

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Donna Bogan
Councilor Robert Gates
Councilor Ray Varney



AGENDA

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday December 4, 2014

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

1. Call to Order
2. Public Input
3. Approval of the Codes and Ordinances Committee Minutes P-3
 - October 2, 2014
4. Discussion: Sign Ordinance – Chapter 42 P-9
5. Elections – Ward Polling locations
6. Action Against Tenants – Chapter RSA 540:1 P-25
7. Second Hand Dealers License P-29
8. Discussion: Durham Zoning Ordinance P-33
9. Proposed Amendment to Chapter 25, Fire Safety Measures P-227
10. Other
11. Adjournment

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CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday October 2, 2014

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

Committee Members Present

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Ray Varney
Councilor Robert Gates
Councilor Donna Bogan

Others Present

Captain Toussaint
Robert Goldstein
Councilor Gray
Gail Varney

MINUTES

1. Call to Order

Councilor Lachapelle called the Codes and Ordinances Committee meeting to order at 7:00 PM. All committee members were present.

2. Public Input

Councilor Lachapelle asked if anyone from the public wanted to address the Codes and Ordinances Committee at this time.

Gail Varney, resident, addressed the committee regarding the City's annual report. Ms. Varney expressed her concerns with the way the report was bound. Ms. Varney showed the committee copies of the standard format that is used. She explained that this type of the annual report goes back to at least 1874 and there is tradition of having them hard bound so they will hold up. She said these reports get archived in the State Library and the current copy would not last the test of time as would the hard bound copies will and they should shrink them down to the standard size. She would like them to continue the tradition so that it would make a complete set.

Councilor Lachapelle asked the City Clerk's Office to research this issue. Councilor Varney stated that they should address City Manager Fitzpatrick where this initially came from him, as well as check into the State archives.

3. Approval of the Codes and Ordinances Committee Minutes

- **September 4, 2014**

Councilor Gates **MOVED** to **ACCEPT** the Committee minutes of September 4, 2014 with the exception of revising the attendance, adding that Councilor Gates and Councilor Gray were in attendance. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Discussion of Home Occupancy Renewals

Councilor Lachapelle stated that Robert Goldstein from the Board of Assessors was present to explain his issues regarding home occupancy renewals.

Mr. Goldstein stated that he would like to see a three or five year renewal on these in-home businesses because currently once they receive this type of license it does not expire and explained why he felt the need to have these renewals. He explained that second hand dealers have to renew. He said that veterans and disabled individuals have to apply every year to get their tax credit. Mr. Goldstein said that having the home occupancy renewal would have the verification that they still meet the criteria.

Councilor Varney asked Councilor Gates if the software that his committee was looking at would be an effective way to track these permits. Councilor Gates stated that the software could help with this. Councilor Varney said that the software could maintain a list of these businesses.

The Codes and Ordinances Committee discussed having Sheldon Perkins, Code Enforcement Officer, look at this and see how many of these businesses are out there.

Mr. Goldstein explained that some of these home businesses expand outside the limits of what was original accepted. Councilor Lachapelle agreed that in some situations they do expand outside the criteria.

Councilor Lachapelle asked if there was a charge for the home occupation license. Mr. Goldstein said yes, there is a charge for the application and an additional charge for the mailing.

Councilor Varney suggested that they find out how many of these home businesses are out there to realize the magnitude of the problem.

Councilor Gray stated that page 1, paragraph four of the minutes indicates how many are in the city and that the home businesses which are for food services and child care are followed up on. He asked how much time and effort would it take for the inspections, and what cost would the City incur. Mr. Goldstein explained the State regulates food and child care. He explained that there would be no inspection; they would just reapply. Councilor Lauterborn questioned why they would not do an inspection. She said that maybe they should be just looking at the offenders. Mr. Goldstein stated that nothing is being done currently to the offenders. They are spoken to, but most of the time nothing is done.

Mr. Goldstein explained that the issue the City had with a certain home occupation could have been dealt with if they had to reapply and were denied. Councilor Lauterborn did not agree because this resident even went against court orders.

Mr. Goldstein said that the veterans and elderly have to reapply to show they meet the requirements for the exemption. He stated that if the home occupation needs to reapply they would need to show they are compliant and he explained how that would work.

Councilor Varney was not in favor of having these home businesses reapplying. Councilor Varney said they could check on these businesses every few years. He felt that the offenders are being taken care of by the Code Enforcement Officer pretty quickly and it might be getting too bureaucratic.

Councilor Lachapelle asked that Mr. Perkins be invited to the next Codes and Ordinances Committee meeting to discuss possibly doing something semi annually for this type of business and maybe he could address the percentages which are food or child care oriented.

Mr. Goldstein explained that currently the home occupation permit stays with the property even if the homeowner moves, but with reapplying it would terminate itself. The Codes and Ordinances Committee discussed this further with Mr. Goldstein. Councilor Lauterborn felt that there are a lot of "maybes" when it comes to this issue. Councilor Bogan suggested if the applicant moves from the property the application should be voided, and maybe they need to change the application. Councilor Gates asked Mr. Goldstein, as well, about this where the application is under the resident's name. Mr. Goldstein explained these are home businesses that are in R1

where they are not permitted and that is the reason for it being listed under the property.

Councilor Gates agreed with Councilor Lauterborn that it should be complaint driven. Mr. Goldstein just wanted the committee to take it into consideration as a recommendation.

Councilor Varney explained the fees for the home occupation application and maybe they need to get feedback from Jim Campbell from the Planning Department.

Councilor Lachapelle stated that this issue will stay in committee until the committee's next meeting. Mr. Goldstein thanked them for their time. Councilor Lachapelle stated that the next Codes and Ordinances Committee meeting will be held November 6, 2014.

5. Panhandling

Councilor Lachapelle asked Captain Toussaint if he had time to review the Concord Ordinance, which has not been challenged by the ACLU.

Captain Toussaint stated that it helps to tighten things up. He cited State RSA 265.40 and he explained this RSA further. He also addressed RSA 644.2 as it pertained to disorderly conduct addressing obstructing traffic, but it is a little loose. Captain Toussaint stated the Concord ordinance makes it cleaner. Councilor Lachapelle asked if this type of ordinance would affect the Fire Department Boot Drive. The committee discussed this further.

Councilor Varney stated per Mr. Perkins that when a business is open and has a parking lot, they consider the parking area as a road way. Captain Toussaint explained the definitions of way and roadway. Councilor Lachapelle asked if they passed an ordinance such as Concord's would the gentleman who stands at the Home Depot be in violation. Captain Toussaint stated that the ordinance would make it cleaner as to rights and duties and he addressed the current statutes. Captain Toussaint said that panhandling has died down in the City.

Councilor Gray asked if RSA 265.40 would make it a violation of panhandling in the Service Credit Union parking lot. Captain Toussaint agreed, but most of the time it would be complaint driven.

Councilor Lachapelle **MOVED** to have Attorney Wensley draft the Concord ordinance in the Rochester format and send it to the full City

Council. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Other

Councilor Varney checked into the home occupation application and stated that it is non-transferable.

Captain Toussaint made himself available to answer other questions from the Codes and Ordinances Committee.

7. Adjournment

Councilor Bogan **MOVED** to **ADJOURN** the Committee meeting at 7:34 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Nancy Carignan
Assistant City Clerk

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Draft dated PB 7.9.14 Comments received for PB for 8.4.14

42.29 Signage

- a. General.** All signs shall comply with the regulations for the erection and construction of signs contained in the Building Code of the City of Rochester and other applicable city regulations, except as shall be under the jurisdiction of New Hampshire RSA 236:69-89. Signs shall be permitted in accordance with the following regulations.
- b. Purpose and Intent.** The purpose of this ordinance is to create a legal framework to regulate the type, number, location, size, and illumination of signs on private property in order to maintain and enhance the character of the city's commercial district and residential neighborhood and to protect the public from hazardous and distracting displays.
- c. Nonconforming signs.** A sign which was lawfully established prior to the adoption of this article but which does not meet the requirements of this article is considered a nonconforming sign. Nonconforming signs and sign structures may remain or must be removed as follows:
1. Applicable provisions of the nonconforming section of this Zoning Ordinance shall apply unless superseded herein.
 2. No changes in the sign or sign structure are permitted except for basic maintenance and repairs necessary to keep the sign in good working order or other changes which bring the sign into compliance. Other than that, no nonconforming sign shall be reconstructed, modified, or relocated except for changes to the sign face itself within the same size and shape to accommodate a change copy. *A nonconforming sign which is damaged beyond repair due to a cause beyond the control of the owner may be replaced within one year of when damage occurs.*
 3. No nonconforming sign may be altered in any way which makes the sign even more out of compliance with this ordinance, including but not limited to lighting an unlit sign.
 4. Existing temporary signs which are not in compliance with this article are not considered to be "grandfathered" under this ordinance. If any notification of noncompliance is given from Director Building Zoning Licensing Services or designee, these signs or conditions must be brought into compliance within 60 days from that notification.
- D. Permits Required.** All signs, regardless of size, shall require the issuance of a zoning permit before public display unless otherwise specifically exempt by this Ordinance.
- E. Application Process.** Application for a sign permit shall be to the Building, Zoning, and Licensing Services Department. The application should contain the following:
1. Name, signature, address and telephone number of the applicant.
 2. Owner's authorization for the application if not the applicant.
 3. Location of the building, structure or lot to which the sign will be located.
 4. The district the sign will be located.
 5. Historic District. Signs in the Historic District, except for portable easel, placard, and sandwich board signs, are subject to review by the Historic District Commission (see Article XIV – Historic Overlay District).
- F. Construction Documents.** Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the Building, Zoning, and Licensing Services Department official showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where

- G. Changes to signs.** No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of movable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.
- H. Permit Fees.** Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.
- I. Prohibited Signs.** The following devices and locations shall be specifically prohibited:
1. Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.
 2. Except as provided for elsewhere in this code, signs encroaching upon or overhanging public rights-of-way. No *sign* shall be attached to any utility pole, light standard, street tree or any other public facility located within the public right-of-way.
 3. Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or to have the appearance of municipal vehicle warnings from a distance.
 4. Any *sign* attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:
 - a. The primary purpose of such a vehicle or trailer is not the display of signs.
 - b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.
 - c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.
 5. Vehicles and trailers used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
- J. Exempt Signs.** The following signs shall be exempt from the provisions of this chapter:
1. Official notices authorized by a *court*, public body or public safety official.
 2. Directional, warning or information signs authorized by federal, state or municipal governments.
 3. Memorial plaques, building identification signs and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.
 4. The flag of a government or noncommercial institution, such as a school.
 5. Religious symbols and seasonal decorations within the appropriate public holiday season.
 6. Works of fine art displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.
 7. Street address signs and combination nameplate and street address signs that contain no advertising copy and which do not exceed 6 square feet (0.56 m²) in area.
 8. Political Signs.
 9. Holiday or Special event signs.
 10. Signs required, or deemed necessary for the public welfare and safety, by a municipal, state, or federal agency such as traffic control and directional signs.
 11. Interior signs
 12. Snipe Signs

K. Definitions. For the purpose set forth in this ordinance the following definitions apply 11/21/2014

1. **Abandoned Sign:** A sign structure that has ceased to be used and the owner intend no longer to have used.
2. **Animated Sign:** A sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from changeable signs as defined and regulated by this code, include the following types:
 - a. **Electrically activated:** Animated signs producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:
 - b. **Flashing:** Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of non illumination. For the purposes of this ordinance, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds 8 seconds.
 - c. **Mechanically activated:** Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.
3. **Architectural Projection:** Any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "Awning;" "Backlit awning;" and "*Canopy*, Attached and Free-standing."
4. **Awning:** An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or non rigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.
5. **Awning Sign:** A sign displayed on or attached flat against the surface or surfaces of an awning. See also "Wall or fascia sign."
6. **Backlit Awning** An awning with a translucent covering material and a source of illumination contained within its framework.
7. **Banner:** A flexible substrate on which copy or graphics may be displayed.
8. **Banner Sign:** A sign utilizing a banner as its display surface.
9. **Billboard:** See "Off-premise sign" and "Outdoor advertising sign."
10. **Building:** A structure which has a roof supported by walls for shelter, support, or enclosure of persons, animals, or chattel.
11. **Canopy:** A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached *canopy* may be illuminated by means of internal or external sources of light. See also "Marquee."
12. **Canopy (Free-Standing):** A multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a free-standing *canopy* may be illuminated by means of internal or external sources of light.

13. **Canopy Sign:** A sign affixed to the visible surface(s) of an attached or free-standing ~~11/21/2014~~
14. **Changeable Sign:** A sign with the capability of content change by means of manual or remote input, including signs which are:
- a. **Electrically activated.** Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also "Electronic message sign or center."
 - b. **Manually activated.** Changeable sign whose message copy or content can be changed manually.
15. **Combination Sign:** A sign that is supported partly by a pole and partly by a building structure.
16. **Copy:** Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.
17. **Development of Complex Sign:** A free-standing sign identifying a multiple-occupancy development, such as a shopping center or planned *industrial* park, which is controlled by a single owner or landlord, approved in accordance with [Section 1009.2](#) of this chapter.
18. **Directional Sign:** Any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.
19. **Double-Faced Sign:** A sign with two faces, back to back.
20. **Electric Sign:** Any sign activated or illuminated by means of electrical energy.
21. **Electronic Message Sign or Center:** An electrically activated changeable sign whose variable message capability can be electronically programmed.
22. **Exterior Sign:** Any sign placed outside a building.
23. **Flag:** A sign, constructed of cloth and attached to a staff or pole.
24. **Flashing Sign:** See "Animated sign, electrically activated."
25. **Free-Standing Sign:** A sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground.
26. **Frontage (Building):** The length of an exterior building wall or structure of a single premise orientated to the public way or other properties that it faces.
27. **Frontage (Property):** The length of the property line(s) of any single premise along either a public way or other properties on which it borders.
28. **Illuminated Sign:** A sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated).
29. **Interior Sign:** Any sign placed within a building, but not including "window signs" as defined by this ordinance. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

30. **Marquee Sign:** A permanent roof-like structure, including the structural support system, projecting beyond a building wall at the entrance to a building or extending along and projecting beyond building wall.
31. **Menu Board:** A free-standing sign orientated to the drive-through lane for a restaurant that advertises the menu items available from the drive-through window, and which has no more than 20 percent of the total area for such a sign utilized for business identification.
32. **Multiple-Faced Sign:** A sign containing three or more faces.
33. **Nonconforming Sign:** Any sign that existed lawfully prior to the adoption of the Sign Ordinance **(DATE OF ADOPTION)** which now does not conform with the provisions of this ordinance.
34. **Off-Premise Sign Directional:** A sign on private property whose only purpose is to direct vehicular traffic for deliveries and visitation and is not intended to be used as a form of advertisement.
35. **Off-Premise Sign:** A sign, which pertains to a business, industry, or other activity which is not located on the premise upon which the sign is located.
36. **On-Premise Sign:** A sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.
37. **Outdoor Advertising Sign:** A permanent sign erected, maintained or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.
38. **Permanent Sign:** A sign that is displayed for more than a total of ninety days in any one year.
39. **Pole Sign:** See "Free-standing sign."
40. **Political Sign:** A temporary sign intended to advance a political statement, cause or candidate for office. A legally permitted outdoor advertising sign shall not be considered to be a political sign.
41. **Portable Sign:** Any *sign* not permanently attached to the ground or to a building or building surface.
42. **Projecting Sign:** A *sign* other than a wall sign that is attached to or projects more than 18 inches (457 mm) from a building face or wall or from a structure whose primary purpose is other than the support of a sign. For visual reference, see [Section 1003](#).
43. **Premises Sign:** A lot or number of lots situated a building or group of buildings designed as a unit or on which a building or group of buildings are to be constructed housing multiple businesses.
44. **Real Estate Sign:** A temporary *sign* advertising the sale, lease or rental of the property or premises upon which it is located.
45. **Sandwich Board Sign:** A portable sign shaped like an A-frame with a sign pane on one or both sides.
46. **Sign:** Any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

- 11/21/2014
47. **Sign Area:** The area of the smallest geometric figure, or the sum of the combination of geometric figures, which comprise the sign face. The area of any double-sided or "V" shaped *sign* shall be the area of the largest single face only. The area of a sphere shall be computed as the area of a circle. The area of all other multiple-sided signs shall be computed as 50 percent of the sum of the area of all faces of the *sign*.
48. **Sign Face:** The surface upon, against or through which the *sign* copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border..
49. **Sign Structure:** Any structure supporting a sign.
50. **Snipe Sign:** A temporary sign or poster affixed to a tree, fences, etc. Snipe sign. Any sign of any size, made of any material, including paper, cardboard, wood and metal, when such sign is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, fences or other objects, and the advertising matter appearing thereon is not applicable to the premises upon which said sign is located. 'Snipe sign' means an off-premises sign which is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or to other objects.
51. **Temporary Sign:** A sign not constructed for or intended for permanent use. Temporary signs may not be displayed for more than a total of thirty (30) days in any one year.
52. **Wall Sign:** A *sign* that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 18 inches from the building or structure wall, including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed. For a visual reference and a comparison of differences between wall or fascia signs and roof signs.
53. **Window Sign:** A *sign* within one foot of a window message intended to be visible to and readable from the public way or from adjacent property.

L. General Provisions.

Conformance to codes. Any sign hereafter erected shall conform to the provisions of this ordinance and the provisions of the *International Building Code* and of any other ordinance or regulation within this jurisdiction.

Signs in rights-of-way. No sign other than an official traffic sign or similar sign shall be erected within 2 feet of the lines of any street, or within any public way, unless specifically authorized by other ordinances or regulations of this jurisdiction or by specific authorization of the code official.

Projections over public ways. Signs projecting over public walkways shall be permitted to do so only subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum height of 8 feet from *grade* level to the bottom of the sign. Signs, architectural projections or *sign* structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the jurisdiction for such structures.

Traffic visibility. No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.

Computation of frontage. If a premises contains walls facing more than one property line or encompasses property frontage bounded by more than one street or other property usages, the sign area(s) for each building wall or property frontage will be computed separately for each building wall or property line facing a different frontage. The sign area(s) thus calculated shall be permitted to then be applied to permitted signs placed on each separate wall or property line frontage.

Maintenance, repair and removal. Every sign permitted by this ordinance shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the code official, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the Building, Zoning, Licensing, Services official forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, the code official shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign.

Master sign plan required. All landlord or single-owner controlled multiple-occupancy development complexes, such as shopping centers or planned *industrial* parks, shall submit to the Building Zoning and Licensing Services a master sign plan prior to issuance of new sign permits. The master sign plan shall establish standards and criteria for all signs in the complex that require permits, and shall address, at a minimum, the following:

- a. Proposed sign locations.
- b. Materials.
- c. Type of illumination.
- d. Design of free-standing sign structures.
- e. Size.
- f. Quantity.
- g. Uniform standards for non business signage, including directional and informational signs.

Illumination.

- a. No internally illuminated sign shall be used within 100 feet of any residential zone.
- b. On externally illuminated signs, the light source shall be steady, stationary, shielded, downcast, and directed solely at the sign. The sign surface shall be non reflective.

- c. Illuminated signs shall send no glare onto the road or onto any neighboring properties. 11/21/2014

Removal of Portable and Other Movable and Temporary Signs.

- a. The Zoning Administrator, or other city personnel designated by the City Manager, shall cause to be removed any sign placed on or over any public right-of-way or public property that is without a valid permit or is not in compliance with the terms of a valid permit, or where such a sign is exempt from permit requirements, the sign is not in compliance with the standards and provisions of this ordinance.
- b. Signs Related to An Adjacent Principal Use. Where a sign that is placed on or over any public right-of-way or public property in violation of this ordinance is related to a principal use of adjacent private property, the Zoning Administrator, or other city personnel designated by the City Manager, shall notify the owner of the principal use or the property that a violation exists and shall specify a time limit for removal of the sign. If the owner fails to comply with the order for removal, the Zoning Administrator, or other city personnel designated by the City Manager, shall remove the sign and the owner shall be liable for the cost of said removal and subsequent storage. If the owner does not redeem the sign within thirty (30) calendar days from the date that the sign is removed, the sign shall be deemed to be abandoned and may be disposed of by the City as abandoned property; and
- c. Other Signs. Where a sign that is placed on or over any public right-of-way or public property in violation of this ordinance is not erected in connection with elections or political campaigns, and is unrelated to a principal use of adjacent private property, the Zoning Administrator, or other city personnel designated by the City Manager, shall remove the sign and it shall be deemed to be abandoned and may be disposed of by the City as abandoned property.”

M. Specific Sign Requirements.

1. Animated Sign. Animated signs, except as prohibited in [Section I3](#), are permitted in Granite Ridge Development, commercial and *industrial* zones only. Changeable signs, manually activated, are permitted for nonresidential uses in all zones. Changeable signs, electrically activated, are permitted in all nonresidential zones.

2. Awning Sign.

- a. The copy area of awning signs shall not exceed an area equal to 25 percent of the background area of the awning or awning surface to which such a sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.
- b. Neither the background color of an awning, nor any graphic treatment or embellishment thereto such as striping, patterns or valances, shall be included in the computation of sign copy area.

3. Canopy Signs.

- a. The permanently-affixed copy area of *canopy* or marquee signs shall not exceed an area equal to 25 percent of the face area of the *canopy*, marquee or architectural projection upon which such sign is affixed or applied.
- b. Graphic striping, patterns or color bands on the face of a building, *canopy*, marquee or architectural projection shall not be included in the computation of sign copy area.

4. Directory Signs. For businesses located on Secondary Streets within the Downtown Commercial District.

- a. Not to exceed four (4) square feet in area.
- b. Permission must be obtained in writing from the property owner on whose premise the sign is to be placed.
- c. These signs shall not obscure any portion of road, intersection, or sidewalk.
- d. Not more than 25 percent of the area of any directional sign shall be permitted to be devoted to business identification or logo, which area shall not be assessed as identification sign area.

5. Directional Signs.

No more than two directional signs shall be permitted per street entrance to any lot. There shall be none in residential zones. For all other zones, the maximum area for any directional sign visible from adjacent property or rights-of-way shall be 10 square feet. Not more than 25 percent of the area of any directional sign shall be permitted to be devoted to business identification or logo, which area shall not be assessed as identification sign area.

6. Development and Construction Signs. Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates, shall be permitted in all zoning districts, subject to the following limitations:

- a. Such signs on a single residential lot, residential subdivision or multiple residential lots, and nonresidential uses shall be limited to one sign, not greater than 10 feet in height and 32 square feet in area.
- b. Such signs for commercial or *industrial* projects shall be limited to one sign per street front.
- c. Development and construction signs may not be displayed until after the issuance of construction permits by the building official, and must be removed not later than 24 hours following issuance of an occupancy permit for any or all portions of the project.

7. Electronic Message Sign. All permitted EMCs shall be equipped with a sensor or other device that automatically determines the ambient illumination and be programmed to automatically dim according to ambient light conditions at all times of the day or night. Electronic changing signs may be freestanding or building mounted, one or two-sided, may be a component of a larger sign or billboard, and shall conform to the following minimum requirements along with all other requirements for signage within this ordinance:

- a. Electronic Message Center portion of the sign shall not make up more than 75% of the actual sign surface. In no case shall an electronic message center exceed 32 square feet.
- b. Animation on Static EMCs shall be limited to the actual changing of the message. No flashing, blinking, or pulsating of lights shall be allowed. Electronic Message Centers must be equipped to freeze in one position or discontinue the display in the event that a malfunction occurs.
- c. Minimum Display Time: All illumination elements on the face of Static electronic changing signs shall remain at a fixed level of illumination for a period of not less than 8 seconds.
- d. Software for operating the EMC must be able to show current and factory brightness levels upon request. The owner/installer of Electronic Message Displays shall certify as part of the application that signs will not exceed the brightness levels specified in this section.
- e. The brightness shall not exceed 0.3 footcandles at night.
- f. Flashing or animated signs (including temporary interior window displays or banners) of red, amber, or green colored lights shall not be permitted.

8. Flag. Each store front may be allowed one (1) Open or welcome flag that is position at a height so as not to impede the flow of pedestrians.

10. Home Occupation-2 Sign. There may be only one sign for the business visible from the street. The sign shall be non-illuminated and shall not exceed three (3) square feet.
11. Home Occupation-3 Sign. There may be only one sign for the business visible from the street. The sign shall be non-illuminated and shall not exceed four (4) square feet.
12. Marquee Sign. No marquee shall be erected unless designed by a registered structural engineer and approved by Director Building Zoning Licensing Services. It may extend over the sidewalk across the ROW to the curb line provided it has a minimum height above the sidewalk of ten feet above the curb level and does not exceed five feet in height.
13. Off-Premise Sign. Off premises signs are prohibited except for the following signs if permission is granted from the owner of the off premises location. A setback of at least 5 feet is required for these signs and they shall not be placed in the road right-of-way (i.e. they must be placed on private property) unless approved by the appropriate government body.
 - a. One freestanding sign directing people to the site. The sign may not exceed 2 square feet per side nor 4 feet in height. No illumination is allowed. It may include only the name and/or logo, with simple directions. The sign must be durable and constructed of solid, finished materials.
 - b. A real estate sign shall not exceed 6 square feet per side.
 - c. Yard sale signs (See section M 25)
 - d. A sign for an office park or industrial park may be erected at the entrance to the park on an out parcel or, with the approval of the City Council, within the road right-of-way.
 - e. A promotional banner for special public or nonprofit institutional events may be placed anywhere in the City, including across a public road, if approved by the City Manager.
 - f. Two seasonal agricultural directional signs not to exceed 4 square feet each are permitted when intended to direct patrons to a farm for the purpose of purchasing or picking seasonal agricultural produce or products during the season within which the produce is available for sale or harvest.
 - g. One portable sign on the sidewalk in front of businesses in the Downtown Commercial, Special Downtown, and Neighborhood Mixed Use lying in density rings.
 - h. Road Signs.
14. Political Sign. Political Advertising. The following provisions are in addition to the political advertising controls established under RSA 664:14, 664:17, and 664:2, as amended:
 - a. Political advertising shall be defined in RSA 664:2, as amended.
 - b. Political signs may not exceed 32 Square feet per side in area nor 8 feet in height.
 - c. Placement of advertising – No political advertising shall be placed on or affixed to any public property including City rights-of-way or private property without the owner's consent. All political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary. Signs shall not be placed on or affixed to utility poles or highway signs. Political advertising may be placed within City-owned rights-of-way

as long as the advertising does not obstruct the safe flow of traffic and the advertisement is placed with the consent of the owner of land over which the right-of-way passes. 11/21/2014

d. Signature, Identification, Lack of Authorization shall be in accordance with RSA 664:14, as amended.

e. Political signs shall not erected in the City Adopt-A-Spots or the Rochester Common.

f. Removal of signs shall be in accordance with RSA 664:17, as amended.

g. City of Rochester Adopt-A-Spots are situated in the following locations:

- Granite State Business Park
- Christmas Tree Island Granite State Business Park
- Strafford Square
- Corner of Portland Street/Olsen Way
- The Common
- Duval Park
- Merrill Park at City Hall & Front of City Hall
- Tax Revenue Office
- Library (Front Entrance)
- Public Works Department
- Stairs and Front – RPD/Museum Way & City Hall Island
- Rochester Fire Department Flagpoles
- Rochester Community Center/Flagpole
- Columbus Avenue Right-of-Way between Hancock Street and South Main Street
- Gonic Center Square
- General Wolfe Tavern Barrels
- Welcome to Rochester/Route 125
- Union/Wakefield Street
- Ten Rod Road Industrial Park
- Airport Welcome Sign
- Route 125/Flagg Road
- East Rochester Square
- Elks Lodge
- Woodman Square Park/Charles Street
- Torr Park at Spaulding and Urn at Wading Pool

h. The area and location of signs used in conjunction with uses allowed by the Board of Adjustment as special exceptions shall also be approved by the Board of Adjustment and shall conform to the sign regulations for the district in which they are located. The area and location of such signs shall be in harmony with the character of the neighborhood in which they are located.

i. No sign, except for political signs, shall be erected until a permit for same has been obtained from the Director of Building, Zoning, & Licensing Services.

15. Portable Sign. Portable signs shall be permitted only in the Downtown Commercial, Special Downtown Overlay, Neighborhood Mixed Use lying in Density Rings, subject to the following limitations:

a. No more than one such sign may be displayed on any property, and shall not exceed a height of 4 feet or an area of 8 square feet per side.

i. Shall be situated directly in front of the business(es) which is being advertised.

ii. Shall not block passage along sidewalk including passage for handicapped persons and shall not present a safety hazard.

c. May be displayed during business hours only.

d. Only one sign per individual business.

16. Projecting Sign. Signs are permitted in the following zones:

a. Multiple projecting signs shall be permitted on buildings having multiple occupants providing only than one projecting sign per occupant will be permitted.

b. Projecting signs shall:

1. Not overhang any public property or public right of way.

2. Be attached to the side of a building with a decorative support bracket engineered to and designed to withstand wind loads.

3. Extend from the side of the building no more than eleven feet.

4. Be part of the wall sign calculations which cumulative total include both projecting s and wall signs shall not exceed twenty percent of the wall area to which the sign is attached.

5. Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 10 feet.

17. Roadside Farm Stand Signs. No more than 2 signs with a maximum combined total of 20 square feet is permitted.

18. Real Estate Sign shall be permitted in all zoning districts, subject to the following limitations:

a. Real estate signs located on a single residential lot shall be limited to one sign, not greater than 8 square feet in area and 6 feet in height.

b. Real estate signs may not be illuminated in residential districts.

c. There may be no more than one sign per street frontage except on lots with more than 500 feet of street frontage a second sign may be placed.

d. Real estate signs shall be removed not later than 10 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.

19. Sandwich Board Sign. See portable signs.

20. Street Banners. Temporary street banners used to inform the public about community events and activities may be placed within or above the road right of way or in other public locations if approved by the City Manager and signed off from all departments.

21. Special promotion, event and grand opening signs. Signs temporarily displayed to advertise special promotions, events and grand openings shall be permitted for nonresidential uses and for all commercial and *industrial* districts subject to the following limitations:

a. Such signs shall be limited to one sign per street front.

b. Such signs may be displayed for not more than 30 consecutive days in any 12-month period, and not more than 30 days in any calendar year. The signs shall be erected no more than 5 days prior to the event or grand opening, and shall be removed not more than 1 day after the event or grand opening.

c. The total area of all such signs shall not exceed 32 square feet.

22. Special event signs in public ways.

Signs advertising a special community event shall be allowed in or over public rights-of-way, subject to approval by Building, Zoning, and Licensing, Services official as to the size, location and method of erection. The official may not approve any special event signage that would impair the safety and convenience of use of public rights-of-way, or obstruct traffic visibility.

23. Window Sign. Window signs shall be permitted for any nonresidential use in, all Downtown Commercial and *industrial* districts, subject to the following limitations:

- a. The aggregate area of all such signs shall not exceed 25 % of the window area on which such signs are displayed within the Historic District.

24. Yard sale signs.

- a. Yard sale signs may not be placed prior to 3 days before the sale and must be removed within 24 hours after the sale. The date and time of the yard sale must be on the sign.
- b. They may not exceed 6 square feet and may not be illuminated.
- c. The signs may be placed off premises for noncommercial sales related to a single residential dwelling unit (or informal joint sales among neighbors) provided they are not placed on utility poles, are not a distraction to traffic, and comply with Requirements by Zoning District.

i. Requirements by Zoning District. The following special requirements shall apply in each respective zoning district.1. Residential Zoning Districts.

- a. For permitted nonresidential uses one freestanding sign with a maximum area of 6 square feet per side plus one attached sign not to exceed 12 square feet is permitted.
- b. Internally illuminated signs (including neon signs and signage placed in a window) are not permitted.
- c. No sign may be illuminated between the hours of 9:00 p.m. and 7:00 a.m. with the exception of signage: a) showing property addresses; b) for residential communities; and c) for businesses and organizations during any specific hours in that time period that the businesses are open.

2. Nonresidential Zoning Districts

- a. Baseline. The following advertising signage is permitted for one nonresidential use occupying a single building in commercial and industrial zoning districts (except as otherwise indicated in this article). Additional allowances beyond these limitations or other restrictions for various situations are shown in the subsequent subsections
- b. Freestanding signs. Only one free standing sign shall be permitted on a lot even if there is more than one building or use on that lot. No part of any free standing sign shall be located within 5 feet of any property line.

Dimensional standards are as follows:

Zoning District	Maximum Area (in square feet)	Maximum Height (in feet)
Highway Commercial General Industrial Hospital Granite Ridge Development	75'	30'
Airport Recycling Industrial	50'	20'
Downtown Commercial	25'	15'
Neighborhood Mixed Use Office Commercial	20'	8'

Note. All signs that are to be located in the historic district are also subject to the provisions of Article XIV – Historic Overlay District

- d. Wall Signs. No wall sign shall exceed ten percent (10%) of the area of the building frontage as measure by the width of the wall containing the main public entrance by the height (measured from the floor level to the top of the first floor cornice area, or to one foot below secondary story window) to which it is attached. For buildings with multiple tenants having store fronts only, the façade rented by the tenant shall be considered as wall area for a sign.
 - i. A maximum of ten (10) signs.
- e. Temporary signs. One temporary sign is allowed at any one time, including portable and banner signs. For portable signs (where they are permitted; (see below) the maximum area is 8 square feet and the maximum height is 4 feet. Banner signs, not exceeding 60 square feet, are permitted for grand openings of new business only, and may be displayed for a maximum of 30 consecutive days. Permits are required for these signs with a fee of \$10.
- f. Directory signs. For each additional independent enterprise on a site beyond one, an additional 10 square feet may be added to one freestanding directory sign not to exceed 100 square feet. Property owners of separate adjoining lots may also elect to have one joint directory sign.
- g. Attached directory signs. One additional attached directory sign of the principal uses within a multi-tenant building is permitted on the exterior wall at each entrance to the building. It shall not exceed 3 square feet plus 1 square foot for each independent enterprise.

- h. Upper floor units. Each upper floor occupant may use one attached sign placed at no higher than the second floor level – not to exceed six square feet per side for each occupant plus window signs. Window signage shall not exceed 25% of the total window area.
- i. On multiple occupant sites up to 3 portable signs for independent enterprises may be placed at the same time.
- j. Secondary Entrance. By Conditional Use Permit issued by the Planning Board any site with at least 300 feet of linear lot frontage and with a second driveway entrance located at least 200 feet from the primary entrance may have a second freestanding sign at the second entrance not to exceed 16 square feet and 8 feet in height.
- k. Corner or multiple frontage lots. By Conditional Use Permit issued by the Planning Board any corner lot or a rear frontage lot (or double frontage) may have one additional freestanding sign with a maximum area of 24 square feet is allowed on the second frontage provided the property across the street on that second frontage is not zoned residential.

1. Specific Zoning Districts

Internally illuminated signs are permitted only in the Highway Commercial, Downtown Commercial, Granite Ridge Development, and Industrial Districts.

Sign permitted in designated zoning districts

Sign	Residential Districts				Commercial Districts				Industrial District		Special	
	R1	R2	NMU	AG	DC	OC	HC	GRD	GI	RI	HS	AS
Canopy	N	N	P	N	P	P	P	P	P	P	P	P
Changeable Copy	N	N	P	N	P	P	P	P	P	P	P	P
Electronic Message	N	N	N	N	N	N	P	P	P	N	N	N
Freestanding Pole	P	P	P	P	P	P	P	P	P	P	P	P
Interior Window	P	P	P	P	P	P	P	P	P	P	P	P
Marquee	N	N	P	P	P	P	P	P	P	P	P	P
Portable	N	N	N	N	P	N	N	N	N	N	N	N
Projecting	P	P	P	P	P	P	P	P	P	P	P	P
Wall	P	P	P	P	P	P	P	P	P	P	P	P
Window	P	P	P	P	P	P	P	P	P	P	P	P

**Signs which are permitted in the designated zone are indicated with a “P”, and signs which are not permitted are indicated with an “N”.

TITLE LV

PROCEEDINGS IN SPECIAL CASES

CHAPTER 540

ACTIONS AGAINST TENANTS

Section 540:1-b

540:1-b Landlord's Agent Required. –

[Paragraph I effective until January 1, 2015; see also paragraph I set out below.]

I. An owner of restricted property, as defined in RSA 540:1-a, II, who resides within the state of New Hampshire shall, within 30 days of becoming the owner or within 30 days of the effective date of this section, whichever occurs later, file a statement with the town or city clerk of the municipality in which the property is located that provides the name, address, and telephone number of a person within the state who is authorized to accept service of process for any legal proceeding brought against the owner relating to the restricted property. Such person authorized to accept service may be the owner of the premises.

[Paragraph I effective January 1, 2015; see also paragraph I set out above.]

I. An owner of restricted property, as defined in RSA 540:1-a, II, who resides within the state of New Hampshire shall, within 30 days of becoming the owner or within 30 days of the effective date of this section, whichever occurs later, file a statement with the town or city clerk of the municipality in which the property is located that provides the name, address, and telephone number of a person within the state who is authorized to accept service of process for any legal proceeding brought against the owner relating to the restricted property. Such person authorized to accept service may be the owner of the premises. This section shall not apply to manufactured housing parks as defined in RSA 205-A:1, II.

II. An owner of restricted property who resides outside the state of New Hampshire shall, within 30 days of becoming the owner or within 30 days of the effective date of this section, whichever occurs later, file a statement with the town or city clerk of the municipality in which the property is located that provides the name, address, and telephone number of a person within the state who is authorized to accept service of

process for any legal proceeding brought against the owner relating to the restricted property.

III. In any legal proceeding in which the property owner resides out of state and said owner fails to: (a) comply with paragraph II, and (b) appear in said proceeding, service of process pursuant to RSA 510:4 shall create a rebuttable presumption that such service was lawful and adequate. As used in this section the term "legal proceeding" includes, but is not limited to, any action at law or in equity or for the enforcement of any provision of RSA 48-A:14, or any housing code adopted by a municipality pursuant to RSA 48-A, or for the enforcement of any municipal health code, building code, or fire or life safety code. A municipality may establish a reasonable filing fee to cover the cost to the town or city clerk of maintaining a record of the filings required by this section.

IV. [Repealed.]

Source. 2010, 203:2, eff. Jan. 1, 2011. 2011, 247:3, eff. July 13, 2011. 2014, 77:4, eff. Jan. 1, 2015.

TITLE LV PROCEEDINGS IN SPECIAL CASES

CHAPTER 540 ACTIONS AGAINST TENANTS

Section 540:1-c

[RSA 540:1-c effective January 1, 2015.]

540:1-c Penalty. –

The governing body of a municipality may establish a fine not to exceed \$100 for the failure to file a statement designating an agent for service of process as required under RSA 540:1-b. Any such fine may be collected in the same manner as a fine for violation of a municipal ordinance, and shall be for the use of the municipality.

