant, given the addition, later in the text, that is tantamount to the same.

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.

GRADE, EXISTING GRADE, AND FINISHED GRADE – various proposed definitions from **Sally Needell** below:

GRADE

Grade refers to the level of the land, in this case, the land around the road. To avoid too many twists and turns to keep a road from being too steep, over sections of land with natural dips and rises, the roadway may be constructed on a man-made hill, and thus be above grade. Or it may plow through a hill, or even need blasting through rock, at which point it is below grade. So if a stretch of road is level with the surrounding land, then it is at grade.

Grade means the level of the earth at a given location. Grade crossings in roads mean all are level. Construction information takes grade to be the existing level of earth at the construction site. If not level, then slope information is necessary relative to a given point.

At grade means at ground level.

“Grade” is the vertical location of the ground surface.

EXISTING GRADE

Existing grade means the elevation of the existing ground surface of the lands upon which dumping and/or placing of fill or site alteration is proposed and includes abutting ground surface up to three metres wide surrounding such lands, except that where placing or dumping of fill or site alteration has occurred in contravention of this by-law or previous by-laws, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill or site alteration;

“Grade, existing” is the grade prior to grading activity.

“Existing grade” is the grade prior to grading; “rough grade” is the stage at which the grade approximately conforms to the approved plan;

FINISHED GRADE

“Grade, finished” is the grade of the site at the conclusion of all grading efforts.

Finished grade means the approved elevation of ground surface of lands upon which fill has been placed in accordance with this By-law.

“Finish grade” is the final grade of the site which conforms to the approved plan.

ROBIN MOWER: (1) Any entry for **grade** must include variants, i.e., **grade,* *at grade,* *existing/natural grade,* *finish/finished grade** (2) I addressed "Grade" and variations in my email to the Board on May 4, 2021 (subject line **zoning amendments | parking definitions** with attached file named **20210504 Mower parking ZO defs.pdf**) That letter included excerpts from Portsmouth and Hanover ordinances. Relevant excerpts include:

grade plane—A reference plane representing the average of finished ground levels adjoining the building at all exterior walls. When the finished ground level slopes away from exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building. (See also building height.) PORTSMOUTH (2021)

grade—As a noun: the surface configuration of terrain; as a verb: to change the surface configuration of terrain that will alter the runoff of waters from the pre-existing surface configuration HANOVER (2020)

highest adjacent grade—The highest natural elevation of the ground surface next to the proposed walls of a structure as measured prior to construction HANOVER (2020)

lowest adjacent grade—The lowest natural elevation of the ground surface next to the proposed walls of a structure as measured prior to construction. In the D-1 district the lowest natural elevation is measured only along streets on which the proposed structure has frontage. In the D-2 district the lowest elevation is measured along the entire perimeter of the proposed structure. HANOVER (2020)

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.

ROBIN MOWER (apologies for earlier out-of-place cut-and-paste entry): Consider this alternative from [American Trails](#). Pennsylvania Greenways - An Action Plan for Creating Connections, has this definition: "A greenway is a corridor of open space, varying greatly in scale, and incorporating or linking diverse natural, cultural, and scenic resources. Some greenways are recreational corridors or scenic byways accommodating pedestrian and non-motorized vehicle traffic on both land and water; while others function almost exclusively for environmental protection and are not designed for human passage." Furthermore, the 2021 Portsmouth ordinance defines it as: "A linear community space that may follow natural corridors providing unstructured and limited amounts of structured recreation. A greenway may be spatially defined by landscaping rather than buildings. Its landscape shall consist of paths and trails, waterbodies, and trees, naturalistically disposed."

I think the concept of a CORRIDOR is important, whether or not it is for wildlife travel. And WHAT are "similar linear facilities"—roads?

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.

HABITABLE FLOOR AREA. *See "Floor Area, Habitable."*

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

HIGH INTENSITY SOIL SURVEY – *See "Soil Survey, High Intensity."*

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.*~~

[This contradicts information under Reference Line, below, the main reference for water level.]

Tom DeCapo: I do not believe High Water Level is used in the Ordinance in any event.

HOME OCCUPATION – Any occupation, profession, activity or use which is clearly an 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. HOME OCCUPATION-1 – A home occupation meeting the following *requirements characteristics*:

ROBIN MOWER: One cannot “meet” a “characteristic.” The occupation HAS certain characteristics... But more substantively: Why shouldn’t the definition MEET THE REQUIREMENTS? This IS a regulatory document.

- a. It occupies no more than five hundred (500) square feet of floor area.
 - b. The principal operator resides on the premises, has not more than one (1) other person employed on-site and does not sell on-site any principal manufactured products prepared by others. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
 - c. The activity is completely enclosed in a primary or accessory structure. 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. HOME OCCUPATION-2 – A home occupation meeting the following *requirements characteristics*:

- 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, has not more than three (3) other persons employed on-site and does not sell on-site any principal manufactured products prepared by others. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
- c. The activity, except for outdoor storage, is completely enclosed in a primary or accessory structure. Outdoor storage of materials or equipment ~~shall not be~~ *is* 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~~ *multiple* sleeping rooms or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for stays of less than thirty consecutive days for compensation and usually providing on-site dining facilities, recreational services, function rooms, housekeeping,

laundry and related services. Access to guest rooms is provided through interior corridors. See Article XX

ROBIN MOWER: Please make consistent the punctuation for “for compensation.” Sometimes it is set off by commas and in other, identical, uses it is not.

[It does not make sense to limit a hotel to a minimum of seven rooms. Otherwise there is no comparable use that allows for fewer than seven rooms. A hotel with five rooms is unlikely but there is no reason to exclude one. The minimum of seven is probably based on the definitions of an inn, which allows 4 to 6 rooms, and short term rental, which allows up to 3 room, but an inn and short term rental must be owner occupied.]

- I would remove ‘less than thirty consecutive days’ as it doesn’t inform the description of a Hotel but rather referred to a restrictive usage condition. JAMES

Tom DeCapo: I agree with above comments. Also, why is the definition limited to facilities that provide access through internal corridors? Many resort style hotels have multiple buildings where room access is from the exterior but remote from parking

HOUSEHOLD – A group of occupants of a dwelling unit defined by one of the following two 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," above. (*Note:* See specific requirements for unrelated households in Section 175-56 - General Dimensional Standards.)

- Household - I think this needs to be updated add "Two unrelated people and any children legally related to either of them occupying a single dwelling" or look at Hanovers? I think stating Household 2. the way it is needs work. HEATHER

ROBIN MOWER: This is a challenging-to-define concept, as is “family.” We should walk through this carefully and absolutely weigh in with Town counsel. The concepts of “family” and “household” have been litigated over the years throughout the country, particularly in municipalities with high levels of nonpermanent residents.

HYDROGEOLOGIST, QUALIFIED – Any person certified in New Hampshire as a Licensed Professional Geologist pursuant to RSA 310-A:125. The Planning Board, at its discretion, may accept as a Qualified Hydrogeologist any person possessing similar credentials from any other state.

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, sidewalks, patios,

driveways, roads, parking spaces or lots, and storage ~~areas;~~ *areas;* compacted gravel including drives and parking ~~areas;~~ *areas;* and 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~~ *is* 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~~ *property* containing, in addition to living accommodations for the owner and his or her family, four (4) to six (6) 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 less than thirty consecutive days.

[An inn is not a single-family residence. See that definition.]

- I would remove ‘less than thirty consecutive days’ as it doesn’t inform the description of a INN but rather referred to a restrictive usage condition. JAMES

Tom DeCapo: I believe we need a definition of owner-occupied that is inclusive of occupation by Family of the owner and, in the case of trusts or other non-individual owners, covers grantors and beneficiaries of the entity that owns the property

JUNKYARD – An area of land used for the exterior storage (i.e., not contained within 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.

ROBIN MOWER: “enclosed building” perhaps should be “enclosed structure”? Also, please consider the situation of white-clapboarded 25 Newmarket Road (between the General Sullivan monument and the dog kennel/veterinary practice) in the Historic District. This definition appears to focus overmuch on motor vehicles. Although we don’t have any regulation that I know of that addresses stationery buses or RVs (e.g., used for living space or storage) parked on driveways (one of which may be seen on Valentine Hill Road). And what about broken lawn mowers, parts of bicycles, et al? Please check in with Audrey Cline on the definition.

NOTE PORTSMOUTH DEFINITIONS AS OF 2021:

Junk: Scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates, used pipe or pipe fittings, used automobiles or airplane tires, and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled.

Junk yard: The use of any lot, whether inside or outside a building, for the storage, keeping or abandonment of junk.

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 does* not include licensed veterinary medical facilities.

LANDSCAPE BUFFER – See *"solid planting"* **"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, cobbles, bark, mulch, edgers, flower tubs, rock and such structures as fountains, pools, artworks, screens, walls, fences or benches, but such objects alone *do not define landscaping. 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.* Specific definitions pertinent to landscaping, buffers, the Wetland Conservation Overlay District, and the Shoreland Protection Overlay District follow:

ROBIN MOWER: (1) Please ask John Parry and Rich Reine to review these terms. (2) Some appear nowhere else in the ordinance. Would an introductory note be appropriate, i.e., that these are concepts that may arise in discussion and therefor the definitions are provided so that all are on the same page? (Not that wording, of course.)

Tom DeCapo: *I am of the view that defined terms not used within the ordinance should be deleted.*

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.

Diameter at Breast Height (DBH) - The diameter of a tree trunk at a height of four and one-half (4.5) feet.

Ground Cover - Low-growing plants, below the shrub layer, that grow to form a continuous cover over the ground, such as grasses, vinca, English ivy or like material.

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 devoted to and consisting of landscaping material, including but not limited to grass, trees, shrubs, flowers, vines and other ground covers, 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 does* not predominate over the use of organic plant material.

ROBIN MOWER: How would you categorize the attractive “landscaping” at 24 Newmarket Road, the stone building on the right of just past the Oyster River? In this day of greater concern about droughts and the use of water, what is called “hardscaping” may be more appropriate. That said, there may be times when the Board will wish to require vegetated landscaping. So...how can you address both of these points?

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 this ordinance*.

ROBIN MOWER: This term is not used elsewhere in the ordinance. Are both “landscaped area” and “landscape development” needed, or could they be combined?

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 are~~ excluded, but such building wall line ~~shall follow and include~~ *follows and includes* the irregular indentations of the building. Further, for the purposes of *these regulations this ordinance*, canopies, gas pump islands, overhangs and similar extensions ~~will be are~~ 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~~ *consists* 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~~ *consists* 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 front most corner of the building wall, fronting the street and nearest such side property line, then following and connecting the front most 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~~ *are* the points closest to the side boundaries.

- C. 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~~ *consists* 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~~ *replaces* the street right-of-way line defined in the landscaped street yard.

Maintenance (or Maintain) - 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.

ROBIN MOWER: Taking a cue from Chuck's note, below: Add to the above something like: "In reference to natural areas on the subject parcel, such as a natural woodland buffer, maintenance includes measures that similarly promote the life, growth, health, or beauty of that natural area."

Natural Woodland Buffer - A forested area consisting of various species of trees, saplings, shrubs and ground covers in any combination and at any stage of growth.

- **Change definition of "Natural Woodland Buffer" - A forested area consisting of various *native or naturalized* species of trees, saplings, shrubs and ~~ground covers~~ *groundcovers* in any combination and at any stage of growth. *Native species should be primarily referenced from the criteria set forth in the 2009 Native Shoreland/Riparian Buffer Plantings for New Hampshire, as amended.* [last sentence is from the Master Plan, page LU-15] EMILY**

- **Maintenance (or Maintain); Should watering be mentioned specifically? CHUCK**

Public Area - Includes parks, playgrounds, areas around public buildings and all other areas under the supervision and maintenance of the town.

ROBIN MOWER: Would it be appropriate to loop in UNH or federal public areas? Those might be discussed during matters brought to the Board, even if those areas are not regulated by the Town. Would a better term be "community space," as in the 2021 Portsmouth ordinance?

Removal (or Removed) - Cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

ROBIN MOWER: Reads like a definition of vandalism. "Removed" implies "taken offsite." Plus, the definition does not address hardscape elements of landscaping (stone steps, millstones, stone benches) but rather appears to focus only on vegetation.

Sapling - Any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.

ROBIN MOWER: Remove hyphen between 4 and 1/2. Make appropriately consistent with the definition of “tree,” below, i.e., “four and one-half (4 1/2) feet” below and review the ordinance for other inconsistencies of this type.

Shrub - Bushy, woody 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.

ROBIN MOWER: “appear to have” a opposed to “have?” Omit words after “trunks.”

Tree Warden - The person whose duties ~~shall include the inspection of inspecting~~ 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.

ROBIN MOWER: (1) First, the edit, above, needs further editing. (Just reread it out loud and you will see what I mean.) (2) FYI: According to [RSA 231:139 \(II\)](#), “as determined by the city or town, the duties of a tree warden shall be to help care for, maintain, protect, and perpetuate shade and ornamental community trees and shrubs in town public ways, village commons, parks, cemeteries, and other public grounds, and to advise the governing body from time to time as may be necessary to help accomplish that purpose. The town tree warden shall cooperate and work with other town agencies and officials in carrying out the intent of this chapter.”

Vegetation - Includes a tree, plant, shrub, vine or other form of plant growth.

ROBIN MOWER: Plant growth that may be a tree, shrub, vine, perennial or annual plant, or other plant forms such as grasses, ferns, or mosses.

LEACHABLE WASTES – Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes, that are capable of leaching contaminants to groundwater or surface water sources.

ROBIN MOWER: Replace “ARE CAPABLE OF LEACHING” with “COULD LEACH.”

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

ROBIN MOWER: Wow, this is an outdated definition! Perhaps check in with Sheryl Bass, the library director.

LIGHT MANUFACTURING – See ~~“manufacturing, light.”~~ *“Manufacturing, Light.”*

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~~ *one unit for the purpose of use and development under this ordinance.*

- **Not sure what you are getting at here? JAMES**

ROBIN MOWER: Agree: Back to the drawing board.

LOT AREA – The total area within the confines of the boundary lines of a lot. The "lot area" ~~shall does~~ 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 is~~ 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.

- **Should this also exclude setbacks? We lack a definition of “ground floor”, it could be a half-sized walk-out basement. Do ‘parking facilities’ include an attached ground floor garage? JAMES**

ROBIN MOWER: For that matter, we do not have a definition of “first floor.”

LOT FRONTAGE – ~~A lot line dividing the lot from a street right-of-way.~~ *The lot line along the juncture where a lot is coterminous with a street right-of-way. Also, the length of that lot line measured along the lot line including curved portions of the lot line. In cases where an existing or proposed lot line is unusually squiggly the frontage is measured along one or more chords from end point to end point of the lot line.*

ROBIN MOWER: After “coterminous,” add the definition “(i.e., has matching boundaries; or, adjoins and shares a boundary)”

LOT LINE:

1. **LOT FRONT LOT LINE**– The front property line of a lot ~~shall-be is~~ determined as follows:

a. CORNER LOT – The front property line on a corner lot is as determined by the Zoning Administrator based upon a reasonable consideration of the following: location of the front door, location of the driveway and garage, configuration of other buildings in the vicinity, the lot layout (generally, the shorter lot line is the front lot line as lots tend to be deep and narrow rather than wide and shallow), and other pertinent issues.

b. INTERIOR LOT – The front property line of an interior lot ~~shall be is~~ the line bounding the street frontage.

c. THROUGH LOT – The front property line of a through lot ~~shall be is that line where the house or building faces or is proposed to face that line which is obviously the front by reason of the prevailing custom of the other buildings in the block.~~

2. **LOT REAR LOT LINE** – 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 is~~ 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 LOT LINES** – 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 the 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 non-elevation 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 does~~ not include pre-site built *or prefabricated* housing as defined in RSA 674:31-a. See Article XX

ROBIN MOWER: CONSIDER definitions from the Purdue Center for Regional Development: (1) **manufactured housing** — Manufactured homes are built in a factory (prefabricated), then transported to a site to assemble. These structures must follow the Housing and Urban Development (HUD) code for manufactured home construction and safety standards. (2) **mobile home** — A manufactured home built before 1976, the year Housing and Urban Development implemented a code for manufactured home construction and safety standards. The terms manufactured, modular, and mobile homes are sometimes used interchangeably. (3) **modular home** — Modular homes are built in a factory and adhere to state, regional, or local building codes and regulations. [[A Planning and Zoning Glossary](#)]

MANUFACTURING, LIGHT – An establishment engaged in the production, packaging, and/or distribution of products or components of products involving processing, fabrication, and/or assembly of parts or components ~~produced off the site~~ that meets the performance standards for a light manufacturing use *specified in Article XX*. See Article XX

ROBIN MOWER: “See Article XX” is made redundant by the addition of “specified in Article XX.”