Source. 2014, 77:3, eff. Jan. 1, 2015.

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CHAPTER 34

JUNK AND SECOND-HAND DEALERS

SECTION ANALYSIS

- 34.1 Junk Dealer Defined
- 34.2 Second-Hand Dealer Defined
- 34.3 Licenses Required
- 34.4 License Applications
- 34.5 License Revocation/Expiration
- 34.6 Purchases from Minors
- 34.7 Second-Hand Dealers' Records
- 34.8 Junk Dealers' Records
- 34.9 Exclusions
- 34.10 Penalty
- 34.11 Severability

34.1 Junk Dealer Defined. A “junk dealer,” within the meaning of the provisions of this ordinance, shall be a person, firm or corporation engaged in the purchase, sale or barter of old iron, steel, chain, aluminum, brass, copper, tin, lead or other base metals, belting, waste paper, old rope, old bags, bagging barrels, piping, rubber, glass, empty bottles and jugs of all kinds and quantities of less than (1) gross, and all other articles discarded or no longer used as manufactured articles composed of any one (1) or more of the materials hereinbefore mentioned.

34.2 Second-Hand Dealer Defined. A “second-hand dealer,” within the provisions of this ordinance, shall be a person, firm or corporation engaged in the business of selling, exchanging, dealing in or dealing with second-hand articles, including, but not limited to, firearms, opera glasses, telescopes, watches, clocks, diamonds or other precious metals, jewelry, furs, fur coats, or other kinds of wearing apparel, antique furniture, furnishings, glass and dishes, musical instruments, radios, automobile accessories, office and store fixtures and equipment, gas and water meters, and all classes of fixture and their connections. For purposes of this definition, yard sales, flea markets, garage sales, attic sales or a similar commercial activity established as a business for the sale of other people’s property as described in this ordinance or such a sale that exceeds three days duration or is held more than three times a year shall be considered a second-hand dealer. In the event any such articles are taken in trade for another or similar article by a retail or wholesale establishment, such transactions shall not be considered as coming within the requirements of this ordinance.

34.3 License Required. No person, firm or corporation shall engage in the business of junk dealer or second-hand dealer as herein defined unless licensed therefore by the Licensing Board.

34.4 License Applications. Applications for licenses shall be made to the Licensing Board and filed with the Director of Building, Zoning, & Licensing Services Department upon blanks furnished by the Director of Building, Zoning, & Licensing Services Department for that purpose, and shall be submitted by the Director of Building, Zoning, & Licensing Services Department to the Chief of Police who shall cause an investigation to be made of the fitness of the applicant to engage in the business of a junk dealer or second-hand dealer and report his findings to the Licensing Board before such license is acted upon by the City Council. The license fee for each license shall be Fifty Dollars (\$50.00) per year payable in advance to the Building, Zoning, & Licensing Services Department. There shall be no fee for non-profit charitable organizations, public schools, and public institutions. [1]

The Licensing Board, after a satisfactory investigation by the Police Chief, may issue a temporary license to existing junk or second-hand dealer establishments when there is only a change of ownership.

34.5 License Revocation/Expiration. ~~Such Annual licenses shall expire on April 1st of each year, unless sooner revoked, and shall not be assigned or transferred, but it may be revoked at any time by the Licensing Board after notice and hearing for just cause. Temporary licenses shall expire after 45 days from the date issued or when acted upon by the City Council, whichever occurs first. Licenses shall not be re-assigned or transferred and may be revoked at any time by the Licensing Board after notice and hearing for just cause.~~

34.6 Purchases from Minors. No junk dealer or second-hand dealer shall, directly or indirectly, either purchase or receive by way of barter or exchange, any of the articles aforesaid, of a minor under the age of eighteen (18) years, knowing or having reason to believe him to be such; except when said minor shall be accompanied by a parent or legal guardian who shall sign the transaction record in person before said dealer.

34.7 Second-Hand Dealers' Records. Every second-hand dealer, upon acquisition of any article either by purchase or exchange, enumerated in Section 34.2 hereof, shall prepare and keep a written record of the transaction stating the full name, address, month, day and year when the transaction took place, and a full, accurate, and detailed description of each article so purchased or exchanged, with the price paid thereof, and cause said record to be signed by the seller in person. A copy of said record shall be available for inspection by any Rochester Police Officer or the Rochester Director of Building, Zoning, & Licensing Services Department at any and all times.

34.8 Junk Dealers' Records. Every junk dealer, upon the acquisition of any items, enumerated in Section 34.1 hereof, shall keep a permanent record of such transactions which shall include a full, accurate, and detailed description of the item with the full name and address of the seller, together with the registration number of any vehicle used by the said seller in delivery of said items and the month, day and year of the said transaction. A copy of said record shall be available for inspection by any Rochester

Police Officer or the Rochester Director of Building, Zoning, & Licensing Services Department at any and all times.

34.9 Exclusions. Specifically excluded from the provisions of this Chapter 34 are the following:

- (1) Antique dealers
- (2) Purchases from private residences
- (3) Wearing apparel stores

34.10 Penalty. Any person, firm, corporation or association violating any of the provisions of this ordinance, in addition to the revocation of his/her license, shall be liable to a fine or penalty of not more than One Hundred (\$100.00) Dollars for each offense.

34.11 Severability. Each provision of this ordinance shall be deemed independent of all other provisions herein, and if any provision of this ordinance be declared invalid, all other provisions thereof shall remain valid and enforceable.

[1] Amended 5/1/07

[2] **Amended 10/15/2013** – Director/Department of Code Enforcement to Director/Department of Building, Zoning, & Licensing Services

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**THE DURHAM ZONING ORDINANCE
AS ADOPTED BY THE DURHAM TOWN
COUNCIL ON FEBRUARY 20, 2006
LAST AMENDED AUGUST 4, 2014**

**CHAPTER 175
ZONING**

PART A. ADMINISTRATIVE PROVISIONS

**ARTICLE I
GENERAL PROVISIONS**

175-1. Title.

This chapter shall be known and may be cited as the "Zoning Ordinance of the Town of Durham, New Hampshire."

175-2. Authority.

This chapter is adopted pursuant to the authority granted by RSA 674:16, as amended, which provides for the local legislative body to adopt or amend a Zoning Ordinance under the Ordinance Enactment Procedure of RSA 675:2-5.

175-3. Purpose.

The provisions of this chapter are intended to regulate the use of land for the purpose of protecting the public health, safety, convenience and general welfare of the residents of the Town of Durham. This chapter is adopted in accordance with and in order to implement the Master Plan and other policies designed to promote the orderly growth of the Town of Durham. Among other purposes, this chapter is specifically adopted to preserve air and water quality; to conserve open space and agricultural resources; to protect natural and scenic resources from degradation; to provide for recreational needs; to protect life and property from flooding and other natural hazards; to preserve historic sites and structures; and to ensure that development is commensurate with the character and physical limitations of the land. Further, this chapter is designed to ensure that the timing, location and nature of new development takes into account the immediate and long-range financial impacts of proposed uses and enhances the achievement of the town's economic development goals.

175-4. Applicability.

- A. No land shall be used and no building or structure shall be erected, structurally altered, enlarged, moved, or used unless such use or activity is in conformity with the provisions of this chapter, except as provided in Section 175-5.
- B. No building permit shall be issued for any proposed use, construction or activity which is not in compliance with the Zoning Ordinance of the Town of Durham.

175-5. Applicability to Governmental Uses including the University of New Hampshire.

The provisions of this chapter shall be advisory with respect to governmental uses as identified by RSA 674:54 including the University of New Hampshire (UNH) except as provided in C. below.

- A. **Written Notification.** The state agency, county, municipal agency, university, school district or other governmental entity identified in RSA 674:54 shall provide the Planning Board with written notification of any use of its property or facilities that constitutes a substantial change in use or a substantial new use. This notification shall be provided to the Town Planner at least sixty (60) days prior to the start of construction and shall contain plans, specifications, and explanations of the proposed use and an assessment of the potential impacts of the use on the community. The notification for any project involving the University of New Hampshire shall be in accordance with the adopted "Process for Coordination and Communication" between the University and the Town. The Planning Board may hold a public hearing on the proposed use. If a hearing is held, the hearing shall be held within thirty (30) days of the receipt of the written notification and at least two (2) weeks after publication of a notice thereof in a paper of general circulation in the town. The purpose of such hearing shall be to bring to light possible problems of traffic circulation, parking, provision of utilities, the protection of persons and property or any other problems affecting the town or the neighborhood. A representative of the governmental entity or UNH shall be present at the hearing to present the plans, specifications, and construction schedule, and to provide explanations. The Planning Board may issue nonbinding written comments relative to conformity or nonconformity of the proposal with normally applicable land use regulations to the government entity or university within 30 days after the hearing, together with any recommendations for minimizing any adverse impacts of the project on the community.
- B. Any use of land or buildings for governmental or university purposes that is located on land or in buildings or structures that are not owned by the governmental entity or university but for which the entity acquires only the right to use, whether by rental, lease or other beneficial interest, may not be used for any other purpose not otherwise permitted by this chapter.
- C. Any use, construction, or development of land, buildings, or other facilities on governmentally owned or occupied land including UNH, that is not used for a governmental or university use as defined in RSA 674:54 shall comply with the provisions of this chapter including, but not limited to, the requirements for site plan review and the issuance of building and other permits.

Nothing herein shall prevent the condemnation of land or buildings for municipal purposes by the Town of Durham or for public or institutional use by any agency, department, institution or public corporation of the State of New Hampshire or of the United States.

ARTICLE II DEFINITIONS

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, they shall have their ordinary accepted meanings or such as the context may imply.

175-7. Definitions.

A. As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY AGRICULTURAL ACTIVITIES – Non-commercial agricultural activities such as gardening and the raising of flowers and ornamental plants conducted by the occupants of a residence primarily for their own use or consumption. These activities shall not include any use that is defined as animal husbandry, commercial agriculture, or the keepings of pigs, chickens, or fowl. The excess products of this activity may be sold so long as the volume of sales does not result in excessive noise, traffic, or other adverse impacts on the neighborhood or constitute a commercial operation that requires the filing of a Schedule F as part of the owner's or operator's federal income tax return. (See Section 175-109(A))

ACCESSORY APARTMENT – A dwelling unit located in a single family residence as an accessory use. (See Section 175-109(D))

ACCESSORY DWELLING UNIT – A dwelling unit located in an accessory structure in conjunction with a single-family residence as an accessory use.

ACCESSORY SHED – A small shed for the storage of items in conjunction with a residential use. (See Section 175-109(O))

ACCESSORY STRUCTURE – A structure detached from a principal building on the same lot and incidental and subordinate to the principal building.

ACCESSORY USE – A use of land or a building or a portion thereof which is incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

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

ADAPTIVE REUSE – The use 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.

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

AGRICULTURAL BUILDING, EXISTING – Any building or structure constructed prior to the adoption of this chapter and designed, used or adapted for agricultural purposes. Section 175-109(J))

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 which is 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/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.

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.

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.

ANIMAL HUSBANDRY - LIVESTOCK, ACCESSORY – The breeding and/or raising of livestock, not including poultry (as defined herein), for noncommercial purposes in conjunction with a residence. (See Section 175-109(B))

ANIMAL HUSBANDRY - POULTRY, ACCESSORY – The breeding and/or raising of poultry for noncommercial purposes in conjunction with a residence. (See Section 175-109(C))

ANIMAL HUSBANDRY, COMMERCIAL – The commercial breeding and/or raising of livestock. Animal husbandry does not include any activity that is defined as a kennel, stable, animal feed lot, or the keeping of pigs, chickens, and fowl for commercial purposes. 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.

APARTMENT – See "dwelling unit."

AQUACULTURE – The commercial growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

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

AREA OF SPECIAL FLOOD HAZARD – A designated A0, AH, or V0 zone on the Flood Insurance Rate Map (FIRM) with a one-(1) percent or greater annual possibility of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.

ART CENTER – A facility for the display and/or sale of objects of art, the teaching of art, or the creation of works of art.

AUTOMOBILE CAR WASH – A facility equipped for washing cars manually or automatically.

AUTOMOBILE 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.

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.

BASE FLOOD – The flood level 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.

BED AND BREAKFAST – An owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner's family, not more than four (4) individual 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 no longer than two (2) consecutive weeks.

BEST MANAGEMENT PRACTICES FOR AGRICULTURE (BMPs) – Refers to 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

[Reference - <http://agriculture.nh.gov/divisions/markets/documents/bmp.pdf>]

BOARDINGHOUSE – 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.

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.

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

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

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

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 all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures.

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 – The vertical distance from the mean grade elevation (average grade around the perimeter of the building) to the mean roof elevation [one-half (1/2) of the vertical distance from eave to ridge].

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

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.

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.

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.

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.

CHILD CARE CENTER – A nonresidential facility for the care of preschool and/or school aged children that is not located within a home or other residence. (See Section 175-109(F))

CHILD CARE HOME – A nonresidential facility for the care of preschool and/or school aged children that is located within the residence in which the primary care provider resides. (See Section 175-109(G))

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.

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.

COMMERCIAL AGRICULTURE – The use of land for commercial agricultural purposes including tilling of the soil, raising of crops, pasturage, and including the necessary accessory structures and uses normally associated with such uses. Commercial agriculture includes the raising of flowers but does not include any activity that is defined as animal husbandry, an animal feedlot, a plant nursery, or the keeping of pigs, chickens, and fowl. Any activity that requires the filing of Schedule F as part of the owner's or operator's federal income tax return shall constitute a commercial operation.

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

COMMON OPEN SPACE – Land within or related to a 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.

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

CONDITIONAL USE – Those uses which because of peculiar 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 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.

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.

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

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.

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.

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.

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.

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.

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

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

DAY CARE – A use which provides 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.

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/her 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.

DIAMETER AT BREAST HEIGHT (DBH) – The diameter of a tree trunk at a height of four and one-half (4.5) feet.

DISTURBED AREA – An area in which natural vegetation is removed, exposing the underlying soil.

DORMITORY – A building occupied by a resident manager and used, designed and adapted to provide housing for more than ten (10) 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.

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 with the street.

DUST-FREE – The maintenance of a dust free environment by paving with one of the following methods: bituminous paving, concrete, compacted crushed rock or gravel, or other suitable materials.

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.

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.

EDUCATIONAL FACILITIES – 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.

ELDERCARE FACILITY – Housing principally used, designed, or adapted for use by elderly citizens, fifty-five (55) years of age and older that are not capable of living independently and that that require assistance in activities of daily living (ADL's), and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire. Residents of an eldercare facility shall receive a package of services to meet their needs. An "eldercare facility" may be contained in a single building or group of buildings and may include assisted living facilities or nursing home facilities. A "life care community" or other retirement community that provides a continuum of care including both independent living units and units for residents that require assistance, shall be considered to be an eldercare facility.

ELDERLY HOUSING – Housing principally used, designed or adapted for use by elderly citizens, fifty-five (55) years of age and older who are capable of living independently, and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire, as amended. "Elderly housing" may be single family residences, duplex residences, or multiunit residences and can be contained in a single building or groups of buildings and may include dwelling units that do not include services for the residents and/or congregate housing that includes services such as meals, housekeeping, recreational programs and related management support systems.

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.

EXTERIOR ARCHITECTURAL APPEARANCE – The architectural character, general composition, and general arrangement of the exterior of the structure, including the kind,

color, and texture of the building material and type and character of all windows, doors, light fixtures, signs, and appurtenant elements.

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.

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) – An official map of a community 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 definition of "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.

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.

FLOOR AREA, HABITABLE – Heated areas used daily for living, eating, cooking or sleeping, including bathrooms and bedroom closets; but excluding garages, circulation areas (stairways, hallways, corridors), storage 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 not apply in any instance where the owner or occupant(s) of the building allow 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% of the gross floor area.

FORESTRY – Forestry shall include the growing, stocking, cutting, or sale of forest trees of any size for habitat management, for producing timber, or for other forest products; and pre-commercial silvicultural activities including but *not* limited to timber stand improvement.

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.

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

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

FRONTAGE – See "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.

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

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.

GOVERNMENT FACILITY – A structure or parcel of land the use of which is governmental, as defined in RSA 674:54. As stated therein, 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, for any public purpose which is statutorily or traditionally governmental in nature.

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.

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.

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.

GROUND COVER – Low plants ranging from ground level to three (3) feet which grow to form a continuous cover over the ground, such as vinca, English ivy or like material.

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

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.

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. **FIRST-CLASS HOME OCCUPATION** – A home occupation meeting the following requirements:
 - 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. **SECOND-CLASS HOME OCCUPATION** – A home occupation meeting the following requirements:
 - 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 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 individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities for stays of less than two (2) consecutive weeks, to the general public for compensation, with or without meals, and usually providing on-site recreational services, function rooms, housekeeping, laundry and related services. Access to individual guest rooms is provided through interior corridors. (See Section 175-109(H))

HOUSEHOLD – A group of occupants of a dwelling unit restricted to the following two (2) 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," provided that no such household shall have a number of members in excess of the figure provided in Table II-1.

Table II-1. DWELLING DENSITY BY TYPE

Dwelling type	Maximum number of occupants in unrelated household per 300 square feet of habitable floor area
Single-family dwelling	1
Duplex or townhouse	1
Apartment, (excluding accessory apartments), except in the ORLI and MUDOR districts	1
Apartment (excluding accessory apartments) in the ORLI and MUDOR districts	1.5
Accessory Apartment	1.5
Rooming/boarding, including accessory rooming/boarding	2
Dormitory	3
Fraternity or sorority	2
Nursing home	2
Elderly housing	1.5

Notes: No more than three (3) unrelated occupants may occupy a dwelling unit in an R, RA, RB, RC, PO, CH, C, or CC Zoning District. See Section 175-109(D).

HYDROGEOLOGIST, QUALIFIED – Any person certified in New Hampshire as a License Professional Geologist pursuant to NHRSA 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 such as sidewalks, patios, driveways, roads, parking spaces or lots, and storage areas, compacted gravel including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers, wood, and swimming pools.

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 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 containing, in addition to living accommodations for the owner and her family, not more than six (6) individual 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 no longer than two (2) consecutive weeks.

JUNKYARD – An area of land used for the storage, outside of 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.

KEEPING OF PIGS, CHICKENS, AND FOWL FOR COMMERCIAL PURPOSES – The commercial breeding and/or raising of pigs, hogs, chickens, ducks, turkeys, and similar fowl. 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.

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 not include licensed veterinary medical facilities.

LANDSCAPE BUFFER – See "solid planting" in landscaping definitions--175-7(C).

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, cobble, bark, mulch, edgers, flower tubs, rock and such structural features as foundations, pools, artworks, screens, walls, fences or benches, but such objects alone 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.

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.

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

LIGHT ASSEMBLY – See "assembly, light."

LIGHT MANUFACTURING – See "manufacturing, light."

LIVESTOCK – Horses, ponies, mules, donkeys, oxen, cattle, sheep, goats, swine, buffalo, llamas, emus, ostriches, alpacas, and any other large animal raised primarily in the outdoors or in unheated structures and that serve as a beast of burden or a source of meat or wool.

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.

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

LOT FRONTAGE – A lot line dividing the lot from a street right-of-way.

LOT LINE:

1. LOT FRONT – The front property line of a lot shall be determined as follows:

- a. CORNER LOT – The front property line of a corner lot shall be the shorter of the two (2) lines adjacent to the streets as platted, subdivided or laid out. Where the lines are equal, the front line shall be that line which is obviously the front by reason of the prevailing custom of the other buildings on the block. If such front is not evident, then either may be considered the front of the lot, but not both. Where such front property

line is not obviously evident, the Zoning Administrator shall determine the front property line.

- b. **INTERIOR LOT** – The front property line of an interior lot shall be the line bounding the street frontage.
 - c. **THROUGH LOT** – The front property line of a through lot shall be that line which is obviously the front by reason of the prevailing custom of the other buildings in the block.
2. **LOT REAR** – 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 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** – 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 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 nonelevation 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 not include presite built housing as defined in RSA 674:31-a. (See Section 175-109(I))

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 (See 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 pleasure craft, fuel and oil, electricity, freshwater, ice, and other supplies for owners and crew.

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.

MEAN SEA LEVEL – The National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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.

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

MIXED USE WITH PARKING (PARKING AND OFFICE/RETAIL) – A building in which the first floor or ground floor is used for parking and the upper floor(s) is used for office or retail or similar non-residential uses.

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

MOTEL – A building containing seven (7) or more individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities for stays of less than two (2) consecutive weeks, to the general public for compensation, with or without meals, and usually providing on-site recreational services, function rooms, housekeeping, laundry and related services. Access to individual guest rooms is provided directly from the outside or from exterior corridors, walkways, or balconies. (See Section 175-109(H))

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 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."

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

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

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

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.

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

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

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

OFFICE, PROFESSIONAL – A building containing one (1) or more offices in which there is no display of unrelated stock or wares in trade commodity sold, nor any commercial use conducted other than the professional offices of a doctor, dentist, lawyer, architect, engineer and related laboratories, insurance agent, realtor or other similar professional services, but excluding barbershops, beauty salons or similar services.

OLDER SINGLE-FAMILY RESIDENCE – A single-family residence that has been at its current location since 1950. (See Section 175-109(K))

ONE-HUNDRED-YEAR FLOOD – See "base flood."

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.

ORDINARY HIGH WATER MARK – The line on the shore, running parallel to the main stem of the river, 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).

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

OWNER – An individual, firm, association, syndicate, partnership or corporation having sufficient proprietary interest to seek development of land.

PARKING SPACE – A space within or without 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.

PERENNIAL STREAM – A stream or brook that, under normal circumstances, runs all year long.

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

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.

PLANT NURSERY – The commercial cultivation and/or raising of flowers, ornamental and greenhouse plants, and other vegetation including the necessary accessory structures and uses normally associated with such uses. A plant nursery may include the retail sale of plant materials raised on the premises together with related accessory items.

POULTRY – For the purpose of this ordinance the term “poultry” refers to chickens and turkeys only.

PREMISES – A lot, parcel, tract, 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, presite built housing shall not include manufactured housing as defined in RSA 674:31.

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.

PROHIBITED USE – A use which is not specifically permitted.

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

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.

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

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

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

RECREATIONAL PLAYING FIELDS, OUTDOOR – Non-commercial 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 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.

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.

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 by the NH DES.
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.
3. For coastal waters, 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.

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.

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 such sales are accessory to the repair service.

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

RESIDENCE, MULTI-UNIT – A building and accessories thereto principally used, designed or adapted with 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.

RESIDENCE, SINGLE-FAMILY – A building and accessories thereto principally used, designed or adapted as a single dwelling unit.

RESTAURANT – A commercial establishment open to the general public where food and beverage are prepared, served and consumed primarily within the principal building. Adequate seating shall be provided. Drive-thru facilities are prohibited.

RESTAURANT, CARRYOUT – A commercial establishment open to the general public which, by design of physical facilities or by service or packaging procedures, permits or encourages the purchase, either within or outside the premises, of prepared ready-to-eat foods intended to be consumed either on or off the premises. Drive-thru facilities are prohibited.

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

RETAIL SALE OF FARM PRODUCTS – The sale directly to the consumer of agricultural products grown or raised on the premises or on other land that is part of the same agricultural business including processed products that are made from products grown or raised on the premises or related land.

RETAIL STORE – 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.

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

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.

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 Section 175-109(L))

SCHOOLS – See "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.

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

SETBACK – The required horizontal distance, in feet, from a lot line or shoreline to any structure.

SHOREFRONTAGE – The width of a lot bordering on a waterbody or wetland measured in a straight line between the intersections of the lot lines with the reference line.

SHORELAND PROTECTION ZONE – 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. These water bodies are designated on the Durham Shoreland Protection Zone Overlay Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.

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.

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.

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.

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.

COMBINATION SIGN - Any sign which combines the characteristics of two or more types of signs.

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.

DAILY SPECIALS 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.

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

FREE STANDING OR GROUND SIGN - Any sign which is not a part of or attached to any building but is located elsewhere on a lot. It shall not exceed six (6) square feet in size and five (5) feet in height, including supports.

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 lighted by electricity either directly or indirectly.

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.

NEON - Any tubular gas filled lights or lighting device.

NEON SIGN - Any light sign using exposed neon tubes for illumination or display.

NON-ACCESSORY SIGN - Any sign advertising 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.

PYLON OR POLE SIGN - A sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.

ROOF SIGN - Any sign erected upon or over the roof of any building.

SANDWICH BOARD SIGN - A portable sign with a message area that does not exceed six (6) square feet in size on each side of a two sided sign. The Sandwich Board Sign shall be no wider than two (2) feet and/or no taller than three (3) feet.

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

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 determined as twice the average height of the letters times the length of the message.

SNIPESIGN - Any sign of a non-permanent nature or construction attached to trees, poles, posts or sides of buildings or structures.

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

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.

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, drainage, etc.

SLUDGE – Residual materials produced by the sewage treatment process.

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.

SPECIAL EXCEPTION – A use which would not be appropriate generally or without restriction in a particular district, and accordingly, is allowable only upon such conditions as are established by this chapter and only after public hearing and determination by the Board of Adjustment.

SPECIAL FLOOD HAZARD AREA – See definition of Area of Special Flood Hazard.

STABLE – Any lot or premises on which four (4) or more horses, ponies, or similar equines, or combination thereof, are boarded for compensation or bred for sale.

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.

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 basement is considered to be a story if the front exterior wall of the basement rises at least 50% above the finished grade.

STREET, ARTERIAL – A major street that is functionally classified as an arterial with moderate to fast speeds, high volume, 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 Madbury Road, U.S. Route 4, Route 108, Route 155A and Route 155.

STREET, COLLECTOR – An 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.

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

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

STRUCTURAL PARKING – Any structure for the parking or garaging of five (5) or more motor vehicles that is not surface parking.

STRUCTURAL PARKING FACILITY – 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.

STRUCTURE – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. "Structures" include but are not limited to a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. It shall not include a minor installation such as a fence under six (6) feet high, a mailbox, a flagpole, or an accessory shed.

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.

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.

SUBDIVISION – The division of the 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 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.

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."

SURFACE PARKING – A parking lot or other at-grade, uncovered facility for the parking of five (5) or more motor vehicles.

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

TEMPORARY – A period of less than ninety (90) days when in reference to a time frame and not having or requiring permanent attachment to the ground when in reference to structures.

TIMBER HARVESTING – The cutting and removal of trees from their growing site, the production of cord wood in conjunction with such harvesting, and/or the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid roads, and haul roads. (See Section 175-109(M))

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

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 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.

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.

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

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 definition of usable area).

USE – The specific purpose for which a building or lot 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 determined in accordance with the provisions of 175-55.

USABLE BUILDING VOLUME – The sum of the volume of all spaces enclosed within the portions of a building used or intended to be used for human habitation not including garages, attics, storage areas, and non-habitable basement spaces.

VARIANCE – A variation 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.

VERNAL POOL – A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates, and is free of adult fish populations.

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.

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

WAREHOUSE, 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.

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.

WATER SURFACE ELEVATION – The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

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.

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

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.

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

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.

YARD – Any open space that lies between the principal building or group of buildings and the nearest lot line and is unoccupied by any structure, unless specifically permitted, and is further defined as front yard, side yard, rear yard and shorefront yard.

B. The following definitions apply to Personal Wireless Service Facilities:

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.

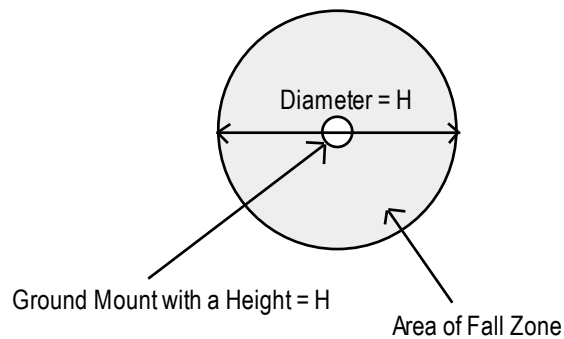
ENVIRONMENTAL ASSESSMENT (EA) – A document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

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 or 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 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.

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 – The distance between one carrier's array of antennas and another carrier's array.

- C. The following definitions apply to landscaping and buffering provisions including the provisions of the Wetlands Conservation Overlay and Shoreland Protection Overlay Districts:

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.

GROUND COVER – Any herbaceous plant which normally grows to a mature height of 4 feet or less.

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 which is devoted to and consists of landscaping material, including but not limited to grass, trees, shrubs, flowers, vines and other ground cover, 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 not predominate over the use of organic plant material.

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.

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 excluded, but such building wall line shall follow and include the irregular indentations of the building. Further, for the purposes of these regulations, canopies, gas pump islands, overhangs and similar extensions will be 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 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 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 frontmost corner of the building wall, fronting the street and nearest such side property line, then following and connecting the frontmost 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 the points closest to the side boundaries.
- C. The delineation of the "landscaped street yard" is illustrated by the diagrams accompanying these regulations as Exhibit A under Article XXII and made a part thereof.
- D. 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 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 the street right-of-way line defined in the landscaped street yard.

MAINTAIN or MAINTENANCE – 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.

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.

PUBLIC AREA – Includes parks, playgrounds, areas around public buildings and all other areas under the supervision and maintenance of the town.

REMOVAL OR REMOVED – Cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

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.

SHRUB – A bushy, wooden 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.

TREE WARDEN – The person whose duties shall include the inspection of 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.

VEGETATION – Includes a tree, plant, shrub, vine or other form of plant growth.

ARTICLE III ADMINISTRATION AND ENFORCEMENT

175-8. Administrative Officer.

Authority to administer this Zoning Ordinance is hereby vested in the Town Administrator, who is duly appointed by the Town Council. The Town Administrator shall have the authority to appoint a Zoning Administrator or duly qualified designee, who shall have the authority to administer, interpret, and enforce the provisions of this chapter. In the performance of these duties, the Zoning Administrator may request entry to any building, structure or premises, or any part thereof, at any and all reasonable times for the purpose of performing his/her official duties.

175-9. Zoning Administrator.

A. The Zoning Administrator, his assistant or designee shall:

1. Enforce any and all provisions of this chapter.
2. Keep complete, accurate and secure records.
3. Accept applications and ensure their appropriateness and completeness.
4. Accept and remit fees as established in the adopted administrative procedures.
5. Update these regulations and the Official Zoning Map as directed by the Town Council.
6. Provide for the accuracy and security of the Official Zoning Map.

7. Undertake any other administrative function appropriate to the office of the Zoning Administrator.
 8. Report to the Town Planning Board any recommendations for changes and improvements in these regulations and the procedures therein.
 9. Issue any permit granted by the Planning Board or ordered by the Board of Adjustment and make periodic inspections to verify that all conditions of such granted permit are complied with by the applicant or his agent.
 10. Receive and investigate allegations of noncompliance or violation of these regulations, report findings to the Town Council and file a complaint where such allegations are based in apparent fact.
 11. Refer any matters under appeal to the Zoning Board of Adjustment for its action.
 12. Make recommendations to the Planning Board in connection with any conditional use permit or to the Board of Adjustment in connection with any application for variance or appeal and recommend such conditions as may be necessary to fully carry out the provisions and intent of this Zoning Ordinance.
- B. The Zoning Administrator shall not:
1. Make any changes in the uses categorically permitted in any zoning classification or zoning district, or make any changes in the terms of this Zoning Ordinance, or make any changes in the terms, classifications or their boundaries on the Official Zoning Map.
 2. Issue any conditional use permit or variance without the specific direction to do so from the authorizing body.

175-10. Violations and Penalties, Methods of Corrections.

- A. Any person, partnership, association, company, corporation or individual who violates, disobeys, omits, neglects, or refuses to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor offense and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a civil fine as set forth in RSA 676:17 for each day such violation continues.
- B. A violation or suspected violation may be brought to the attention of the Zoning Administrator by any individual who suspects that such violation has or may be occurring. The Zoning Administrator shall conduct an investigation into the alleged violation. If the investigation appears to uphold the allegation, the Zoning Administrator shall first notify the offending party, who shall have a maximum of ten (10) days in which to correct the violation or in which to come to an agreement on a time frame in which the violation will be abated. Such an agreement shall be binding. In the event that these efforts fail to result in an abatement of the violation, the Zoning Administrator shall notify the Town Administrator and file a complaint with the Town Attorney. The Town Attorney shall take appropriate legal

action to address the complaint and the matter shall come before a court of competent jurisdiction for resolution.

- C. Every violation of these regulations shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be deemed a separate and distinct offense.

ARTICLE IV INTERPRETATION, AMENDMENTS, AND LEGAL PROVISIONS

175-11. Scope and Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, convenience and general welfare of the Town of Durham and its residents. Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern. Any use not specifically permitted or permitted by conditional use permit is prohibited.

175-12. Administrative Appeals.

Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in his/her interpretation of the Ordinance, it shall modify or reverse the decision accordingly.

175-13. Severability.

The provisions of this chapter are severable. If a court finds that any section or provision of this ordinance is invalid, this finding shall not invalidate any other section or provision of this chapter and those other sections shall remain in force without further action by the Town Council.

175-14. Amendment Procedure.

Amendments to the Zoning Ordinance including the Official Zoning Map may be initiated by the Planning Board, Town Council, or citizens in accordance with the following procedures:

- A. ***Amendments Initiated by the Planning Board.*** The Planning Board may, upon its own initiative, from time to time, consider amendments to the Zoning Ordinance, including its overlay districts, and submit recommendations thereon to the Town Council. The referral shall be made in writing by the chair of the Planning Board. Such amendments shall be developed pursuant to the notice and public hearing requirements contained in Subsection D below.
- B. ***Amendments Initiated by the Town Council.*** The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay

districts. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the chair of the Town Council. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their referral.

- C. ***Amendments Initiated by Citizens.*** Citizens submitting amendments to the Zoning Ordinance, including its overlay districts, shall forward their proposed changes to the Planning Board for its consideration. Such submission shall be by typed petition signed by not fewer than fifty (50) properly registered voters of the Town of Durham, and shall set out the language of the proposed amendment or the proposed change to the Official Zoning Map. The Planning Board shall have the request placed on the agenda for its next regularly scheduled meeting. It shall, after following the notice and public hearing requirements contained in Subsection D below, make its recommendation concerning such request to the Town Council within sixty (60) days of the date of the Planning Board's initial consideration. A thirty (30) day extension of the above time limit may be granted by the Town Council.

D. ***Public Notice and Hearing Requirements.***

1. Notice. Notice shall be given for the time and place of the public hearing at least ten (10) days before the hearing. The notice required under this section shall not include the day notice is posted or published or the day of the public hearing. Notice of each public hearing shall be published in a newspaper of general circulation in the municipality and shall be posted in at least two (2) public places.
2. Text of Ordinance. The full text of the proposed amendment to the Zoning Ordinance need not be included in the notice if an adequate statement describing the proposal and designating a place where the proposal is on file for public inspection is stated in the notice.

- E. ***Ordinance Form.*** Any amendment to the aforementioned ordinances approved by the Planning Board or submitted through it pursuant to Subsection G below shall be submitted to the Town Administrator, who shall be responsible for putting the amendment into proper ordinance form beginning with the words "The Town of Durham ordains..." Whenever practical, the Town Administrator shall set out in full the ordinance sections or subsections to be repealed or amended and shall indicate the material to be omitted by enclosing it in brackets or by strikeout type and shall indicate new material by underscoring it or by typing it in italics. In every case, the recommendation of the Planning Board shall follow immediately at the end of the proposed amendment.

F. ***Action by Town Council.***

1. Agenda. The proposed amendment shall be placed on the agenda of the Council at the next regularly scheduled Council meeting for first reading.
2. First Reading. If the Council votes not to pass at the first reading, the proposed amendment dies. If the Council votes to pass the amendment to second reading, it shall be scheduled for a public hearing before the Council. The Council may, however, refer an amendment

initiated by petition that has not passed at the first reading to the Planning Board to be revised and resubmitted to the Town Council for reconsideration. Such reconsideration shall be considered to be the first reading of the amendment.

3. Notice and Public Hearing Requirements. Prior to final Council action, the notice provisions contained in Subsection D above shall be followed.
 4. Minor Revisions. After the public hearing, the Council may make minor changes to the proposed amendment, so long as the proposed amendment remains substantially the same as that which was advertised for the public hearing.
 5. Second Reading. Following the second reading and public hearing, the Council shall vote on the proposed amendment.
 6. Majority Vote Required. Any proposed amendment shall require a majority affirmative vote of Council members present in order to pass.
 7. Recording of Amendment. If passed by the Council, the ordinance amendment shall be recorded, authenticated, indexed and printed in accordance with the provisions of the municipal charter.
- G. ***Protest Process.*** Pursuant to RSA 675:5, concerned property owners may protest proposed amendments to the Zoning Ordinance.
1. Required Signatures. All protest petitions must be signed by either:
 - a. The owners of twenty (20) percent of the area of the lots included in such proposed change; or
 - b. The owners of twenty (20) percent of the area within one hundred (100) feet immediately adjacent thereto or across a street therefrom.
 2. Requirements for Council Consideration of Protest Petition(s).
 - a. In order to have any protest considered:
 - (1.) The owners signing the petition shall identify themselves on the petition by name and address and by address of the property involved or by lot and map number or by whatever other means is used within the town to identify the land in question so that the Durham Town Council may identify such others as interested and affected parties.
 - (2.) The signed protest petition shall be submitted to the Durham Town Council at least ten (10) days prior to the next Town Council meeting; provided, however, that each protest petition shall apply to that petition only. The Chairman of the Durham Town Council shall announce at the opening of the Council meeting that a protest petition has been received.

- b. Required Council Action. Any such amendment or repeal developed pursuant to this subsection shall not become effective except by the favorable vote of two-thirds (2/3) of all Council members present at its second reading. (See Subsection F above.)

ARTICLE V PLANNING BOARD

175-15. Planning Board.

- A. There shall be a Planning Board consisting of seven (7) members and not more than five (5) alternate members as provided by state statute in accordance with Sec.11.1.A of the Town Charter.
- B. During the period of his/her service on the Planning Board, a member may not appear before the Planning Board as a paid representative of or paid consultant to an applicant before the Board.
- C. The Town Administrator or another member of the Town administration designated by the Town Administrator shall meet with the Planning Board in April of each year to provide the Board with the information and guidance necessary for the Board to carry out its duties including those specified in Section 175-16 and fulfill the purposes set out in Section 175-3.

175-16. Powers and Duties.

The Planning Board shall have all the powers granted to, and the duties conferred upon, planning boards by state law, including but not limited to the following:

- A. The Planning Board shall prepare and amend, from time to time, a Master Plan to guide development of the municipality in accordance with RSA 674:1,
- B. The Planning Board may initiate changes in the Zoning Ordinance to ensure that the Town's regulations are consistent with the adopted Master Plan,
- C. The Planning Board shall review and make recommendations to the Town Council on proposed amendments to the Zoning Ordinance,
- D. The Planning Board shall develop, adopt, and periodically review and amend subdivision regulations, site plan review regulations, road standards, and other land use regulations authorized by state law or local ordinances,
- E. The Planning Board shall review and approve or disapprove proposals for subdivisions,
- F. The Planning Board shall review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or multi-unit residences whether or not such development includes a subdivision or resubdivision of the site, and as provided for in RSA 674:43, and
- G. The Planning Board shall review and approve or disapprove requests for Conditional Uses.

175-17. Delegation of Site Review Authority.

The Planning Board is empowered to delegate to a Technical Review Committee, its site review powers for minor site plan reviews of permitted uses (those listed without an asterisk in the zoning district standards or listed as permitted in the Table of Uses). The Technical Review Committee shall, at a minimum, consist of the Code Enforcement Officer/Zoning Administrator, and the Director of Planning and Community Development. The membership of the Technical Review Committee may expand at the discretion of the Code Enforcement Officer/Zoning Administrator and the Director of Planning and Community Development to include staff representatives from other town departments, including but not limited to, the Public Works, Police, and Fire Departments. The Technical Review Committee shall insure compliance with the provisions of the Town of Durham Site Plan Review Regulations. The Committee shall have the power to grant waivers under Section 12.02 of the Site Plan Review Regulations. The Technical Review Committee shall approve, disapprove, or make a recommendation to the Planning Board on site plans reviewed by it. For each site plan reviewed by the Technical Review Committee, the Planning Board shall be provided, at its next regularly scheduled meeting, a written report of the Technical Review Committee's decisions. Decisions rendered by this Committee may be appealed to the full Planning Board, provided that a notice of appeal is filed within thirty (30) days of the Committee's decision. The Planning Board shall hold a public hearing on the appeal. The review by the Planning Board shall be based upon the materials submitted to the Technical Review Committee, the record of the committee action, and testimony at the public hearing. The Planning Board may affirm or change the decision of the committee. All provisions of RSA 676:4 shall apply to actions of the Technical Review Committee.

ARTICLE VI ZONING BOARD OF ADJUSTMENT

175-18. Appointment.

- A. ***Appointment.*** There shall be a Zoning Board of Adjustment appointed by the Town Council, consisting of five (5) members in accordance with Sec. 11.2. of the Town Charter and state law each serving a three-year term and three (3) alternates each serving a three-year term. Such terms shall be staggered. The Town Council shall fill any vacancy for the period of the unexpired term.
- B. ***Disqualification of Board Member.*** No member of the Zoning Board of Adjustment shall sit upon the hearing on any question which the Board is to decide in a judicial capacity who would be disqualified from any case, except exemption from service and knowledge of the facts involved gained in the performance of his official duties, to act as juror upon the same matter in any action at law.

175-19. Powers and Duties.

- A. The Zoning Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the efficient administration and enforcement of this chapter. In addition, the Zoning Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter.
 2. To authorize, upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.
 3. The Board shall hear and decide requests for special exceptions only when the granting of a special exception is specifically provided for in this chapter. No other special exceptions shall be granted. The request for the special exception and the Board's action on the request shall reference the specific section whereby the granting of the special exception is provided for in this chapter. Appropriate conditions may be placed on special exception approvals when necessary to meet the standards of this chapter.
 4. To hear and decide requests for equitable waivers of dimensional requirements as provided for in RSA 674:33-a.
- B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.
- C. The concurring vote of three (3) voting members of the Board shall be necessary to reverse any action of such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.

175-20. Meetings.

- A. A Chairman and clerk shall be appointed. The Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.
- B. Meetings of the Board shall be held at the call of the Chairman and at such times as the Board may determine.
- C. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings in accordance with RSA 91-A as amended, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Town Office and shall be a public record.

ARTICLE VII CONDITIONAL USE PERMITS

175-21. Conditional Use Permits.

- A. The purpose and intent of a Conditional Use permit is to allow certain uses that are not normally permitted under conventional zoning provisions. Specifically authorized conditional uses appear in section 175-53, Table of Land Uses. A Conditional Use shall be approved if the application is found to be in compliance with the approval criteria in Section 175-23. Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town. The Planning Board shall make findings of fact, based on the evidence presented by the applicant, Town staff, and the public, respecting whether the Conditional Use is or is not in compliance with the approval criteria of section 175-23
- B. No structure, building or land requiring a conditional use permit shall be used, constructed, altered or expanded unless a conditional use permit specifically required by this chapter has been authorized by the Planning Board and issued by the Zoning Administrator.
- C. Any use that was lawfully established prior to the adoption, extension or application of this chapter and is now permitted by this chapter subject to a conditional use permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of this chapter. A conditional use permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot on which said use is located.
- D. Structures or buildings devoted to any use which is permitted under the terms of this chapter subject to the securing of a conditional use permit, may not be altered, added to, enlarged, expanded or moved from one location to another on the lot without securing a new conditional use permit.

175-22. Procedures.

A. *Application.*

- 1. Application for a conditional use permit may be made by the owner of the affected property, or his designated agent, on a form obtainable from the Zoning Administrator.
- 2. The completed application and fee as set by the Town Council shall be submitted to the Zoning Administrator or his designee. Said fee is nonrefundable.

B. *Procedure for Consideration.*

- 1. After receipt by the Zoning Administrator or his designee, the completed application shall be transmitted to the Planning Board staff for their review and evaluation.
- 2. The planning staff shall set a public hearing date and publish a notice which advertises the public hearing before the Planning Board in a newspaper of general circulation. Public

notice shall be made at least ten (10) calendar days prior to the meeting of the Planning Board at which the application is to be considered.

3. The planning staff shall also mail written notice, by certified mail, to all abutting and adjacent property owners within three hundred (300) feet of the subject property and a sign measuring two by three (2 x 3) feet shall be placed on the property by the applicant not less than ten (10) calendar days prior to the time of the public hearing by the Planning Board. The sign shall remain on the property until the conclusion of the public hearing. This sign shall be visible from the most heavily traveled street right-of-way adjacent to the property. The sign shall state the date of the public hearing, the time, the location and the action to be considered. (Where the subject property abuts a public right-of-way, the three hundred (300) foot measurement shall be in addition to the right-of-way along the abutting side.)
4. Any written comment shall be specific when maintaining that the granting of the conditional use permit would adversely or injuriously affect the writer's personal and legal interests.
5. The Planning Board shall consider the application at its next regular meeting following the public notice process.
6. Where development approval for a conditional use includes subdivision or site plan approval by the Planning Board, the application and review procedure for a conditional use permit shall be made concurrently and in accordance with the procedures specified in the Subdivision Regulations or Site Plan Regulations as applicable to the particular development.

C. *Approval of Application and Granting of Conditional Use Permit.* At least five (5) members must vote in favor of the issuance of a Conditional Use Permit for an application to be approved. Upon rendering a decision to grant a conditional use permit with conditions of approval that must be adhered to by the applicant, the Planning Board shall notify the Zoning Administrator of its decision and he shall issue a conditional use permit with the conditions of approval referred to and itemized in brief on the face of the permit. The application and all subsequent information, correspondence, evaluations, recommendations and decisions shall then be placed on permanent file in the office of the Zoning Administrator. The Conditional Use Permit application and Findings of Fact and Conditions of Approval shall be recorded at the Strafford County Registry of Deeds.

D. *Revocation.* In the event of a violation of any of the provisions of these regulations or amendments thereto or in the event of a failure to comply with any prescribed condition of approval or stipulations placed upon such approval, the Zoning Administrator shall suspend any conditional use permit immediately, shall notify the Planning Board and shall set a date for a hearing to determine if such suspensions shall be lifted or if the conditional use permit shall be revoked. The Planning Board shall be the hearing body. In the case of a revocation of a conditional use permit, the determination of the Planning Board shall be final, unless recourse is sought in a court of competent jurisdiction.

E. *Termination and Transferability.* Once granted, a conditional use permit, with its terms and conditions, shall:

1. Run with the lot, building, structure or use and shall not be affected by changes in ownership.
 2. Terminate twelve (12) months from the date of authorization if the authorized use has not begun:
 - a. Unless otherwise spelled out in the conditions of approval; or
 - b. Unless the applicant can demonstrate good reason(s) at a public hearing before the Planning Board why the permit should be extended.
 3. Terminate after twelve (12) consecutive months of nonuse.
- F. ***Denial of application.*** In the event that an application is denied by the Planning Board, no resubmittal of an application for a conditional use permit for the same or similar use may be made for one (1) year from the date of said denial, unless sufficient new evidence or conditions are offered to the Zoning Administrator to demonstrate that the circumstances have altered and that further consideration of the application is warranted. In such an event, the resubmitted application shall follow the same procedures as the original and shall be treated as a new application.

175-23. Approval Criteria.

- A. ***Planning Board Decision Based on Findings.*** Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a conditional use permit shall be based upon findings of fact and conditions of approval. The findings of fact and conditions of approval shall be supported in the records of its proceedings. The criteria enumerated in Subsection C are required to be met in any matter upon which the Planning Board is required to pass under these regulations. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall be deemed not to be in compliance with these regulations.
- B. ***Burden on applicant.*** The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence, through testimony, or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.
- C. ***Criteria Required for Consideration of a Conditional Use Permit.*** A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following conditional use permit criteria:
1. Site suitability: The site is suitable for the proposed use. This includes:
 - a. Adequate vehicular and pedestrian access for the intended use.
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The absence of environmental constraints (floodplain, steep slope, etc.).

- d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.
3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.
4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.
5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.
6. Impact on property values: The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.
7. Availability of Public Services & Facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
8. Fiscal impacts: The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning

Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.

D. ***Conditions of Approval.*** Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary to further the objectives of this ordinance and the Master Plan, or which would otherwise allow the general conditions of this article to be satisfied. Conditions of approval shall be stated in writing in the issuance of a permit. The conditions shall, if applicable, include, but are not limited to, the following:

1. Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.
3. Landscaping in excess of any minimum requirements of this Ordinance.
4. Modification of the exterior features of buildings or other structures.
5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
6. Footprint or lot coverage less than the allowed maximum of this Ordinance.
7. Limitations on the number of occupants and methods and times of operation.
8. Grading of the premises for proper drainage.
9. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
10. Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance.
11. Other performance standards as appropriate.

175-24. Appeals.

Any persons aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5 III)

ARTICLE VIII VARIANCES AND SPECIAL EXCEPTIONS

175-25. Variances.

- A. ***Types of Variances.*** The Zoning Board of Adjustment may grant variances from the requirements of this ordinance as provided for in state law.
- B. ***Standards for the Granting of Variances.*** The Zoning Board of Adjustment shall grant a variance only if it finds that the request meets the criteria set forth in state law.

C. ***Accommodation of Persons with a Recognized Physical Disability.*** The Zoning Board of Adjustment may grant a variance from the dimensional standards of this ordinance without finding a hardship when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

1. Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.
2. In granting any variance under this paragraph, the Zoning Board of Adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

D. ***Variances from Flood Hazard Overlay District Provisions.*** For applications for a variance from the provisions of Article XV, the applicant shall have the burden of showing, in addition to the usual variance standards, the following:

1. The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
2. If the variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
3. The variance is the minimum necessary considering the flood hazard, to afford relief.

The Zoning Board of Adjustment shall notify the applicant in writing that:

1. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
2. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

The Town shall maintain a record of all variance actions, including the justification for their issuance, and report such variances issued in its annual or biennial report submitted to FEMA's Flood Insurance Administrator.

175-26. Special Exceptions.

A. ***Criteria for the Granting of Special Exceptions.*** The Zoning Board of Adjustment shall grant a special exception only if it finds that all of the following criteria are met. For the purposes of this chapter, the following are established as conditions upon the grant of all

"special exceptions," subject to such further conditions as may be defined elsewhere herein as to the uses concerned.

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious, noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes of conditions.
4. As to all nonresidential uses subject to site review by the Planning Board or Technical Review Committee pursuant to RSA 672 through RSA 677, that written approval by the Planning Board or Technical Review Committee of the applicant's site plans must be on file with the Board of Adjustment.

ARTICLE IX NONCONFORMANCE

175-27. General Provisions.

- A. ***Change of Ownership.*** Nonconforming uses, lots, and buildings and structures may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming lot, building or structure subject to the provisions of this article.
- B. ***Repair and Maintenance.*** The normal upkeep and maintenance of nonconforming uses, buildings, and structures including repairs or renovations that do not involve structural changes or expansion of the building, structure, or paving are permitted subject to the provisions of this article. Routine maintenance includes activities such as the replacement of roofing, siding, windows, and deck surfaces and the repaving of existing paved areas.

175-28. Nonconforming Uses.

- A. ***Routine Maintenance.*** Routine maintenance and repairs of the building or structure housing the nonconforming use as well as those modifications required by applicable health and safety codes shall be permitted by the Zoning Administrator.
- B. ***Nonconforming Status of Projects Under Construction.*** Any use of a building for which a building permit has been issued prior to the adoption or amendment of these regulations and the erection of which is in conformity with the plans submitted and approved for such permit, but that does not conform to the use provisions of these regulations, shall be a nonconforming use, and may be continued or modified in accordance with the following provisions.

- C. ***Continuation of a Nonconforming Use.*** Any nonconforming use may be continued, except that if any such nonconforming use is abandoned or desisted or voluntarily or by legal action caused to be discontinued for a period of one (1) year, then any subsequent use of the building, other structure or use of the land shall be required to be in conformity with the provisions of these regulations.
- D. ***Enlargement of a Nonconforming Use.*** A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit, within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.
- E. ***Conversion of a Nonconforming Use to an Allowed Use.*** A nonconforming use may be converted to a permitted use or conditional use permitted with a conditional use permit in the zone in which it is located. Once a nonconforming use is converted to a conforming use, it may not revert to a nonconforming status. A building or structure containing a nonconforming use may be enlarged, extended, reconstructed or structurally altered if said use is changed to a permitted use or a conditional use for which a conditional use permit has been issued and the building or structure completely conforms to the provisions of these regulations.
- F. ***Change of a Nonconforming Use to Another Nonconforming Use.*** A nonconforming use may, upon approval and issuance of a conditional use permit, be changed to another nonconforming use of the same or a more-restricted use classification, if no structural alterations are made to the building or other structure provided that said new nonconforming use is less deleterious to the neighborhood, considering all factors, than was the previous nonconforming use.

175-29. Nonconforming Lots.

- A. ***Single, Vacant Nonconforming Lots.*** A nonconforming vacant lot which, at the time of passage of this chapter, was in separate ownership from any adjacent lot and which was duly recorded in the Strafford County Register of Deeds prior to the adoption of this chapter may be used for a single family dwelling in the RA, RB, RC, and R districts and for a permitted use in a non-residential district provided that:
 - 1. The lot is in a district where the proposed use is permitted.
 - 2. The requirements of this chapter regarding setbacks, yards and height are met.
 - 3. The arrangements for sewage disposal and water supply are approved by the Code Enforcement Officer in accordance with the provisions of state law.
 - 4. The lot contains a minimum of 5,000 (five thousand) square feet of area unless a Special Exception has been granted by the Zoning Board of Adjustment.
- B. ***Requirements for Individual Nonconforming Vacant Lots in the WCO and SPO Districts.*** The erection of a structure or septic system on an existing vacant lot within the Wetlands

Conservation District or Shoreland Protection Overlay District may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this Article was posted and published in the town.
2. The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District or Shoreland Protection Overlay District without undue hardship.
3. Due to the provisions of the Wetland Conservation District or Shoreland Protection Overlay District, no reasonable and economically viable use of the lot can be made without the exception.
4. The location and design of the building(s) and all structures shall provide for the maximum setback from the reference line consistent with reasonable use of the property considering the size, shape, slope, and natural conditions of the lot including, but not limited to, soils, flood hazard areas, and wetlands.
5. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
6. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.
7. All other state, federal and local approvals required for the septic system have been obtained.
8. Where site review is required, prior approval shall be obtained from the Planning Board.

At the time of submission of the special exception application to the Zoning Board of Adjustment, the Conservation Commission, the Health Officer, and the Planning Board shall be informed of the application for special exception.

- C. ***Nonconforming Lots in Contiguous Ownership.*** Where two (2) or more adjacent nonconforming lots are held by the same fee title or beneficial ownership when this chapter is passed, the area and frontage of the lots shall be combined in such a manner as to comply as nearly as practical with the dimensional requirements of this chapter. This provision shall not apply to lots within a subdivision previously approved by the Planning Board under this Chapter or prior Durham Zoning Ordinances.
- D. ***Alteration or Expansion of a Conforming Structure or Building on a Nonconforming Lot.*** An alteration or expansion of a conforming structure or building on a nonconforming lot shall be permitted by the Zoning Administrator as long as the structure or building remains conforming with respect to height, setbacks, and coverage and does not further deviate from this chapter.

175-30. Nonconforming Structures and Buildings.

- A. ***Continuance of a Nonconforming Building or Structure.*** Any lawful nonconforming building or structure in existence when this chapter is passed may continue unchanged but may not be altered or extended in any way which will result in a new and increased violation.
- B. ***Restoration and Reconstruction of a Nonconforming Building or Structure.*** Nothing herein shall prevent the substantial restoration or reconstruction within one (1) year of a building or structure destroyed in part or whole by fire or other casualty so long as this does not result in a new or increased violation.
- C. ***Alteration of a Nonconforming Building or Structure.*** A building or structure that is nonconforming with respect to height, setback or coverage may be altered or extended if the alteration or extension does not further deviate from this chapter except as provided in D. below.
- D. ***Requirements for Nonconforming Buildings and Structures in the WCO and SPO Districts.***
 - 1. Legally nonconforming buildings and structures existing prior to the date on which this Article was enacted may be continued, provided that such buildings and structures shall not be expanded further to encroach upon the wetland, water body, or designated buffer zone.
 - 2. Where an existing building or structure within the Wetland Conservation Overlay District or Shoreland Protection Overlay District is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall be of the same size and built in the same location as the original building or structure, not extend closer to the wetland, water body, or buffer zone than the original foundation and the result will not be a new or increased threat to the wetland or water body.
 - 3. The construction of attached additions or other expansions to nonconforming one- and two-family dwellings shall be permitted within the Wetland Conservation Overlay District and Shoreland Protection Overlay District provided that:
 - a. The dwelling lawfully existed prior to the date on which this Article was enacted.
 - b. The number of dwelling units shall not be increased.
 - c. The building footprint existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than fifteen (15) percent.
 - d. The usable building volume existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than thirty (30) percent.
 - e. The proposed construction shall conform to all other applicable ordinances and regulations of the Town of Durham.

PART B. ZONING DISTRICTS

ARTICLE X GENERAL ZONING DISTRICT PROVISIONS

175-31. Establishment of Districts.

The Town of Durham shall be divided into zones as set forth in Article XI. The use of land, buildings, and structures shall conform to the provisions of the zone in which it is located except as otherwise specifically provided for in this ordinance.

175-32. Zoning Map.

- A. ***Official Zoning Map.*** The Official Zoning Map of the Town of Durham shall show the location of the various zones set forth in Article XI. The Official Zoning Map, dated November 30, 2004, as amended, is hereby incorporated as part of this chapter and is filed with the Town Clerk. The Zoning Map and all the notations, references, district boundaries and other information shown thereon shall be as much a part of this chapter as if all were fully described herein.
- B. ***Changes to the Zoning Map.*** In accordance with the provisions of this chapter, if changes are made in zone district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Town Council. The entry on the Official Zoning Map shall indicate the ordinance number and the date adopted.

175-33. Zoning Boundaries.

- A. ***Location of District Boundaries.*** The location of the zones shall be as shown on the Official Zoning Map. Where uncertainty exists with respect to the boundaries of the various zones as shown on the Zoning Map, the following rules shall apply in determining the location of the boundary:
 1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
 2. Boundaries indicated as approximately following well established lot lines shall be construed as following such lot lines, even if the location of such lines is inaccurately represented on the Zoning Maps or Tax Maps;
 3. Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
 4. Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural change in the shoreline, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following

the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center line;

5. Boundaries indicated as being parallel to or extensions of features indicated in paragraphs 1. through 4. above shall be so construed.
6. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.
7. Any conflict between the Zoning Map and a description by metes and bounds in a deed shall be resolved in favor of the description by metes and bounds;
8. Where the location of a physical feature existing on the ground such as a wetland, water body, road, or utility right-of-way deviates from those shown on the Zoning Map, the actual location on the ground shall be used to determine the location of the zone boundary.

Where uncertainty exists as to location of any zoning district boundary, the Zoning Administrator shall make a written determination based upon these rules. If the Zoning Administrator is unable to make a determination or if a property owner does not agree with the Zoning Administrator's determination, the Planning Board shall determine the location of the Zone Boundary.

175-34. Special Provisions.

- A. ***Lots in More Than One Zone.*** Where a Zoning District boundary as established in this ordinance and as shown on the Official Zoning Map divides a lot that existed at the time of enactment of this provision, the use, dimensional, and other requirements applying to the portion of the lot in the zone with the less restrictive requirements may be applied to the portion of the lot in the more restrictive zone for a maximum of fifty (50) feet beyond the zoning district boundary. This provision shall not apply to any overlay district.
- B. ***Lots with Multiple Uses.*** When a lot contains more than one principal use, each use shall comply with all of the applicable requirements of this chapter except as otherwise specifically provided.
- C. ***Lots Crossed by Town Lines.*** Pursuant to RSA 674:53, when part of a lot in a single or joint ownership lies outside the Town of Durham, that portion of the lot within Durham shall conform to the use regulations of this chapter. In applying dimensional controls to that portion of the lot within Durham, the dimensions of the whole lot shall be considered without reference to the town line.

ARTICLE XI ESTABLISHMENT OF ZONES

175-35. Zoning Districts.

For the purpose of this chapter, the Town of Durham is hereby divided into zoning districts as follows:

A. *Residential Districts:*

Residence A	RA
Residence B	RB
Residence Coastal	RC
Rural	R

B. *Nonresidential/Mixed Use Districts:*

Central Business	CB
Professional Office	PO
Church Hill	CH
Courthouse	C
Coe's Corner	CC
Office and Research – Route 108	OR
Multiunit Dwelling/Office Research	MUDOR
Office, Research and Light Industry	ORLI
Durham Business Park	DBP

175-36. Overlay Districts.

In addition to the zoning districts identified in Section 175-35, there are six (6) overlay districts as follows:

WCO	Wetlands Conservation Overlay District
SPO	Shoreland Protection Overlay District
FHO	Flood Hazard Overlay District
APO	Aquifer Protection Overlay District
HO	Durham Historic Overlay District
PWSFO	Personal Wireless Service Facilities Overlay District

Each of these overlay districts establishes requirements in addition to the requirements of the underlying zoning district. The requirements of both the underlying zoning district and the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

ARTICLE XII ZONE REQUIREMENTS

The use of land, buildings, and structures shall conform to the provisions of the zone in which it is located except as otherwise specifically provided for in this ordinance.

175-37. Rural District (R).

A. Purpose of the Rural District.

The purpose of the Rural District is to preserve the rural character of the areas of Durham that have historically been rural, that are low density, that are not served or intended to be served by public water and public sewerage, and that Master Plan 2000 identifies as areas that should remain rural and their agricultural heritage preserved. In this district, customary rural land uses will be preserved and all development will be carried out with the objective of preserving the natural and scenic environment of the district. Residential development will be limited to housing that is designed so that the character of the district is maintained, the scenic quality is protected, and a significant amount of open space is permanently preserved.

B. Permitted Uses in the Rural District.

Any use shown as a Permitted Use in the Rural District in the Table of Land Uses in Section 175-53 shall be permitted in the Rural District.

C. Conditional Uses in the Rural District.

Any use shown as a Conditional Use in the Rural District in the Table of Land Uses in Section 175-53 shall be permitted in the Rural District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Rural District.

Any use that is not listed as a Permitted Use or a Conditional Use in the Rural District in the Table of Land Uses in Section 175-53 is prohibited.

E. Dimensional Standards in the Rural District.

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Rural District shall be used in accordance with the dimensional standards for the Rural District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Rural District.

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

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Rural District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least fifty percent (50%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources, or pre-existing legal restrictions applicable to the lot.

G. Performance Standards Applicable to the Rural District.

Uses within the Rural District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. Coordination with Overlay District Provisions.

1. Areas within the Rural District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
2. Areas within the Rural District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
3. Areas within the Rural District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the

standards and requirements of that district in addition to the provisions of the Rural District.

4. Areas within the Rural District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
5. Areas within the Rural District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Rural District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-38. Residence A District (RA).

A. Purpose of the Residence A District.

The purpose of the Residence A District is to maintain the integrity of existing high density residential areas that are predominately served by public water and sewerage while ensuring that new development, redevelopment, or expansions of existing buildings and structures are consistent with and maintain the established character of these neighborhoods.

B. Permitted Uses in the Residence A District.

Any use shown as a Permitted Use in the Residence A District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence A District.

C. Conditional Uses in the Residence A District.

Any use shown as a Conditional Use in the Residence A District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence A District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Residence A District.

Any use that is not listed as a Permitted Use or a Conditional Use in the Residence A District in the Table of Land Uses in Section 175-53 is prohibited.

E. Dimensional Standards in the Residence A District.

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Residence A District shall be used in accordance with the dimensional standards for the Residence A District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Residence A District.

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

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Residence A District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least thirty percent (30%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources, or pre-existing legal restrictions applicable to the lot.
3. No parking shall be permitted in the area between the front property line and the front wall of the principal building except on a driveway in conformance with the provisions of Article XXI.

G. Performance Standards Applicable to the Residence A District.

Uses within the Residence A District shall conform to all applicable standards of this Ordinance, including but not limited to:

- 1, Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. *Coordination with Overlay District Provisions.*

1. Areas within the Residence A District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
2. Areas within the Residence A District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
3. Areas within the Residence A District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
4. Areas within the Residence A District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
5. Areas within the Residence A District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
6. Areas within the Residence A District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence A District.
7. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-39. Residence B District (RB).

A. Purpose of the Residence B District.

The purpose of this district is to maintain the integrity of existing medium-density residential areas while ensuring that new development, redevelopment, and expansions of existing buildings and structures are consistent with and maintain the established character of these neighborhoods.

B. Permitted Uses in the Residence B District.

Any use shown as a Permitted Use in the Residence B District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence B District.

C. Conditional Uses in the Residence B District.

Any use shown as a Conditional Use in the Residence B District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence B District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Residence B District.

Any use that is not listed as a Permitted Use or a Conditional Use in the Residence B District in the Table of Land Uses in Section 175-53 is prohibited.

E. Dimensional Standards in the Residence B District.

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Residence B District shall be used in accordance with the dimensional standards for the Residence B District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Residence B District.

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

1. All residential subdivisions shall be developed as "Conservation Subdivisions" in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Residence B District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the "unsuitable areas" plus at least forty percent (40%) of the "usable area" of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources, or pre-existing legal restrictions applicable to the lot.

3. No parking shall be permitted in the area between the front property line and the front wall of the principal building except on a driveway in conformance with the provisions of Article XXI.

G. Performance Standards Applicable to the Residence B District.

Uses within the Residence B District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. Coordination with Overlay District Provisions.

1. Areas within the Residence B District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
2. Areas within the Residence B District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
3. Areas within the Residence B District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
4. Areas within the Residence B District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
5. Areas within the Residence B District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
6. Areas within the Residence B District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence B District.
7. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall

apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-40. Residence Coastal District (RC).

A. Purpose of the Residence Coastal District.

The purpose of the Residence Coastal District is to protect the water quality of the community's principal surface waters and to preserve the rural character and scenic beauty of these coastal areas including the view of the shore as seen from the water. In this district, all development will be carried out in a manner that preserves the natural and scenic environment of the district. Residential development will be limited to housing that is designed so that the character of the district is maintained, the scenic quality of coastal areas is protected, and a significant amount of open space is permanently preserved.

B. Permitted Uses in the Residence Coastal District.

Any use shown as a Permitted Use in the Residence Coastal District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence Coastal District.

C. Conditional Uses in the Residence Coastal District.

Any use shown as a Conditional Use in the Residence Coastal District in the Table of Land Uses in Section 175-53 shall be permitted in the Residence Coastal District only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Residence Coastal District.

Any use that is not listed as a Permitted Use or a Conditional Use in the Residence Coastal District in the Table of Land Uses in Section 175-53 is prohibited.

E. Dimensional Standards in the Residence Coastal District.

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Residence Coastal District shall be used in accordance with the dimensional standards for the Residence Coastal District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Residence Coastal District.

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

1. All residential subdivisions shall be developed as “Conservation Subdivisions” in accordance with Article XIX and the provisions of the Subdivision Regulations, unless the subdivision is exempt from the requirement as set forth in Article XIX. As part of any conservation subdivision in the Residence Coastal District, common open space shall be set aside and permanently protected. The minimum amount of common open space shall be equal to one hundred percent (100%) of the “unsuitable areas” plus at least fifty percent (50%) of the “usable area” of the parcel.
2. No new residential lot shall have its required minimum lot frontage or driveway on a street that is functionally classified as an arterial or collector. The Planning Board may waive this limitation based upon a finding that there is no viable alternative for meeting the frontage requirement or for providing vehicular access to the lot due to the shape of the lot, the topography of the site, the potential impact on wetlands or other natural resources or pre-existing legal restrictions applicable to the lot.

G. Performance Standards Applicable to the Residence Coastal District.

Uses within the Residence Coastal District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. Coordination with Overlay District Provisions.

1. Areas within the Residence Coastal District may be located within the Wetland Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
2. Areas within the Residence Coastal District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
3. Areas within the Residence Coastal District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
4. Areas within the Residence Coastal District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards

- and requirements of that district in addition to the provisions of the Residence Coastal District.
5. Areas within the Residence Coastal District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Residence Coastal District.
 6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-41. Central Business District (CB)

A. Purpose of the Central Business District

The purpose of the Central Business District is to maintain the mixed-used, pedestrian-oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that maintains and enhances the small town character of the downtown. Downtown Durham should be an attractive and vibrant community and commercial center where desirable residential, retail, office, and other nonresidential growth can occur in a clean, safe, pedestrian-friendly environment. The Central Business District is intended to accommodate a range of uses in a manner that encourages fuller utilization of the limited area of Downtown through denser building construction and modified parking requirements. Mixed use development in which the upper floors are used for residential purposes is encouraged.

B. Permitted Uses in the Central Business District

Any use shown as a Permitted Use in the Central Business District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Central Business District

Any use shown as a Conditional Use in the Central Business District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Central Business District

Any use that is not listed as a Permitted Use or a Conditional Use in the Central Business District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Central Business District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Central Business District shall be used in accordance with the dimensional standards for the Central Business District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Central Business District

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

1. **Parking** – No new parking shall be located on the portion of the lot between the front wall of the principal building and the front property line. This restriction shall apply to the full width of the lot. For corner lots, this restriction shall apply to all frontages abutting a public street.
2. **Building Setback** – Along the westerly side of Madbury Road from Main Street to Pettee Brook Lane, the front wall of the principal building shall be located no closer than fifteen (15) feet to, and no farther than twenty (20) feet from, the front property line. Along the westerly side of Madbury Road from Pettee Brook Lane to Garrison Avenue, the front wall of the principal building shall be located no closer than twenty (20) feet to, and no farther than thirty (30) feet from, the front property line. For corner lots, this requirement shall apply to all frontages abutting a public street. Up to fifty percent (50%) of the front façade may be recessed beyond the maximum setback distance if the space between the front wall and the front property line is used as pedestrian area in accordance with paragraph 4. below. The expansion or modification of an existing building shall be exempt from this requirement if the Planning Board finds that conformance with this requirement would not be consistent with the character of the existing building.
3. **Pedestrian Area** – The area directly in front of the front wall of the building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian and/or customer use of this space. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
4. **Front Entrance** – The front wall of the principal building shall contain a “front” door providing access to the building for tenants, customers, or other users of the building. If the front wall of the building is located behind the front property line, a paved sidewalk or other appropriate pedestrian way shall be provided from the sidewalk to the front door. This provision shall not be interpreted to prevent the creation of other entrances to the building. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.

5. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
6. Minimum Building Height – All new principal buildings or additions to existing principal buildings that increase the building footprint by more than twenty percent (20%), shall have a minimum of two usable stories or a height equivalent of two stories above adjacent grade at the front wall of the building.
7. Maximum Height of Mixed-Use Buildings – The height of a new or redeveloped mixed use building that provides both residential and nonresidential space shall be a maximum of three (3) stories notwithstanding other height limitations. The first floor shall be nonresidential. However, if the building contains nonresidential uses on the first floor and one additional story of nonresidential, the maximum permitted height shall be four (4) stories. If the proposal is for a four (4) story building, the first floor shall be nonresidential and the remaining three floors shall consist of two residential and one nonresidential. However, see Sections 8 and 9 below for limitations to this provision.
8. Maximum Height of Mixed-Use Buildings, Section of Main Street - No building in the Central Business District on any lot with frontage along either side of Main Street, from and including Tax Map 2, Lot 14-4 to the easterly boundary of the district, shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 14-4; Tax Map 4, Lot 7-0; Tax Map 4, Lot 6-0; Tax Map 4, Lot 5-0; Tax Map 4, Lot 4-0; Tax Map 4, Lot 3-0; Tax Map 4, Lot 2-0; Tax Map 4, Lot 1-0; Tax Map 5, Lot 1-0; Tax Map 5, Lot 1-2; Tax Map 5, Lot 1-3; Tax Map 5, Lot 1-17; Tax Map 5, Lot 1-4; Tax Map 5, Lot 1-5; Tax Map 5, Lot 1-6; Tax Map 5, Lot 1-7; and Tax Map 5, Lot 1-8.
9. Maximum Height of Mixed-Use Buildings, Madbury Road – No building in the Central Business District on any lot with frontage along Madbury Road shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 12-0; Tax Map 2, Lot 12-2; Tax Map 2, Lot 12-3; Tax Map 2, Lot 12-4; Tax Map 2, 12-5; Tax Map 4, Lot 1-0; Tax Map 4, Lot 11-0; Tax Map 4, Lot 12-0; Tax Map 4, Lot 13-0UNH; and Tax Map 4, Lot 14-0.
10. Treatment of the Front Façade – The front wall of the principal building shall be designed to include windows appropriate to the proposed use. On the first floor, not less than twenty (20) percent of the surface area of the front wall shall be windows. On upper floors, not less than ten (10) percent of the surface area shall be windows.
11. Conditional use for nonresidential use. The requirement for nonresidential use, specified in subsection “7. Maximum Height of Mixed-Use Buildings,” above, may be adjusted by conditional use where the Planning Board determines that: a) devoting the entire floor(s) to nonresidential uses is not practical; b) there is a reasonable alternative arrangement that will serve the intent of this requirement;

and c) the amount of square footage of the nonresidential use under this alternative arrangement is at least as much as would otherwise be required.

G. Performance Standards Applicable to the Central Business District

Uses within the Central Business District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures

H. Coordination with Overlay District Provisions

1. Areas within the Central Business District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Central Business District.
2. Areas within the Central Business District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Central Business District.
3. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-42. Reserved.

175-43. Professional Office District (PO)

A. Purpose of the Professional Office District

The purpose of the Professional Office District is to provide an area for the growth of professional services and offices adjacent to the Downtown. The district allows for the conversion of existing fraternities/sororities into office uses as well as multi-unit housing. The district is intended to be pedestrian focused with strong pedestrian connections to the Downtown and UNH campus. The district is intended to maintain the existing character of the neighborhood by requiring buildings to be set back and the area in front of the buildings to be retained as open area and not used for parking or other vehicular activities.

B. *Permitted Uses in the Professional Office District*

Any use shown as a Permitted Use in the Professional Office District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. *Conditional Uses in the Professional Office District*

Any use shown as a Conditional Use in the Professional Office District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. *Prohibited Uses in the Professional Office District*

Any use that is not listed as a Permitted Use or a Conditional Use in the Professional Office District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. *Dimensional Standards in the Professional Office District*

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Professional Office District shall be used in accordance with the dimensional standards for the Professional Office District as shown in the Table of Dimensional Requirements in Section 175-54.

F. *Development Standards in the Professional Office District*

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

1. **Parking** – No new parking shall be located on the portion of the lot between the front wall of the principal building and the front property line. This restriction shall apply to the full width of the lot. For corner lots, this restriction shall apply to all frontages abutting a public street.
2. **Pedestrian Area** – The area directly in front of the front wall of the principal building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian use of this space. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
3. **Storage and Service Areas** – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
4. **Maximum Height** – The maximum height of any new or redeveloped building in the Professional Office District shall be three (3) stories.

G. Performance Standards Applicable to the Professional Office District

Uses within the Professional Office District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures

H. Coordination with Overlay District Provisions

1. Areas within the Professional Office District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Professional Office District.
2. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-44. Church Hill District (CH)

A. Purpose of the Church Hill District

The purpose of the Church Hill District is to preserve and enhance the historic character of this area by allowing for multiple land uses including professional offices, limited retail uses, and apartments. The adaptive reuse of existing buildings is encouraged including the use of first floor space for non-residential use while the upper floors are residential. Reuse of existing buildings is bound by the standards of the Historic Overlay District provisions and is required to maintain the historic character of the building's façade. New development should maintain the character of the area and is subject to the standards of the Historic Overlay District. Parking should be located behind buildings.

B. Permitted Uses in the Church Hill District

Any use shown as a Permitted Use in the Church Hill District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Church Hill District

Any use shown as a Conditional Use in the Church Hill District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Church Hill District

Any use that is not listed as a Permitted Use or a Conditional Use in the Church Hill District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Church Hill District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Church Hill District shall be used in accordance with the dimensional standards for the Church Hill District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Church Hill District

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

1. Parking – New parking shall be located behind the building.
2. Pedestrian Area – The area directly in front of the front wall of the principal building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian use of this space. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
3. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.

G. Performance Standards Applicable to the Church Hill District

Uses within the Church Hill District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures

H. *Coordination with Overlay District Provisions*

1. Areas within the Church Hill District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Church Hill District.
2. Areas within the Church Hill District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Church Hill District.
3. Areas within the Church Hill District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Church Hill District.
4. Areas within the Church Hill District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Church Hill District.
5. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-45. Courthouse District (C)

A. *Purpose of the Courthouse District*

The purpose of the Courthouse District is to revitalize this area of the community by allowing a variety of retail and professional services including such businesses as banks, professional offices, restaurants, motor vehicle repair facilities, and gasoline stations. The use of sites for multiple uses is encouraged. The district is intended to enhance the area's pedestrian nature and reinforce the pedestrian links to Downtown. The character of new development should create a smooth visual transition into the Historic District by assuring that the architecture, landscaping, and signage are compatible with the historic buildings in and adjacent to the district.