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 commercial or pleasure craft, fuel and oil, electricity, freshwater, ice, and other supplies for owners and crew.

~~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.~~

- From Webster’s public way defined as “any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the public and designed for travel by vehicle, on foot, or in a manner limited by statute (as by excluding pedestrians or commercial vehicles). JAMES

[See “Canopy,” above.]

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.

ROBIN MOWER: Consider adding after “community” (1) “as laid out in RSA 674:2 Master Plan; Purpose and Description.” and “(2) a sentence such as, “In some communities, this may be known as the Comprehensive Plan.” NOTE THAT RSA 674:2 defines the purpose as “The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire, and to guide the board in the performance of its other duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection.”

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.

ROBIN MOWER: The Encyclopedia Britannica definition begins, “mining, process of extracting useful minerals from the surface of the Earth, including the seas,” and the National Geographic Society notes, “Mining is the process of extracting useful materials from the earth.”

In other words, should the word “useful” be inserted before “materials?” And is the definition overly wordy, given that we also have a definition for “excavation?”

MINOR SITE COMMITTEE. A staff committee empowered to review minor site plan applications pursuant to RSA 674:43 III. (See Section 175-17 *and the Durham Site Plan Regulations*.)

MIXED USE WITH RESIDENTIAL (OFFICE/RETAIL DOWN, MULTIUNIT RESIDENTIAL UP) – A building in which the first floor is used for office/retail uses (as defined in this article) and the upper floor(s) is used, in whole or in part, for multi-unit residential use.

MIXED USE WITH PARKING (PARKING AND OFFICE/RETAIL) – A building in which all or part of the first floor or ground floor is used for parking and the upper floor(s) is used for office/retail (as defined in this article). If only part of the first or ground floor is used for parking, the remainder is used for office/retail.

ROBIN MOWER: Do we distinguish “in real life” and/or in our land use regulations between “first floor” and “ground floor,” that is, do we truly have instances of structures with both?

- Mixed Use with Parking (Parking and Office/Retail) and the next one Mixed Use with Parking (Parking and office) could be combined?
HEATHER

ROBIN MOWER: In response to Heather, note that in the Table of Uses, while almost uniformly allowed only by Conditional Use, “parking and office/retail” is prohibited in the Office Research zone, while “parking and office” is allowed only by Conditional Use.

MIXED USE WITH PARKING (PARKING AND OFFICE) – A building in which all or part of the first floor or ground floor is used for parking and the upper floor(s) is used for office or similar non-residential uses. (If only part of the first or ground floor is used for parking, the remainder is used for office or other non-residential uses.)

MOTEL – A building containing ~~seven (7)~~ *or more multiple* sleeping rooms or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for compensation for stays of less than thirty consecutive days, with or without meals, and usually providing on-site function rooms, housekeeping, laundry and related services. Access to guest rooms is provided directly from the outside or from exterior corridors or walkways. *See Article XX*

ROBIN MOWER: (1) Inclusion of this term goes back to a policy question of what definitions do we include if the terms are not used elsewhere in the ordinance; (2) Note that both the American Heritage and Merriam-Webster dictionaries link the accommodations aspect of a motel to usage by motorists, e.g., “lodging establishment typically featuring a series of rooms whose entrance is immediately adjacent to a parking lot, as might facilitate easy access to one’s automobile during an overnight stay, particularly located near a major highway.” While it may be less likely that guests

without vehicles might rent a motel room, it is certainly possible that they may. I think it is the presence of a parking space adjacent (or nearly so) to and associated with a specific room that may be a key characteristic that differentiates a motel from a hotel—in addition to a more likely location near a highway.

[See Hotel, above. We don't allow a motel anywhere in Durham presently but this change makes sense nonetheless.]

Tom DeCapo: *I agree with Robin's observation that it is the presence of a parking space adjacent (or nearly so) to and associated with a specific room that may be a key characteristic that differentiates a motel from a hotel. I do not believe that entryway to rooms is the defining feature See comments to Hotel above*

- I would remove 'less than thirty consecutive days' as it doesn't inform the description of a Motel but rather referred to a restrictive usage condition. JAMES

MOTOR VEHICLE SALES AND SERVICE – The use of any building or land area for the display and sale of new or used automobiles, trucks, vans, trailers, recreation vehicles, motorcycles, or similar motorized vehicles. This use may include repair facilities for such vehicles.

MOTOR VEHICLE SERVICE FACILITY – A business that provides service, maintenance, and repairs for motor vehicles, including the accessory sale of parts and supplies. This use includes muffler, transmission, and brake shops, tune-up centers, repair garages, and similar uses but *shall does* not include operations involving body work, painting, structural repairs or alterations

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."*~~

NEIGHBORHOOD – *A contiguous (or semi-contiguous) area of a community with: a) some defining characteristics such as an integrated network of streets, walkability within the area, the presence of a school attended by the residents, similar housing types, similar period of development, similar uses, similar economic characteristics, and a sense of neighborhood among the residents; and b) one or more distinct boundaries such as physical barriers, natural features like streams, woods, and steep topography, major roads, and railroads.*

ROBIN MOWER: (1) One cannot have a “contiguous area.” Contiguous refers to two distinct areas that touch; (2) The figure of 1,000 feet leads to trouble if it covers central Durham, which has

distinct and sometimes conflicting uses and is perceived by both the Town (vis, the “welcome to the ABC Neighborhood” signs) and residents; in addition, neighborhood vary in size; (3) How about something like: “An area of the non-UNH part of Durham that has distinctive characteristics acknowledged by its residents and that may be delineated by man-made or geographical landmarks or barriers.”

[See proposed housing amendments which incorporate only one minor change.]

- For "Neighborhood", Delete "similar income strata" but leave the 1,000 feet as the definition is far less subjective by providing a number. EMILY

- We lack a definition of “community”. All of the streets in town comprise an integrated network, much of the Town’s population is connected by sidewalks, we have only one common High School. I think this definition is unworkable and perhaps undefendable on appeal.

I don’t understand the point of ‘b’). Is the Durham Village Garage in the same neighborhood as the Mobil Station? Faculty Area is a steep slope above Chesley Drive, are they in the same neighborhood. JAMES

- My husband is from South Carolina, and noted the changes sounded like the segregationist era. "Economic status" in the definition of "neighborhood", is neither necessary nor neighborly. Communities avoid red-lining, because it aids in isolation that grows economic deserts. Native American reservations is a perfect example. Including those who are unique supports a diversity to makes us stronger in the long run. KIMBERLEY LARIS, DURHAM RESIDENT

Tom DeCapo: I do not believe it is necessary to define neighborhood Its common meaning and dictionary definitions seem adequate for the way the term is used throughout the Zoning Ordinance. If we define it, I would suggest a flexible definition, such as “ A limited geographic area 1)officially designated as a neighborhood by applicable statute, ordinance or rule, or 2) having relevant common attributes.

NEON – Any tubular gas filled light or lighting device.

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

ROBIN MOWER: If we are going to use the word “structure” in various places, why not use it here, as in “nonconforming structure?” Besides, that would provide linguistically parallel construction to “noncontributing structure,” below.

NONCONFORMING LOT – A lot, the area, dimensions and location of which were lawful prior to the adoption, revision or amendment of *the this* 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.

NONCONTRIBUTING STRUCTURE – A property or structure which, due to its recent vintage, incompatible design, *or* incompatible *and irreversible* alterations, ~~*or secondary or incidental use,*~~ would not be considered to contribute to that character or quality of the Historic Overlay District that the Town seeks to preserve.

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

[This term is not used anywhere in the Zoning Ordinance.]

- I thought the Housing Amendments were open to community septic, water, geothermal installations, etc.? JAMES

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

ROBIN MOWER: Delete the hyphen, i.e., use “preschool.” See [Merriam-Webster](#) et al.

- How does this differ from Child Care Nursery? Could we change the definition of one to eliminate the need for the other? JAMES

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.

ROBIN MOWER: Should this definition be grouped with other eldercare definitions? Is this needed or desired? Under what category do the two Harmony Homes facilities fall?

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

- How do we classify the Occupancy of multiuse buildings? And why do we need to? JAMES

ROBIN MOWER: Perhaps we include “occupancy” because we have the “three-unrelated” rule, i.e., we establish residential occupancy limits in sections 175-56. General Dimensional Standards.

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*~~ *is* deemed that said motor vehicle is not being used for recreational purposes.

ROBIN MOWER: Why reinvent the wheel? Instead: “As defined in [RSA 215-A:1](#), Off highway recreational vehicle means “any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, tracks, 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. For purposes of this chapter "off highway recreational vehicle" shall be abbreviated as OHRV. OHRVs shall include any pedaled vehicle equipped with a motor that is not included in the definition of electric bicycle and utility terrain vehicles, but shall not include snowmobiles as defined in RSA 215-C or electric bicycles as defined in RSA 259:27-a.”

**- Why this distinction between recreational and transportation purposes?
JAMES**

ROBIN MOWER: Does the Board see any need to define, also, motorized two-wheeled vehicles, with an eye to any parking requirements?

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 does* not include the production of physical products for sale or distribution.

ROBIN MOWER: Simplify? “A place of business that does not include either the production for sale or distribution of physical products, and distinct from a consumer retail business.” [Why are examples necessary? They can become outdated, among other reasons.]

OFFICE, PROFESSIONAL – A *use or* building containing one (~~1~~) or more offices *in which where there is no display of unrelated stock or wares in trade commodity physical products are not* sold, nor any commercial use conducted other than the professional *offices activities* of a doctor, dentist, lawyer, architect, engineer and related laboratories, insurance agent, realtor or other similar professional services, but excluding barbershops, beauty salons ~~or~~ *and* similar services.

**- Does a definition that stipulates “where physical products are not sold” make sense?
For instance, my optometrist’s office sells eyeglass frames and lenses. CHUCK**

ROBIN MOWER: Perhaps “A place of business that primarily provides services that typically require specialized knowledge and skill of a mental or intellectual nature and usually requiring a license, certification, or registration. Examples include physician, dentist, attorney, architect, engineer and related laboratories, insurance agents, and real estate brokers.”

OFFICE/RETAIL – For the land uses Mixed Use with Residential and Mixed Use with Parking (parking and office/retail), “office/retail” includes retail sales, personal and business services, offices, restaurants, and other comparable commercial uses such as public, institutional, research, and industrial which are allowed in the zoning district. “Office/Retail”

for this purpose does not include parking, storage uses, utility uses where there is minimal flow of people in and out of the building, nor uses that are accessory to the residential use in the building (such as laundry, bicycle storage, and exercise rooms).

ROBIN MOWER: Suggest editing the last phrase to read “nor uses that are accessory to the residential use in the building (such as laundry, bicycle storage, and exercise rooms) AND USED SOLELY BY RESIDENTS. I suggest this given the potential to duplicate a “confusing” situation in which 9–11 Madbury Road was allowed to count as “commercial” a laundry area that was, in fact, not available to the public (assuming that my memory is correct).

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

[As proposed in the housing amendments.]

- Older Single-Family residence - Why is this described? Is it used somewhere in zoning that calls for it to stay? HEATHER

ROBIN MOWER: Ditto to Heather. (And is there then an “antique single-family residence? Opens the door to all sorts of issues...)

OPACITY, VERTICAL – The percentage of the area of a fence or wall, covered by boards, slats, metal links, and other materials, through which one cannot see. Vertical opacity is measured from an elevation drawing.

ROBIN MOWER: The percentage of the area of a fence or wall THAT IS covered by boards, slats, metal links and other materials [delete comma] through which one cannot see.

~~*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.*~~

OPEN SPACE – Conservation land, recreational areas, playgrounds, and undeveloped lands with significant natural resources (in contrast to “Common Open Space” which is specifically part of a conservation subdivision).

- "OPEN SPACE" – not ready to give feedback on the definition until after we discuss how it will be used in zoning. EMILY

ROBIN MOWER: Ditto to Emily.

OR – When used in a series of two or more allowed activities, such as “Dogs may be used for herding, working, or guarding livestock,” means “and/or,” such that any and all of the activities are allowed, individually or in combination.

ORDINARY HIGH WATER MARK – The line on the shore, running parallel to the main stem of ~~the river~~ a river or stream, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the

ordinary high water mark may be determined by the NH Department of Environmental Services (NH DES).

ROBIN MOWER: This definition could apply to lines other than the high water mark. Don't you need to include something like the "highest line"????

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

ROBIN MOWER: What is the source of the 15 feet? Run by John Parry, please.

OWNER – An individual, firm, association, syndicate, partnership or corporation having ~~sufficient proprietary interest to seek development of land~~ *legal title to land or other real property*.

PARKING SPACE – A space within or outside of 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. (*See "Structured Parking" and "Surface Parking."*)

ROBIN MOWER: Suggest, "A space not located on a driveway that is used to temporarily park a vehicle [and what about motorcycles and scooters?] and having access to a public street or driveway. (See "Structured Parking" and "Surface Parking.") [if those terms are kept]

PERENNIAL STREAM – A stream or brook that, under normal circumstances, runs all year long (*in contrast to an intermittent stream which runs only part of the year and an ephemeral stream which runs only after significant rain events*).

ROBIN MOWER: NOTE that the EPA refers to intermittent streams as "seasonal streams." However, our site plan regulations use the term "intermittent stream," although it is not defined therein.

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

ROBIN MOWER: Given climate change, aren't we asking for trouble by using the phrase "under normal circumstances?" What about "historically" or some such? Why not ask Cooperative Extension or the Conservation Commission?

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. Personal Services includes fitness centers.

ROBIN MOWER: Would this cover tattoo and piercing services?

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. Specific definitions pertinent to Personal Wireless Service Facilities follow.

ROBIN MOWER: Is this section, or any part of it, outdated? Should it be reviewed by an expert?

Alternative Tower Structure - Innovative siting structures that include artificial trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

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.

Concealment - The enclosure of a personal wireless service facility within a natural or human-made feature resulting in the facility being not visible from the outside or being part of the feature enclosing it.

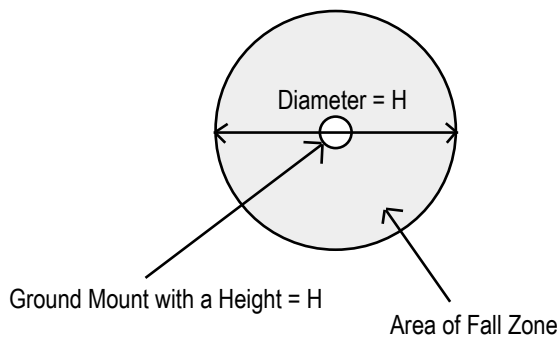
Disguise - Changing the appearance of a PWSF to appear to be something it is not.

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, 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 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 - distance between one carrier's array of antennas and another carrier's array.

ROBIN MOWER: WHEN WOULD WE ADD A DEFINITION FOR PUD AND A PUD OVERLAY?

Consider definition from the Purdue Center for Regional Development: planned unit development (PUD) — A single lot or group of few large adjacent lots that require master planning and a comprehensive development review process. PUDs are usually developed for residential and mixed use. They are sometimes commercial projects. [[A Planning and Zoning Glossary](#)]

POCKET NEIGHBORHOOD – *A small scale planned development consisting of a grouping of small residences (such as bungalow-type dwellings), often around a courtyard or other common space, designed to promote a close sense of community. (Also called “Cottage Court.”)*

- As I remember, Gerrish Drive development was referred to as a ‘Pocket Neighborhood’ but the building units seem much larger than what I would call “small residences”. Unless ‘Pocket Neighborhood is used elsewhere with additional benefits associated then do we need this definition? If we need it then we should be defining ‘small residences better than ‘bungalow-type dwellings’. JAMES

ROBIN MOWER: (1) Hyphenate SMALL SCALE, resulting in SMALL-SCALE; (2) No need to limit architecture to bungalow style, but important to note design for privacy. Hence: “A small-scale group of closely-situated small detached uniquely-styled residences, usually clustered around common open space, that is designed to promote both privacy and a sense of community.” NOTE: I would not consider the Gerrish Drive subdivision to be a pocket neighborhood for numerous reasons, and even the clustered Perley Lane houses off Edgewood are significantly larger than one might associate with the concept, with at least two at approximately 2,700 square feet—larger than many homes in the Faculty Neighborhood.

Please note also: Is it worth considering a “Cottage Housing Development Overlay District?” See architect’s description of the “original” pocket neighborhood in Langley, on an island in Washington State: <<https://rosschapin.com/projects/pocket-neighborhoods/third-street-cottages/>> This description includes a list of “essential design keys” that I think worth noting, including “individuality.” It would be a shame to see a pocket neighborhood simply be a group of nearly-identical beige Hardie Board “bungalows.” One of the appeals to many Durham residents is that our neighborhoods have developed “organically,” with at least SOME varying housing styles and details. Of course, my suggested definition, above, might include elements that would better be included in some sort of performance or design standards that would also include an upper limit to the size of each dwelling unit.