B. *Permitted Uses in the Courthouse District*

Any use shown as a Permitted Use in the Courthouse District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Courthouse District

Any use shown as a Conditional Use in the Courthouse District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Courthouse District

Any use that is not listed as a Permitted Use or a Conditional Use in the Courthouse District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Courthouse District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Courthouse District shall be used in accordance with the dimensional standards for the Courthouse District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Courthouse District

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

1. Pedestrian Facilities – All uses in the Courthouse District shall provide for pedestrian facilities linking the entrance of the principal building to the public sidewalk and providing for pedestrian circulation within the site.
2. Parking – New parking shall be located to the side or rear of the building unless the Planning Board allows parking between the front wall of the principal building and the front property line, including within the setback, as part of a site plan review application or conditional use application.
3. Front Yard Area – The area between the front wall of the principal building and the front property line that is not used for pedestrian access, vehicular access, or parking shall be maintained as a vegetated landscaped area or lawn.
4. Storage and Service Areas – All storage and service areas shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
5. Architectural Treatment of Buildings – If the property is located within the Historic Overlay District, the design of the principal building and all accessory building and structures shall conform to the standards of that district. If the property is not within the Historic Overlay District, the principal building shall have a pitched roof with a minimum pitch of 4/12 and shall be compatible in design and materials with traditional New England architecture. “Franchise” architecture in which the design of the building serves as an advertising feature shall not be permitted within this district.

6. Architectural Treatment of Canopies – Any freestanding canopy shall be architecturally compatible with the design of the principal building and shall have a similar roof line and appearance. No advertising features including distinctive graphics shall be located on a canopy.

G. Performance Standards Applicable to the Courthouse District

Uses within the Courthouse District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures

H. Coordination with Overlay District Provisions

1. Areas within the Courthouse District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Courthouse District.
2. Areas within the Courthouse District may be located within the Wetlands Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Courthouse District.
3. Areas within the Courthouse District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Courthouse District.
4. Areas within the Courthouse District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Courthouse District.
5. Areas within the Courthouse District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Courthouse District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-46. Coe's Corner District (CC)***A. Purpose of the Coe's Corner District***

The purpose of the Coe's Corner District is to create a gateway to the more intensive commercial uses of the Courthouse, Church Hill, and Central Business Districts by establishing a transition zone with controlled commercial development that preserves the scale and scenery of the area and highlights its natural features. Within the district, limited commercial land uses that are sensitive to and complement the existing scale of buildings and the natural environment are allowed. The objective for the district is to accommodate well-designed, high-quality office and hospitality uses. The reuse of existing residential buildings for non-residential uses and the construction of new buildings should maintain the character of the area.

B. Permitted Uses in the Coe's Corner District

Any use shown as a Permitted Use in the Coe's Corner District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Coe's Corner District

Any use shown as a Conditional Use in the Coe's Corner District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Coe's Corner District

Any use that is not listed as a Permitted Use or a Conditional Use in the Coe's Corner District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Coe's Corner District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Coe's Corner District shall be used in accordance with the dimensional standards for the Coe's Corner District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Coe's Corner District

In addition to the dimensional standards, development in the Coe's Corner District shall conform to the following additional requirements:

1. Parking – Parking shall be located to the side or rear of the building. No parking shall be located on the portion of the lot between the front wall of the principal building and the front property line except on driveways in accordance with Article XXI. This restriction shall apply to the full width of the lot.

2. Front Yard Area – The area between the front wall of the principal building and the front property line shall be maintained as a naturally vegetated area or lawn and shall not be used for vehicular facilities or parking except for driveways.
3. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
4. Reuse of Residential Structures – The conversion or reuse of a residential structure for a non-residential use shall not alter the essential residential character of the building or site. Alterations or additions to the building shall maintain the existing character of the structure and shall not increase the apparent scale of the building when viewed from a public street.
5. Architectural Treatment of Buildings – If the property is located within the Historic Overlay District, the design of the principal building and all accessory building and structures shall conform to the standards of that district. If the property is not within the Historic Overlay District, the principal building shall have a pitched roof with a minimum pitch of 4/12 and shall be compatible in design and materials with traditional New England architecture. “Franchise” architecture in which the design of the building serves as an advertising feature shall not be permitted within this district.

G. Performance Standards Applicable to the Coe’s Corner District

Uses within the Coe’s Corner District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures

H. Coordination with Overlay District Provisions

1. Areas within the Coe’s Corner District may be located within the Wetlands Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Coe’s Corner District.
2. Areas within the Coe’s Corner District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Coe’s Corner District.
3. Areas within the Coe’s Corner District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with

the standards and requirements of that district in addition to the provisions of the Coe's Corner District.

4. Areas within the Coe's Corner District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Coe's Corner District.
5. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-47. Reserved.

175-48. Office and Research District – Route 108 (OR)

A. Purpose of the Office and Research District - Route 108

The purpose of the Office and Research District – Route 108 is to provide an area for the development of high-quality office and research uses in a rural business park environment that maintains the rural appearance of the corridor and a sense of open space. Buildings and parking lots are required to be set back and significant open land retained on each lot.

B. Permitted Uses in the Office and Research District - Route 108

Any use shown as a Permitted Use in the Office and Research District - Route 108 in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Office and Research District - Route 108

Any use shown as a Conditional Use in the Office and Research District - Route 108 in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Office and Research District - Route 108

Any use that is not listed as a Permitted Use or a Conditional Use in the Office and Research District - Route 108 in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Office and Research District - Route 108

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Office and Research District - Route 108 shall be used in accordance with the

dimensional standards for the Office and Research –Route 108 District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Office and Research District - Route 108

In addition to the dimensional standards, development in the Office and Research District – Route 108 shall conform to the following additional requirements:

1. Access to Route 108 – Each lot of record as of the date of adoption of the Office and Research District – Route 108 shall be limited to one (1) vehicular access to Route 108.
2. Route 108 Setback and Buffer – All buildings shall be setback at least one hundred (100) feet plus two feet for each foot of building height in excess of twenty-five (25) feet from any property line adjacent to Route 108. No parking or vehicular facilities other than driveways running perpendicular to Route 108 shall be located within this setback area. This area shall be retained as a naturally vegetated buffer and landscaped in accordance with the provisions of Article XXII.
3. Front Yard Area – The area between the front wall of the principal building and the front property line shall be maintained as a naturally vegetated area or lawn and shall not be used for vehicular parking or facilities except for driveways.
4. Parking – Parking shall be located to the side and rear of the building. No parking shall be located on the portion of the lot between the front wall of the building and the front property line. This restriction shall apply to the full width of the lot. The Planning Board may waive this requirement for lots which have a side or rear lot line that abuts Route 108 and the waiver is necessary to accomplish the Route 108 buffer provided for above. In granting the waiver, the Planning Board shall balance the desire to preserve the rural character of the Route 108 corridor and the appearance of the front of the building when seen from a public street.
5. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.

G. Performance Standards Applicable to the Office and Research District - Route 108

Uses within the Office and Research District - Route 108 shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. *Coordination with Overlay District Provisions*

1. Areas within the Office and Research District - Route 108 may be located within the Wetlands Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research District - Route 108.
2. Areas within the Office and Research District - Route 108 may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research District - Route 108.
3. Areas within the Office and Research District - Route 108 may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research District - Route 108.
4. Areas within the Office and Research District - Route 108 may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Office and Research District - Route 108.
5. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-49. Reserved.

175-50. Multiunit Dwelling/Office Research District (MUDOR)

A. Purpose of the Multiunit Dwelling/Office Research District

The purpose of the Multiunit Dwelling/Office Research District is to provide an area in the community for high-quality multiunit housing while allowing the potential for office development.

B. Permitted Uses in the Multiunit Dwelling/Office Research District

Any use shown as a Permitted Use in the Multiunit Dwelling/Office Research District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Multiunit Dwelling/Office Research District

Any use shown as a Conditional Use in the Multiunit Dwelling/Office Research District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Multiunit Dwelling/Office Research District

Any use that is not listed as a Permitted Use or a Conditional Use in the Multiunit Dwelling/Office Research District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Multiunit Dwelling/Office Research District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Multiunit Dwelling/Office Research District shall be used in accordance with the dimensional standards for the Multiunit Dwelling/Office Research District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Multiunit Dwelling/Office Research District

In addition to the dimensional standards, development in the Multiunit Dwelling/Office Research District shall conform to the following additional requirements:

1. Parking – Parking shall be located to the side or rear of the building. No parking shall be located on the portion of the lot between the front wall of the principal building and the front property line except on driveways in accordance with Article XXI. This restriction shall apply to the full width of the lot.
2. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
3. Streetscape Buffer – A landscaped buffer strip at least twenty-five (25) feet in width meeting the requirements of Article XXII shall be established and maintained between any public street and all buildings, parking areas, and service or storage areas. Where the existing landscape is open field, the buffer strip shall be located adjacent to the facility so that it is located as far from the road as feasible thereby retaining open fields along the road.
4. Residential Buffer – A landscaped buffer strip at least fifty (50) feet in width meeting the requirements of Article XXII shall be established and maintained between any property line that abuts a lot in use as a single-family residence and all buildings, parking areas, and service or storage areas.
5. Outdoor Recreation Space – All multiunit housing including dormitories and fraternity or sorority houses shall provide outdoor recreation space at a ratio of fifty (50) square feet per dwelling unit or twenty (20) square feet per occupant whichever is greater. This space shall be improved with outdoor recreational facilities appropriate for the intended occupancy.

6. Public Sewerage – All uses, except for single-family dwellings on individual lots, shall be connected to and serviced by a public sewerage system and shall not be allowed to dispose of sewage through an on-site disposal system such as a septic system.

G. Performance Standards Applicable to Multiunit Dwelling/Office Research District

Uses within the Multiunit Dwelling/Office Research District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. Coordination with Overlay District Provisions

1. Areas within the Multiunit Dwelling/Office Research District may be located within the Wetlands Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Multiunit Dwelling/Office Research District.
2. Areas within the Multiunit Dwelling/Office Research District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Multiunit Dwelling/Office Research District.
3. Areas within the Multiunit Dwelling/Office Research District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Multiunit Dwelling/Office Research District.
4. Areas within the Multiunit Dwelling/Office Research District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Multiunit Dwelling/Office Research District.
5. Areas within the Multiunit Dwelling/Office Research District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Multiunit Dwelling/Office Research District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-51. Office, Research and Light Industry District (ORLI)***A. Purpose of the Office, Research and Light Industry District***

The purpose of the Office, Research and Light Industry District is to provide areas in Durham to accommodate a wide range of businesses that create employment and contribute to the town's economic vitality.

B. Permitted Uses in the Office, Research and Light Industry District

Any use shown as a Permitted Use in the Office, Research and Light Industry District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Office, Research and Light Industry District

Any use shown as a Conditional Use in the Office, Research and Light Industry District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Office, Research and Light Industry District

Any use that is not listed as a Permitted Use or a Conditional Use in the Office, Research and Light Industry District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Office, Research and Light Industry District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Office, Research and Light Industry District shall be used in accordance with the dimensional standards for the Office, Research and Light Industry District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Office, Research and Light Industry District

In addition to the dimensional standards, development in the Office, Research and Light Industry District shall conform to the following additional requirements:

1. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
2. Streetscape Buffer – A landscaped buffer strip at least twenty-five (25) feet in width meeting the requirements of Article XXII shall be established and maintained between any public street and all buildings, parking areas, and service or storage areas. Where

- the existing landscape is open field, the buffer strip shall be located adjacent to the facility so that it is located as far from the road as feasible thereby retaining open fields along the road.
3. Residential Buffer – A landscaped buffer strip at least fifty (50) feet in width meeting the requirements of Article XXII shall be established and maintained between any property line that abuts a lot in use as a single-family residence and all buildings, parking areas, and service or storage areas.

G. Performance Standards Applicable to the Office, Research and Light Industry District

Uses within the Office, Research and Light Industry District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. Coordination with Overlay District Provisions

1. Areas within the Office, Research and Light Industry District may be located within the Wetlands Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Office, Research and Light Industry District.
2. Areas within the Office, Research and Light Industry District may be located within the Aquifer Protection Overlay (APO) District. All uses of land within the APO District shall comply with the standards and requirements of that district in addition to the provisions of the Office, Research and Light Industry District.
3. Areas within the Office, Research and Light Industry District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Office, Research and Light Industry District.
4. Areas within the Office, Research and Light Industry District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Office, Research and Light Industry District.
5. Areas within the Office, Research and Light Industry District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Office, Research and Light Industry District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall

apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-52. Durham Business Park District (DBP)

A. Purpose of the Durham Business Park District

The purpose of the Durham Business Park District is to provide an area for the development of high-quality office and research uses in a business park environment with the possibility of complementary recreational uses.

B. Permitted Uses in the Durham Business Park District

Any use shown as a Permitted Use in the Durham Business Park District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Durham Business Park District

Any use shown as a Conditional Use in the Durham Business Park District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Durham Business Park District

Any use that is not listed as a Permitted Use or a Conditional Use in the Durham Business Park District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Durham Business Park District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Durham Business Park District shall be used in accordance with the dimensional standards for the Durham Business Park District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Durham Business Park District

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

1. Design Standards – Any structure must conform to the design guidelines for the district established by the Town Council.

G. Performance Standards Applicable to the Durham Business Park District

Uses within the Durham Business Park District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures
5. Article XXIV. Septic Systems

H. Coordination with Overlay District Provisions

1. Areas within the Durham Business Park District may be located within the Wetlands Conservation Overlay (WCO) District. All uses of land within the WCO District shall comply with the standards and requirements of that district in addition to the provisions of the Durham Business Park District.
2. Areas within the Durham Business Park District may be located within the Shoreland Protection Overlay (SPO) District. All uses of land within the SPO District shall comply with the standards and requirements of that district in addition to the provisions of the Durham Business Park District.
4. Areas within the Durham Business Park District may be located within the Flood Hazard Overlay (FHO) District. All uses of land within the FHO District shall comply with the standards and requirements of that district in addition to the provisions of the Durham Business Park District.
5. Areas within the Durham Business Park District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the standards and requirements of that district in addition to the provisions of the Durham Business Park District.
6. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-53. Use Standards

A. **Table of Uses.** Table 175-53, Table of Land Uses shows the uses that are allowed in the various zoning districts.

TABLE OF LAND USES

The following Table of Uses identifies allowed uses of land, buildings, or structures in all zoning districts. There is a definition in 175-7 for each of the uses listed in the table. Permitted Uses are indicated by a “P” in the appropriate column. Uses permitted only with the issuance of a Conditional Use permit are indicated by a “CU”. Uses not permitted in that district are marked with an “X”. Uses indicated with a CUA are Conditional Uses that are allowed only as an adaptive reuse of an existing building. Any use that is not listed as a Permitted Use or a Conditional Use is prohibited in the district. The following uses are specifically prohibited in all zoning districts:

1. All Terrain Vehicle/Off Highway Recreational Vehicle Facility
2. Airport, private
3. Airport, commercial
4. Heliport
5. Drive-through facilities other than as an accessory to a financial institution as set forth in the table below
6. Junkyard
7. Cemetery
8. Warehouse, mini-storage

All projects involving the construction or enlargement of a building or structure that will be used for a nonresidential use or a multi-unit residence or that will create two (2) or more dwelling units (not including accessory apartments and accessory dwelling units) or that involve the erection of a personal wireless service facility are subject to review and approval by the Planning Board in accordance with the provisions of the Site Plan Review Regulations of the Town of Durham, New Hampshire. A nonresidential use includes any use listed below as a Rural Use, an Institutional Use, a Recreational Use, a Utility and Transportation Use, or a Commercial and Industry Use.

In addition, a change in the occupancy of an existing building is also subject to Site Plan Review by the Planning Board if the change in use is:

1. from one category of nonresidential use to another category of nonresidential use;
2. from a residential use to a nonresidential use;
3. from a nonresidential use to a multiunit residential use; or
4. from a single-family residential use to a multiunit residential or a nonresidential use.

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multitunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
I. NATURAL RESOURCE USES													
A. Principal Uses													
Conservation activities	P	P	P	P	P	P	P	P	P	P	P	P	P
Excavation and/or mining	CU	X	X	X	X	X	X	X	X	X	X	X	X
II. RURAL USES													
A. Principal Uses													
Commercial agriculture	P	X	X	P	X	X	X	X	X	P	P	P	X
Commercial animal husbandry	P	X	X	P	X	X	X	X	X	P	P	P	X
Plant nursery	P	X	X	P	X	X	X	X	X	P	P	P	X
Kennel	CU	X	X	CU	X	X	X	X	X	CU	X	CU	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multiunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Stable	P	X	X	P	X	X	X	X	X	CU	CU	CU	X
Forestry in accordance with the provisions of Article XX	P	P	P	P	X	X	X	X	P	P	P	P	P
Temporary sawmill in accordance with the provisions of Article XX	P	P	P	P	X	X	X	X	X	P	P	P	P
Reuse of existing agricultural building in accordance with provisions of Article XX	CUA	X	X	CUA	X	X	X	X	X	P	P	P	P
B. Uses Accessory to Commercial Agriculture and Animal Husbandry													
Retail sales of farm products	P	X	X	P	X	X	X	X	X	CU	CU	CU	X
III. RESIDENTIAL USES													
A. Principal Uses													
Residence, single-family	P	P	P	P	X	P	P	X	X	X	CU	CU	X
Residence, duplex	X	X	X	X	X	X	X	X	X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multiunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Residence, multi-unit	X	X	X	X	X	CUA	X	X	X	X	X	X	X
Elderly housing, single family	P	P	P	P	X	X	P	X	P	CU	CU	CU	X
Elderly housing, duplex	P	P	P	P	X	X	P	X	CU	CU	CU	CU	X
Elderly housing, multiunit	P	P	P	P	CU	P	P	P	CU	CU	P	CU	X
Manufactured housing	P	X	X	X	X	X	X	X	X	X	X	X	X
Eldercare facility	P	X	CU	P	X	X	P	P	P	P	P	P	P
Nursing Home	X	X	X	X	X	X	P	P	P	P	P	P	CU
B. Uses Accessory To Any Residential Use													
Home occupation (first class)	P	P	P	P	X	P	P	P	P	P	P	X	X
Home occupation (second class)	P	X	X	P	X	CU	CU	X	P	P	P	X	X
Accessory structure	P	P	P	P	X	P	P	P	P	P	P	P	P
Accessory agricultural activities in accordance with the provisions of Article XX	P	P	P	P	X	X	X	X	X	P	P	P	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multitunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Accessory animal husbandry – livestock - in accordance with the provisions of Article XX	P	P	P	P	X	X	X	X	X	CU	CU	CU	X
Accessory animal husbandry - poultry - in accordance with the provisions of Article XX	P	P	P	P	X	X	X	X	X	P	P	P	X
C. Uses Accessory To a Single Family Residential Use													
Accessory apartment in accordance with the provisions of Article XX	P	P	P	P	P	P	P	P	P	P	P	P	X
Accessory dwelling unit in accordance with the provisions of Article XX	P	X	X	P	X	P	P	X	P	P	P	P	X
Child care home for not more than six children	P	P	P	P	P	P	P	P	P	P	P	P	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multiunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Child care home for more than six children subject to the provisions of Article XX	P	P	P	P	P	P	P	P	P	P	P	P	X
IV. INSTITUTIONAL USES													
A. Principal Uses													
Adult day care facility	P	P	P	P	P	P	P	P	P	P	P	P	CU
Art center	X	X	X	X	P	X	P	P	CU	X	X	X	X
Child care center or nursery in accordance with the provisions of Article XX	P	X	X	P	P	P	CU	P	CU	P	CU	CU	CU
Nursery or pre-school	P	X	P	P	P	P	CU	P	CU	CU	CU	CU	CU
Club	X	X	X	X	P	X	CU	CU	CU	X	X	X	X
Community center	X	X	X	X	P	P	CU	P	CU	CU	CU	CU	CU
Educational facility	X	X	X	X	CU	P	CU	P	X	X	CU	CU	CU
Fraternity/sorority house	X	X	X	X	CU	CUA	X	X	X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multitunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Government facility	P	P	P	P	P	P	P	P	P	P	P	P	P
Hospital	X	X	X	X	X	X	X	X	X	X	CU	CU	X
Library	X	X	X	X	P	P	P	P	P	P	X	X	X
Museum	CU	X	X	CU	P	P	P	P	CU	X	X	CU	CU
Religious use/facility	CU	CU	CU	CU	CU	P	P	X	CU	CU	X	X	X
V. RECREATIONAL USES													
A. Principal Uses													
Golf course	CU	X	X	CU	X	X	X	X	X	X	X	X	X
Recreational facility, indoor	X	X	X	X	X	X	X	X	X	P	P	P	P
Recreational facility, outdoor	CU	X	X	CU	X	X	X	X	CU	CU	CU	CU	CU
Recreational playing fields, outdoor	P	P	P	P	X	X	X	X	CU	P	P	P	CU
VI. UTILITY & TRANSPORTATION USES													

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multitunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
A. Principal Uses													
Structural parking	X	X	X	X	CU	X	X	CU	CU	X	X	X	X
Surface parking	X	X	X	X	CU	X	CU	CU	X	X	X	X	X
Public utility facility	CU	X	X	CU	X	X	X	X	X	P	P	P	P
Personal Wireless Service Facility in accordance with the provisions of Article XVIII	P	P	P	P	P	P	P	P	P	P	P	P	P
VII. COMMERCIAL & INDUSTRY USES													
A. Principal Uses													
Reuse older single-family residence for a low impact nonresidential use in accordance with provisions of Article XX	CUA	X	X	CUA	P	P	P	P	P	P	P	X	X
Bed & breakfast	P	P	P	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Inn	P	X	X	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Conference center	X	X	X	X	CU	P	CU	P	P	CU	CU	CU	CU

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multiunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Hotel	X	X	X	X	P	P	CU	P	CU	CU	CU	CU	CU
Restaurant	X	X	X	X	P	X	P	P	X	X	X	X	X
Restaurant, carry-out	X	X	X	X	P	X	X	P	X	X	X	X	X
Convenience store with gasoline sales	X	X	X	X	X	X	X	P	X	X	X	CU	X
Craft shop with accessory production	X	X	X	X	P	X	P	P	X	X	X	X	X
Gallery	P	X	X	P	P	X	P	P	CU	X	X	X	X
Retail store	X	X	X	X	P	X	CU	P	X	X	X	X	X
Retail store limited	X	X	X	X	P	X	P	P	X	X	X	X	X
Financial institution	X	X	X	X	P	P	CUA	P	X	X	X	CU	CU
Business services	X	X	X	X	P	P	CUA	P	CU	P	P	P	P
Funeral homes	X	X	X	X	X	P	X	P	CU	X	X	X	X
Medical clinic	X	X	X	X	P	P	CUA	P	CU	P	P	P	P
Cinema	X	X	X	X	P	P	X	CU	X	X	X	X	X
Theater	X	X	X	X	P	P	X	CU	X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multiunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Personal services	X	X	X	X	P	X	CUA	P	CU	X	X	X	X
Veterinary clinic/grooming	CU	X	X	CU	X	X	X	X	X	CU	CU	CU	CU
Office, business	X	X	X	X	P	P	P	P	P	P	P	P	P
Office, professional	X	X	X	X	P	P	P	P	P	P	P	P	P
Repair services	X	X	X	X	P	X	CUA	P	X	CU	CU	CU	CU
Automotive service station	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle service facility	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle sales and service	X	X	X	X	X	X	X	P	X	X	X	X	X
Automobile/car washing	X	X	X	X	X	X	X	P	X	X	X	X	X
Marine sales and service	X	X	X	CU	X	X	X	X	X	X	X	X	P
Boatyard/Boat club	X	X	X	CU	X	X	X	X	X	X	X	X	P
Research facilities and labs	X	X	X	X	X	X	X	X	X	P	P	P	P
Manufacturing, light	X	X	X	X	P	P	P	P	P	P	P	P	P
Warehouse	X	X	X	X	X	X	X	X	X	CU	X	CU	CU

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multiunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Wholesale sales	X	X	X	X	X	X	X	X	X	CU	X	CU	CU
Mixed Use with residential (office/retail down, multiunit residential up)	X	X	X	X	CU	CU	CU	X	X	X	CU	X	X
Mixed Use with parking (parking and office/retail)	X	X	X	X	CU	CU	CU	CU	CU	X	CU	CU	CU
Mixed Use with parking (parking and office)	X	X	X	X	CU	CU	CU	CU	CU	CU	CU	CU	CU
VIII. USES ACCESSORY TO AN ALLOWED NON-RESIDENTIAL USE													
Drive through facility accessory to a financial institution	X	X	X	X	CU	CU	X	CU	X	X	X	CU	CU
Caretaker apartment within a non-residential use	X	X	X	X	X	P	P	P	CU	CU	CU	CU	CU
Accessory buildings and structures	P	P	P	P	P	P	P	P	P	P	P	P	P
Restaurant or cafeteria accessory to a nonresidential use	X	X	X	X	CU	CU	CU	CU	CU	CU	CU	CU	CU
IX. USES ACCESSORY TO ANY ALLOWED USE													

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES					RESEARCH/INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multituit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Off street parking on the lot to serve the allowed use	P	P	P	P	P	P	P	P	P	P	P	P	P
Structural parking	X	X	X	X	P	P	P	P	P	P	P	P	P
Surface parking	P	P	P	P	P	P	P	P	P	P	P	P	P

B. *General use regulations* - The following additional standards apply to the specific uses listed below:

1. Occupancy of Residences. No more than three (3) unrelated occupants shall occupy a dwelling unit located in a residence in an R, RA, RB, RC, PO, CH, C or CC District.
2. Junkyards. Junkyards are prohibited in all districts.
3. Untreated wastes. Untreated sewage or household wastes shall not be discharged into any flowing stream or body of water. Owners and users of land not served by town water and sewer shall be required to furnish plans for a satisfactory on-site sewage disposal system with percolation tests that indicate satisfactory drainage before a building permit will be issued, provided that such system satisfies all local and state ordinances, statutes and regulations.
4. Inoperative motor vehicles. The outdoor storage of unregistered or inoperative motor vehicles shall be prohibited in all zones except as follows:
 - a. Not more than one (1) such vehicle may be stored on any lot during any calendar year, for a period not to exceed ninety (90) days except for lots used for permitted motor vehicle related businesses.
 - b. The provisions of state law shall determine the storage period for abandoned, improperly registered or wrecked vehicles by any garage or other persons properly storing the same according to law. (See RSA 236.)
5. Combination of uses. Any combination of uses contemplated as a single enterprise may be established in only those districts in which all such uses are permitted. Any establishment having combination of uses must meet all the requirements of each use as outlined by the Durham Zoning Ordinance. In the case of conflicting duly adopted rules, regulations or ordinances, the more restrictive shall apply.
6. Airports and Heliports. Private and commercial airports and heliports shall be prohibited in all Zoning Districts within the Town of Durham, unless otherwise expressly permitted in a Zoning District
7. Number of bedrooms. The maximum number of bedrooms in any dwelling unit in any "Residence, multi-unit" or "Mixed Use with residential (office/retail down, multi-unit residential up)" shall be four.
8. Basement units. No new basement dwelling unit shall be permitted in any "Residence, multi-unit" or "mixed Use with residential (office/retail down, multi-unit residential up)" building.

175-54. Dimensional Standards.

Table 175-54, Table of Dimensional Requirements shows the dimensional provisions that apply to buildings and structures in the various zones.

TABLE 175-54 TABLE OF DIMENSIONAL REQUIREMENTS

STANDARD	DISTRICTS												
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	OR-Route 108 (OR)	Multi-Unit Dwelling/ Office Res. (MUDOR)	Office, Research Light Ind. (ORLI.)	Durham Business Park (DBP)
Minimum Lot Size - Single-Family Residence that is not part of a Conservation Subdivision - Multiunit Housing - Allowed Nonresidential Use - Any Other Allowed Use	20,000 SF NA 20,000 SF 20,000 SF	40,000 SF NA 40,000 SF 40,000 SF	150,000 SF NA 150,000 SF	150,000 SF NA 150,000 SF 150,000 SF	NA 5,000 SF 5,000 SF 5,000 SF	10,000 SF 10,000 SF 10,000 SF 10,000 SF	5,000 SF 5,000 SF 5,000 SF 5,000 SF	5,000 SF 5,000 SF 5,000 SF 5,000 SF	30,000 SF 30,000 SF 30,000 SF 30,000 SF	40,000 SF 80,000 SF 80,000 SF 80,000 SF	40,000 SF 40,000 SF 40,000 SF 40,000 SF	150,000 SF 150,000 SF 150,000 SF 150,000 SF	40,000 SF NA 40,000 SF 40,000 SF
Minimum Lot Area Per Dwelling Unit³	20,000 SF	40,000 SF	150,000 SF ²	150,000 SF ²	1,200 SF	3,000 SF	4,200 SF	4,200 SF	4,200 SF	4,200 SF	40,000 SF	150,000 SF	NA
Minimum Usable Area Per Dwelling Unit in a Conservation Subdivision³	20,000 SF	40,000 SF	150,000 SF	150,000 SF	1,200 SF	3,000 SF	4,200 SF	4,200 SF	4,200 SF	4,200 SF	40,000 SF	150,000 SF	NA
Minimum Lot Frontage - Minor Street - Collector Street - Arterial Street	100 FT	150 FT	300 FT	300 FT	50 FT	100 FT	50 FT	50 FT	100 FT	50 FT 100 FT 200 FT	100 FT 100 FT 200 FT	150 FT	150 FT
Minimum Front Yard Setback - Minor Street ¹ - Collector Street - Arterial Street	30 FT 30 FT 40 FT	30 FT 30 FT 40 FT	30 FT 30 FT 40 FT	30 FT 30 FT 40 FT	None – except per Note 5	30 FT 30 FT 50 FT	15 FT 15 FT 15 FT	15 FT 15 FT 15 FT	30 FT 30 FT 50 FT	50 FT 50 FT See Note 6	30 FT 30 FT 100 FT	30 FT 30 FT 50 FT	30 FT 30 FT 50 FT
Maximum Front Yard Setback	NA	NA	NA	NA	See Note 5	NA	NA	25 ft	NA	NA	NA	NA	NA
Minimum Side Yard Setback⁴	10 FT	20 FT	50 FT	50 FT	NA	15 FT	5 FT	10 FT	15 FT	25 FT	20 FT	20 FT	20 FT

STANDARD	DISTRICTS												
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	OR-Route 108 (OR)	Multi-Unit Dwelling/ Office Res. (MUDOR)	Office, Research Light Ind. (ORLL)	Durham Business Park (DBP)
Minimum Rear Yard Setback⁴	20 FT	30 FT	50 FT	50 FT	NA	20 FT	15 FT	15 FT	20 FT	25 FT	20 FT	20 FT	20 FT
Minimum Shoreland Shorefrontage	200 FT	200 FT	200 FT	200 FT									
Maximum Permitted Building Height	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	50 FT	40 FT	40 FT	40 FT
Maximum Permitted Building Height with Planning Board Approval under RSA 674:16	35 FT	35 FT	35 FT	35 FT	50 FT See Note 7	35 FT	35 FT	35 FT	35 FT	75 FT	50 FT	50 FT	50 FT
Impervious Surface Ratio	33%	30%	20%	20%	100%	50%	80%	80%	30%	50 %	50%	50%	50%

NOTES: 1. When the average front yard setback of other buildings within three hundred (300) ft each way on the same side of a minor street is less than thirty (30) feet, the front yard setback may be reduced to the average existing setback.

2. Any single-family lot in the R and RC Districts existing as of July 1, 2003, including lots in approved subdivisions, shall only be required to have a minimum lot area of 120,000 square feet and shall not be subject to the minimum usable area per dwelling unit requirement. Pre-existing lots with a minimum of 120,000 square feet of area shall be deemed to be conforming lots for the purpose of the minimum lot size and minimum usable area provisions but shall conform to all other current applicable standards for the district in which they are located.

3. See 175-56. A. for the special density requirements for elderly housing, eldercare facilities, and nursing homes.

4. See 175-109(O) for requirements for accessory sheds.

5. Additional setback requirements for this district are provided in the Development Standards section for the zone.

6. The minimum front yard setback from Route 108 shall be 100 ft plus 2 feet for each foot of building height in excess of 25 feet.

7. No building along the sections of Main Street or Madbury Road delineated in Subsections 175-41(F)(8) and (9) shall exceed thirty five (35) feet in height.

175-55. General Dimensional Controls.

- A. ***Limitation on occupants.*** The number of unrelated occupants is subject to the provisions of Article II, 175-53.B.1., and to the off-street parking requirements of Article XXI.
- B. ***Permitted uses in required yards.*** No building or parking is permitted within the minimum yards required for the district, except as otherwise allowed below. All required minimum yards, except for driveways and walkways, shall be landscaped or left with natural vegetation, with the following exceptions:
 - 1. Up to twenty-five (25) percent of the area of street yards of noncommercial residential lots may be used for accessory parking.
 - 2. Structures accessory to residential uses shall occupy no more than thirty (30) percent of the required yard and be no closer than ten (10) feet to any lot line nor more than twenty (20) feet high.
- C. ***Corner clearance.*** No object, vegetation or slope which impedes visibility at street intersections shall be allowed 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.
- D. ***Changes in lot dimensions.*** Any change made to the dimensions of an undeveloped lot shall meet all the requirements of this Article in effect at the time of the proposed change. In the case of a legal nonconforming lot which has been developed, the lot dimensions may be changed to decrease the violation of the dimensional requirements of this chapter.
- E. ***Calculation of useable area.*** The usable area of a parcel of land shall be determined by subtracting the following unsuitable areas from the gross area of the parcel. A High Intensity Soil Survey (HISS) shall be used to determine the unusable areas of soils set forth below. The unsuitable areas shall be deducted in the following order and no geographic area shall be deducted more than once:
 - 1. All very poorly drained, poorly drained, and somewhat poorly drained soils as identified on the HISS.
 - 2. All floodways and all non-wetland portions of the 100-year floodplain.
 - 3. All areas with ledge outcroppings, shallow depth-to-ledge soils (0" to 20" to bedrock), and variable depth-to-ledge soils (0" to 40" to bedrock) as identified on the HISS if the site will use on-site sewage disposal.
 - 4. Fifty (50) percent of the area with moderate depth-to-ledge soils (20" to 40" to bedrock) as identified on the HISS if the site will use on-site sewage disposal.
 - 5. All areas with a slope of twenty-five (25) percent or greater as identified on the HISS.
 - 6. Fifty (50) percent of the area with a slope between fifteen (15) and twenty-four (24) percent as identified on the HISS.

7. Areas within rights-of-way or easements that impose restrictions on the use of the area such as to make it unavailable for building purposes or intensive use as part of the development.
8. Stream channels as measured from the top of the banks and other water bodies as measured by the normal high water mark.
9. Any otherwise usable area that is fragmented or isolated by unsuitable areas such that the contiguous area of usable land is less than five_thousand (5,000) square feet or is narrower than fifty (50) feet.

175-56. Special Situations Affecting Dimensions.

A. *Density.*

1. Density for elderly residential uses. In determining the maximum density for Elderly Housing, Eldercare Facilities, and Nursing Homes, the following provisions shall apply to the entire development:
 - a dwelling unit containing one bedroom or a studio unit without a separate bedroom shall count as 0.33 dwelling units for the purpose of the density calculation
 - a dwelling unit containing two or more bedrooms shall count as 0.50 dwelling units for the purpose of the density calculation
 - four (4) beds or accommodations for four (4) residents in those facilities that do not provide dwelling units shall count as one (1) dwelling unit for the purpose of the density calculation

B. *Lot frontage.*

1. Frontage variation. The minimum frontage otherwise required may be varied by the Zoning Board of Adjustment by special exception for plots of land of unusual shape or at corners where an increased setback can provide the same effective spacing of the usable portion of a lot, whether or not the lot is part of a subdivision plan.

C. *Front yards.*

1. Average setbacks along minor streets. When the average front yard of other buildings within three hundred (300) feet each way on the same side of a minor street is less than thirty (30) feet, the street yard may be reduced accordingly.
2. Central Business District fronting on a minor street. The front yard requirement for a Central Business lot fronting on a minor street may be varied by the Zoning Board of Adjustment by special exception.

D. *Side and rear yards.*

1. Nonresidential or multiunit structures abutting or within residence districts. No nonresidential or multiunit structures, other than permitted signs, and no parking shall be permitted within seventy (70) feet of a side or rear lot line abutting a residence district or use unless screened as provided in Article XXII.

2. Within business districts. Side and rear yards in the CB District may be omitted where buildings are separated by fire partitions meeting the requirements of the Durham Building Code and/or where the remainder of the yard is occupied by publicly maintained parking, circulation or landscaping.
3. Shorefrontage. Any building lot which abuts on the Great or Little Bay and significant rivers and brooks shall conform to the following additional requirements:
 - a. The minimum length of the shorefrontage shall be two hundred (200) feet, exclusive of the width of creeks at mean low tide.
 - b. The minimum shorefront yard setback for any building other than a marina or boatyard shall be in accordance with Article XIV.

175-57. Porkchop Subdivisions.

- A. *Optional porkchop subdivisions in RC and R Districts.* Developers of residential subdivisions of two (2) or three (3) lots in the RC and R Districts on existing town roads as of the date this chapter is enacted that are not conservation subdivisions, may elect to follow the requirements for porkchop subdivisions in Table 4-1, provided that all lots are entered from a common driveway whose maintenance is guaranteed in the deeds to the lots concerned. A common driveway to a porkchop subdivision will only serve a maximum of three (3) lots. Adjacent porkchop subdivisions will not share a common driveway. Each porkchop subdivision will have a common driveway independent from any other subdivision.

Table 4-1. Requirements for Optional Porkchop Subdivisions

Porkchop subdivision lots	Minimum area (square feet)	Minimum frontage area (feet)
Smallest lot	80,000	200
Porkchop lot	160,000	50
Average, all lots	120,000	125*

*NOTE: The Planning Board is empowered to reduce the average frontage to not less than one hundred (100) feet in the case of a porkchop subdivision of a nonconforming lot into not more than three (3) lots, provided that the requirement for minimum area is met.

ARTICLE XIII WETLAND CONSERVATION OVERLAY DISTRICT

175-58. Purpose of the Wetland Conservation Overlay District.

The Wetland Conservation Overlay (WCO) District is an overlay district intended to protect the quality and functioning of wetlands throughout the Town by managing the use of the wetland and the upland buffer adjacent to the wetland in coordination with the state dredge and fill permit system. The provisions of this article are intended to:

- A. Protect the water quality of wetlands by appropriately managing stormwater runoff, siltation and sedimentation, and the construction or alteration of allowed or pre-existing buildings and structures;
- B. Minimize flooding and flood damage by preserving the flood storage capacity of wetlands;
- C. Protect wildlife and fisheries habitats and wetlands vegetation;
- D. Maintain stream flow and groundwater recharge;
- E. Conserve natural beauty and scenic quality; and
- F. Limit uses of the wetland and upland buffer to those that are consistent with the objectives listed in A.-E.