PORKCHOP SUBDIVISION – A porkchop subdivision involves limited subdivision of relatively large lots where there is significant back land but not sufficient street frontage to provide the minimum required frontage for each new lot. *See Article XX*

PREFABRICATED HOUSING – *See “Presite Built Housing.”*

PREMISES – A lot, parcel, tract, *site* or plot of land together with the buildings and structures thereon. ~~Premises may be further defined as the principal use dwelling unit/residence, or non-residential building, and any accessory structures to that principal use, where there are multiple principal buildings on a single lot.~~

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, pre-site built housing shall~~ *Presite built housing does* not include manufactured housing as defined in RSA 674:31. *(Also called “Prefabricated Housing.”)*

ROBIN MOWER: Whoever uses the term “presite built housing?” In addition, it is not a term used elsewhere in the ordinance; should it be included? PLUS, I think this is confusing. PLUS, [RSA 64:31](#) is misquoted above. The RSA states: “Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.”

Also: Please check the use of PRE-SITE (hyphenated) throughout these definitions and elsewhere in the ordinance.

[Pre-site built housing is used below in the Zoning Ordinance.]

~~PRIMARY BUILDING LINE – The setback from the reference line.~~

~~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.~~

PRINCIPAL USE – The primary or predominant use(s) on a property and to which all or most other uses on site are accessory. There is typically, but not necessarily, one principal use on a property.

[There are many lots in Durham with more than one principal use. Section 175-34. B. implies there may be more than one principal use on a lot. This change will remedy that discrepancy. It would hamstring good zoning to prohibit more than one principal use on site in all cases.]

- From Webster’s “most important, consequential, or influential”. Multiple Principal anythings don’t make sense. I would suggest we simply use the definition of Permitted Use or Change Principal Use to USE. USE is a nice companion to Accessory Use. JAMES

PROHIBITED USE – A use which is not ~~specifically permitted~~ *allowed on a particular site, in a particular zoning district, or anywhere in Durham.*

~~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.~~

PUBLIC UTILITY – A public service corporation, municipal body, or authority providing a specific public service subject to special governmental regulations, where the recipients pay for the service directly. Utilities typically include water supply, sewer service, piped gas, electric supply, telephone, television cable, internet access, and sometimes transportation services.

PUBLIC WAY – A road, sidewalk, footpath, trail, or navigable waterway accessible to the public.

QUALIFIED CONSERVATION ORGANIZATION (~~See Article XIX – Conservation Subdivisions~~) – As defined in Section 170(h)(3) of the Internal Revenue Code of 1986 or any successor section, and the regulations promulgated thereunder, an organization that is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of that Code. (*See Article XIX – Conservation Subdivisions.*)

RARE AND EXEMPLARY COMMUNITY – A natural community that has been identified by the New Hampshire Natural Heritage Bureau as being an exemplary example of a particular type of community and/or location of rare plants or animals.

RECREATION, ACTIVE – Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed sites, locations, or fields. Active recreation includes, but is not limited to, swimming, tennis and other court games, baseball, track and field sports, and playground activities. Active recreation generally requires altering the land for recreational use.

ROBIN MOWER: (1) Neither swimming nor some track-and-field sports require equipment, not even temporary or portable equipment, e.g., balls. Not all sites where these activities occur are prescribed. Active recreation does NOT necessarily require altering the land.

RECREATION, PASSIVE – Non-motorized recreational activities that typically occur in a natural setting, that do not have significant adverse impacts to natural, cultural, scientific, or agricultural values of the setting, and do not require structures. Such passive recreation uses include, but are not limited to, walking, hiking, picnicking, nature observation, and cross-country skiing.

-Should mountain biking be mentioned? CHUCK

ROBIN MOWER: These two definitions are inadequate and set up an odd dichotomy. Examples are inadequate. Why would swimming be in one category and walking or hiking be in the other? Why does the first characterize activities as “leisure-time” and the second as “recreational?” Please address these concerns.

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, *for example by way of example only*, skating rinks, gymnasias, bowling alleys, fitness centers, and arcades.

ROBIN MOWER: Why qualify the activities as “usual?” And “gymnasias?” As [Merriam-Webster](#) notes: “Very few people use gymnasias as the plural of gymnasium anymore, but it can come in handy if you want to confuse people.”

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 does* not involve the use of individual motorized vehicles, all-terrain vehicles, off highway recreational vehicles, motorized rides, or fire arms. Outdoor recreation facilities include, *for example by way of example only*, miniature golf courses, cross country ski centers, stadia, tennis courts, and ball fields.

ROBIN MOWER: Could we please move away from the “customer and usual” qualification? Somebody might decide to practice archery or tai chi or orienteering... And if listing what is not part of an outdoor recreational facility, what about e-bikes? (I don’t know whether an e-bike is considered a motorized vehicle in this context, nor may other readers.)

RECREATIONAL PLAYING FIELDS, OUTDOOR – Noncommercial 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 are included* 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 are included*.

ROBIN MOWER: Bring in the concept of teams? “Noncommercial outdoor playing fields for organized practices like soccer, field hockey, baseball and OTHER outdoor TEAM sports.”

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.

RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, designed to be self-propelled or permanently towable by a light duty vehicle, and designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use. (Also called an “RV” or a “Motor Home.”)

- I believe you meant to line out the old Recreational Vehicle line - I think the one is blue is certainly better. HEATHER

ROBIN MOWER: Shouldn’t LIGHT DUTY be hyphenated, resulting in LIGHT-DUTY?

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

1. For natural fresh water bodies without artificial impoundments, the natural mean high water level as *determined defined* by NHDES.
2. For artificially impounded water bodies with established flowage rights, the limit of the flowage rights and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.

ROBIN MOWER: Hyphenate ARTIFICIALLY IMPOUNDED, resulting in ARTIFICIALLY-IMPOUNDED.

3. For coastal waters *and estuaries*, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.
4. For rivers and streams, the ordinary high water mark.

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

REPAIR – Work conducted to restore an existing legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so during construction.

ROBIN MOWER: Delete the word PARTIAL. (Make no sense otherwise: one either replaces or does not.)

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, or heavy equipment. Retail sales of parts and supplies ~~shall be allowed provided~~ *are included where* such sales are accessory to the repair service.

ROBIN MOWER: (1) Examples seem outdated. It is nearly impossible to find anyone to repair “electronic” equipment, but there are computer technicians. What kind of sporting equipment is repaired nowadays—does this open up the service to repairing snowmobiles? (2) Delete FOR—the third word. (3) Might the repair of “small engines and equipment” require much larger facilities (think of Eliot Small Engine repair; or repairing home generators)?

~~RESEARCH FACILITY~~ *RESEARCH FACILITIES AND LABS* – ~~A facility~~ *Facilities* for the investigation into the natural, physical, or social sciences, and other such disciplines, including commercial product development and testing.

[This is how the use is described in the Table of Uses.]

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

ROBIN MOWER: Consider also the 2021 Portsmouth zoning ordinance definition: “A residential building with two vertically-separated units with separate entrances.”

RESIDENCE, MULTI-UNIT – ~~A building and accessories thereto~~ *One or more buildings with accessories* principally used, designed or adapted with *a total of* 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~~ *townhouse and rowhouse-style attached dwelling units*.

[Brendan O’Sullivan, the Fire Marshal, said the Fire Code references the zoning definitions and inclusion of the reference to a fire wall is problematic. I don’t see any need to retain this reference.]

ROBIN MOWER: Confusing second sentence. Suggest: Townhouse- and rowhouse-style attached dwelling units are also considered multi-unit residences.

RESIDENCE, SINGLE-FAMILY – A building and accessories thereto principally used, designed or adapted as a single dwelling unit. A single-family residence is situated on its own separate lot with no other dwelling units nor nonresidential uses other than those that are accessory to the single-family use, including accessory dwellings/apartments and home occupations, where allowed.

RESIDENCE, SINGLE-UNIT – A house with one dwelling unit on a lot where other residential or nonresidential uses are located ~~are the same lot~~ (in contrast to a Single-Family Residence).

- I wanted to discuss adding a clarification to the definition of Single-Family & Single-Unit residence. Doing so would ease worries about non-traditional housing becoming exclusively student housing since it would limit those residences to 2 unrelated occupants and make it less attractive to investors to convert residences to student rentals that charge \$800 a head. EMILY

- RESIDENCE, SINGLE-FAMILY – A building and accessories thereto principally used, designed or adapted as a single dwelling unit **and occupied as a Family Household**. A single-family residence is situated on its own separate lot with no other dwelling units nor nonresidential uses other than those that are accessory to the single-family use, including accessory dwellings/apartments and home occupations, where allowed. EMILY

RESIDENCE, SINGLE-UNIT – A house **consisting of one dwelling unit that is occupied as a Family Household and located** on a lot where other Residential or nonresidential uses are located are the same lot (in contrast to a Single-Family Residence). EMILY

- Sounds like an Unattached Accessory Dwelling Unit. JAMES

RESIDENCE, SINGLE-UNIT CLUSTER – A lot on which two or more separate single-unit houses are situated.

- Cluster is the right choice here. JAMES

ROBIN MOWER: I appreciate Emily’s intent—which opens a can of worms/Pandora’s Box—but question the legal option of limiting to 2 unrelated. Will be interested in reviewing the Board’s discussion.

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.***

ROBIN MOWER: So, does the adverb PRIMARILY modify all three activities? Bakery goods may be prepared offsite, for example. Perhaps move PRIMARILY before CONSUMED?

RESTAURANT, ~~CARRYOUT~~ **CARRY-OUT** – 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.

[It is spelled this way in the Table of Uses.]

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

[The use is written this way in the Table of Uses.]

RETAIL STORE, MEDIUM ~~SIZED~~ **SIZE** – An establishment with five thousand (5,000) to twenty thousand (20,000) square feet of gross floor area 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.

[The use is written this way in the Table of Uses.]

~~RETAIL STORE, SMALL – A retail store with less than five thousand (5,000) square feet of gross floor area.~~

RETAIL STORE, SMALL – *An establishment with five thousand (5,000) square feet of gross floor area 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.*

[Matching the definition for a Retail Store, Medium Size, above]

- "RETAIL STORE, SMALL" - missing words "less than". **EMILY**

ROBIN MOWER: What is the basis for these sizes? Perhaps the Board has discussed this. IMO, one should not simply accept the existing definitions.

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.~~ See "Boarding House."

ROBIN MOWER: Why have both terms? Shouldn't we choose one, or choose to put both in one definition, e.g., Boarding/Rooming House?

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. See Article XX

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

SCREENING – A device or materials used to visually shield one site or one element of a site from a more sensitive adjacent or neighboring site. Typically, the site being shielded has elements that are visually incompatible with the character of the adjacent or neighboring site. Screening devices may include walls, fences, berms, plantings or a combination of them. Effective screening incorporates a high year-round vertical opacity.

- This should be incorporated with Buffering? JAMES

ROBIN MOWER: Agreed, per my notes above.

SEASONAL HIGH WATER TABLE – The highest level of the groundwater table during the wettest season of the year, usually in the spring.

SENIOR CARE FACILITY – Housing principally used, designed, or adapted for use by citizens fifty-five (55) years of age and older who are not capable of living independently and who require assistance in activities of daily living. Residents of a senior care facility receive a package of services to meet their needs. A senior care facility may be contained in a single building or group of buildings and may include assisted living, memory care, and/or nursing home facilities. A ~~*"life-care community"*~~ *life-care community, continuous care retirement community (CCRC)* or other retirement community that provides a continuum of care including both independent living units and units for residents that require assistance, is considered to be a senior care facility.

SENIOR HOUSING – In accordance with RSA 354-A:15, *"senior housing" refers to* either: a) housing where at least 80% of the units are occupied by at least one person 55 years of age or older; or b) housing where 100% of the occupants are 62 years of age or older. *In any development or portion of a development in Durham referred to as "senior housing" 100% of the units include at least one person 55 years of age or older.*

[My understanding from earlier talks with the Town Attorney is that it is permissible to use this narrower standard. It is much easier to enforce this way.]

ROBIN MOWER: (1) The RSA does NOT include the term "senior housing." It refers to "housing for older persons" -- likely a preferred use today. (2) Consider changing the term throughout the ordinance and including a note in the definitions such as *(sometimes referred to as "senior housing")* (3) It would be appropriate to note that the RSA focuses on Fair Housing. (4) Does Durham have the option of changing its threshold to 62 years of age or older? Given housing needs and demographic/longevity changes.....

SEPTAGE - Material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, but not including sewage sludge from public treatment works and industrial waste and any other sludge. (As defined in RSA 485-A:2.)

SETBACK – The required minimum (except where “maximum” is specified) horizontal distance in feet from a lot line, shoreline, or other designated line *or point* to any structure. Where eaves, overhangs, cladding materials, and architectural details on a building project 18” or less from the building face, the setback is measured from the applicable building foundation. Where eaves, overhangs, cladding materials, and architectural details on a building project more than 18” from the building face, the setback is measured from the furthest point where those elements extend from the building. Table 175-54, Table of Dimensions, gives front, side, and rear setbacks, which are measured from front, side, and rear lot lines, respectively. *See “Building” and “Structure.”*

SETBACK AREA – The section of the front, side, or rear of a lot corresponding to the area within which structures may not be placed in accordance with front, side, or rear setbacks, respectively. *(Also called “Yard.”)*

SEWAGE - The water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present. (As defined in RSA 485-A:2.)

SHALL – Where the term “shall” is used, the person or party is required to do what is referred to.

SHOREFRONTAGE – The width of a lot bordering ~~*on a waterbody or wetland on the following waterbodies*~~, measured in a straight line between the intersections of the lot lines with the reference line: *Great Bay, Little Bay, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson Creek, Bunker Creek, Folletts Brook, and the tidal sections of their tributary streams (i.e. all waterbodies in the Shoreland Protection Overlay District where the width of the district is 250 feet).*

[The ordinance does not define which waterbodies the shorefrontage requirement in the Table of Uses refers to. I believe the intent of the provision and the practice of the Town is to apply it to these waterbodies.]

- "SHOREFRONTAGE" – Would like comments from ConComm & LSC.

EMILY

ROBIN MOWER: (1) Agree with Emily. (2) “The width of a lot bordering” could be confusing; It’s the frontage along the waterbody, not the width of the lot. (Some lots might be shaped with a longer frontage than non-frontage, so to speak.) Maybe it’s the LINEAR MEASURE?

SHORELAND PROTECTION **ZONE OVERLAY DISTRICT (SPOD)** – *Encompasses The Shoreland Protection Overlay District encompasses* all land within two hundred fifty (250) feet of the reference line of Great and Little Bays, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal sections of their tributary streams; and within seventy-five (75) feet of all other perennial *brooks streams*. These water bodies are designated on the Durham Shoreland Protection **Zone** Overlay **District** Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.

SHORT-TERM RENTAL – An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty consecutive days. A short-term rental is not considered a home occupation. (*See Article XX.*)

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

SIDEWALK – An established paved pedestrian way situated along or in close proximity to a street, typically, but not necessarily, a public street. (See “Footpath” and “Trail.”)

ROBIN MOWER: (1) Why require that the pedestrian way be *established,* when the term will be used in development applications yet to be constructed? (2) Some sidewalks are made of concrete, which, to my knowledge, is not typically considered pavement.

ROBIN MOWER: Additionally, perhaps it is important—from either a DPW snow-clearing or development application perspective—to include a description of a manmade hard surface other than packed dirt or gravel, i.e., pavement of some type.

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. Specific definitions pertinent to signage follow.

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.

Combination Sign - Any sign which combines the characteristics of two or more types of signs.

Flashing Sign - Any sign that moves, flashes, contains traveling lights, or gives the impression of any movement or flashing.

Freestanding Sign - Any sign which is not a part of or attached to any building but is located elsewhere on a lot.

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 lit by electricity either directly or indirectly.

Monument Sign - A type of freestanding sign that is anchored to the ground without poles or posts, often with a masonry surround.

Neon Sign - Any light sign using exposed neon tubes for illumination or display.

Non-Accessory Sign - Any sign advertising a 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.

Pole Sign - A type of freestanding sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.

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.

Roof Sign - Any sign erected upon or over the roof of any building.

Sandwich Board Sign - A portable sign with an A-frame shape intended to be placed in a front yard or on a public sidewalk.

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 is* 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.

ROBIN MOWER: (1) Suggest NOT hyphenating NONPERMANENT; (2) Would it be appropriate to reference Section 175-126. Types of Signs Permitted: Subsection B addresses signs “intended for political speech?” That of course is only one type of a snipe sign, but it may be the most commonly seen in Durham.