175-59. Applicability.

- A. The provisions of the WCO District shall apply to the following areas of the Town of Durham:
 - 1. All wetlands except:
 - a. isolated, non-tidal wetlands with a contiguous surface area of less than three thousand (3,000) square feet that are not vernal pools and are not associated with any surface water, natural drainage way, or other wetland, and
 - b. wetlands associated with currently functioning and maintained, non-abandoned, manmade:
 - ditches and swales,
 - sedimentation and/or detention basins or ponds,
 - agricultural and irrigation ponds and swales, and
 - fire ponds, cisterns, and related facilities.

2. An upland buffer strip adjacent to each wetland subject to the provisions of this district as identified in 1. above. The width of the upland buffer strip from the reference line of the wetland shall vary with the type of wetland as follows:
- | | |
|--|----------|
| a. bogs, prime wetlands, and rare and exemplary wetland communities: | 150 feet |
| b. all other tidal wetlands: | 100 feet |
| c. vernal pools: | 100 feet |
| d. all other non-tidal wetlands | |
| - in the R and RC Zones: | 100 feet |
| - in all other zones: | 75 feet |
- B. Wetlands are defined in 175-7 and shall be delineated by a state certified wetlands scientist on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in accordance with the techniques outlined in the Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (January 1987). The hydric soils component of the delineation shall be determined in accordance with Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998), published by the New England Water Pollution Control Commission.
- C. The provisions of this article apply in addition to any state requirements for a dredge and fill permit or other state approval or permit. It is the intention of the Town that these provisions be coordinated with state requirements and standards but that these standards shall govern if they are more stringent than state standards.

175-60. Permitted Uses in the WCO District.

- A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the WCO District provided that they do not alter the surface condition or configuration of the land by the addition of fill, do not obstruct or alter the natural flow or infiltration of surface water, and comply with the regulations of WCO district:
1. The planting of native or naturalized species and wetland vegetation as identified in "The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands: New Hampshire" within a wetland and native or non-native, non-invasive vegetation in the upland buffer in conjunction with the landscaping of lot;
 2. The installation and observation of monitoring wells;
 3. Conservation activities;
 4. Accessory agriculture subject to the performance standards of 175-65 C;
 5. The removal of dead, diseased, unsafe, or fallen trees;
 6. The maintenance of existing vegetation including shrubs, lawns, and fields except as provided in 175-65.A.
 7. Forestry in accordance with Performance Standard 175-65 D.

- B. The following uses or activities shall be permitted in the WCO District if they are permitted in the underlying zoning district provided that the Zoning Administrator issues a permit for the activity after the Planning Board, with the advice of the Conservation Commission, determines that appropriate erosion control measures will be used, any disturbed area will be restored, and the activity will be conducted in a manner that minimizes any impact on the wetland:
1. The installation of private water supply wells serving a use on the lot;
 2. Water impoundments with a surface area of less than ten thousand (10,000) square feet;
 3. The installation of culverts or rock fords for existing driveways or woods roads in uplands and wetlands that are non-tidal, and are not vernal pools, prime wetlands, or rare and exemplary wetlands where the wetland impact is less than three thousand (3,000) square feet;
 4. Temporary crossings for the maintenance of utility pipes or lines;
 5. Temporary coffer dams associated with the repair or replacement of existing structures;
 6. Seasonal docks;
 7. The repair or replacement of existing retaining walls;
 8. Decks with an area of less than two hundred square feet provided that they are raised above the ground in such a manner as to permit the natural flow of any surface water;
 9. The maintenance or replacement of existing docks or docking structures;
 10. The control of aquatic weeds by harvesting;
 11. The control of exotic weeds in accordance with NH RSA 487:17;
 12. The construction of nature trails and paths.

175-61. Conditional Uses in the WCO District.

- A. The following uses shall be permitted as conditional uses in the WCO District provided that the use is allowed in the underling zoning district and a Conditional Use Permit is granted by the Planning Board in accordance with Article VII:
1. The construction of streets, roads, access ways, bridge crossings, and utilities including pipelines, power lines, and transmission lines;
 2. Commercial agriculture and plant nurseries within the upland buffer strip subject to the performance standards of 175-65.C;
 3. The construction of a non-residential building within the upland buffer strip in a commercial or office-residential zoning district;
 4. Accessory structures and buildings other than those allowed as permitted uses;
 5. Outdoor recreational facilities that do not require the construction of buildings or structures.

- B. The Planning Board shall approve a Conditional Use Permit for a use in the WCO District only if it finds, with the advice of the Conservation Commission, that all of the following standards have been met in addition to the general standards for conditional uses and any performance standards for the particular use:

1. There is no alternative location on the parcel that is outside of the WCO District that is feasible for the proposed use;
2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;
3. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts; and
4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

175-62. Prohibited Uses in the WCO District.

Any use that is not identified as a permitted use in 175-60 or a conditional use in 175-61 shall be a prohibited use.

Notwithstanding this limitation, the erection of a structure or septic system on an existing lot within the Wetlands Conservation Overlay District may be permitted by special exception in accordance with the provisions and standards of 175-29.B.

175-63. Coordination with Other Districts

All land within the WCO District is also subject to the provisions of an underlying zone. Where there is conflict among the provisions of the WCO District, any other applicable overlay district, and the underlying district, the most stringent or restrictive provision shall apply.

175-64. Use of Wetlands in Calculating Lot Area and Density

No areas of surface water, wetlands or areas designated as very poorly drained, poorly drained, or somewhat poorly drained soil may be used to satisfy minimum lot sizes or the minimum usable area per dwelling unit requirement.

175-65. Performance Standards in the WCO District.

All buildings and structures shall be erected, altered, enlarged, or moved and all land within the WCO District shall be used in accordance with the following performance standards:

A. Naturally Vegetated Buffer Strip

A naturally vegetated buffer strip meeting the requirements of 175-75.1 of the Shoreland Protection Overlay District shall be maintained from the reference line of each wetland to the upland limit of the WCO District. Where existing buildings or structures or other site considerations preclude the maintenance of a vegetated buffer for the full width of the upland portion of the WCO District, a buffer of the maximum possible width as set forth in 175-75.1 shall be provided. No soil disturbance shall occur within fifty (50) feet of the reference line. Existing lawns within the upland buffer may be allowed to remain provided that a twenty-five (25) foot wide strip adjacent to the reference line of the wetland is not mowed and is allowed to reestablish naturally occurring vegetation. The application of fertilizers, pesticides, or herbicides within the buffer strip shall be prohibited except in conjunction with allowed agricultural activities.

B. Sedimentation and Erosion Control

All activities and the use of buildings, structures, and land within the WCO District shall be designed and operated to minimize the volume and rate of stormwater runoff, the amount of erosion, and the export of sediment from the site. All activities shall be conducted in accordance with Town standards for stormwater management and Best Management Practices (BMPs) for stormwater management including but not limited to:

1. Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials, NHDES, January 2004
2. Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire, NHDES, 1992
3. Best Management Practice for Urban Stormwater Runoff, NHDES, 1996
4. Innovative Stormwater Treatment Technologies Best Management Practices Manual, NHDES, 2002

C. Agricultural Activity

No soil disturbance, manure spreading, or mowing in conjunction with either commercial agriculture or accessory agricultural activities shall occur within the wetland or within seventy-five (75) feet of the reference line of the wetland. Commercial agriculture within the WCO District shall be conducted in accordance with a management plan approved by the Strafford County Resource Conservation District as demonstrating Best Management Practices as set forth in “Manual of Best Management Practices for Agriculture” (New Hampshire Department of Agriculture, 1993) and “Best Management Wetlands Practices for Agriculture” (New Hampshire Department of Agriculture, 1993).

D. *Forestry*

Any forestry activity-within the WCO District shall be in accordance with the Basal Area Law RSA 227-J:9 and shall use as guidance for best forest management practices the “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” Department of Resources and Economic Development (DRED) 2004 as amended, Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005 as amended, “Good Forestry in the Granite State” (DRED).

E. *Trails*

Trails within the WCO District shall be constructed and maintained in accordance with Best Management Practices as set forth in “Best Management Practices for Erosion Control During Trail Maintenance and Construction” (DRED 1994). The use of trails within the WCO shall be limited to non-motorized activities except when the trail is snow covered.

F. *Septic Setbacks*

Any new septic system, leach field, or other sewage disposal system shall be set back 125 feet from the reference line of the wetland or as provided for in 175-139, whichever is greater.

The replacement of an existing septic system, leach field, or other sewage disposal system that is located within the required setback from the reference line of the wetland shall comply with the required setback unless the Health Officer/Zoning Administrator/Code Enforcement Officer determines that such a location is not physically possible due to the shape or size of the lot and soil conditions. If the Health Officer/Zoning Administrator/Code Enforcement Officer determines that a replacement system must be located within the required wetland septic system setback, the system shall be located to provide the maximum setback possible as determined by the Health Officer/Zoning Administrator/Code Enforcement Officer and shall employ the best available technology.

175-66. Challenge to the Classification of Wetlands

If the classification of an area as a wetland or not as a wetland or the location of the reference line is challenged by the applicant, an abutter, a landowner, the Code Enforcement Officer, the Conservation Commission, or the Planning Board, petition shall be made, in writing, by the challenger to the Zoning Administrator. The Zoning Administrator shall engage a state certified wetlands scientist to review the wetland delineation. If the wetlands scientist determines that there is uncertainty as to the classification of an area as a wetland or the location of the reference line, the Zoning Administrator may authorize the wetlands scientist to conduct an on-site investigation. The

wetlands scientist shall present evidence in written form to the Zoning Administrator, which evidence shall form the basis for the final decision. The cost for the review of the classification shall be born by the challenger unless the Planning Board determines that the review is in the greater public interest and the cost should therefore be borne by the Town.

175-67. Responsibility for Restoration of Altered Wetlands.

Any wetland altered in violation of this article shall be restored at the expense of the violator(s), as provided by RSA 483-A:5.

175-68. Local Authority.

No approval or waiver of permits by state or federal agencies shall preempt the ability of the Planning Board or the Zoning Board of Adjustment to seek additional information or to make an independent judgment as to the acceptability of a lot or alteration of land.

ARTICLE XIV SHORELAND PROTECTION OVERLAY DISTRICT

175-69. Purpose.

The Shoreland Protection Overlay (SPO) District is an overlay district intended to protect the quality of the Town's surface waters in order to promote public health and safety, maintain wildlife habitat, and conserve and protect shoreline and upland resources. This is accomplished by maintaining and enhancing natural forests and shoreland habitat and buffers. The district is intended to implement and expand upon the provisions of the Comprehensive Shoreland Protection Act, NH RSA 483-B. The provisions of this article are intended to:

1. Protect the water quality of Great and Little Bays, the Oyster and Lamprey Rivers, and the Town's other surface waters by managing stormwater runoff, siltation and sedimentation, and the construction or alteration of buildings and structures in proximity to these resources;
2. Minimize the potential for the pollution of these water bodies;
3. Protect wildlife and fisheries habitats and travelways;
4. Conserve the natural beauty and scenic quality of the shoreland; and
5. Allow uses of the land adjacent to these water bodies that are consistent with these objectives.

175-70. Applicability.

The provisions of the SPO District shall apply to 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. These water bodies are designated on the Durham Shoreland Protection Overlay District Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.

The provisions of this article apply in addition to any state requirements for shoreland areas or other state approvals or permits. It is the intention of the Town that these provisions be coordinated with state requirements and standards but that these standards shall govern if they are more stringent than state standards.

175-71. Permitted Uses in the SPO District.

- A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the SPO provided they do not alter the surface condition or configuration of the land, do not obstruct or alter the natural flow or infiltration of surface or ground water, and comply with the regulations of the SPO district:
 - 1. The planting of native or naturalized species and wetland vegetation as identified in "The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands: New Hampshire" and other native or non-native, non-invasive vegetation in conjunction with the landscaping of a lot;
 - 2. The installation and observation of monitoring wells;
 - 3. Conservation activities;
 - 4. Accessory agriculture subject to the performance standards of 175-75.1. A and B;
 - 5. The removal of dead, diseased, unsafe or fallen trees;
 - 6. The maintenance of existing vegetation including shrubs, lawns, and fields, except as provided in 175-75.1, A.
 - 7. Forestry in accordance with Performance Standard 175-75.1.C.
- B. The following uses or activities shall be permitted in the SPO provided that the Zoning Administrator issues a permit for the activity after the Planning Board, with the advice of the Conservation Commission, determines that appropriate erosion control measures will be used, any disturbed area will be restored, and the activity will be conducted in a manner that minimizes any impact on the shoreland:
 - 1. The installation of private water supply wells serving a use on the lot;
 - 2. Water impoundments with a surface area of less than ten thousand (10,000) square feet;
 - 3. The installation of culverts or rock fords for existing driveways or woods roads in uplands;

4. Temporary crossings for the maintenance of utility pipes or lines;
5. Temporary coffer dams associated with the repair or replacement of existing structures;
6. Seasonal docks;
7. The repair or replacement of existing retaining walls;
8. The maintenance or replacement of existing docks or docking structures;
9. The control of aquatic weeds by harvesting;
10. The control of exotic weeds in accordance with NH RSA 487:17;
11. The construction of nature trails and paths.

175-72. Conditional Uses in the SPO District.

- A. The following uses shall be permitted as conditional uses in the SPO District provided that the use is allowed in the underlying zoning district and a Conditional Use Permit is granted by the Planning Board in accordance with Article VII:
 1. The construction of streets, roads, access ways, bridge crossings, and utilities including pipelines, power lines, and transmission lines;
 2. Commercial agriculture and plant nurseries subject to the performance standards of 175-75.1. A and B;
 3. The construction or expansion of a non-residential or multi-unit building or structure;
 4. Accessory buildings and structures other than those allowed as permitted uses;
 5. Outdoor recreational facilities that do not require the construction of buildings or other structures.
- B. The Planning Board shall approve a Conditional Use Permit for a use in the SPO only if it finds, with the advice of the Conservation Commission, that all of the following standards have been met in addition to the general standards for conditional uses and any performance standards for the particular use:
 1. There is no alternative location on the parcel that is outside of the SPO District that is feasible for the proposed use;
 2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;
 3. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the adjacent shoreland and waterbody as well as downstream waterbodies, and mitigation activities will be undertaken to counterbalance any adverse impacts, and
 4. Restoration activities will leave the site, as nearly as possible, in its pre-existing condition and grade at the time of application for the Conditional Use Permit.

175-73. Prohibited Uses in the SPO District.

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

The following uses are prohibited in the SPO District even if they are permitted or conditional uses in the underlying zoning district:

1. Any land use that poses a particular threat to the water quality of the adjacent shoreland or waterbody or downstream waterbodies including but not limited to:
 - b. the establishment or expansion of salt storage yards;
 - c. automotive junk or salvage yards;
 - d. the storage or handling of hazardous wastes;
 - e. the bulk storage of chemicals, petroleum products, or hazardous materials;
 - f. use of any fertilizer, pesticide, or herbicide except in conjunction with accessory or commercial agriculture as provided for in 175-75.1. B.;
 - g. the processing of excavated materials;
 - h. the dumping of snow or ice removed from roads or parking lots;
 - i. the disposal, handling, or processing of solid wastes including transfer stations, recycling facilities, and composting facilities;
 - j. animal feedlots;
 - k. the disposal of septage or other liquid or leachate wastes except for an approved septic system;
 - l. construction on upland slopes which exceed 15%;
 - m. dumping, spreading or any other application or use of treated soils or sludge from a sewage treatment plant.

175-74. Dimensional Requirements.

All land, buildings, and structures to be used, erected, altered, enlarged, or moved within the SPO District shall be in accordance with the dimensional standards of the underlying zoning district except as modified and required by this section.

A. Shoreland Setback of Buildings and Structures

Any new building or structure or any enlargement or modification of an existing building or structure shall be set back from the reference line of the waterbody as follows:

1. 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 tributaries: 125 feet

2. All other perennial streams except College Brook and
Pettee Brook: 75 feet
3. College Brook and Pettee Brook: 25 feet

This shoreland setback provision shall not apply to water dependent structures, nor to permitted uses that are specifically listed in 175-71, nor conditional uses that are specifically listed in 175-72 other than principal and accessory buildings and structures. Such a use shall be set back the maximum practical distance from the reference line of the waterbody as determined by the Zoning Administrator, or in the case of conditional uses, by the Planning Board in consultation with the Conservation Commission. Septic systems shall be governed by Section B. below.

B. Septic Setbacks

Any new septic system, leach field, or other sewage disposal system shall be set back from the reference line of the waterbody as provided for in 175-139 or as follows, whichever is greater:

1. 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 tributaries: 125 feet
2. All other perennial streams: 75 feet

The replacement of an existing septic system, leach field, or other sewage disposal system that is located within the required setback from the reference line of the waterbody shall comply with the required setback unless the Health Officer/Zoning Administrator/Code Enforcement Officer determines that such a location is not physically possible due to the shape or size of the lot and soil conditions. If the Health Officer/Zoning Administrator/Code Enforcement Officer determines that a replacement system must be located within the required shoreland septic system setback, the system shall be located to provide the maximum setback possible as determined by the Zoning Administrator and shall employ the best available technology.

C. Use of Shoreland in Calculating Lot Area and Density

Land within the SPO District may be used to meet the minimum lot area, minimum lot size, or maximum density provisions of the underlying zoning.

D. Shoreland Frontage

Any single lot that abuts a waterbody in the SPO District shall have a minimum of two hundred (200) feet of shoreland frontage. If such a lot contains more than one dwelling unit and is served by on-site sewage disposal, the lot shall have an additional fifty (50) feet of shoreland frontage per dwelling unit.

175-75. Coordination with Other Districts

All land within the SPO District is also subject to the provisions of the underlying zone. Where there is conflict among the provisions of the SPO District, any other applicable overlay district, and the underlying district, the most restrictive or stringent provision shall apply.

175-75.1. Performance Standards in the SPO District

All buildings and structures shall be erected, altered, enlarged, or moved and all land within the SPO District shall be used in accordance with the following specific performance standards:

A. Natural Woodland for Shoreland Development

The preservation of natural shoreland vegetation is intended to stabilize banks to prevent erosion, maintain wildlife habitats, minimize pollution of the water and preserve the scenic quality of shoreline properties.

Where existing, a natural woodland buffer shall be maintained within one hundred fifty (150) feet of the reference line or for the full width of the SPO District if the district is less than one hundred fifty (150) feet in width. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural conditions of the protected shoreland.

Where a natural woodland buffer does not exist, a naturally vegetated buffer strip at least fifty (50) feet in width, or the full width of the SPO District if the district is less than fifty (50) feet in width, shall be maintained adjacent to the reference line. Within the buffer strip, naturally occurring vegetation shall be maintained and encouraged. No new lawn, garden, or landscape areas shall be created within the buffer strip but existing lawns may be allowed to remain provided that a twenty-five (25) foot wide strip adjacent to the shore is not mowed and is allowed to reestablish naturally occurring vegetation.

Within the buffer, the following standards shall apply:

1. Selective cutting of trees and other vegetation other than ground cover shall be permitted provided that a healthy, well distributed stand of trees and other vegetation is maintained. No trees over six (6) inches in DBH [nineteen (19) inches in circumference] shall be cut within the natural woodland buffer. Not more than fifty (50) percent of the basal area of trees, nor more than fifty (50) percent of the total number of saplings shall be removed in any twenty (20)

year period. A healthy, well distributed stand of trees, saplings, shrubs and ground covers and their living undamaged root systems shall be left in place.

2. Existing vegetation under three (3) feet in height including ground cover shall not be removed except to provide for a single point of access to the shoreline as provided for in G. below, and in case of disease as provided for in 5. below.
3. No cleared opening in the forest canopy shall be created with a projected surface area of greater than two hundred fifty (250) square feet as measured from the outer limits of the tree crown unless a building is allowed within the buffer strip. In such case, a cleared opening for the building site may be created but the cleared opening shall not extend more than twenty-five (25) feet outward from the building.
4. Stumps and their root systems which are located within fifty (50) feet of the reference line shall be left intact. The removal of stumps and roots in conjunction with beaches or docks may be permitted with the approval of the Conservation Commission based upon a determination that the removal in combination with mitigation activities will not increase the potential for erosion.
5. Dead, diseased, or damaged trees, saplings, or ground covers may be removed with prior approval of the Conservation Commission, in consultation with the Tree Warden. The stumps and root systems of the removed trees shall not be disturbed and shall remain in place. If such removal results in the creation of cleared openings, these openings shall be replanted with native species unless existing new growth is present. Dead and living trees that provide dens and nesting places for wildlife are encouraged to be preserved.
6. The application of pesticides, herbicides, and fertilizers within the buffer is prohibited except in conjunction with allowed agricultural activities. In the case of allowed agriculture, no fertilizers, pesticides, or herbicides shall be applied within seventy-five (75) feet of the reference line.

B. Agriculture

In no case shall any soil disturbance or animal grazing occur within seventy-five (75) feet of the reference line. No fertilizers (including manure), pesticides, or herbicides shall be applied within seventy-five (75) feet of the reference line. Any commercial agricultural activity within the SPO shall be conducted in accordance with a management plan approved by the Strafford County Natural Resources Conservation Service as demonstrating Best Management Practices.

C. Forestry

Any forestry activity within the SPO shall be conducted in accordance with a forest management plan prepared by a New Hampshire state licensed professional forester and shall be in accordance with the Basal Area Law RSA 227-J:9 and shall use as guidance for best forest management practices the “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” DRED 2004 as amended, Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005 as “Good Forestry in the Granite State” (DRED). In no case shall any harvesting or clearing, except for the removal of dead or diseased trees, occur within fifty (50) feet of the reference line. If there is conflict among the standards, the most restrictive shall apply.

D. Sedimentation and Erosion Control

All activities and the use of buildings, structures, and land within the SPO District shall be designed and operated to minimize the volume and rate of stormwater runoff, the amount of erosion, and the export of sediment from the site, and to prevent the release of surface runoff across exposed mineral soils. All activities shall be carried out in accordance with a stormwater management and erosion control plan that incorporates Best Management Practices and is approved by the Strafford County Natural Resources Conservation Service.

E. Inspection of Nonconforming Septic Systems

When a property with a septic system that does not conform to the setback requirements of 175-74.B is sold or otherwise transferred, the septic system shall be inspected by the Town’s Code Enforcement Officer and, if inadequate, replaced prior to the transfer of the property. If it is replaced it shall be consistent with the setback requirements in 175-74, unless deemed by the Code Enforcement Officer to be unreasonable due to the site or soil conditions.

G. Access to the Shorefront

One point of access to the shorefront may be developed on any lot. Such access shall be limited to a maximum of twenty (20) feet in width.

H. Docks and Piers In or Over the Water

If otherwise permitted in the District, a maximum of ten (10) percent of the frontage of the lot on the waterbody, but no greater than fifty (50) feet of frontage may be used for a boat dock or ramp (excluding seasonal, temporary docks or ramps). Access to the facility shall be located on soils suitable for such use and shall be designed, constructed, and maintained to minimize erosion. The facility shall comply with all applicable federal, state, and local requirements.

**ARTICLE XV
FLOOD HAZARD OVERLAY DISTRICT**

175-76. Applicability.

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its Flood Insurance Study for the County of Strafford, New Hampshire, dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps (FIRM) dated May 17, 2005 or as amended, which are declared to be a part of this chapter and are hereby incorporated by reference.

175-77. Building Permit Required.

All proposed development in any special flood hazard area shall require a building permit.

175-78. General Design Standards.

The Code Enforcement Officer shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction or substantial improvements shall be:

- A. Designed, or modified, and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. Constructed with materials resistant to flood damage.
- C. Constructed by methods and practices that minimize flood damages.
- D. Constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

175-79. Water and Sewer Systems.

Where new or replacement water and sewer systems, including on-site systems, are proposed in flood-prone areas, the applicant shall provide the Code Enforcement Officer with assurance that these systems will be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste-disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

175-80. Certification Records.

The Code Enforcement Officer shall maintain for public inspection and furnish upon request any certifications of floodproofing and the as-built elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures and include

whether or not such structures contain a basement. If the structure has been floodproofed, the as-built elevation, in relation to mean sea level, to which the structure was floodproofed must be furnished by the applicant.

175-81. Review of Proposed Developments.

The Code Enforcement Officer shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.S. 1334. It shall be the responsibility of the applicant to certify these assurances to the Code Enforcement Officer.

175-82. Watercourses.

- A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Code Enforcement Officer. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Enforcement Officer.
- B. The applicant shall submit to the Code Enforcement Officer certification provided by a registered professional engineer assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.
- C. Along watercourses with a designated regulatory floodway, no encroachments, including fill, new construction, substantial improvements and other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Code Enforcement Officer shall obtain, review and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meet the floodway requirements of this section.
- D. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development, including fill, shall be permitted within Zones AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

175-83. One-Hundred-Year-Flood Elevation.

- A. In special flood hazard areas, the Code Enforcement Officer shall determine the one-hundred-year-flood elevation in the following order of precedence according to the data available:
 - 1. In Zones AH and AE, he shall refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
 - 2. In unnumbered A Zones, the Code Enforcement Officer shall obtain, review and reasonably utilize any one-hundred-year-flood elevation data available from federal, state,

development proposals submitted to the community (i.e., subdivisions or site approvals) or other sources.

- B. The Code Enforcement Officer's one-hundred-year-flood elevation determination will be used as criteria for requiring in Zones A and that:
1. All new construction or substantial improvements of residential structures have the lowest floor, including basement, elevated to or above the one-hundred-year-flood elevation.
 2. All new construction or substantial improvements of nonresidential structures have the lowest floor, including basement, elevated to or above the one-hundred-year-flood level or, together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below the one-hundred-year-flood elevation the structure is watertight with walls substantially impermeable to the passage of water.
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
 3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 4. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that they meet the following requirements:
 - a. The enclosed area is unfinished or flood-resistant, usable solely for the parking of vehicles, building access or storage.
 - b. The area is not a basement.
 - c. They shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (1.) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2.) The bottom of all openings shall be no higher than one (1) foot above grade.

- (3.) Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- 5. Recreational vehicles placed on sites within Zone AE shall: (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet all standards of section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in paragraph (c) (6) of Section 60.3.

ARTICLE XVI

AQUIFER PROTECTION OVERLAY DISTRICT

175-84. Authority and Purpose.

Pursuant to RSA 674:16-21, the Town of Durham adopts an Aquifer Protection Overlay District and accompanying regulations in order to protect, preserve and maintain existing and potential groundwater supplies and related groundwater recharge areas within the town. The objectives of the Aquifer Protection Overlay District are:

- A. To protect the public health and general welfare of the citizens of Durham.
- B. To prevent development and land use practices that could potentially contaminate or reduce the rate of recharge of identified aquifers.
- C. To provide for future growth and development of the town, in accordance with the Master Plan, by ensuring the future availability of safe public and private water supplies.
- D. To permit uses that can appropriately and safely be located in the aquifer recharge areas.

175-85. District Boundaries.

A. *Location.*

- 1. The Aquifer Protection Overlay District is defined as the area shown on the map entitled "Aquifer Protection District" and is hereby adopted as part of the Official Zoning Map of the Town of Durham. The Aquifer Protection Overlay District includes the area delineated by the 1988-89 United States Geological Survey aquifer delineation studies, as amended or updated, and other site-specific engineering studies.
- 2. The Aquifer Protection Overlay District is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying district. In all cases, the more restrictive requirements shall apply.

B. Appeals.

1. When the actual boundary of the Aquifer Protection Overlay District is in dispute by any landowner or abutter actually affected by said boundary or the location of the boundary is challenged by an applicant, an abutter, a landowner, the Code Enforcement Officer, the Conservation Commission, or the Planning Board, petition shall be made, in writing, by the challenger to the Zoning Administrator. The Zoning Administrator shall engage a Qualified Hydrogeologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question, and the location of the overlay district boundary. The cost for the review shall be born by the challenger unless the Planning Board determines that the review is in the general public interest and the cost should therefore be born by the Town. Any appeals must address a minimum of five (5) acres or an entire lot, whichever is lesser in area. This report shall include but not be limited to the following:
 - a. A two-foot-interval topographic layout prepared by a registered land surveyor of the property(s) in question.
 - b. A high-intensity soils map of the property(s) in question prepared by a Certified Soil Scientist qualified in hydrologic studies, including a written report of the scientist's on-site field inspection and test boring data, for all test borings and test pits taken. The professional seal of the Certified Soil Scientist shall be affixed to all maps and reports submitted.
 - c. The Aquifer Protection Overlay District boundary shall be overlaid on the plat, and the newly proposed boundary location shall be indicated on the same plat by a broken line.
 - d. Evidence derived from a pumping test(s) and a sufficient number of test borings, test pits, observation wells and groundwater elevations to clearly demonstrate that the area in question does not meet the definition of "Aquifer" or "Aquifer Recharge Area" as defined under Article II of this ordinance. All evidence must be gathered in accordance with Section 175-87.
 - e. Any additional mapping, hydrogeologic reports or information which becomes available as a result of recent or ongoing scientific investigation(s) of the locations and extent of aquifers performed by this United States Geological Survey, New Hampshire State agencies or boards, the Town of Durham or agents of any of the above.
2. The Planning Board may, based upon any findings or reports submitted under this section, recommend to the Town Council of the Town of Durham that the boundary or area designation of the Aquifer Protection Overlay District be adjusted to more correctly define the aquifer(s) and recharge area(s) on a site-specific, case-by-case basis. In all cases the burden of proof shall rest with the applicant or property owner.

175-86. Use Regulations.

- A. ***Minimum lot size.*** The minimum lot size shall be governed by the dimensional controls outlined in the applicable zoning district.
- B. ***Maximum lot coverage.*** Within the Aquifer Protection Overlay District, no more than twenty percent (20%) of a lot used for residential or commercial purposes shall be rendered impervious to groundwater infiltration.
- C. ***Site drainage.*** All runoff from impervious surfaces, except roof and exterior foundation drains, shall be directed into an underground storm sewer system and directed to a detention/holding pond outside of the aquifer and aquifer recharge area. Any detention or holding pond must be located down the potentiometric gradient from any existing or potential Town well(s) and in the location where anticipated pumping will not so reverse the gradient that infiltrating water from the basin is drawn back into the well(s). The design and the construction of any detention or holding pond must be approved by the Public Works Department and the Planning Board.
- D. ***Use of deicing chemicals.*** There shall be minimal use of road salt or other deicing chemicals on all public and private roads and parking lots within the district. These chemicals shall be free of sodium and chloride to the greatest extent possible.
- E. ***Prohibited uses.*** The following uses shall not be permitted in the Aquifer Protection Overlay District, except where permitted to continue as a nonconforming use as allowed by 175-86.G.:
 - 1. Disposal of all solid waste either by stockpiling, landfilling or through injection wells that disposes waste into the ground.
 - 2. All on-site handling, disposal, storage, processing or recycling of toxic or hazardous materials.
 - 3. Disposal of liquid or leachable wastes from all residential, commercial or industrial systems.
 - 4. Subsurface storage of petroleum and other refined petroleum products.
 - 5. All industrial uses.
 - 6. Storage of road salt and other deicing chemicals.
 - 7. Dumping of snow containing deicing chemicals brought from outside of the Aquifer Protection Overlay District.
 - 8. Commercial animal feedlots where animals are kept.
 - 9. Automotive service and repair shops, and junk- and salvage yards.

10. Mining of land, unless it is incidental to a permitted use; sand and gravel excavation and other mining that is permitted, provided that such excavation or mining is not carried out within eight (8) vertical feet of the seasonal high-water table and that periodic inspections are made by the planning staff or its agent to determine compliance.
 11. Dumping, spreading or any other application or use of treated soils or sludge from a sewage treatment plant.
- F. ***Permitted uses.*** The following uses are permitted, provided that they are conducted in accordance with the purposes and intent of this Article:
1. All uses permitted in the underlying zoning district, regulated as Conditional Uses pursuant to Article VII. There must also be an approved hookup to the town's sewer system and the installation of an underground storm sewer system in accordance with Subsection C above.
 2. Maintenance and repair of any existing structure in conformance with the regulations of this Article.
 3. Farming, gardening, nursery, forestry, harvesting, grazing and recreational uses, provided that fertilizers, pesticides and other management practices are deemed safe by the Strafford County Conservation District. These uses of land in the Aquifer Protection Overlay District must not cause groundwater contamination that is deemed harmful to the aquifer, as determined by the Town of Durham and its consultants.
- G. ***Nonconforming uses.*** Any nonconforming use may continue and may be maintained and repaired, unless such use is determined by the Town Council or the Health Officer to be a potential hazard to water quality within the underlying aquifer or to public health and safety.

175-87. Hydrogeologic Study.

Within the Aquifer Protection Overlay District, a hydrogeologic study shall be required for any proposal for a conservation subdivision or for any development that requires site plan review and for all appeals of the District boundaries pursuant to Section 175-85.B.

- A. ***Standards.*** Hydrogeologic studies shall be performed by a Qualified Hydrogeologist. These studies shall be sufficiently detailed to evaluate the development's impacts to groundwater within the parcel to be developed and the surrounding land. All hydrogeologic studies shall include at least the following:
1. An adequate number of subsurface borings in order to determine the site geology and stratigraphy. Boring requirements are as follows:
 - a. For sites up to thirty (30) acres, the parcel shall contain a minimum of one (1) boring per three (3) acres, with a minimum of three (3) borings for a site. For sites greater

than thirty (30) acres, additional borings of at least one (1) per ten (10) acres are required.

- b. At least twenty (20) percent of the borings shall be sampled utilizing the split-spoon sampling technique.
 - c. Not less than twenty-five (25) percent of the borings but at least one (1) boring shall be dug to bedrock.
2. Identification of water table contours and groundwater flow directions, with water table measurements using a series of shallow observation wells screened at the water table. The number of observation wells required shall be the same as the number of borings required.
 3. Water quality sampling and analysis to determine existing conditions, measuring the following parameters: nitrate-nitrogen ($\text{NO}_3\text{-N}$), ammonia-nitrogen ($\text{NH}_3\text{-N}$), pH and specific conductance. An analysis of at least the following additional parameters shall be conducted on one strategically selected sample: arsenic, radon, sodium, chloride, iron, manganese, copper, lead, and mercury.
 4. An analysis of cumulative impact nitrogen loading employing a saturation build-out model. The analysis shall include verification that the development will not cause the nitrate-nitrogen ($\text{NO}_3\text{-N}$) concentration to exceed five (5) milligrams per liter in the groundwater at the down-gradient property boundary.

175-88. Design and Performance Standards.

- A. **Nitrate loading.** No development shall cause the nitrate-nitrogen ($\text{NO}_3\text{-N}$) concentration to exceed five (5) milligrams per liter in the groundwater beyond the site.
- B. **Safeguards.** Provision shall be made to protect against toxic or hazardous material discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as spill control provisions in the vicinity of chemical- or fuel-delivery points, secured storage areas for toxic or hazardous materials and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interior of any structure, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
- C. **Location.** Where the premises are partially outside of the Aquifer Protection Overlay District, potential pollution sources such as on-site waste-disposal systems shall be located outside and down gradient of the Aquifer Protection Overlay District to the extent feasible.

175-89. Administration.

The provisions of the Aquifer Protection Overlay District shall be administered by Zoning Administrator together with the planning staff and the Durham Town Council. All development proposals shall require a Conditional Use Permit pursuant to Article VII of this ordinance if

located in the Aquifer Protection Overlay, in accordance with the rules and regulations of this chapter. Such review and approval shall precede the issuance of any building permit by the Town of Durham.

ARTICLE XVII DURHAM HISTORIC OVERLAY DISTRICT

175-90. Purpose.

This article establishes a Historic Overlay District (HOD) in the Town of Durham pursuant to NH RSA 673:4 and 674:45 through 674:50.

The purpose of the HOD is to preserve and promote the historic, cultural, educational, economic, and general welfare of the community by:

- A. Preserving structures, places, and properties that reflect elements of the cultural, social, economic, and political heritage of the Town;
- B. Promoting the preservation, restoration, rehabilitation, and adaptive reuse of structures and places of historical, architectural, and community value as well as vistas of significance within the HOD;
- C. Conserving property values in the HOD;
- D. Protecting and enhancing the attractiveness of the HOD;
- E. Promoting the use of the HOD for the education, pleasure, and welfare of the citizens of the Town.

175-91. Historic District Commission.

A. *Membership.*

1. Members of the Historic District Commission (HDC) shall be appointed by the Town Council.
2. The HDC shall consist of seven (7) members. All members shall be residents of the Town of Durham; one (1) shall be a member of the Town Council, and one (1) shall be a member of the Durham Planning Board. In determining the qualifications of a Commission member, consideration will be placed on her/his demonstrated interest and ability to understand, appreciate and promote the purpose of the HDC.
3. The Commission members shall be appointed for three-year terms, except that the initial appointments shall be staggered so that subsequent appointments shall not recur at the same time. Members shall serve without compensation and shall serve no more than two (2)

successive terms. In the event of a vacancy on the Commission, interim appointments may be made to complete the unexpired term of such position.

4. The HDC shall annually elect a Chairman, Vice Chairman, and Secretary from among its membership.
5. The HDC shall adopt and may from time to time amend such rules and regulations as are not inconsistent with the intention of this chapter and of state enabling legislation.
6. The HDC shall develop and submit an annual request for funds to the Town Council. Subject to appropriations or other income, the Commission may employ clerical and technical assistants or consultants and may accept gifts of money or services, or grants, and may hold or expend such gifts or grants for the purposes of this chapter.
7. The decisions of the Commission shall be by vote of the majority of the Commission members.

B. ***Powers and Duties.*** The HDC shall have the following powers and duties:

1. Review and approve, approve with conditions, or deny applications for Certificates of Approval.
2. Call upon Town staff, citizens, abutters to applicants, and professionals, as it sees fit, for input, consultation, and recommendations on matters before the Commission.
3. Conduct small area or community-wide surveys of historic, architectural, and cultural resources.
4. Nominate structures and districts for listing in the New Hampshire State Register of Historic Places and National Register of Historic Places and review all proposed National Register nominations within the Town; keeping a record of all properties that are included in local historic districts, listed in the National Register, or determined eligible for National Register listing.
5. Prepare historic resources components of local master plans and ensure that the impacts on historical resources are considered at every level of local decision-making.
6. Advise other elements of local, state, and federal government regarding, and advocate on behalf of, the identification, protection, and preservation of local historical, architectural, archaeological, and cultural resources.
7. Consult on applications for zoning amendments, variances, conditional uses, and other approvals affecting property in the historic district.
8. Investigate and recommend to the Planning Board and Town Council amendments to these provisions and appropriate areas for designation as historic districts.

9. Act as a liaison between local government and individuals or organizations concerned with historic preservation.
10. Educate municipal officials, property owners, the public, and individual members of the Commission about the historic district and historic preservation.
11. Participate in informational, advisory, and policy setting meetings about historic preservation issues, historic district commissions, and Certified Local Governments.
12. Develop and administer a system of markers and monuments recognizing individual properties in the district and acknowledging special contributions toward historic preservation by members of the community.
13. Develop and submit an annual request for funds to the Town Council.
14. Subject to the availability of funds, the Commission may employ clerical and technical assistants and retain consultants as needed.
15. Adopt, and from time to time amend, rules and regulations that are consistent with the intent of this article and appropriate state statutes.
16. Coordinate with other Town boards in the review of items, such as lighting or parking areas, which might also be subject to review by those boards.
17. Undertake any other appropriate action or activity necessary to carry out its mission as embodied in this section.

175-92. Designation Of Historic District

- A. ***Procedures for Designation.*** The (HOD) District exists as a zoning overlay district. The District boundaries may be amended and new historic districts may be designated and delineated following the Amendment Procedure described in Article IV, Section 175-14 of this Zoning Ordinance.
- B. ***Criteria for Designation.*** The following criteria should be considered when the Commission, Planning Board, and Town Council deliberate the enlargement or reduction of an existing district or the creation of a new district. In any district which contains multiple properties or structures, not every property or structure need meet these criteria. Rather, the district overall should embody a meaningful degree of continuity, cohesiveness, integrity, and conformity with one or more of the following criteria.
 1. The site is identified with or significantly represents or exemplifies one or more significant cultural, social, political, economic, or military events in the history of the Town of Durham, region, state, or nation.

2. The site is associated with a person or persons of historic significance;
3. The site embodies distinguishing characteristics of, or quality in, design, detailing, materials, craftsmanship, or a particular architectural style.
4. The site is identified as the work or representing the work of a master builder, designer, architect, engineer, or landscape architect whose individual work was influential in the development of the Town, region, state, or nation.
5. The site's unique location and characteristics make it an established and appreciated element or visual landmark for the community.
6. The site's age (typically 50 years or older), good condition, and special features make it worthy of preservation.
7. The site has yielded or is likely to yield significant archaeological information.
8. The site contributes to the visual continuity of the District.

175-93. Identification Of The Historic Overlay District.

A Zoning Map of the HOD as amended, including all the notations, references, district boundaries, and other information shown thereon, is incorporated by reference as part of this Ordinance and is on file with the Town Clerk. If there are any inconsistencies between the map and the listing of map and lot numbers under subsection (B), the listing of map and lot numbers shall prevail.

- A. ***Locating Boundaries.*** The District lines drawn on the HOD map are generally on or parallel to a street, watercourse, or lot line, and shall, unless there are indications to the contrary, be deemed to be:
 1. On the centerline of the right-of-way or watercourse;
 2. Parallel to the centerline at the distance noted; or
 3. On the lot line, or parallel to the lot line, at the distance noted in Section B.
- B. ***Delineation of the District.*** The HOD is defined as that area made up of the lots listed below as delineated on the Durham Tax Maps. Unless otherwise noted, all of the land composing each lot shall be considered to lie within the District. The District also includes all Town property necessary to make a contiguous District.

1. Map 4: Lots 1, 52, 53, 54-2 (Episcopal Church), 54-3, 54-4, 55, 56, and 59.
2. Map 5: Lots 1-4 through 1-10 inclusive, 1-12, 2-1 through 2-8 inclusive, 3-1, 3-2, 3-3, 4-0, 4-2 [seventy-five (75) feet from the centerline of Newmarket Road], 4-10, 4-11, 4-12, 5-6-6, 5-10, 5-11, 5-12, 5-14 and 7-0.
3. Map 6: Lots 9-1 through 9-5 inclusive, 9-6 and 9-8 [two hundred fifty (250) feet from the centerline of Newmarket Road], 9-7, 9-9, 11-1, 11-2, 11-3 [two hundred fifty (250) feet from the centerline of Newmarket Road and Durham Point Road], 11-4, 11-5, 11-6, 11-7 and 11-8 [two hundred fifty (250) feet from the centerline of Newmarket Road] and 12-1 through 12-8 inclusive.
4. Map 15: Lot 17-1

175-94. Purview Of Board.

A. Activity Within the Historic District Overlay District Subject to Review. Approval of the HDC is required for the following activity respecting structures within the HOD:

1. Modifications to the exterior architectural appearance of the property including erection of new structures, additions to existing structures, alterations to existing structures, demolition of existing structures or portions of existing structures, or relocation of any structure into, out of, or within the HOD
2. Installation, modification, or removal of exterior freestanding lighting structures.
3. Erection, alteration, or removal of any kind of wall, barrier or fence.
4. Installation of pavement or other impervious or semi-impervious material on the ground or establishment of any parking or driveway area.
5. Installation of any new roofing material; provided that where failure to repair a roof will result in immediate damage to the structure the Code Enforcement Officer may grant approval for emergency temporary repairs and immediately notify the HDC of such action.
6. Signage (excluding political, contractor, and real estate signs), banners, flags, and similar displays, except for those of a temporary nature, i.e. those for which approval from the Town has been received to allow for display not to exceed two weeks at any one time.
7. Removal or destruction of any healthy tree with a diameter at breast height of 12" or more.
8. Any substantial change in topography (cuts and fills).

B. Activity Exempt from Review. No review or Certificate of Approval shall be required for the following:

1. Work performed on the interior of buildings.
2. General maintenance and repair which does not involve any change in materials or the outward appearance of the structure or site.
3. Installation or removal of any plant materials (except for tree removal as described in 175-94.A.7.
4. Any of the following items if they are situated on a building or on a lot such that no part of them will be visible from a public way at any time of the year: antenna, wall siding, outbuilding not exceeding 400 square feet, deck, swimming pool, fence, patio, wall, barbecue pit, satellite dish, septic tank, leach field, well, and other yard appurtenances.
5. Construction, alteration, or demolition of any structure or element of a structure that the Code Enforcement Officer certifies as being the only means of avoiding an immediate health or safety emergency prior to the HDC convening a meeting to consider the matter. In such instance, the Code Enforcement Officer shall immediately notify the Commission of his certification.

C. Review of Exterior Colors Within the Historic Overlay District - Painting. Painting, staining and other exterior decorative work not involving exterior construction shall be in accordance with the character of the Historic Overlay District. The Commission shall be notified thirty (30) days in advance of such exterior decorative work. Such work shall not begin if the owner is notified that an application to the Commission is required.

175-95. Procedures For Review Of A Certificate Of Approval.

A. Application: In order to be considered at the next scheduled HDC meeting, an application for a Certificate of Approval shall be submitted to the Durham HDC through the Department of Planning and Community Development no fewer than 10 days prior to that meeting. The application package shall include the items listed below:

1. A completed application form as provided by the Department of Planning and Community Development, stating the purpose of the proposed project and identifying the nature and extent of the work to be performed.
2. Site plans drawn to scale clearly depicting existing conditions and proposed work.
3. Elevation drawings to scale of each affected facade of the building, structure or sign, clearly depicting existing conditions and proposed work.

4. Detail drawings of project-specific elements.
5. Photographs of each side of any building proposed for alterations, additions or demolition, and one of the overall site.
6. Sample, swatch, and/or manufacturer's cut sheet of materials to be used as appropriate.
7. Any other items which the Commission may reasonably need to conduct its review.

The Commission may, at its discretion, waive requirements for the submission of any or all of the above items as well as for drawings to be precisely drawn to scale on smaller or less complex projects.

B. *Review of the Application.*

1. Determination of Appropriateness. In deliberating whether to grant or deny a Certificate of Approval, the HDC shall make a determination as to the "appropriateness" of the work proposed by determining whether or not the proposal conforms to the provisions of this article.
2. Scheduling and Completeness. The HDC will consider applications at its scheduled meetings. At that time a determination shall be made whether the application under consideration is complete in accordance with the list of required items, above, and whether or not further information is needed by the Commission in order to accept the application.
3. Dialogue with Applicant. The applicant may present his or her application at the Commission meeting(s). When there are aspects of the proposal which may not conform to this article, the Commission, at its discretion, may advise the applicant to find reasonable cost approaches to meet his or her objectives with a project which still conforms to the standards of this article.
4. Public Hearing. The Commission is authorized to hold a public hearing at which time opinions of abutters and interested citizens shall be heard. Notice of the Public Hearing shall be sent to abutters and posted in a newspaper of general circulation at least ten (10) calendar days prior to the hearing.
5. Professional Advice. The Commission may seek advice from such professional, educational, cultural, or other sources as is deemed necessary.
6. Recommendations. The Commission may make nonbinding recommendations to the applicant on elements outside of its purview such as planting materials.

C. ***Action on an Application.***

1. To the extent practical and appropriate, as determined by Town staff, an applicant may file applications for permits simultaneously to the Planning Board, and the Commission. However, if approval from the Planning Board and the Commission is required, the applicant shall first appear before the Commission, unless otherwise agreed to by the two boards and the applicant.
2. The HDC shall take action on all applications within forty-five (45) days after the meeting at which the Commission accepts the application as complete. This time frame may be extended either by consent or request of the applicant for an additional period not to exceed forty-five (45) days.
3. The Commission shall file a Certificate of Approval or a Certificate of Denial with the Department of Planning and Community Development. Failure by the Commission to act within the period of time specified above shall be deemed to constitute approval of the application as submitted. A Certificate of Approval, or approval by default of the Commission to take action, shall be effective for one year after the date of approval.
4. When an application is rejected as being incomplete or denied, the reason(s) for the decision shall be conveyed to the applicant and clearly stated in the record of proceedings of the Commission.

D. ***Appeals.*** Any applicant, persons, or organizations aggrieved by a decision of the HDC may appeal the decision to the Durham Zoning Board of Adjustment in accordance with RSA 674:33 and any appeal procedures specified in the Town Ordinances.

E. ***Enforcement.*** The provisions of this article shall be enforced as provided for in Article III, Administration and Enforcement.

175-96. Standards For Review.

The following standards shall be used by the HDC in reviewing applications for Certificates of Approval.

A. ***General Principles.***

1. Every reasonable effort shall be made to minimize alteration of the significant features of the property.
2. The distinguishing original qualities or character of the property shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features shall be avoided where possible.

3. All structures and sites shall be recognized as products of their own time. Alterations that have no historical basis or that seek to create an earlier appearance shall be discouraged.
4. Changes that may have taken place in the course of time are evidence of the history and development of the property. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship that characterize a property shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other structures.
7. Every reasonable effort should be made to protect and preserve archaeological resources affected by, or adjacent to, any project.
8. Contemporary design for alterations and additions to existing properties should not be discouraged when such designs do not destroy significant historical, architectural, or cultural material, and when those designs are compatible with the size, scale, color, material, and character of the property, neighborhood, and surrounding environment.
9. Whenever possible, new additions or alterations to structures should be done in such a manner that if those additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

B. ***Elements of Design.*** Proposals should be harmonious with existing structures within the District. The Commission shall consider the following elements of design when evaluating an application:

1. **Scale.** The scale of a building is its size relative to common reference points: e.g. the human body and nearby structures. New construction should be consistent with the dominant cornice and peak or ridge height of other nearby structures within the HOD. Inordinately low buildings create a void at upper floor levels that interrupts the feeling of enclosure. Disproportionately tall buildings overpower other structures. Most buildings in the district are relatively large comprising 2-1/2 stories. Notable exceptions are the 1-1/2 story Samuel Yeaton House and the Red School House.

2. Elevation of the first floor and floor-to-floor heights. Many of Durham's historic buildings have a slightly raised foundation and floor-to-floor heights which are either greater than or smaller than prevalent heights used in contemporary construction.
3. Proportions. Proportion deals with height, width, depth, and spacing relationships and is important both in the overall dimensions of the building and in its individual components. For example, most windows in the District are rectangular and vertical. Thus, square, polygonal, or horizontal windows would be inappropriate in many cases.
4. Massing. Massing refers to the shapes, sizes, articulation, composition, and voids created by the three dimensional forms that constitute the structure. While many buildings in the District are boxlike and massive with expansive wall areas and small windows, most have subtle detailing, graceful proportions, multiple appended additions, and numerous windows, all of which create appeal. Massing tends toward aggregations of simple geometric shapes in keeping with traditional New Hampshire rural and village architecture rather than the complex forms typical of the late 19th century Queen Anne style.
5. Roof shape. Most of the contributing residential buildings have a gable roof. In contrast, "The Ledges" has a distinctive hipped roof. Gambrel, mansard, and flat roofs are not found in the district and are therefore inappropriate.
6. Entrance. Many of the historic buildings in the District have a porch, a portico, or at least an articulated door surround at the entry. Entrances are generally situated in the center bay of the facade.
7. Fenestration. Fenestration refers to the pattern of window openings - spacing, size, proportion, symmetry vs. asymmetry. Most buildings in the District have five bays; many have a syncopated rhythm with windows in the outer bays closer to each other than to the window in the center bay.
8. Materials. Most buildings in the District are wood frame with wood clapboard siding. There is only one stone house in the District - the James Paul House. Vinyl and aluminum siding or other artificial materials should not be used although they may be acceptable on noncontributing structures and on elevations that are not visible from a public way. Where they are used, the reveal should be approximately four inches in width and detailing should be preserved or used to give articulation to the structure. Diagonal and vertical siding are generally inappropriate. The use of natural materials is encouraged.
9. Orientation. While most buildings have their narrower gable end perpendicular to the street in the Georgian manner, many are also oriented with the gable

facing the street in the Greek Revival or Italianate manner. Most buildings within the District are oriented parallel or perpendicular to the street. Buildings should not be oriented at odd angles to the street, such as at a 45-degree angle, unless this is already the prevailing pattern in the area or if it is dictated by strong topographic or site considerations.

10. **Style and Details.** Most of the buildings in the District were built from the mid 1700s to the mid 1800s in the Georgian, Federal, Greek Revival, and Italianate styles. They are predominantly simple, conservative, and restrained in design. Common or distinct features include brick chimneys, dormers, attic gable windows, eave brackets, painted shutters, corner pilasters, ells, porches, three-sided window bays, sidelights, and transom windows, stone walls, and white picket fences.

- C. ***New construction.*** New construction is an essential process in a vital community, representing the current phase of an evolution that has been ongoing since the settlement of Durham. Contemporary architecture may be appropriate, provided that it is respectful of the historic fabric of the District. New construction within the Historic District should be consistent with Sections A and B, above.
- D. ***Demolition or Removal.*** No existing building or other structure may be-demolished or moved out of the Historic Overlay District until approval has been granted by the HDC. Demolition or removal from the District of a contributing structure is strongly discouraged and shall rarely be permitted. An application which includes a detailed plan for the reuse of the site shall be submitted, and the Commission shall determine the appropriateness of the plan. It shall only be approved if the applicant demonstrates that 1) denial of the application would result in extreme hardship unique to the subject property; and 2) the Commission has approved a detailed redevelopment plan for the site. Financial hardship of the owner of the property shall not constitute a hardship for this purpose.
- E. ***Relocation within the District.*** Relocation of a contributing structure on its site or within the District is discouraged. The Commission may approve such a relocation only if it determines that there are compelling reasons to do so after conducting a thorough review of the request.
- F. ***Other Issues***
 1. **Noncontributing Structures.** The procedures set forth in 175-95 will be followed. However, the HDC may, at its discretion, engage in a less stringent review of such structures. In some cases, demolition or relocation of a noncontributing structure may be entirely appropriate, depending upon how the site will be developed afterward.
 2. **Parking.** Parking areas, particularly when paved and unbroken by landscaping, can have a significantly deleterious impact upon historic areas. All parking areas for other than single-family uses shall be located at the rear of buildings. Where the Commission determines that such placement is not practicable,

parking may be located at the side of buildings provided that no part of the parking area is located forward of the front elevation of the building. Any parking area located on the side of a building shall be screened from the road.

3. Fences. Chain link fences shall not be used in front yards or in side yards if they would be visible from a public way.
4. Signage. In addition to meeting the minimum standards set forth in Article XXIII, all signs shall be constructed of non-synthetic or natural-looking materials reviewed by the Commission. Signs may be painted, but shall not exceed six (6) square feet in size. Any illumination shall be designed to illuminate only the sign.
5. All utility elements such as dumpsters, garbage cans, propane tanks, above-ground oil tanks, and ground-mounted air conditioning units shall be screened and located such that they are not visible from a public way .
6. The U.S. Secretary of the Interior’s “Guidelines for Historic Preservation” shall also serve as a guide for the Commission.

175-97. Demolition By Neglect.

- A. **Responsibility.** A property owner in the HOD is prohibited from allowing his/her property to deteriorate in the manner specified in section B and failing to correct those conditions.
- B. **Conditions.** Conditions leading to Demolition by Neglect include but are not limited to the following:
 1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, splitting, listing, collapsing, or buckling.
 2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, collapsing, or buckling.
 3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, collapsing, or buckling.
 4. Deterioration or crumbling of exterior plasters or mortars.
 5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
 6. Defective protection or lack of weather protection for exterior wall and roof coverings, including paint, or weathering due to lack of paint, peeling paint, or lack of other protective covering.
 7. Rotting, holes, and other forms of decay.

8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, wall facings, and architectural details that causes delamination, instability, loss of shape and form, collapsing, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures.
11. Deterioration, except by irreversible natural processes, of vegetation, trees, shrubs, plantings, and all landscaping.
12. Deterioration that has a detrimental effect upon the special character of the Historic Overlay District as a whole.
13. Deterioration of any exterior feature so as to create or permit the creation of any conditions hazardous or unhealthful to life, environment, or other property.
14. Severely peeling or deteriorating exterior paint.
15. Other conditions as determined by the Code Enforcement Officer (CEO) or the Commission.

- C. ***Enforcement Actions.*** Upon written notification by the HDC to the Code Enforcement Officer regarding noncompliance with this section, the CEO shall send written notification to the owner of the property in question, informing the owner of the noncompliance and ordering that the condition be corrected within 60 days. If the owner chooses to contest the CEO's notification with respect to either the existence of the conditions or the number of days allowed for correction, the owner may appeal to and request a hearing before the HDC no later than 30 days following the mailing of the notification. At the hearing, the owner and the CEO may present evidence, after which the HDC shall enter an Order affirming, modifying, or rejecting the CEO's notification. A building permit for all repairs shall be issued by the Code Enforcement Officer after having received a complaint from the HDC. Building permit guidelines and regulations will be followed and monitored by the Code Enforcement Officer. If a building owner fails to comply, the Code Enforcement Officer shall notify in writing the Town Administrator and Town Council of a breach of this regulation. The Town may cause the maintenance and repairs to be completed, the cost of which shall be recovered by lien on the property.
- D. ***Waivers and Hardship Cases.*** The HDC may grant a waiver of up to one year from part or all of this ordinance in cases where strict compliance would create a financial hardship.

175-98. Appeals.

Appeals may be taken to the Durham Zoning Board of Adjustment by any owner or tenant of property wholly or partly within the HOD, as well-as by any other person, agency or group, if aggrieved by a ruling of the Durham HDC. The Durham Zoning Board of Adjustment shall hear and act upon such appeals within the periods of time prescribed by New Hampshire statute.

175-98.1 Applicability to the Town of Durham.

Any property owned by the Town of Durham within the HOD shall be subject to the provisions of Article XI; provided, however, that following a public hearing, the Durham Town Council may, by a two-thirds vote of its members, override any vote of the Commission pertaining to such property.

175-98.2 Heritage Commission.

The HDC shall also assume the composition and duties of a Heritage Commission as set forth in Article IV, Section 4-17.A.8 of the Town of Durham Administrative Code.

ARTICLE XVIII**PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT****175-99. Purpose and Intent.**

It is the express purpose of this Article to permit carriers to locate personal wireless service facilities within particular areas of the Town of Durham consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town.

Compatibility with the visual features of Durham is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed personal wireless service facility. This Article enables the review of the locating and siting of personal wireless service facilities by the Town of Durham so as to eliminate or mitigate the visual and environmental impacts of personal wireless service facilities. This Article is structured to encourage carriers to locate on existing buildings and structures whenever possible. New ground mounted personal wireless facilities are permitted, but only when the use of existing structures and buildings is found to be infeasible. Co-location is encouraged for all personal wireless service facility applications and the review of a personal wireless facility shall be on the basis of the site being built using all positions on the mount. The Town of Durham encourages the location of personal wireless service facilities (PWSF) in non-residential areas.

175-100. Applicability.

The terms of this Article and the Site Plan Review Regulations shall apply to personal wireless service facilities proposed to be located on property owned by the Town of Durham, on privately owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

175-101. District Regulations.

- A. **Location:** Personal wireless service facilities shall be permitted in all Zoning Districts, except as restricted by this Article. Applicants seeking approval for personal wireless service facilities shall first evaluate existing structures for the siting of personal wireless service facilities. Only after finding that there are no suitable existing structures pursuant to Section 175-101. C. herein, shall a provider propose a new ground mounted facility. Applicants for new PWSF shall place antennas and towers at locations which will minimize the impact on residential neighborhoods. In no case shall a PWSF be allowed in designated conservation areas unless they are located on existing tower facilities.
- B. **Existing Structures – Policy:** Personal wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
- C. **Existing Structures – Burden of Proof:** The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent applicable:
1. The applicant shall submit to the Department of Planning and Community Development a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board or Department of Planning and Community Development informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
 2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered “Return Receipt Requested” forms from the U.S. Post office shall be provided for each owner of existing structures that was contacted.
 3. If the applicant claims that a structure is not capable of physically supporting a personal wireless service facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.
- D. **Ground Mounted Facilities – Policy:** If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of alternative tower structures, use of compatible building materials and colors, screening, landscaping, and placement within trees. If the applicant does not propose the use of alternative tower structures, then the applicant shall provide evidence as to why it is unsuitable. Costs of alternative tower structures that exceed regular tower or antenna development shall not be presumed to render the alternate tower structure unsuitable.

- E. ***Locations for Ground Mounted Facilities:*** Ground mounted personal wireless service facilities shall be prohibited from those areas identified on the “Town of Durham, NH Visual Sensitivity Project - Composite Overlay,” dated March 13, 1998, and prepared by Strafford Regional Planning Commission using data from the original map created by Complex Systems Research Center, Institute for the Study of Earth, Oceans, and Space, University of New Hampshire. The “Town of Durham, NH Visual Sensitivity Project - Composite Overlay” is hereby adopted as an overlay to the official Zoning Map of the Town of Durham and incorporated in this Article by reference. If the site is within or adjacent to a residential zone, then a study shall be provided showing which alternative sites that are not within or adjacent to a residential zone were considered and why these locations are not acceptable.
- F. ***All PWSF – Policy.*** All applicants for PWSF shall submit information related to the availability of alternative technologies. If no alternative technologies exist to accommodate the applicant’s proposed PWSF, then the applicant shall submit evidence to demonstrate that no alternative technologies can accommodate the applicants proposed PWSF and said evidence may include, but is not limited to, the following: that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

175-102. Use Regulations.

- A personal wireless service facility shall require a building permit in all cases and may be permitted as follows:
- A. ***Existing Tower Structures:*** Subject to the issuance of a building permit that includes review by the Director of Planning and Community Development, carriers may locate a personal wireless service facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Article, or on any personal wireless service facility previously approved under the provisions of this Article so long as the co-location complies with the approved site plan. All the Performance Standards from this Article shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, site plan review is required.
- B. ***Reconstruction of Existing Tower Structures:*** An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Article may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Article are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than two hundred (200) feet to exceed two hundred (200) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.
- C. ***Existing Structures:*** Subject to the provisions of this Article and site plan review and except as otherwise permitted under Section 175-101.A, a carrier may locate a personal wireless service facility on an existing structure, building, utility tower or pole, or water tower. If

siting on a utility pole, the protrusions from the face of the pole should be no greater than one-half the diameter of the pole itself and in no cases greater than 12 inches. If antennas are included in a radome shield on top of the pole, the shield shall have a maximum overhang of 4 inches. In no instance shall the pole be wider than the minimum necessary to support the proposed equipment. Both Cellular and PCS can use dual-polarized antennas.

- D. **Ground Mounted Facility:** A personal wireless service facility involving construction of a ground mount shall require site plan review and be subject to the provisions of this Article.

175-103. Dimensional Requirements.

- A. Personal wireless service facilities shall comply with the following requirements:

1. **Height, Maximum:** In no case shall a personal wireless service facility exceed two hundred (200) feet in height, unless the mount for the facility was greater than two hundred (200) feet in height prior to the adoption of this Article. The applicant shall demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the site's function.
2. **Height, Existing Structures and Utility Poles:** Carriers that locate new personal wireless service facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than twenty (20) feet. This increase in height shall only be permitted once for each structure.
3. **Height, Other Existing Structures:** The height of a personal wireless service facility shall not increase the height of a structure by more than ten (10) feet, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a personal wireless service facility on a building that is legally non-conforming with respect to height, provided that the provisions of this Article are met.
4. **Height, Ground-Mounted Facilities:** Ground-mounted personal wireless service facilities shall not project higher than (10) ten feet above the average tree canopy height within a one hundred and fifty (150) foot perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
5. **Setbacks:** All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. Fences shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six (6) feet or more in height.
6. **Fall Zone for Ground Mounts:** In order to ensure public safety, the minimum distance from the base of any ground-mount of a personal wireless service facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone

easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review.

7. Fall Zone for Non-Ground Mounts: In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformity.

B. ***Planning Board Flexibility:*** Heights - In reviewing a site plan application for a personal wireless service facility, the Planning Board may permit an increase in the height of a ground mounted facility up to twenty (20) feet above the average tree canopy height, if no material increase in visual or environmental impacts will result from the increased height. The visual and environmental criteria of this Article and the Site Plan Review Regulations shall be the guidelines in making this determination.

175-104. Performance and Design Standards.

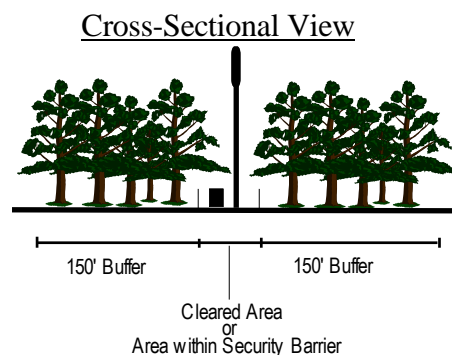
A. *Visibility*

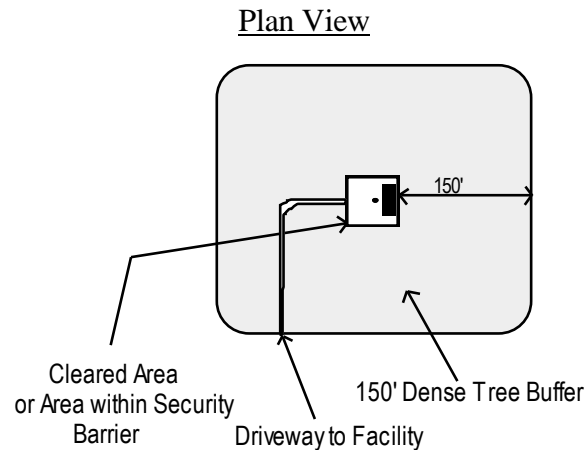
1. Visual impacts are measured on the basis of:
 - a. Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within their proposed surroundings.
 - b. New visible elements proposed on a contrasting background.
 - c. Different colors and textures proposed against a contrasting background.
 - e. Use of materials that are foreign to the existing built environment.
2. Enhancements are measured on the basis of:
 - a. Conservation of opportunities to maintain community scale, e.g., buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
 - b. Amount and type of landscaping and/or natural vegetation.
 - c. Preservation of view corridors, vistas, and viewsheds.
 - d. Continuation of existing colors, textures, and materials.
3. Visibility focuses on:
 - a. Eliminating or mitigating visual impact.
 - b. Protecting, continuing, and enhancing the existing environment.
4. Concealment or Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts: When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the

facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

5. Concealment or Camouflage for Facilities on Existing Buildings or Structures - Side Mounts: Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted, shielded, or concealed with material consistent with the design features and materials of the building.
6. Camouflage for Ground Mounted Facilities: All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions, as set forth in Figure XVIII – 1. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.
7. Disguise for Facilities on Existing Buildings and Structures (Roof and Side Mounts) and Ground Mounted Facilities: Applicants may choose to change the appearance of the facility to make it appear to be something other than a PWSF.

Figure XVIII





- B. **Color** - To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color which blends with the background or surroundings.
- C. **Equipment Shelters** - Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:
1. Equipment shelters shall be located in underground vaults; or
 2. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the personal wireless service facility; or
 3. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
 4. If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.
- D. **Lighting, Signage, and Security**
1. Lighting:
 - a. The mounts of personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA).
 - b. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot candles.

2. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Article XXIII of the Durham Zoning Ordinance.
3. Security Barrier: The Planning Board shall have final authority on whether a ground mounted personal wireless service facilities should be surrounded by a security barrier.

E. *Historic Buildings and Districts*

1. Any personal wireless service facility located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
2. Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.
3. Personal wireless service facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
4. Personal wireless service facilities located in the Durham Historic Overlay District shall comply with the provisions of Article XVII.

F. *Scenic Landscapes and Vistas* - Personal wireless service facilities shall not be located within open areas that are visible from public roads, recreational areas, or abutting properties. All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth as per Section 175-103.A.6.

G. *Driveways* - Existing entrances and driveways to serve a personal wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a personal wireless service facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.

H. *Antenna Types* - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.

I. *Ground and Roof Mounts* - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 175-102.B.

J. *Hazardous Waste* - No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.

- K. **Noise** - Personal wireless service facilities shall not generate noise in excess of that permitted under the Durham Noise Ordinance for intermittent noise.
- L. **Radio Frequency Radiation (RFR) Standards** - All equipment proposed for a personal wireless service facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines), under *Report and Order*, FCC 96-326, published on August 1, 1996, and all subsequent amendments.
- M. **Interference** - No antenna shall cause localized interference with the reception or transmission of any other communications signals including, but not limited to, public safety signals and television and radio broadcast signals. Certification by a qualified, licensed professional engineer that there will be no interference must be submitted.

175-105. Monitoring and Maintenance.

- A. **Maintenance** - The owner of the facility shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.
- B. **Monitoring** - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Durham may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.
- C. **Security for Removal** - Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 175-106.B. The amount of the security shall be based upon the removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional civil engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.

175-106. Abandonment or Discontinuation of Use.

- A. **Notification** - At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.

- B. **Removal** - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 3. Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- C. **Failure to Remove** - If the owner of the facility does not remove the facility upon the Zoning Administrator's order, then the Town Council shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Town Council. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

PART C. STANDARDS

ARTICLE XIX CONSERVATION SUBDIVISIONS

175-107. Conservation Subdivisions.

The Town of Durham's Master Plan 2000 recommends that conservation subdivisions, in which a substantial portion of the site is set aside as permanent, common open space, be the primary form of residential development in the community. The provisions of this section govern the design and development of conservation subdivisions. The process for the design of conservation subdivisions, as set forth in the Town's Subdivision Regulations, requires that key natural, historic, archeological, and cultural features on the site be identified for protection and the development planned to protect these resources.

- A. **Purpose.** The purposes of these provisions are to assure that conservation subdivisions developed in the Town of Durham:
 1. Preserve those areas of the site that have the highest value for conservation purposes;
 2. Preserve identified historic, known archeological and identified cultural features located on the site;
 3. Locate the buildings and structures on those portions of the site that are most appropriate for development considering both the development suitability of the site and its conservation value;
 4. Create continuous open spaces or "greenways" by linking the common open spaces in adjoining subdivisions wherever possible; and
 5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.
- B. **Applicability.** All residential subdivisions in the Residence A District, Residence B District, Residence Coastal District, Rural District, Office Research Light Industry District, and Multiunit Dwelling Office Research District shall be developed as Conservation Subdivisions in accordance with the provisions of this section and the Town's Subdivision Regulations unless the subdivision is exempt from this requirement based upon subsection C. below.
- C. **Exempt Subdivisions.** A subdivision shall be exempt from the Conservation Subdivision requirement if the Director of Planning and Community Development determines that the proposal meets one of the criteria set forth in subsection D. below. If the Director

determines that a subdivision is exempt, the Director shall provide written notice to the applicant, all abutters, the chair of the Planning Board, and the chair of the Conservation Commission within five (5) business days after making the determination. An applicant, an abutting property owner, or the Conservation Commission may appeal the Director's determination to the Planning Board. The appeal shall be made in writing within thirty (30) days of the Director's determination. The Planning Board shall hold a public hearing on the appeal. The review by the Planning Board shall be based upon the materials submitted to the Director and the testimony at the public hearing. The Planning Board may affirm or change the decision of the Director. Until the appeal is decided, the Planning Board shall not process an application for the approval of a conventional residential subdivision for the subject site.

D. ***Exemption Criteria.*** The Director of Planning and Community Development shall find that a proposed subdivision is exempt from the requirement that a subdivision be developed as a Conservation Subdivision only if the proposed subdivision meets one of the following criteria. In determining if the criteria are met, any lot that has been or will be transferred to a qualified conservation organization as such term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (Code) or any successor section, and the regulations promulgated thereunder, which organization is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, and will be restricted to conservation use in perpetuity, shall not be counted as a lot for the purpose of this provision.

1. The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots, or
2. The subdivision will consist of lots, all of which will have a minimum lot area of four hundred thousand (400,000) square feet , and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots, or
3. The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units, there is additional land that may be developable in the future for which a Conceptual Long Range Development Plan meeting the requirements of subsection N. will be prepared, all lots being created as part of the exempt subdivision will be consistent with and incorporated into the long range plan as part of a conservation subdivision, and no additional lots will be created in the future that are not part of a conservation subdivision, or
4. The subdivision will create not more than one additional lot accommodating_one (1) dwelling unit and no other lots have been created from the parcel within the preceding seven (7) year period.

- E. ***Maximum Development Density.*** The maximum number of dwelling units that may be developed in a Conservation Subdivision shall be determined by dividing the calculated Usable Area of the parcel by the required Minimum Usable Area Per Dwelling Unit for the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) and rounding down to the maximum allowed whole number of units. If the parcel is located in more than one district, the maximum number of units allowed on the portion of the parcel in each district shall be calculated separately and the allowed maximum number of units (including fractional units) in each district shall be added together and then rounded down to the allowed number of whole units. If the subdivision involves only part of a parcel, the Usable Area shall be calculated for that portion of the parcel proposed to be included in the subdivision and the determination of the maximum number of dwelling units within the subdivision determined based upon that Usable Area. The Planning Board shall not approve a plan for a Conservation Subdivision that provides for the development of more dwelling units than the maximum number determined by this section.
- F. ***Lots in a Conservation Subdivision.*** Residences in a Conservation Subdivision may be located on individual residential lots, or on common lots with more than one dwelling unit on a lot, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot, and the units thereon, shall be detailed as part of the subdivision application and those arrangements shall be subject to approval by the Planning Board in accordance with the Subdivision Regulations.
- G. ***Individual Lot Sizes.*** If individual lots are created as part of a Conservation Subdivision, the lots shall conform to the following minimum lot size requirements:
1. Any lot that has its required lot frontage on a public street that existed as of July 1, 2003 shall conform to the minimum lot size requirement for the district in which it is located (see Section 175-54, Table of Dimensional Requirements).
 2. Any lot that has its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate sewage disposal, but in no case shall any lot served by a private wastewater disposal system be less than ten thousand (10,000) square feet in area.
- H. ***Individual Lot Frontages.*** If individual lots are created as part of a Conservation Subdivision, the lots shall conform to the following minimum lot frontage requirements:
1. Any lot that has its required lot frontage on a public street that existed as of July 1,

2003 shall conform to the minimum lot frontage requirement for the district in which it is located (see Section 175-54, Table of Dimensional Requirements).

2. Lots that have frontage on a public street shall be laid out to minimize the number of curb cuts onto the public street through the use of shared or common driveways or other methods. In no case, shall two adjacent driveways be located on a public street that existed as of July 1, 2003 unless the driveways are separated by at least one hundred (100) feet or such other greater distance as required by other provisions of this ordinance.
 3. Any lot that has its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may have less frontage than the required minimum lot frontage for the district in which it is located. The amount of frontage for the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot frontages will allow for the creation of a high quality living environment for the residents of the subdivision and provide adequate access to the residences and other facilities, but in no case shall any lot have less than fifty (50) feet of lot frontage.
- I. ***Common Open Space.*** A Conservation Subdivision shall provide for the permanent set aside and protection of common open space meeting the following requirements:
1. The amount of common open space provided within the subdivision shall be equal to or greater the sum of the following:
 - a. the percentage of the calculated Usable Area set forth below, plus
 - b. the unsuitable area of the parcel that is deducted from the gross area of the site to determine the Usable Area.

The minimum percentage of the usable area that shall be set aside for common open space shall be as follows:

Residence A District	Thirty (30) percent
Residence B District	Forty (40) percent
Residence Coastal District	Fifty (50) percent
Rural District	Fifty (50) percent
All other districts	Fifty (50) percent

If the parcel is located in two or more districts, the percentage of the usable area located in each district shall be calculated and the required minimum percentage of the usable area set aside for open space determined based upon the weighted average of the percentages for the various districts.

2. The location and layout of the common open space shall conform to the standards and process set forth in the Subdivision Regulations.
3. The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:
 - a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, identified cultural or historic features such as stone walls, graveyards or cemeteries, and similar identified features or resources
 - b. Passive and active outdoor recreation uses and facilities included related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that any building shall have a gross floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1000) square feet
 - c. Indoor community or recreational facilities that primarily serve residents of the subdivision, have a total gross floor area for all such facilities of less than two thousand (2,000) square feet, and are compatible with the overall scale and character of the subdivision
 - d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval
 - e. Support facilities necessary for the subdivision including community wells, stormwater management facilities, underground utility lines and related facilities such as sewer pump stations, small community storage buildings, and similar buildings and structures that are needed for the operation of the subdivision but not including personal storage buildings or sheds
 - f. Individual or group underground wastewater disposal systems or parts thereof, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities
 - g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board
4. Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.

5. Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Subdivision Regulations, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.

J. *Front Yard Setbacks.*

1. The minimum front yard setback for any lot with its required lot frontage on a public street in existence as of July 1, 2003 shall be the required minimum setback for the type of street and the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) or thirty (30) feet whichever is greater.
2. The minimum front yard setback for any lot with its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may be less than that required by the district regulations. The size of the minimum setback shall be shown on the subdivision plan, may vary from lot to lot or in different areas of the subdivision, and shall be subject to Planning Board approval based upon its finding that the setbacks will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate privacy and public safety.
3. If the approved front yard setback for any lot is less than that required by the requirements of the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements), any garage with garage doors that face the street, whether attached or detached, shall be located so that the front wall of the garage is located at least two (2) feet behind the front wall of the principal building. This requirement shall not apply to a garage located in the basement of a single-family home.
4. If the approved front yard setback for any lot is less than that required by the requirements of the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements), any accessory building shall be located so that the front wall of the accessory building is located at least two (2) feet behind the front wall of the principal building.