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.

SIGNIFICANT – Noticeable, consequential, substantive, having some meaningful impact as reasonably determined by the Town official or board or committee reviewing a particular proposal.

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, and drainage structures.

ROBIN MOWER: CONSIDER incorporating elements of the definitions from the Purdue Center for Regional Development. “**site plan** — A scaled drawing that includes detailed layout of a development proposal and shows lot lines, access roads, rights of way, major landscape features, environmentally sensitive areas, existing and proposed utility easements, etc.” [[A Planning and Zoning Glossary](#)]

I believe that the concept of SCALE is important, as are existing “major landscape features” (as opposed to “landscaping”) and “environmentally sensitive areas.”

- I think we need to take the opportunity to add the definition for SLOPE and SLOPE,STEEP. HEATHER

- In response to RSA 674:21, the State published a guide to Innovative Land Use Controls authorized by that RSA to address the need for guidance and technical assistance in creating sustainable development (2008). <https://www.nh.gov/osi/planning/resources/documents/ilupt-complete-handbook.pdf>

This guide provides model ordinance language around "steep slopes" and "excessive fill": This ordinance shall apply to all areas with a slope greater than 15 percent, as shown on the town’s steep slopes map, and where the proposed site disturbance is greater than 20,000 square feet (p. 181) Cut and fill shall be minimized. The maximum height of any fill or depth of any cut area, as measured from the natural grade, shall not be greater than 10 feet. (p. 163) EMILY

- Based on the brief review that I conducted, it appears the origin of 15% slope appears to be routed in the engineering world. Rickard Kelly might be able to clarify what the generally accepted definition of a 'steep slope" is. Perhaps you should ask Rick Reine and/or April Talon. I seem to remember that the reason the Dover Road ROW to Gerrish Drive Development was rejected, at least in part, was because the slope exceeded 20% and it seemed to be implied by Mike Sievert that you can't build a public way with a 20% or greater slope. JAMES

SLUDGE - The solid or semisolid material produced by water and wastewater treatment processes, but not including domestic septage. However, sludge which is disposed of at solid waste facilities as permitted by the New Hampshire Division of Environmental Services is considered solid waste. (As defined in RSA 485-A:2.)

SOIL, POORLY DRAINED – Any soil type having a soil drainage classification of “poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOIL, SOMEWHAT POORLY DRAINED – Any soil type having a soil drainage classification of “somewhat poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOIL, VERY POORLY DRAINED – Any soil type having a soil drainage classification of “very poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

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.

ROBIN MOWER: Please confirm with DPW or NHDES that this Rule is still in effect and has the same number.

SPECIAL EXCEPTION – A use which would not be appropriate generally or without restriction in a particular district, and accordingly, is allowable as specifically authorized in this chapter and only after a public hearing and determination by the Zoning Board of Adjustment. *See Article VIII.*

SPECIAL FLOOD HAZARD AREA—See “Area of Special Flood Hazard.”

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.

ROBIN MOWER: Why is land disturbance within those 180 days after issuance of a building permit not considered the start of construction? See: [Law Insider examples](#).

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.

ROBIN MOWER: How does one categorize split-level construction? Do two split levels constitute a single story? What if there is a “cathedral ceiling” living room surrounded by slightly raised rooms? (I know of one in Durham.)

STREET, ARTERIAL – A high-order street 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 Main Street west of Mast Road, U.S. Route 4, Route 108, Route 155A and Route 155.

ROBIN MOWER: Would it be appropriate to reference the Master Plan? Where else are these street “orders” identified? (2) Are the terms “high-order” and “middle-order” even useful?

STREET, COLLECTOR – A middle-order 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. Bay Road, Bennett Road, Durham Point Road, Madbury Road, Main Street (from Newmarket Road to Mast Road), Mill Road, and Packers Falls Road are considered collector streets.

ROBIN MOWER: See above.

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

STREET, MINOR – A low-order local street. If a particular street is not classified as an arterial or collector street, it is considered a minor street.

ROBIN MOWER: See above. In addition, new street, e.g., within a new subdivision, might fall into one of these classifications. Is it worth qualifying the naming of examples, as in “such as” or “including,” in the above three definitions?

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~~ **defines** the parties responsible for maintenance, the collection of trash and recyclables, and snow removal.

ROBIN MOWER: Please check with DPW. Are ANY private streets maintained by the Town, or does DPW provide the other services? If not, then it should be made clear here.

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

STRUCTURE (See additional ~~definitions~~ **definition** immediately below.) – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. Structure includes but is not limited to a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. Structure does not include a minor installation such as a fence six (6) feet high or less in height, a mailbox, a flagpole, or an accessory shed.

- **STRUCTURE** - deserves its own discussion as to what does/doesn't qualify and which examples should be retained. PAUL

- Within the context of the built environment , the term 'structure' refers to anything that is constructed or built from different interrelated parts with a fixed location on the ground. This includes buildings, but the term structure can also be used to refer to any body of connected parts that is designed to bear loads, even if it is not intended to be occupied by people. Engineers sometimes refer to these as 'non-building' structures.

any building, timber, masonry, metal or reinforced concrete structure, railway line or siding, tramway line, dock, harbor, inland navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipeline, cable, aqueduct, sewer, sewage works, gasholder, road, airfield, sea defense works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure or structure designed to preserve or alter any natural feature and fixed plant. SALLY NEEDELL

ROBIN MOWER: Clearly a challenge. Please also consider whether to include agricultural hoop houses, which may be fixed or seasonally-fixed.

STRUCTURE – (For Historic Overlay District purposes) Anything within the Historic Overlay District that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.

~~**STRUCTURED PARKING** – A structure or portion of a structure that provides parking. The parking may be above or below grade, may be covered or uncovered, and may be on multiple levels. See “Surface Parking”~~

STRUCTURED PARKING – A parking garage including at least two levels of parking or a parking facility situated within or on top of a multi-unit residential or nonresidential building where the building contains at least two full levels with parking or other active uses. The structured parking may be completely enclosed or supported with open columns and the parking or portions of the parking may be situated below ground. Structured parking incorporates a substantial structure typically built with heavy-duty concrete, steel, or comparable.

- **"STRUCTURED PARKING"** – A structure that provides parking where the finished grade of any of its levels is at least 5 feet higher or lower than existing grade. The structure may have one or multiple levels and may be unenclosed or enclosed, covered or uncovered. See “Surface Parking”.

EMILY

- Should "Structured Parking" be renamed "Parking, Structured"?

HEATHER

- STRUCTURED PARKING - I'm not sure we want to have parking on top of a building, let's discuss. PAUL

ROBIN MOWER: (1) My email to the Board on May 4, 2021 (subject line *zoning amendments | parking definitions* with attached file named *20210504 Mower parking ZO defs.pdf*) included excerpts from Portsmouth and Hanover ordinances. Relevant excerpts include:

- Parking structure—A structure containing multiple stories of parking as a principal use or accessory use. (See also: garage, parking lot, underground parking level.) PORTSMOUTH (2021)

- Should we add a "Student Housing" here? HEATHER

I know Heather and I have suggested this before but since we are going through definitions I am wondering if now would be a good time to create a definition for Student/Undergraduate Housing/Apartment. With the various State legislation being worked on it may be a time to get some clarity on this. Heather also suggested that we assign such a facility a use. This would allow us to put it where most suitable. SALLY

Definitions from Hanover provided by Heather:

student residence, Institution district

A building designed for and occupied by students and operated in conjunction with another institutional use, which may include individual living units with social rooms and kitchen facilities for any number of students. This definition applies only to those student residences located within the I district.

student residence, residential districts

A building designed for and occupied by students including social rooms and a limited number of kitchens, operated in conjunction with another institutional use, and located in a district in which residential use is permitted

ROBIN MOWER: Pandora's Box, from both a pragmatic and legal perspective.

SUBDIVISION – The division of a 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, lease, condominium conveyance, or building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. *The granting of an easement to the Town of Durham or to a public utility for the purpose of placing and maintaining facilities is not considered a subdivision.*

~~*The division of a parcel of land, held in common and subsequently divided into parts among the several owners, shall be deemed a subdivision under these regulations.*~~

~~The granting of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters, and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be construed as a subdivision under these regulations, and shall not be deemed to create any new division of land for any other purpose.~~

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.

ROBIN MOWER: Why would the “victim” of the damage be constrained to a structure, as opposed to a landscaped area or natural buffer, for example?