K. *Side and Rear Yard Setbacks.*

1. When a side or rear yard of a lot containing a residence or other building abuts the external perimeter or property line of a Conservation Subdivision, the minimum side and rear yard setbacks shall be the required minimum setback for the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) unless the streetscape buffer requirements of L. result in a greater setback .

2. The minimum side and rear yard setbacks from internal property lines within a Conservation Subdivision may be less than the required setbacks established by the district regulations (see Section 175-54, Table of Dimensional Requirements). The size of the minimum setbacks shall be shown on the subdivision plan, may vary from lot to lot or in different areas of the subdivision, and shall be subject to Planning Board approval based upon its finding that the setbacks will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate privacy and public safety.
 3. In all cases, the separation distance between principal buildings within the subdivision, whether on the same lot or on different lots, shall conform to the requirements of the Town's building code and the NFPA fire protection codes based upon the type of construction and the use of the buildings.
- L. ***Streetscape Buffer Adjacent to Existing Public Streets.*** A vegetated buffer strip shall be maintained along any public street existing as of July 1, 2003 that is adjacent to a Conservation Subdivision to minimize the visual impact of the Conservation Subdivision on the streetscape. The depth of the buffer strip shall be at least three times the minimum front yard setback requirement for the zoning district in which the parcel is located and the type of street (see Table of Dimensional Requirements) or one hundred (100) feet whichever is greater. This provision shall be reduced to twenty-five (25) feet for individual residential lots that front on public streets that existed as of July 1, 2003. No parking, buildings, structures, or recreational facilities shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in accordance with the landscaping provisions of Article XXII and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board as part of the approval of the subdivision, to assure that the buffer strip will be permanently protected and maintained.
- M. ***Perimeter Buffer.*** A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least the minimum setback requirement for the zone in which the subdivision is located. If the subdivision abuts a water body or wetland, the width and treatment of the buffer shall be consistent with the requirements of the Wetland Conservation Overlay District and/or the Shoreland Protection Overlay District. No parking, buildings, structures, access roads or driveways, or recreational facilities shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped in accordance with the landscaping provisions of Article XXII and the

treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained.

- N. ***Conceptual Long Range Development Plan.*** When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a Conservation Subdivision. This plan shall show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for Conservation Subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

175-107-II Workforce Housing Option

A. Purpose

The purpose of this Section is to provide an option for including workforce housing in Conservation Subdivisions that is consistent with the requirements of RSA 674:58-61 and will:

1. provide reasonable and realistic opportunity for the development of workforce housing;
2. ensure the continued availability of a diverse supply of home ownership and rental opportunities;
3. meet the goal of providing an adequate supply of affordable housing in Durham as set forth in the town's Master Plan; and
4. address the regional need for workforce housing as documented in the Strafford Regional Planning Commission's Housing Needs Assessment, as updated.

B. Authority

This section is adopted under the authority of RSA 674:21, Innovative Land Use Controls, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e.

C. Applicability

1. Development in accordance with the provisions of this Section is permitted as a Conditional Use in the Rural (R), Residential A (RA), Residential B (RB) and Office Research/Light Industry (ORLI) Districts as an option to Article XIX, Conservation Subdivision.

2. Permitted Uses

Single family, duplexes, multi-units not to exceed four (4) units, accessory apartments, and accessory dwelling units. A mix of housing types within the same subdivision is permitted within an application under this Section. Any housing type that exceeds more than two (2) units shall be designated as workforce housing.

D. Procedural Requirements

Any applicant, who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this section, shall follow the same procedure as outlined in the Town of Durham Subdivision Regulations and as provided for in the *Developer's Guidance Document for Affordable Housing*, January, 2011 as updated. Any such applicant shall also file a written statement of such intent as part of the application as per RSA 674:60.

E. Definitions: The following terms as used in this section shall have the following definitions:

1. Reasonable and Realistic Opportunities for the development of Workforce Housing: Opportunities to develop economically viable workforce housing within the framework of Durham's municipal ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e.
2. Workforce Conservation Subdivision: A Conservation Subdivision that provides rental or ownership housing opportunities to households based on the following standards: (1) workforce rental housing is defined as a housing unit that has a monthly rent not exceeding 30 percent of the gross income of a household earning no more than 60 percent of the Area Median Income for a 3-person household for the Portsmouth-Rochester Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development consistent with RSA 674:58 II; (2) workforce ownership housing is defined as housing that can be purchased at a price, including the combination of mortgage loan debt service, property taxes and insurance, that does not exceed 30 percent of the gross income of a household earning no more than 100 percent of the Area Median Income for a 4-person household for the Portsmouth-Rochester Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development consistent with RSA 674:58 II.

3. 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.

F. Density Incentive

Any Conservation Subdivision that seeks to include workforce housing shall be permitted to increase the number of market units by 20% above the Maximum Development Density as calculated per Section 175-107 E (2) and that will guarantee an additional 20% of units above the Maximum Development Density to be designated as workforce housing.

G. General Requirements of Workforce Housing Units

1. The workforce housing units should be interspersed to the greatest extent possible throughout the overall development and not concentrated in a separate area of the Subdivision.
2. Phasing—The phasing plan for the development shall provide for the construction of workforce housing units concurrently with the market-rate units.
3. More than fifty percent of the workforce housing units in the development shall contain two or more bedrooms.
4. The subdivision plan must also adhere to the standards outlined in Section H and satisfactorily meet the following criteria:
 - a. The dwellings qualifying as workforce housing shall be compatible in exterior appearance and reasonably consistent with the market rate dwellings in the proposed Subdivision.
 - b. Incorporate the equivalent of the Energy Star rating in all building designs or the current requirements outlined within Chapter 38 “Building Construction” of the Town of Durham Code, whichever performs better energy efficiency.
5. Alternative Lot Sizing: The Planning Board may authorize variations from the minimum lot sizes and lot dimensions specified by standards of the underlying zone through the Conditional Use Permit, provided the Planning Board determines that the following conditions are met:
 - a. All lots comply with the New Hampshire Department of Environmental Services requirements (RSA 485: A) for subsurface wastewater management (developments may

utilize individual or community wells and/or septic systems) and private water wells within the decreased lot size; and

- b. The objectives and standards of this article and the Subdivision Regulations are otherwise achieved.

H. Assurance of Affordability

1. Certification of Income Levels

All of the workforce housing units gained under this provision must meet the affordability requirements for workforce housing in Paragraph E (2) of this Section.

2. Assurance of Continued Affordability

Workforce ownership housing units must retain the development criteria and affordability standards herein for a minimum period of thirty (30) years through a suitable deed restriction, easement and/or mortgage deed instrument deemed acceptable to the Durham Planning Board and as monitored through reports provided to the Durham Planning Board by a selected third-party agent prior to the time of unit sale or resale.

I. Administration

This Section shall be administered by the Planning Board in cooperation with a third party property management entity that will be responsible for income verification and ongoing affordability compliance.

J. Conflict

If any provision of this Section is in conflict with the provisions of any other provisions of this ordinance, the more restrictive provision shall apply, except for any provision relating to reductions in standards for lot size, setbacks, or density, in which case the provisions of this Section shall apply.

175-108. Stewardship Fund.

Payments to the Town to provide for the periodic monitoring of conformance with the conservation restrictions on common open space shall be deposited in the Town's Stewardship Fund. The Stewardship Fund shall be maintained as a separate trust account and shall be used only for the monitoring of conservation restrictions. The use of the Fund shall be managed by the Town's Conservation Commission. The Commission shall provide the Town Council with an annual accounting of the use of the fund.

ARTICLE XX PERFORMANCE STANDARDS

175-109. Compliance Required.

This article establishes performance standards for specific uses. These standards must be met for all activities involving the specified uses.

- A. ***Accessory Agricultural Activities.*** Accessory Agricultural Activities shall conform to the following standards:
 - 1. The total area cultivated shall not be more than thirty-five (35) percent of the total lot area.
 - 2. The amount of herbicides, pesticides, and similar chemicals stored on the property shall not be greater than the amount associated with normal residential usage.
 - 3. Any facilities for the sale of excess agricultural products shall be temporary, shall be located so as not to create a traffic hazard or obstruct vehicular or pedestrian traffic, and shall be used only during the period of the actual harvesting of the product.
 - 4. No products that are not grown, raised, or produced on the premises shall be displayed or sold.
- B. ***Accessory Animal Husbandry – Livestock, not including poultry.*** Accessory Animal Husbandry – Livestock shall conform to the following standards:
 - 1. The lot on which the use is located shall have a minimum lot size of one hundred twenty thousand (120,000) square feet of area
 - 2. No area or structure for the housing, stabling, or feeding of animals shall be located within one hundred (100) feet of any property line
 - 3. No animals shall be pastured within twenty-five (25) feet of any property line
- C. ***Accessory Animal Husbandry – Poultry.*** The following terms and conditions apply to Accessory Animal Husbandry – Poultry:
 - 1. Roosters. Roosters are permitted only in the Rural Zoning District. However, they are not permitted on lots in the Rural Zoning District smaller than 20,000 square feet that were/are created as part of a conservation subdivision.

2. Single/Two Family. The keeping of poultry is permitted as an accessory use only to single family and duplex residences.
3. Number of animals. A maximum of 12 animals may be maintained per lot. There is no limit on the number of animals in the Rural Zoning District, except on lots smaller than 20,000 square feet that were/are created as part of a conservation subdivision.
4. Housing structure. An appropriate fully-enclosed structure for housing animals shall be provided in accordance with University of New Hampshire Cooperative Extension Housing and Space Guidelines. The structure shall be designed to prevent access from predators. Poultry shall be maintained in the structure from sunset to sunrise.

[Reference - http://extension.unh.edu/resources/files/Resource000471_Rep493.pdf]

5. Housing structure setbacks. The structure for housing animals shall meet all setbacks applicable to structures under this zoning ordinance. The structure shall be placed in the rear yard or side yard and may not be placed closer to any public street than the primary facade of the house facing that street (including for corner lots). However, in the Rural Zoning District the structure may be placed forward of the primary facade of the house provided it is set back at least 50 feet from the front (or side, for corner lots) property line.
6. Manure. Manure, compost from manure, and odor from the animals shall be handled in accordance with best management practices as specified in Best Management Practices for Agriculture in New Hampshire, as revised. Manure must be removed from the structure and immediate area housing the animals and composted or disposed of in a timely manner.
7. Feed. Feed shall be stored in fully enclosed and secured containers in order to prevent pests and predators.
8. Yards. Animals shall be confined to the rear yard and side yard, and may not go closer to any public street than the primary facade of any house facing any public street (including for corner lots). However, in the Rural Zoning District animals may inhabit the area forward of the primary facade of the house provided they are kept at least 50 feet from the front (or side, for corner lots) property line. Animals shall be maintained on the subject property and kept under the control of the owner.
9. Fencing. Poultry owners may install a chicken wire fence or other appropriate barrier in the rear and side yards (as delineated above) on their property. In the Rural Zoning District the fencing or barrier may be placed forward of the primary facade of the house provided it is set back at least 50 feet from the front property line. Otherwise, there is no

required setback for such fence or barrier. Any such fence or barrier shall not exceed 6 feet in height.

10. Slaughtering. Any slaughtering of poultry on the subject property must be carried out in accordance with best management practices.
11. Selling. Eggs may be sold on the premises provided the activity is conducted in accordance with the New Hampshire Department of Agriculture, Markets, and Food's Guidelines for Selling Shell Eggs and any signage conforms with the standards for residential accessory signs. The commercial sale of live poultry and poultry products other than eggs is prohibited.

[Reference - <http://agriculture.nh.gov/divisions/markets/documents/egg-guidelines.pdf>]

12. Complaints. When a complaint is issued regarding the keeping of poultry as an accessory use, at the option of the Town's enforcement official, the complaint may be referred to the Agricultural Commission which may then investigate the complaint and seek to resolve it, as appropriate. When such a complaint is reviewed by the Agricultural Commission, regardless of the outcome of the Agricultural Commission's review, the Town's enforcement official shall nonetheless maintain responsibility for ultimate disposition of the complaint, in accordance with Town law. The Town's enforcement official and the Agricultural Commission may refer to the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, as revised, and pertinent NH RSA's for guidance in this process, as appropriate.
13. Best Management Practices. The enforcement official shall use his/her reasonable judgment in applying the required best management practices (BMPs) that are referred to in this section C. Practices included in the BMP's which clearly should not pertain in the implementation of this ordinance, based upon his/her reasonable judgment, shall not apply. Where the relevance of a particular practice is debatable, the enforcement official, at his option, may consult with the Agricultural Commission for nonbinding guidance, as appropriate.
14. Permits. Please note that a building, fence, and/or sign permit may be required depending on specific circumstances. See the Code Enforcement Officer for clarification, where appropriate.

D. Accessory Apartments and Dwelling Units. Accessory apartments and accessory dwelling units shall conform to the following standards:

1. Only one accessory apartment or one accessory dwelling unit shall be located on a lot with a single-family residence. The location of an accessory apartment and an accessory dwelling unit in conjunction with one single-family residence shall not be permitted.

2. An accessory apartment shall contain at least three hundred (300) square feet of floor space, but shall not contain more than twenty-five (25) percent of the total floor space of the dwelling in which it is located, and shall be an integral part of the dwelling.
 3. An accessory dwelling unit shall contain at least three hundred (300) square feet of floor space, but shall not contain more than twenty-five (25) percent of the total floor space of the single-family residence to which it is accessory.
 4. If the occupancy of the single family dwelling, including the integral accessory apartment or accessory dwelling unit, becomes an unrelated household, the total occupancy is limited to three unrelated persons.
 5. The location and design of the accessory apartment or dwelling unit shall maintain the single-family character of the premises.
- E. **Accessory Structures.** Accessory structures shall be limited to a maximum of two (2) accessory buildings per lot plus one (1) additional accessory building for each eighty thousand (80,000) square feet over the required minimum lot size.
- F. **Child Care Center.** A child care center shall conform to the following standards:
1. Any outside play area shall be fenced and shall not be located within required yard setbacks.
 2. Provisions shall be made for the safe drop-off and pick-up of children such that this activity will not create a traffic hazard, obstruct vehicular or pedestrian traffic, or adversely impact adjacent properties including those located on the other side of the street.
 3. A child care center shall not be located on a minor street that is residential in character unless the Zoning Administrator finds that such a use will not create traffic in excess of what would be typically found on a residential street based upon a traffic study prepared by the applicant.
- G. **Child Care Home.** All child care homes shall conform to the following standard:
1. Provisions shall be made for the safe drop-off and pick-up of children such that this activity will not create a traffic hazard, obstruct vehicular or pedestrian traffic, or adversely impact adjacent properties including those located on the other side of the street,

In addition, child care homes licensed to accommodate more than six children at any time shall conform to the following standards:

1. Any outside play area shall be fenced and shall not be located within required yard setbacks.
2. The child care home shall not be located on a minor street that is residential in character unless the Zoning Administrator finds that such a use will not create traffic in excess of what would be typically found on a residential street based upon a traffic study prepared by the applicant.

H. ***Hotels and Motels.*** Hotels and motels shall conform to the following standards:

1. No person may stay in a hotel or motel as a guest for more than fourteen (14) days in any thirty (30) day period.

I. ***Manufactured Housing.*** A manufactured housing unit shall conform to the following construction and siting standards in addition to any state requirements:

1. It was constructed after June 15, 1975, and certified as meeting the mobile home construction and safety standards of the Department of Housing and Urban Development.
2. It is at least twenty (20) feet wide at the narrowest point.
3. The roof pitch shall be not less than a two-foot rise for each twelve (12) feet of horizontal run [two to twelve (2:12)], and the roof shall have minimum six-inch eaves or eaves and gutter.
4. It has roofing materials which are generally acceptable for site-built housing. Any roofing material may be used, provided that it has the appearance of a nonmetallic shingle, shake or tile roof.
5. It has siding material which has the appearance of wood, masonry or horizontal metal siding. Reflection from horizontal metal siding shall be not greater than that from siding coated with white gloss enamel.
6. It has a perimeter skirting that resembles a conventional house foundation and is constructed of brick, concrete, concrete block or pressure-treated wood.
7. It is placed on a permanent foundation approved by the Code Enforcement Officer.
8. The hitch and tongue of the manufactured home shall be removed.

J. ***Reuse of an Existing Agricultural Building.*** Any reuse of an agricultural building for a use other than an agricultural use shall conform to the following standards:

1. Any residential reuse shall conform to the use and dimensional requirements for residential uses for the zone in which it is located including, but not limited to, minimum lot size and minimum usable area per dwelling unit.
2. Any nonresidential reuse shall conform to the following standards:
 - a. There shall be no retail sale of goods not otherwise allowed in the zone.
 - b. The nonresidential activity shall occur completely within the agricultural building and there shall be no outside storage of material, equipment, or products.
 - c. The architectural character of the building shall be maintained.
 - d. Exterior changes to the building shall be limited to minor changes or additions needed to provide access or comply with code requirements.

K. *Reuse of an Older Single-Family Home for a Low Impact Nonresidential Use.* Any reuse of an older single-family home or residence shall conform to the following standards:

1. The nonresidential activity shall occur completely within the building and there shall be no outside storage of material, equipment, or products. The nonresidential activity may occupy all of the building or a portion of the building together with a single-family residential use.
2. The architectural character of the building shall be maintained.
3. Exterior changes to the building shall be limited to minor changes or additions needed to provide access or comply with code requirements.
4. The volume of traffic generated by the use shall not be more than twice the volume resulting from a typical single-family residence.
5. Any off-street parking created to serve the reuse shall be located to the side or rear of the building and shall be buffered from any abutting residential use by a landscaped buffer at least twenty (20) feet in width that meets the requirements of Article XXII.
6. No noise, odors, dust, vibrations, or similar factors shall be produced in amounts greater than those typically resulting from a typical single-family residence.

L. *Temporary Sawmill.* A temporary sawmill shall conform to the following standards:

1. The sawmill shall not be located or used on a property for more than thirty (30) days in any calendar year.
2. The sawmill shall be not located in any required front, side, or rear yard setback and shall be at least two hundred (200) feet from any residence on an abutting lot.

3. Processed materials shall not be stored on the site for more than two weeks.
 4. Upon the cessation of processing activity, the location of the sawmill, storage and processing areas, and vehicle areas shall be re-graded and seeded to restore the original condition of the site.
- M. **Forestry.** All forestry activities shall be conducted in accordance with the Basal Area Law RSA 227-J:9, RSA 79:10., and shall use as guidance for best forest management practices the “Best Management Practices for Erosion on Timber Harvesting Operations in New Hampshire” 2004 as amended, Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005 as amended, and Good Forestry in the Granite State (DRED).
- N. **Light Manufacturing.** Light Manufacturing shall conform to the following standards:
1. All manufacturing, processing, or fabrication shall occur within a building or fully enclosed structure.
 2. Manufacturing activities shall be limited to the processing or fabrication of materials which does not involve basic processes such as the mechanical or chemical transformation of materials or substances into new products unless such basic processes do not result in any noise, odors, or vibrations that are perceptible at the property line of the parcel on which the use is located.
 3. Assembly, processing, and fabrication activities not involving basic processes shall be conducted so that they will not result in objectionable noise, glare, vibration, odor, or electrical interference that will disturb or endanger adjacent properties,
 4. All outside storage of raw materials, products, and wastes shall occur within fenced and screened areas. Storage areas shall be buffered from view from public streets and adjacent residential uses through a combination of fencing, landscaping, and/or berms.
 5. Truck loading and material handling areas shall be located to the side or rear of the building. No overhead doors or other service or material delivery facilities shall be allowed on the side of the building facing a public street unless the Planning Board determines that there is no practical alternative.
- O. **Accessory Shed.** An accessory shed used in conjunction with a residential use shall conform to the following:
1. The maximum floor area of the shed shall be one hundred (100) square feet and no dimension shall be greater than fourteen (14) feet.

2. The height of the highest point on the shed shall be not more than fourteen (14) feet above grade.
3. The shed shall not be placed on a permanent foundation but may be located on blocks or similar supports.
4. The shed shall not be supplied with electricity, water, sewerage, or heat.
5. The shed shall only be used for the storage of personal effects of the occupants of the premises on which it is located.
6. The shed shall be located to the side or rear of the principal building.
7. The shed shall be setback at least ten (10) feet from any property line unless the abutter provides written approval to the Zoning Administrator for a reduced setback.
8. The shed shall be separated from any principal residential building on an abutting lot by not less than twenty (20) feet.

ARTICLE XXI

OFF-STREET PARKING AND LOADING

175-110. Compliance Required; Applicability.

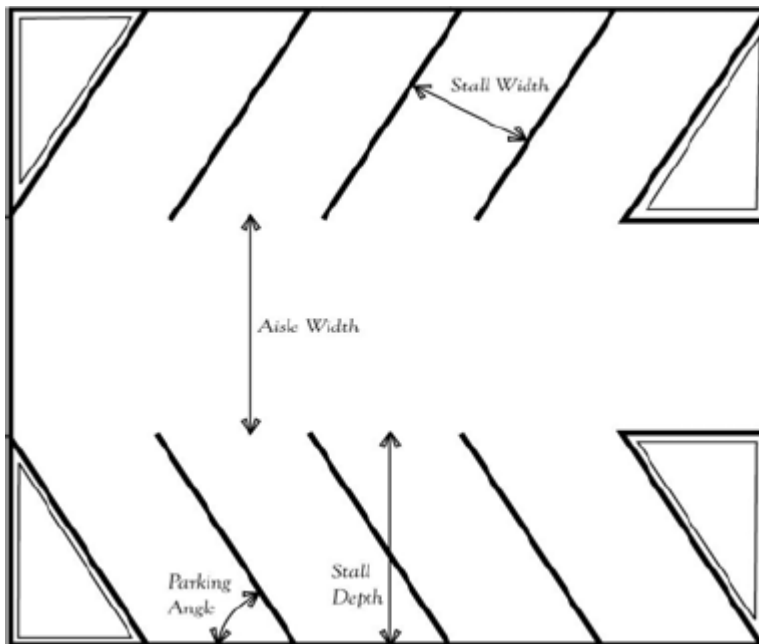
No use of premises shall be authorized or extended and no building shall be erected or enlarged unless parking and loading requirements are met for the new or added use. Any use existing prior to passage of this chapter which is later changed or enlarged shall provide an additional number of parking spaces at least equal to the difference between the numbers required for the total proposed use less the number which would have been required for the prior use under this chapter.

Parking lots and parking spaces shall also comply with the Americans with Disabilities Act (ADA) Regulations, the current edition of the NH State ICC Building Code and the current edition of the ICC/ANSI A117.1.

175-111. General Requirements.

- A. *Standard vehicle parking space size and aisle width.* For 90 degree parking a standard vehicle parking space shall measure nine by eighteen (9 x 18) feet, and the aisle width shall be twenty-two feet. For 60 degree angled parking a standard vehicle parking space shall measure nine by seventeen (9 x 17) feet, and the aisle width shall be twenty feet.

The nine (9) foot vehicle parking space width may be reduced to eight (8) feet, with an additional eight (8) foot access aisle, in order to comply with accessibility requirements under ADA or State Building Codes where an access aisle is required adjacent to the space.

Figure 1 – Parking Space Dimensions

- B. **Compact parking space size.** A compact parking space shall be no smaller than eight by sixteen (8 x 16) feet. No more than thirty percent (30%) of the off-street parking requirement shall be met by the use of compact spaces, and all such spaces shall be suitably marked on the site.
- C. **Storage.** The parking or storage of any truck or truck trailer in excess of one (1) ton for more than twenty-four (24) hours in any three-day period shall not be allowed in the front or side yard setback.
- D. No driveway in the front yard setback shall be wider than twenty-two (22) feet, except as permitted under 175-118 C 3.
- E. Parking spaces, excluding employee parking, shall be on the same lot with the principal building unless arrangements have been made for shared parking on another property and approved by the Planning Board.
- F. **Bicycle Racks.** For all parking facilities that provide ten or more parking spaces, the installation of bicycle racks shall be required. The bicycle racks shall be designed to provide for secure locking of bicycles.
- G. **Design Requirements.**
 - 1. All parking areas and access driveways shall have, at a minimum:
 - a. A smoothly graded stabilized dust-free gravel surface, or similar surface type, for single-family, duplex dwelling units, and agricultural uses.
 - b. A hard surface (concrete, asphalt, gravel, porous asphalt or cement, interlocking brick pavers, etc.) for:

- (1.) All multi-unit dwellings, fraternities, sororities and rooming and boarding houses.
- (2.) All nonresidential uses.
- c. Adequate drainage to prevent runoff from flowing onto adjacent property, sidewalks and public roads. The infiltration of stormwater on site is strongly encouraged.
- d. Appropriate bumper guards or curbs where needed to define parking spaces or limits of paved areas, or to prevent vehicles from projecting into any setback or other portion of a lot where parking is prohibited.
- 2. Parking lots for ten (10) or more vehicles shall be clearly marked with properly painted lines or other method approved by the Code Enforcement Officer.
- 3. Parking serving single-family and duplex units will be permitted in the front yard setback for up to three (3) vehicles per household; however, the parking must be on paved, gravel, or similar pervious surfaces as required in G.1.a and b above.
- 4. Adequate parking spaces for disabled persons will be provided as necessary under the ADA and NH State Building Code Regulations.
- 5. Parking is allowed in the side yard setbacks and rear yard to serve residential uses and all nonresidential uses, provided that:
 - a. A five-foot strip of landscaping and solid screening is provided and maintained adjacent to the adjoining property boundary or a public right-of-way.
 - b. A commercial residential or commercial use does not abut a single-family or duplex household.
- 6. Buildings should be sited closer to the street and parking areas shall be located on the side or rear of lots in an effort to reduce the visual dominance of parking areas, improve pedestrian safety, and increase the visibility of businesses to drivers.

175-112. Central Business District Special Conditions.

- A. ***Exemptions.*** All permitted uses shall be exempt from the parking requirements of this chapter within the Central Business District, provided that:
 - 1. A one-time parking impact fee (as set by the Town Council) is paid by the owner and/or developer for the number of spaces required less the number of on-site spaces provided. The parking impact fee shall be reviewed by the Durham Town Council on an annual basis.
 - 2. The existing number of required parking spaces shall not be reduced by any proposed development unless approved as part of a property redevelopment plan by the Planning Board.

175-113. Required Parking.

Parking shall be required as follows and shall be rounded up to the nearest whole number:

TYPE OF USE	NUMBER OF REQUIRED PARKING SPACES
<i>Residential</i>	
Single-family duplex or multiunit dwellings	2 per dwelling unit
OR	
Dwelling units permitted to be occupied by 3 or more unrelated individuals	1 per resident
Rooming or boarding houses, fraternities, sororities, dormitories, or congregate housing	1 per resident
Elderly housing	1 per dwelling unit or lodging unit, plus 1 per employee
Homes for aged, disabled, or handicapped	1 per 5 beds, plus 1 per employee of the maximum shift
Educational facilities	1 per staff member, plus 1 for 4 seats in the largest public assembly room
<i>Commercial</i>	
Bed and breakfasts or Hotels and motels	2 for the resident family or manager, plus 1 per room rented, plus 1 for each 2 outside employees on the maximum shift, plus 1 per 400 square feet of meeting place
Veterinary clinics or commercial kennels	1 per 400 square feet of gross floor space; minimum of 4
Auditoriums, theaters, churches, or other places of assembly with fixed seating	1 per 4 seats or 40 square feet of gross floor area used for assembly purposes; whichever is greater
Libraries, museums, and art galleries	1 for every 500 square feet of gross floor area.

Day care	1 per 6 supervised children or adults, plus 1 per employee
Restaurant Carry-out	1 space per every two (2) seats, plus (1) space per each employee in the maximum shift, or one (1) space per fifty square feet of gross floor area, plus one (1) space per each employee in the maximum floor shift.
Restaurants less than 4,000 square feet	1 per 100 square feet of seating area, plus 1 per employee on the maximum shift
Restaurants over 4,000 square feet	40, and 1 per 200 square feet of gross floor area in excess of 4,000 square feet
Banks and financial institutions	1 per 250 square feet of gross floor area
Professional offices	1 per 350 square feet of gross floor area
Medical and dental offices	1 per 250 square feet of gross floor area, plus 1 per employee
Offices not providing customer service	1 per employee, but not fewer than 1 per 400 feet of gross floor area
Retail or personal service stores	1 per 250 square feet of gross floor area
Retail II (furniture, hardware or carpets)	1 space per 600 hundred square feet of gross floor area.
Service stations	3 per service bay, plus 1 per employee
Manufacturing uses, research testing and processing, assembling, all industries	1 per 1.5 employees on a maximum shift, but not less than 1 space for every 400 square feet of gross floor area

Other Uses

Closest similar use as shall be determined by the Director of Planning and Zoning Administrator.

Maximum Number Allowed. Parking lots may contain up to ten percent (10%) more spaces than the required minimum. Any additional spaces above ten percent (10%) shall be allowed only as a conditional use upon the finding that such additional spaces are needed.

175-114 Shared Parking

A. When required parking reductions are anticipated, as a result of sharing between intermittent, seasonal, or compatible uses with non-conflicting parking demands (e.g. a church and a bank), then the reduction can be considered for approval by the Planning Board without a parking study. Individual spaces identified on a site plan for shared users shall not be shared by more than one user at the same time.

B. If a privately owned parking facility is to serve two or more separate properties, then a "Shared Parking Agreement" shall be filed with the Town of Durham for consideration by the Planning Board. Unless explicitly stated to the contrary, the property owner of the parking facility accepts responsibility for operating, maintaining, and accepting liability for personal injury and property damage.

175-115. Loading Spaces or Bays.

A. Every retail business and restaurant outside of the Central Business District shall have direct access to an off-street exterior loading space or interior loading bay. Where the gross floor area of a retail business or restaurant in the CBD exceeds ten thousand (10,000) square feet, an off-street loading space or bay shall be provided on the premises. In the OR Districts, at least one (1) off-street loading space or bay shall be provided for the first twenty-five thousand (25,000) square feet of gross floor area and two (2) such spaces or bays for the first fifty thousand (50,000) square feet of gross floor area.

175-116. On Site Landscaping and Exterior Screening.

All surface parking areas for over five (5) vehicles shall meet the following conditions below

- A. A minimum of five percent (5%) of the total parking and driveway area, in addition to a buffer strip of at least ten-feet in width abutting a public right-of-way, shall be landscaped.
- B. Parking lots shall be broken up into smaller parking areas with landscaping and bio-retention features. The total parking area required shall be broken into sections not to exceed forty (40) spaces unless otherwise approved by the Planning Board or other appropriate municipal official.

- C. The perimeter landscape buffer along a street shall consist of native planting materials, or planting materials and man-made features to create at a minimum a three-foot-high visual relief screen in the form of a hedge, fence, planter box, berm, dividers, shrubbery or trees, or a combination thereof. All landscaping to form such visual relief shall create a two-foot-tall minimum screen at planting.
- D. All islands, peninsulas and medians required in the parking areas shall be more or less evenly distributed throughout such parking areas. The distribution and location of landscaped areas may be adjusted to accommodate existing trees or other natural features so long as the total area requirement for landscaped islands, peninsulas and medians for the respective parking area is satisfied. All landscaped islands, peninsulas and medians shall be a minimum of six feet in width and shall be separated from the parking area by adequate curbing or tire stops. The design and use of islands for bio-retention is encouraged as a Low Impact Development (LID) application. Some islands shall be used to provide pedestrian walkways.
- E. There shall be a six-foot-high solid screen composed of evergreens or fencing when bordering or adjacent to a residential zone.
- F. Corner clearance, as defined in Section 175-7, shall be observed regarding all landscaping or screens.
- G. Trees for parking lots shall be species selections recommended for the Durham area. They shall be selected to endure urban environment, shall be tolerant of salt, shall be resistant to disease and shall require little maintenance. Trees that drip sap or drop large seeds or blossoms onto parked vehicles shall not be used.
- H. All trees and other vegetation within parking lot landscaped areas are subject to maintenance requirements as outlined in Section 175-124 Maintenance Requirements. All trees and other vegetation are also subject to protection during construction as outlined in Section 175-123.
- I. A performance bond or letter or credit is required to insure compliance with this section and to cover maintenance for a period not to exceed one (1) year after the time of planting.

175-116.1. Lighting.

Any lighting provided to illuminate any parking area shall be arranged so as to direct the light away from any abutting or adjacent residential district or residential use. All lighting fixtures serving parking lots shall be cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA).

175-117. Driveway Permits; Penalty; Fees.

A. *Access to town roadways.*

- 1. A written permit from the Director of Public Works is required prior to the construction or alteration of any driveway, entrance, exit or approach within the limits of right-of-way of the Durham roadway system.

2. A written construction permit application must be obtained from and filed with the Durham Public Works Department by any abutter intending driveway work as per Subsection A(1) above. Said permit shall have been reviewed and a construction permit issued prior to the final approval of the site plan or building permit.

B. *Construction requirements.*

1. Driveway construction shall meet the requirements of the Public Works Department. The latest Policy and Procedure for Driveways and Other Accesses to the State Highway System, as published by the New Hampshire Department of Transportation, will be used for design guidelines.
2. Engineered construction plans shall be required for commercial or industrial enterprises and all subdivisions.

C. *Number of curb cuts.*

Applicants seeking approval for curb cuts on State Roadways are required to communicate with both the Town of Durham and the NH Department of Transportation, and to identify the agreed upon locations and configuration of the curb cuts prior to applying for a driveway permit.

1. In the RA, RB, RC and R Zoning Districts, there shall be not more than one (1) driveway where the frontage is less than two hundred (200) feet. One (1) additional driveway for each additional one hundred (100) feet or major fraction thereof may be permitted by the Public Works Department should site conditions warrant.
2. In the OR 108, CB, PO, CH, C, CC, MUDOR, ORLI, and DBP Zoning Districts, a maximum of two (2) driveways per lot may be permitted by the Public Works Department should site conditions warrant.
3. In addition to limiting the number and location of driveways, the Town of Durham encourages the use of shared driveways for adjoining parcels, the elimination of existing driveways, and the construction of fewer driveways than permitted. It is envisioned that by limiting the number of highway access points, the number of points where turning vehicles and through vehicles conflict will be reduced. To provide incentives for shared driveways in the OR 108, CB, PO, CH, C, CC, MUDOR, ORLI, and DBP Zoning Districts, an incentive system has been developed. An applicant may increase the maximum lot coverage permitted in their District by electing to use one or more of the provisions listed below. The Planning Board shall decide if the applicant complies with the provisions of the incentive system. An applicant may utilize one or more of the following voluntary provisions:
 - a. Provide a shared driveway as the sole access to the subject parcel and one or more adjacent parcels. To qualify for this incentive, the applicant shall provide appropriate easements to insure that the shared driveway will remain in existence and will be adequately maintained.

b. For parcels with existing driveways, reduce either the number of separate driveways or the total width of the existing driveways (as measured at the right-of-way line) by at least fifty percent (50%), or reduce the number of driveways to one driveway of not more than thirty-two (32) feet in width.

c. Reduce the total number of driveways permitted.

If the Planning Board finds that an applicant has complied with one or more of the voluntary provisions outlined above the Planning Board shall permit additional impervious surface coverage above the maximum permitted in the District. This additional impervious surface coverage may be five percent (5%), or the equivalent of the surface area eliminated by the voluntary provisions, whichever is less.

D. ***Interconnections Between Parcels.*** In order to reduce the number of vehicles entering and exiting arterial and collector roads, the provision of interconnecting driveways is encouraged whenever feasible. These interconnecting driveways or service roads are provided to allow customers and employees to move from site to site without repeatedly using Durham's main streets. If an adjacent parcel(s) is vacant, the applicant shall grant an easement for future access. The easements shall be written to insure that the interconnection(s) will remain open and will be adequately maintained. The cross connections shall be located to encourage internal traffic between abutting properties and shall be adequately marked with directional signs. If the Planning Board finds that an applicant has complied with the provision outlined above, the Planning Board shall permit an additional five percent (5%) of impervious surface coverage above the maximum permitted in the District.

E. ***Maintenance responsibility.***

1. The total cost of all construction and maintenance of the work specified shall be borne by the applicant, his/her grantees, successors and assignees. With the exception of certain drainage structures constructed according to permit specifications by the applicant, the Department of Public Works will assume the maintenance responsibility for:
 - a. The driveway culverts carrying surface water in roadside ditches under driveways within the town right-of-way.
 - b. Catch basins constructed at the end of cross-road culverts under the town roadway system.
 - c. Drainage systems along existing roadways constructed for the purpose of disposing of roadway drainage.
2. In the case where adjoining property has been or is being developed which requires the extension of a pipe, ditch or drainage system, it is the responsibility of the abutting property owner to construct according to permit specifications and maintain said

extensions. The Department assumes the responsibility of maintenance for the catch basin at the roadside (in the ditch or gutter line within the town right-of-way), and the abutting landowner is responsible for extensions from said catch basin.

- F. **Penalty.** Whoever violates any provision of this section or the rules and regulations made under authority thereof shall be fined as set forth in Section 175-10 of this Code and, in addition, shall be liable for the cost of restoration of the roadway to a condition satisfactory to the person empowered to give such written permission.
- G. **Permit fees.** Permit fees shall be as set by the Town Council from time to time and shall be payable upon the filing of the application.

ARTICLE XXII LANDSCAPING

175-118. Preface.

Trees are recognized as a valid asset to the community, providing a more healthful and beautiful environment in which to live. Trees and other vegetation provide oxygen; shade; protection from wind, glare and noise; view barriers; aesthetics; and a priceless psychological counterpoint to the man-made urban setting. Landscaping is economically beneficial in attracting new residents, visitors and industry. When grown on the right place and of proper varieties, landscaping enhances the value and marketability of property and promotes the stability of desirable neighborhoods and commercial areas.

175-119. Purpose and Intent.

- A. The purpose of this Landscape Article is to establish procedures and practices governing the protection, installation and long-term maintenance of trees, vegetation and other landscape elements within the limits of the Town of Durham. The process of development, with its alteration of the natural topography and creation of impervious cover, can have a negative effect on the ecological balance of an area by causing increases in air temperature and by accelerating the processes of runoff, erosion and sedimentation.
- B. Development oftentimes requires the removal of trees and other plant material. The protection and enhancement of the natural beauty, environment and green space within the Town of Durham is an important aspect of the economic base of the community in that it is instrumental in attracting residents and nonresidents who come to visit, trade, vacation or attend conventions and educational programs.
- C. The purpose and intent of this Article is as follows:
 - 1. To aid in stabilizing the environment's ecological balance by contributing to the processes of air purification, oxygen regeneration, groundwater recharge and stormwater runoff retardation while at the same time aiding in noise, glare and heat abatement.