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~~ *is* 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.”

ROBIN MOWER: My comment is the same for the definition of SUBSTANTIAL IMPROVEMENT in the Floor Hazard Overlay section, above: I imagine that the Board has had a thorough discussion about the above definition. What is the basis for the 50% threshold? And what about “substantial improvement” to undeveloped property, as opposed to an existing structure?

~~**SURFACE PARKING**—A parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure.~~

SURFACE PARKING – An open-air parking lot or parking area situated on the ground, at grade, on a single level and not within a garage or parking structure. “Surface parking” may incorporate one or more retaining walls to provide an adequate finish grade. A carport and a parking lot covered with solar panels are considered “surface parking.”

- "**SURFACE PARKING**" – An at-grade, open-air parking area where the difference between existing grade and finished grade never exceeds 5 feet. A carport and a parking lot covered with solar panels are considered “surface parking.”. **EMILY**

- Should "Surface Parking" be renamed "Parking, Structured"? **HEATHER**

- SURFACE PARKING - Are the words "open-air" necessary? What does open-air mean? One open side of a structure? nothing above? Is partial enclosure allowed? PAUL

- It would be helpful to add a definition of "ground, at grade". Should a definition of "retaining walls" which includes height of wall be included as well? JAMES

ROBIN MOWER: (1) Replace CAR PORT with CARPORT; (2) Agree about need for definition of "at grade;" (3) Need to consider language that allows for a parking garage that has an open-air top level (which we have all seen and/or used).

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

ROBIN MOWER: Do not limit to "dramatic or musical" performances. Lectures, demonstrations, expos could all be set in a theater.

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. "Toxic or hazardous materials" include,-but are not limited to: volatile organic chemicals; petroleum products; heavy metals; radioactive materials; infectious materials or wastes; acids; alkalis; products such as pesticides, herbicides, solvents and thinners; or such other substances as defined in New Hampshire Department of Environmental Services Rules Section Env-Wm-400, in New Hampshire Solid Waste Rule Env-Wm 100 and in the Code of Federal Regulations 40 CFR 261, as amended. The more-restrictive rules shall apply in all cases.

The following commercial activities are presumed to use toxic or hazardous materials and/or to generate wastes containing toxic or hazardous materials, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board. In all cases the burden of proof ~~shall rest~~ rests with the applicant:

- A. Airplane, boat and motor vehicle service and repair, including gasoline stations.
- B. Chemical and biological 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.
- K. Any other commercial or industrial activity which, in the judgment of the Planning Board, typically uses toxic or hazardous materials or produces wastes containing toxic or hazardous materials.
- L. Storage and/or distribution of chemicals or any other hazardous materials used in any of the above activities.

TRAIL – An informal pedestrian way typically situated in natural and wooded areas. (See “Footpath” and “Sidewalk.”)

- Trail - I am not sure the work "informal" needs to be in the sentence.

HEATHER

ROBIN MOWER: I do not believe the words AND WOODED are needed. A trail may lead through a meadow. Both meadow and woods are natural.

TREATED SOILS – Soils decontaminated by a treatment process and certified for distribution and use as soil under NH Env-Wm 3203.11, having originally been contaminated with liquids or materials not regulated by the State of New Hampshire as hazardous waste defined under NH Env-Wm 2603.01.

TRUCKING AND DISTRIBUTION FACILITY – A facility for the short-term storage and trans-shipment of materials or goods including express delivery, common carriers, oil terminals, moving companies, and similar operations.

- The Trucking and Distribution might be able to be in Manufacturing, Light and add /Distribution? Something like this could end up at the Goss sight, but would cause more truck traffic - but with direct entry at HWY 4, and other side of Durham, probably not an issue. HEATHER

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

ROBIN MOWER: Again, please check with John Parry and/or Rich Reine.

UNRELATED OCCUPANTS – Persons living in an unrelated household. (See *definition for* “Household.”)

UNRELATED HOUSEHOLD – See “Household.”

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 “Usable Area.”

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

- Some commercial lots have multiple uses and a single 'specific purpose'. JAMES

ROBIN MOWER: In addition, we allow “mixed use” buildings that may have different “specific purposes.” Suggest: “A specific purpose for which a building or lot, or a portion thereof, is arranged, intended, designed, occupied, or maintained.”

USABLE AREA – The area of any conservation subdivision, 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~~ *is* determined in accordance with the provisions of Section 175-56(E).

ROBIN MOWER: Minor: Delete first comma

VARIANCE – A ~~variation~~ *deviation* 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~~ *if the board determines that the required criteria are met. See Article VIII.*

- VARIANCE - Isn't variance defined in the RSA's? PAUL

ROBIN MOWER: What is wrong with the current definition? And “if the board determines” is confusing if you delete reference to the ZBA. It then would appear that the Planning Board could grant a variance.

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, as amended.

ROBIN MOWER: Please consult the Conservation Commission.

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.

ROBIN MOWER: ADD “VIEWSHED” and consider definition from the Purdue Center for Regional Development, i.e., “The geographical area and landscape visible to an observer from a specific vantage point.” [[A Planning and Zoning Glossary](#)]

WAREHOUSE – A building for the storage of commercial goods and materials.

WAREHOUSE, ~~MINI-STORAGE~~ *MINI-STORAGE* – Any self-service storage building housing individual storage units or lockers, each of which is accessible through a private entrance, and rented to the public for storage of personal or business belongings.

ROBIN MOWER: (1) Why MINI-storge, as opposed to “self-storage?” Why is the size limited? And just change the name in the Table of Uses accordingly. (2) As written, infers that the unit or locker has a private entrance from outdoors, which is not always the case. Suggest: “A self-service facility

housing individual units or lockers that are rented to the public for storage of personal or business belongings and that are individually accessible by the renter.”

[As written in the Table of Uses.]

WATER-DEPENDENT STRUCTURE – A structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

➤ **Change “water dependent structures” to “water-dependent structures” in Section 175-74. A.**

WETLAND – An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands include, but are not limited to, swamps, marshes, bogs, vernal pools, and similar areas.

ROBIN MOWER: Please consult the Conservation Commission.

WETLAND, NON-TIDAL – A wetland that is not subject to periodic inundation by tidal waters.

ROBIN MOWER: Please consult the Conservation Commission.

WETLAND, PRIME – A wetland designated by the Town Council in accordance with RSA 482-A:15 as having one or more of the values set forth in RSA 482-A:1 and that, because of its size, unspoiled character, fragile condition or other relevant factors, makes it of substantial significance.

ROBIN MOWER: Please consult the Conservation Commission.

WETLAND, TIDAL – A wetland whose vegetation, hydrology, or soils are influenced by periodic inundation of tidal waters.

ROBIN MOWER: Please consult the Conservation Commission.

WHOLESALE SALES – Trade that involves the sale of merchandise, in bulk or large quantities, exclusively to retailers for resale or to industrial, commercial, or institutional users.

WORKFORCE HOUSING – (Pursuant to RSA 674:58, as amended) 1. *Housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the Portsmouth – Rochester, NH – Maine Primary Metropolitan Statistical Area as published annually by the United States Department of Housing and Urban Development.* 2. *“Workforce housing” also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household in the Portsmouth – Rochester, NH – Maine Primary Metropolitan Statistical Area as published annually by the United States Department of Housing and Urban Development. [Note. The definition under RSA 674:58 states that housing developments that exclude minor*

children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, do not constitute workforce housing. This definition in the Durham zoning ordinance, herein, does not include this provision].

[As proposed in the housing amendments.]

- "Workforce Housing" - assuming the [Note] portion is meant to be deleted? Can we add to it, to specify that leased properties must give priority status to non undergrads, aka yes to applicants with Section 8 vouchers, veterans, those who are employed full-time, or those who have participated in Durham's community life for at least 4 years? Looking forward to hearing more about how/why Workforce Housing excludes undergrads but does include grad students. EMILY

- Last sentence on Workforce Housing - Why would we not include this provision? HEATHER

YARD – *See Setback Area.*

GENERAL COMMENTS

- Please consider a review of the planning definitions to simplify. Changes that add ornamentation cause more harm than good to a community that advertises inclusiveness as an important value.

Many details read more like individual pet peeves snuck in to further a personal agenda to encroach on freedoms, than a clean Town guide to aid functional decision making. If a challenge was made to shorten the definitions to half of their 41 pages, it is likely to save a lot of headaches. Less is often more when it comes to governance documents.
KIMBERLEY LARIS, DURHAM RESIDENT