2. To ensure that the local stock of native trees and vegetation is protected and replenished.
3. To provide visual buffering and enhance the beautification of the town.
4. To safeguard and enhance property values and to protect public and private investment.
5. To preserve and protect the identity and environment of the Town of Durham and preserve the economic base attracted to the Town of Durham by such factors.
6. To conserve energy.
7. To protect the public health, safety and general welfare.

175-120. General Requirements.

The objectives of this section are to encourage the planting and retention of existing trees and other vegetation to improve the appearance of off-street parking areas, yard areas and other vehicular use areas; to protect and preserve the appearance, character and value of surrounding properties and thereby promote the general welfare, safety and aesthetic quality of the Town of Durham; to establish buffer strips between properties of different land uses in order to reduce the effects of sight and sound and other incompatibilities between abutting land uses; and to ensure that noise, glare and other distractions within one area do not adversely affect activity within another area.

- A. No landscape plan submitted pursuant to this section shall be approved unless it conforms to the requirements of this Article.
- B. Landscape plans shall be submitted for all commercial and commercial residential uses. Said plans shall include dimensions and distances and shall clearly delineate the existing and proposed parking space or other vehicular use, access, aisles and driveways and the location, size and description of all landscape materials, including the quantity and botanical names of all plants. The Planning Board reserves the right to require landscape plans to a scale of one (1) inch equals twenty (20) feet.
- C. A detailed snow-removal plan shall be submitted with the landscape plan.
- D. Shrubbery, ground cover and other planting materials shall be used to complement the tree planting but shall not be the sole contribution to the landscaping. Effective use of earth berms, existing topography and existing trees is also encouraged as a component of the landscape plan and shall be considered as a part of the planting requirements.
- E. All shade trees to be used shall be a minimum of two (2) inches in diameter at breast height at planting. Inclusion in the landscape design of existing trees is encouraged.
- F. All shade trees to be planted shall be hardy for the Durham botanical zone.
- G. All required landscaping shall be provided with either:
 1. An underground sprinkling system; or

2. An outside hose attachment.
- H. All landscaping which is in required landscaped areas and which is adjacent to pavement shall be protected with concrete or granite curbs or equivalent barriers (such as car bumpers, railroad ties, continuous border plants or hedgerows) when necessary to protect the vegetation from vehicular damage.
- I. Landscaping in landscaped areas shall not obstruct the view between the street and the access drives and parking aisles near the street yard entries and exits, nor shall any landscaping which creates an obstruction of view be located in the radius of any curb return. (See Section 175-55C.)
- J. Plant materials used in conformance with the provisions of this Article shall be of specimen quality and conform to the American Standard for Nursery Stock, American Standards Institute, Inc., 230 Southern Building, Washington, D.C. 20005.
- K. Landscaping, landscape maintenance and snow-removal plans shall be developed and approved as required in the Site Plan Review Regulations and Subdivision Regulations of Durham, New Hampshire. In the case where a question may arise between the town and the developer regarding a proposed landscape plan, a third party (qualified professional landscape authority), as approved by the town and the developer, may be called upon to make recommendations for the Planning Board's consideration; all costs to be borne by the developer.
- L. A guaranty or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscaping plan as submitted and approved.

175-121. Commercial Areas.

The existing natural landscape character shall be preserved to the extent reasonable and feasible. As an example of this, in a yard area containing a stand of trees, the developer shall use care to preserve such trees. In determining whether there is compliance, the Planning Board shall consider topographical constraints on design, drainage, access and egress, utilities and other factors reasonably related to the health, safety and welfare of the public which necessitated disturbance of the property without the disturbance of its natural character, the nature and quality of the landscaping installed to replace it and such other factors as may be relevant and proper. Clearing and stripping of the natural vegetation on a lot is prohibited prior to obtaining an approved landscaping plan.

A. *Landscaped yard area requirements.*

1. The landscape plan will include a mix of tree species a minimum of two (2) inches in diameter at breast height at planting, to be planted at twenty-foot centers to provide for a tree canopy. The total number of trees necessary will be determined according to the combined footage of the front and side lines defining the landscaped yard as illustrated by the diagram accompanying this chapter as Exhibit A and made a part hereof.

2. In cases where the zoning requires a buffer area, landscaping requirements under Subsection C below shall be followed.
 3. Shrubbery, ground cover and other planting materials shall be used to complement the tree planting but shall not be the sole contribution to the landscaping. Effective use of earth berms, existing topography and existing trees is also encouraged as a component of the landscape plan and shall be considered as a part of the landscaping requirement.
- B. All newly planted trees shall be planted in a permeable area of no less than a three-foot-wide radius from the base of the tree. Piles of snow shall be kept a minimum of five (5) feet away from the base of the tree.
- C. **Buffer/barrier.** Abutters will be protected against undue noise, glare, unsightliness or other nuisance detrimental to property values. Where a commercial lot abuts a residential area, a screen along the lot line must be provided consisting of either a row of evergreens at least four (4) feet in height at planting, which will grow into a thick hedge not less than six (6) feet high, or of an opaque and neatly maintained fence not less than six (6) feet in height.

175-122. Subdivision Areas.

During the development and construction process, wooded natural and nonwooded natural areas will be manipulated to maintain a healthy vegetative cover to maintain the soil structure, minimize soil erosion and enhance the quality of the proposed community. In wooded natural areas, the healthy forest cover will be retained to reduce the amount of stormwater running across the ground surface.

A. *Wooded natural areas.*

1. Plant community groupings or forest types will be identified, and the negative response to construction for plant groupings or forest types shall be identified based on forestry management principles.
2. Trees targeted for harvest/removal shall be clearly marked.
3. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators.
4. Trees of special interest, historic trees or trees having unusual silvicultural characteristics shall be flagged and located on the landscaping plan. These existing trees shall be protected during construction as outlined in Section 175-123.
5. The landscape plan will include a reforestation plan to establish trees in appropriate places, not to attempt to design finished landscaping near home sites. The plan is intended to establish and enhance forest cover in certain areas and/or create screens and buffer strips in critical locations, i.e., sewer/water easements. Proposed screening and buffer strips will receive plantings of evergreens three (3) to four (4) feet in minimum height, planting on ten-by-ten-foot centers (i.e., white pine, red pine or hemlock).

6. A site inspection by the Durham Tree Warden of trees marked for saving, cutting or clear-cutting is required prior to cutting of the lot.
- B. ***Nonwooded natural areas***. For subdivisions in open fields and other nonwooded areas, the landscape plan will include a mix of tree species to be planted on thirty-foot centers to provide for a tree canopy. The trees will be planted within the town right-of-way or on the private property boundary line adjacent to the town right-of-way.
- C. ***Roadway slopes***. In cases where the sloped areas extend more than ten (10) feet from the shoulder to the ditch line, the sloped areas must be landscaped and planted as determined by the Planning Board.

175-123. Protection During Construction.

The Protection during construction section, as outlined below, will apply to commercial, subdivision, parking lot, roadway slopes and buffer/barrier zone sections of this chapter.

- A. Fencing or other protective barrier shall be used around trees near construction sites.
- B. Changes in the normal drainage patterns shall be avoided, and appropriate protection shall be provided for trees if a grade change is necessary in the surrounding area.
- C. Pedestrian and other traffic patterns should be kept away from trees to avoid soil compaction.
- D. Practices for the proper protection of trees on construction sites shall be in accordance with the guidelines in the following references:
 1. Tree Protection Manual for Builders and Developers, 1979, Florida Department of Agriculture and Consumer Services, Tallahassee, Florida.
 2. Protecting Shade Trees During Home Construction, United States Department of Agriculture, Home and Garden Bulletin No. 104, 1977, United States Government Printing Office, Washington, D.C. 20402.
 3. Environmental Do's and Don'ts on Construction Sites, United States Department of Agriculture, Soil Conservation Service, Publication No. 1291, 1974.
- E. If the above guidelines are not followed and a tree is damaged or destroyed during construction, the developer shall be required to pay to the Town of Durham the assessed value of said tree, to a maximum of two thousand five hundred dollars (\$2,500.) per tree, the cost to be determined by guidelines in a Guide to Professional Evaluation of Landscape Trees, Specimens and Evergreens, 1982, International Society of Arboriculture, Urbana, Illinois, or per an updated version.
- F. Protection of existing vegetation during construction shall include, wherever possible, open field or non-treed areas.

175-124. Maintenance Requirements.

The maintenance requirements as outlined below shall apply to commercial, subdivision, parking lot areas, Roadway slopes and Buffer/barrier zone sections of this chapter.

- A. All newly planted vegetative material shall be guaranteed to meet minimum American Standard for Nursery Stock standards at the time of planting and for one (1) year thereafter.
- B. Any agreement for long-term maintenance of any landscaping project must be negotiated prior to approval of a subdivision request based on the following criteria:
 - 1. Vegetation replacement.
 - 2. Irrigation.
 - 3. Pruning, fertilizing and insect and disease protection.
 - 4. Litter or debris cleanup.
 - 5. Drainage and tree protection if there is a grade change.
- C. A maintenance program shall be established. Pruning should be started early and kept up at regular intervals. Trees should be pruned and shaped to avoid splitting later in life. Broken tops and branches should be removed as soon as possible after injury. Broken, weak or diseased branches should be removed first, dead branches second and healthy branches last.
- D. Trees and shrubs should be protected against damage incurred with lawn mowers and garden equipment. Keeping grass away from tree trunks with the use of mulch is recommended.
- E. The use of road salt around the trees and shrubs should be avoided or minimized.
- F. Required landscaped areas shall be routinely maintained free of debris and litter and in good condition, with regular mowing of grass, so as to present a neat, healthy and orderly appearance. Maintenance shall include the replacement of all dead plant material within the guaranteed contract period. Practices for proper maintenance of landscape materials shall be done in accordance with the following standards:
 - 1. A Pictorial Primer for Proper Pruning by Dr. Alex L. Shigo, Forest Notes, Number 148, Spring 1982, pages 18-21.
 - 2. Standards of Practice of National Arborist Association, Inc., which includes Pruning, Fertilizing, Cabling, Pesticide Application and Lighting System Installation, National Arborist Association, 3537 Stratford Road, Wantagh, New York 11793.
 - 3. The Planting and Care of Shade Trees, Extension Publication Number 10, Cooperative Extension Service, University of New Hampshire, Durham, New Hampshire 03824.

175-125. References.

References shall be as follows:

- A. Tree Protection Manual for Builders and Developers, 1979, Florida Department of Agriculture and Consumer Services, Tallahassee, Florida.
- B. Protecting Shade Trees During Home Construction, United States Department of Agriculture, Home and Garden Bulletin No. 104, 1977, United States Government Printing Office, Washington, D.C. 20402.
- C. Environmental Do's and Don't's on Construction Sites, United States Department of Agriculture, Soil Conservation Service, Publication No. 1291, 1974.
- D. A Guide to Professional Evaluation of Landscape Trees, Specimens and Evergreens, 1982, International Society of Arboriculture, Urbana, Illinois.
- E. Tree Values, Council of Tree and Landscape Appraisers, Washington, D.C. (slide and tape program).
- F. Trees and Shrubs in New Hampshire, A Guidebook for Natural Beauty Projects, Cooperative Extension Service, University of New Hampshire, Durham, New Hampshire, 03824.
- G. American Standard for Nursery Stock, American Standards Institute Inc., 230 Southern Building, Washington, D.C. 20005.
- H. A Pictorial Primer for Proper Pruning by Dr. Alex L. Shigo, Forest Notes, Number 148, Spring 1982, pages 18-21.
- I. Standards of Practice of National Arborist Association, Inc., which includes Pruning, Fertilizing, Cabling, Pesticide Applications and Lighting System Installation, National Arborist Association, 3537 Stratford Road, Wantagh, New York 11793.
- J. The Planting and Care of Shade Trees, Extension Publication Number 10, Cooperative Extension Service, University of New Hampshire, Durham, New Hampshire 03824.

ARTICLE XXIII**SIGNS AND COMMUNICATIONS DEVICES****175-126. Applicability.**

It is the purpose and intent of this article to provide standards for the erection, installation and maintenance of signs, vending machines, awnings, marquees, canopies, public time pieces and thermometers for the purpose of conformity with aesthetic values outlined in the Master Plan, and for the convenience, comfort, propriety and general welfare of the Town of Durham.

- A. *Nonconforming signs and communication devices.* Any sign, vending machine, marquee, canopy, public time piece or thermometer, or other such structure not conforming to the terms of this chapter shall be allowed to continue nonconforming. Nothing herein shall prevent the substantial restoration or reconstruction, within one year, of a sign destroyed in

part or whole by fire or other casualty so long as this use does not result in a new or increased violation. Once a nonconforming sign has been removed as per 175-126 (B), any new signs shall conform to the standards set forth in this section.

- B. ***Removal of certain signs.*** Any sign now or hereafter existing which no longer advertises a bona fide business conducted, or product sold on the premises, shall be removed by the owner, agent or person having the beneficial use of the building or property upon which the sign may be located. Removal shall take place within fourteen (14) days after written notification from the Code Enforcement Officer. Otherwise said sign shall be deemed to constitute a public nuisance.

175-127. General Provisions/Application Process.

Application for a permit to erect a sign shall be made in writing to the Code Enforcement Officer, Town of Durham, for all signs, except snipe signs, in excess of six (6) square feet of total exposed surface area or six (6) feet in height, vending machines, awnings, marquees, canopies, public time pieces, and thermometers and such application shall contain the following information:

Note: Signs shall only be permitted for the promotion of goods and services sold on the site in question.

- A. Name, address and telephone number of applicant;
- B. Proposed location and position of sign or structure;
- C. Plans or drawings with dimensions and specifications;
- D. Written consent of owner of the building or land;
- E. Such other information as the Code Enforcement Officer may require including load calculations prepared and submitted by a Registered Professional Engineer.

175-128. Inspection.

The owner of any sign shall inspect annually each sign belonging to him/her, and it shall be the duty of said owner to keep his/her sign(s) in good repair and in good appearance at all times.

175-129. Placement of Signs.

- A. All signs shall be prohibited within public rights-of-way (ROWs) with the exception of necessary traffic control devices and directional signs deemed essential for the public welfare and safety and which are authorized by municipal and state agencies.
- B. The location of all sandwich board signs shall be limited to the outer edge of the sidewalk within the public ROW and no closer than within one (1) foot of the curb line. The sandwich board sign placement shall be within ten (10) feet of the primary entrance of the establishment, shall not obscure or impede pedestrian travel, and shall allow a minimum of a four (4) foot accessible path along the side walk.

- C. No sign shall be designed or placed so as to endanger, obscure or confuse or otherwise create a hazardous condition to motor vehicles or pedestrians.
- D. No sign shall project above the roof or parapet line of a building.
- E. Vending machines and Automated Teller Machines (ATMs) shall not be permitted on the exterior surface of any building or structure, or on any sidewalk or thoroughfare.
- F. This section is not intended to regulate or restrict signs expressing political, non-commercial, or non-advertising messages.

175-130. Illumination of Signs.

- A. Signs may be illuminated only by exterior white light sources, and shall be placed so that they will not contribute to light pollution or constitute a hazard to street or highway driving by glare. The maximum amount of lighting permitted shall be the minimum amount of lighting necessary to illuminate the sign, and the spillover of light beyond the sign surface shall be minimal to nonexistent.
- B. No flashing or animated signs, nor signs with visible moving parts or intermittent lighting to create the visual effect of movement shall be permitted.
- C. No neon or tubular gas filled signs shall be allowed in any district.
- D. Signs will be illuminated only during business hours.

175-131. Permitted Messages.

- A. Signs shall refer only to a use or activity conducted on the lot upon which they are situated, except that a limited number of signs, each sign not exceeding two (2) square feet in area on each of two sides and intended solely to provide directional information, may be permitted by the Code Enforcement Officer for a limited period of time.
- B. Farms shall be permitted by the Code Enforcement Officer to place not more than four (4) signs, each sign not exceeding six (6) square feet in area on each of two sides and intended solely to provide information about farm products for sale, as well as directional information.
- C. No sign which contains a registered trademark or name which portrays a specific commodity or service for sale will be allowed in any zone unless the trademark or name is of the principal commodity or service offered for sale by the establishment.
- D. This section is not intended to regulate or restrict signs expressing political, non-commercial, or non-advertising messages.

175-132. Condition of Signs.

- A. Signs other than permitted temporary or snipe signs shall be constructed of durable materials, and shall be maintained in good condition and repair. When by reason of neglect a sign

becomes hazardous, unsightly, or otherwise tends to depreciate its surroundings, the sign shall be deemed to constitute a public nuisance (see Section 175-135).

- B. Any clock or thermometer displayed for the public convenience shall be accurate.

175-133. Permitted Signs, by District.

- A. **Total Sign Area.** Each business establishment will be allowed a total of forty-eight (48) square feet of signage. This can be composed of any combination of signs in accordance with this ordinance. Each business establishment in the Central Business District is permitted one additional Sandwich Board sign or Reader Board sign.

- B. **Snipe Signs.** The use of snipe signs is permitted on private property only for non-commercial events and elections. The limitations that follow are intended to allow for political speech while minimizing any visual distraction that could become a hazard to the traveling public, and also to preserve the visual and rural environment of the town. Snipe signs larger than that permitted below create an unsightly clutter which detracts from the visual appearance of the town, and create a danger to the traveling public by obscuring sight lines, entering and exiting traffic, and curb cuts and adjoining intersections. Such signs are limited to a period of 45 days preceding and seven (7) days after the relevant event, except political advertisements which are governed by RSA 664:17, provided:

1. The size of any snipe sign shall not exceed thirty-two (32) square feet; nor be more than five (5) feet above the adjacent finished ground level.
2. The number of such signs is limited to one per lot in Residence A and B Districts and to two per lot in other districts; provided that this provision does not apply to signs that express political speech such as an endorsement of a candidate for office or an issue on an election ballot.
3. Such signs are not permitted on public property.
4. Signs within a public right-of-way are allowed provided they comply with RSA 664:17 and that the top of the sign extends no more than three (3) feet above the ground surface so as not to restrict vehicle sightlines.

- C. **Temporary Signs.** One temporary sign such as used by real estate agents advertising property for sale or those used by contractors, architects, painters or other artisans advertising work in progress may be permitted on a lot in any district provided:

1. It is unlighted;
2. It is set back at least one-half the required depth of the street yard;
3. It does not exceed twelve (12) square feet in size;
4. Its proper appearance is maintained;

5. It is removed upon completion of the work or transaction; and
 6. Only one additional directional sign is allowed for each Real Estate for-sale sign, and it must be located at the nearest street intersection to the property that is for-sale. This sign is limited to not more than four (4) square feet in size, and may project no more than two (2) feet above the ground.
- D. ***Real Estate Open House Signs.*** Real Estate Signs promoting an Open House may be used on the day of the event between 9:00 AM and 4:00 PM, once the Code Enforcement Officer has been notified in writing by fax, mail or electronic mail, provided:
1. No more than three signs are used for wayfinding;
 2. No balloons or flags are attached to the signs; and
 3. Signs are no more than four (4) square feet.
- E. ***Yard Sale Signs.*** Yard sale signs will only be permitted from 12:00 PM on Friday until 12:00 PM on Monday, provided that:
1. The address of the yard sale is located on the sign for identification purposes;
 2. Signs are no more than four (4) square feet;
 3. No more than three signs are used for wayfinding
- F. ***Residential Accessory Signs.*** Signs stating the name and nature of a permitted home occupation may be displayed on a lot in any district provided such signs:
1. Are not illuminated;
 2. Are set back at least one-half the required depth of the street yard or are attached to the building;
 3. Do not exceed one in number, and the sign is of no more than six (6) square feet in size in the R, RC, PO, CH, C, CC, OR, MUDOR, and ORLI Districts, or no more than three (3) square feet-in size in the RA and RB.
- G. ***Professional Offices and Permitted Commercial Use Signs in RB and RC and R Districts.*** Signs stating the name and nature of a professional office or permitted commercial use may be displayed on a lot in these districts provided such signs:
1. Abide by the same regulations that apply to residential accessory signs in the R

District (175-133 F), except such signs may be lighted during normal business hours subject to 175-130 Illumination of Signs.

- H. **Directory Signs.** Directory Signs, for businesses located on Secondary Streets within the CB District, may be allowed in the Town right-of-way if permission is granted by the Durham DPW and the Town Administrator. A plan must be in place to identify all businesses, and signage must be updated as uses change over time.
- I. **Projecting Signs.** Within the CB, PO, CH, C, CC, OR, MUDOR, ORLI, and DBP Districts, only one accessory projecting sign shall be permitted for each business ownership; it shall not project horizontally in excess of six (6) feet; it shall be erected at a height of not less than eight (8) feet above the sidewalk or ground level; and it shall not exceed twenty (20) square feet in surface area on each of two sides nor a total of forty (40) square feet on all sides.
- J. **Wall Signs.** Within the CB, OR, MUDOR, ORLI, and DBP Districts, no wall sign shall exceed ten percent (10%) of the area of the building face to which it is attached, but in no case shall it exceed forty-eight (48) square feet in size. Within the PO, CH, C, and CC Districts, the cumulative size of permitted signs on any one business establishment shall not exceed forty-eight (48) square feet.
- K. **Window Signs.**
Signs may be displayed in a window *inside* a building without a permit as long as they do not cover more than 25% of the total visible window area.
- L. **Multi-Tenant Developments.**
New Multi-Tenant developments shall submit a Signage Master Plan to the Planning Board for approval. Existing multi-tenant developments shall submit a signage master plan to the Code Enforcement Officer for approval. The following signage standards shall apply:
 - 1. Free Standing or Ground Mounted Sign – an entrance sign shall be allowed with a maximum of sixty (60) square feet of sign area, and a maximum height of twenty (20) feet. This signage will not count toward the individual businesses total allowable signage. However, a maximum of one hundred (100) square feet may be allowed with Planning Board approval.
- M. **Free Standing or Ground Mounted Signs.** In the PO, MUDOR, OR 108, and ORLI Districts maximum sign size will be twenty (20) square feet, and maximum sign height will be six (6) feet.
- N. **Roof Signs and Pole Signs.** No such signs shall be permitted anywhere.

175-134. Sign Construction.

The design and placement of signs shall be as an architectural element of the building and site they identify. The design shall be consistent with, and not detract from, the overall architectural concept of the site.

- A. ***Glass Requirements.*** Any glass forming a part of a sign shall be of safety glass, and where any single piece or pane of glass has an area of more than three (3) square feet, it shall be constructed of wired glass securely held in place or a similar technology meeting the same industry standard for safety.
- B. ***Wind Pressure and Dead Load.*** The supporting structure of, and fasteners for, all signs shall be designed to withstand five (5) times the combined effect of wind pressure and dead load. A wind pressure of twenty-five (25) pounds per square foot on the maximum horizontally projected area of the sign shall be assumed; dead load shall be the weight of the sign. Analysis must be provided by a structural engineer, and must meet the current standards in the State Building Code.
- C. ***Obstructions to Doors and Windows.*** No sign shall be erected, relocated or maintained so as to prevent free ingress to, or egress from, any door, window or fire escape.
- D. ***Marquees.*** No marquee shall be erected unless designed by a registered structural engineer and approved by the Code Enforcement Officer. It may extend over the sidewalk across the ROW to the curb line provided it has a minimum height above the sidewalk of ten feet above the curb level and does not exceed five feet in height. The marquee must be able to support a live load of not less than one hundred pounds per square foot, and any sign attached to or hung from a marquee shall fully comply with this chapter.
- E. ***Ground Supported or Wall Mounted Canopies.***

Canopies may be constructed of cloth or metal, provided, however, that the lowest portion of any canopy shall not be less than eight (8) feet above the level of the sidewalk or public thoroughfare. Canopies must be designed by a registered structural engineer and be approved by the Code Enforcement Officer. The area of the canopy used for signage shall be computed by means of the smallest rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any structural, decorative, or architectural features. See Figure 1.

Figure 1 Sign Size Calculation



- F. **Awnings.** Non-retractable awnings may be constructed of cloth or metal, provided, however, the lowest portion thereof shall be not less than eight (8) feet above the level of the sidewalk; they may extend beyond the street line, but not nearer than eighteen inches to the curb line. Awnings must be designed by a registered structural engineer and must be approved by the Code Enforcement Officer. The area of the awning used for signage shall be computed by means of the smallest rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any structural, decorative, or architectural features. See Figure 1.

175-135. Enforcement.

Notification and Removal. It shall be the duty of the Town Administrator, upon notification by the Code Enforcement Officer of any violation of the provisions of this section to notify the violator and/or building owner of such condition in writing, and if such condition is not corrected in five (5) days from the date of notification, the Town Administrator shall take legal action to have removed immediately the sign, vending machine, awning, marquee, canopy, public time piece, thermometer, structure, or machine. The owner shall be liable for any costs

incurred for such removal. Any such use in violation hereof, after such notice has been duly given, is hereby declared to be a public nuisance (as in any other use or violation which is otherwise hereby declared to be a public nuisance), and the Town Administrator is authorized to abate the violation by application for injunction or other lawful means. Nothing herein shall prevent the Town Administrator from causing prosecutions to be had for violations to obtain or impose fines for such violations, either as supplemental or alternative corrective actions.

175-136. Penalties.

Any person violating any of the provisions of this Article shall be subject to the penalties as provided by Section 175-10.

175-137. Appeal.

Any person aggrieved by a decision taken under this Article shall have the right to appeal the making of said decision to the Zoning Board of Adjustment, as provided in Section 175-19.

ARTICLE XXIV SEPTIC SYSTEMS

175-138. Applicability.

The standards of this article shall apply to the installation of a septic system or other on-site sewage disposal system on a lot created after the effective date of this article. These standards shall not apply to existing vacant lots of record, lots in a subdivision approved prior to the effective date of this article, or the replacement of a septic system on an existing lot.

175-139. Suitability of the Location of the Leaching Field.

The leach field or other component of the system designed to infiltrate the leachate into the ground shall be located within a rectangular area of suitable soils having a contiguous area of not less than four thousand (4000) square feet. No portion of the required suitable area shall be located within one hundred twenty-five (125) feet of very poorly or poorly drained soils or a water body. To demonstrate the suitability of the area, the applicant shall dig a minimum of two (2) satisfactory test pits within the suitable area. The Town's independent soil scientist shall observe the digging of the pits and may require that additional pits be dug to demonstrate the suitability of the entire area. All test pits that are dug shall be recorded and the results of all test pits provided to the Town whether they are satisfactory or not.

The satisfactory test pits shall be located at least fifty (50) feet from any other satisfactory test pit. To be satisfactory, a test pit shall comply with the following criteria:

- a. The minimum depth to the estimated seasonal high water table shall be twenty-four (24) inches, and
- b. The minimum depth to ledge shall be four (4) feet.

Innovative systems approved by the NH Department of Environmental Services that provide a higher level of treatment may be installed on sites that cannot meet all of the above standards if the Zoning Board of Adjustment grants a Special Exception and a report is provided to the Code Enforcement Officer every two years by a certified septic system evaluator.

175-140. Duties of the Code Enforcement Officer.

The Town's Code Enforcement Officer shall be responsible for the oversight of the installation of septic systems and shall:

- a. Review the test pit information, suitability of the proposed leach field location, and design of the proposed septic system for conformance with the Town's requirements prior to submitting the application to the state. If the proposed system does not conform to the Town's requirements, the Code Enforcement Officer shall reject the application and notify the applicant of that decision in writing setting forth the reasons for the denial.
- b. Inspect the installation of the system to see that it conforms to the approved location and design.
- c. Retain an independent soil scientist to oversee the digging of the test pits and to verify the accuracy of the test pit data.

175-141. Duties of the Independent Soil Scientist.

The independent soil scientist shall be retained by the Town and shall be responsible to the Code Enforcement Officer. The soil scientist shall be responsible for observing the digging of the test pits and the recording of the information to determine if the test pit is "satisfactory". The soil scientist shall review the test pit logs and other documentation to verify that they accurately portray the conditions on the site. In addition, the soil scientist may require that additional test pits be dug to demonstrate that the required area is suitable.

175-142. Review Fee.

Prior to the scheduling of the digging of any test pits, the applicant shall pay a review fee to the Town to cover the cost of the services of the independent soils scientist. The amount of the fee shall be equal to the Town's actual cost for the services of the soil scientist. The Code Enforcement officer shall collect a deposit prior to the scheduling of any test pit observations. The amount of the deposit shall be 125% of the estimated cost of the services. Any unused balance of the deposit shall be returned to the applicant within thirty (30) days of the date of application for a permit to install the septic system.

175-143. Reserved.

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CHAPTER 23

FIRE SAFETY MEASURES

SECTION ANALYSIS

- 23.1 Fire Safety Rules and Regulations
- 23.2 Smoke Detector Wiring
- 23.3 Enforcement Officer
- 23.4 Control of Outdoor Fires
- 23.5 Knox Box Installations
- 23.6 Public Safety Amplification System Required in Large Facilities
- 23.7 Administration and Enforcement
- 23.8 Means of Escape
- 23.9 Fire Department Access
- 23.10 Control of Fire Hazards
- 23.11 Penalty
- 23.12 Sprinkler Requirements for Certain Single-family Dwelling Units
- 23.13 Prohibition and Regulation of Fireworks
- 23.14 Certificate of Fitness Program
- 23.15 Regulation of Fire Alarms

23.1 Fire Safety Rules and Regulations.

The rules and regulations of the State Fire Marshal as they are now constituted and as they are from time to time amended are hereby adopted as and for the Fire Safety Rules and Regulations of the City of Rochester. The full text of such rules and regulations may be obtained by any person at the office of the Chief of the Fire Department of the City of Rochester.

23.2 Smoke Detector Wiring.

[1]

When installing 120 volt, hard-wired smoke detectors in any type occupancy, the smoke detector shall be wired to a lighting circuit.

23.3 Enforcement Officer.

The words “officer” and/or “local authorities” wherever used in the rules and regulations of the State Fire Marshall adopted in the foregoing section shall be deemed to refer to the Chief of the Rochester Fire Department.

23.4 Control of Outdoor Fires.

No person shall kindle, light, or otherwise start an outdoor fire in the City of Rochester for any purpose whatsoever without first having obtained a written permit, without cost, from the Chief of the Rochester Fire Department. All such permits shall be in writing and in such form as the Chief of the Rochester Fire Department shall prescribe and shall set forth any conditions or restrictions which, in the opinion of the Fire Chief, shall be reasonably necessary and prudent to insure the safe performance of permitted activities.

23.5 Knox Box Installations.

For purposes of rapid entry in cases of emergencies or required access to buildings after hours, any new construction on the following type occupancies occurring after the date of the adoption of this ordinance will require a KNOX BOX to be installed on such premises:

2/8/2000

1. Assembly
2. Educational
3. Mercantile
4. Business
5. Industrial
6. Apartment Complex

The Fire Chief shall have authority to require any other type of building, not listed above, to install a KNOX BOX to meet rapid entry requirements, if in his discretion public safety considerations require such installation.

23.6 Public Safety Amplification System Required in Large Facilities

[5]

The purpose of this system is to provide minimum standards to insure a reasonable degree of reliability for emergency services communications from within certain buildings and structures within the City to and from emergency communications centers. It is the responsibility of the emergency service provider to get the signal to and from the building site.

(a) Applicability

The provisions of this article shall apply to:

- (1) New buildings greater than fifty thousand (50,000) square feet;
- (2) Existing buildings over fifty thousand (50,000) square feet when modifications, alterations or repairs exceed fifty percent (50%) of the value of the existing building(s) and are made within any twelve (12) month period or the usable floor area is expanded or enlarged by more than fifty percent (50%); and
- (3) All sublevels, regardless of the occupancy, over ten thousand (10,000) square feet.

(b) Radio coverage

- (1) Except as otherwise provided in this article, no person shall erect, construct or modify any building or structure or any part thereof, or cause the same to be done, which fails to support adequate radio coverage for firefighters and police officers.
- (2) The City's fire department with consideration of the appropriate police, fire and emergency medical department services shall determine the frequency range or ranges that must be supported.

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- (3) For the purposes of this section, adequate radio coverage shall constitute a successful communications test between the equipment in the building and the communications center for all appropriate emergency service providers for the building.

(c) Inbound into the Building

- (1) A minimum average in-building field strength of 2.25 micro-volts (-100 dbm) for analog and five (5) micro-volts (-93 dbm) for digital systems throughout eighty-five percent (85%) of the area of each floor of the building when transmitted from

the City's police dispatch center and the appropriate emergency service dispatch centers which are providing fire and emergency medical protection services to the building.

- (2) If the field strength outside the building where the receive antenna system for the in-building system is located is less than (-100 dbm) for analog, or (-93 dbm) for digital systems, then the minimum required in-building field strength shall equal the field strength being delivered to the receive antenna of the building.

- (3) As used in this article, eighty-five percent (85%) coverage or reliability means the radio will transmit eighty-five percent (85%) of the time at the field strength and levels as defined in this article.

(d) Outbound from the Building

A minimum average signal strength of 112 micro-volts (-6 dbm) for analog and five (5) micro-volts (+1 dbm) for digital systems as received by the City's Police dispatch center and the appropriate emergency service dispatch centers, which are providing fire and emergency medical protection services to the building.

FCC authorization. If amplification is used in the system, all FCC authorizations must be obtained prior to use of the system. A copy of these authorizations shall be provided to the City's Fire Department.

(e) Enhanced amplifications systems

- (1) Where buildings and structures are required to provide amenities to achieve adequate signal strength, they shall be equipped with any of the following to achieve the required adequate radio coverage; radiating cable system(s), internal multiple antenna system(s) with an acceptable frequency range and an amplification system(s) as needed, voting receiver system(s) as needed, or any other City approved system(s).
- (2) If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operation on an independent battery or

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generator system for a period of at least eight (8) hours without external power input or maintenance. The battery system shall automatically charge in the presence of external power.

- (3) Amplification equipment must have adequate environmental controls to meet the heating, ventilation, cooling and humidity requirements of the equipment that will be utilized to meet the requirements of this code. The area where the amplification equipment is located almost must be free of hazardous materials such as fuels, asbestos, etc.

All communications equipment, including amplification systems, cable and antenna systems shall be grounded with a single point ground system of five (5) ohms or less. The

ground system must include an internal tie point within three (3) feet of the amplification equipment. System transient suppression for the telephone circuits, ac power, radio frequency (RF) cabling and grounding protection are required as needed.

(4) The following information shall be provided to the Fire Department by builder:

- (A) A blueprint showing the location of the amplification equipment and associated antenna systems which includes a view showing building access to the equipment; and
- (B) Schematic drawings of the electrical, backup power, antenna system and any other associated equipment relative to the amplification equipment including panel locations and labeling.

(f) Testing procedures – Method to Conducts Tests

- (1) Tests shall be made using frequencies close to the frequencies used by the Police and appropriate emergency services. If testing is done on the actual frequencies, then this testing must be coordinated within the City's Fire Department. All testing must be done on frequencies authorized by the FCC. A valid FCC license will be required if testing is done on frequencies different from the Police, Fire or emergency medical frequencies.

(g) Measurements Shall be Made Using the Following Guidelines

- (1) With a service monitor using a unity gain antenna on a small ground plane;
- (2) Measurements shall be made with the antenna held in a vertical position at three (3) to four (4) feet above the floor;
- (3) A calibrated service monitor (with a factory calibration dated within twenty-four (24) months may be used to do the test);
- (4) The telecommunications unit representative for the City may also make simultaneous measurements to verify that the equipment is making accurate measurements. A variance of 3 db between the instruments will be allowed; and 1/2/2007
- (5) If measurements in one location are varying, then average measurements must be used.
 - (A) All testing shall be done in the presence of a Fire Department representative at no expense to the City or appropriate emergency services department.
 - (B) Signal strength, both inbound and outbound as defined above, shall be measured on each and every floor above and below ground including stairwells, basements, penthouse facilities and parking areas of the structure. The structure shall be divided into fifty (50) foot grids and the measurements shall be taken at the center of each grid.

(h) Annual Tests

Annual tests will be conducted by the City's telecommunications unit or appropriate emergency services department. If communications appear to have degraded or if the tests fail to demonstrate adequate system performance, the owner of the building or structure is required to remedy the problem and restore the system in a manner consistent with the original approval criteria. The re-testing will be done at no expense to the City or the appropriate emergency services departments as required in the original testing procedures.

(i) Field Testing

Police and Fire personnel, after providing reasonable notice to the owner or his/her representative, shall have the right to enter onto the property to conduct field testing to be certain the required level of radio coverage is present. Certificates of Occupancy may be denied for new and existing buildings for failure to comply with these requirements.

23.7 Administration and Enforcement.

[2]

The authority having jurisdiction for the administration and enforcement of this chapter shall be Fire Prevention of the City of Rochester. The fee schedule under this chapter shall be as follows:

Tank Removal	\$25.00	
Blasting	\$25.00	
Incident Report	\$5.00	
Fire Marshal's Investigation Report	\$25.00	
Photographs (Fire Scene)	\$15.00	
CD Photos (Fire Scene)	\$15.00	
Fire Alarm System Plan Review	\$1.00 per device or \$50.00 minimum	
Sprinkler System Plan Review	\$1.00 per device or \$50.00 minimum	1/2/2007
Commercial Hood Fire Suppression	\$1.00 per device or \$50.00 minimum	
Clean Agent Initial Inspection	\$1.00 per device or \$50.00 minimum Free of Charge	
Re-Inspections (Sprinkler Systems, Fire Alarm Systems, Commercial Hood Fire Suppression, Clean Agent)	\$50.00 per person with \$100.00 minimum	
Fine <u>license)</u>	\$100.00 <u>175.00</u> (working without a permit <u>or</u>	
<u>Certificate of Fitness</u>	<u>\$25.00 per year, per restriction</u>	
<u>False Alarm, Fire alarm activation</u>	<u>\$175 after 2 consecutive, per calendar year</u>	

23.8 Means of Escape.**[3]**

All factories, hotels, tenement houses, public halls, schoolhouses and other buildings used as places of public resort in the City shall be provided with ample means of escape in case of a fire and adequate facilities for entrance and exits on all occasions; and be so erected as not to endanger the health and safety of persons who occupy them.

23.9**Fire Department Access****[4]**

Before construction on commercial buildings, a residential street or a private street with two (2) or more duplexes or single-family dwellings may begin, Fire Department access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface suitable for all-weather driving capabilities.

23.10**Control of Fire Hazards****[4]**

The Chief of his/her designee shall examine, or cause to be examined, at regular intervals, all places where combustible material may be collected or deposited and cause the same to be removed by the tenants, occupants or owners of such place, at their expense, whenever, in the opinion of the Fire Chief, such removal is necessary for the security of the City against fires. A record of all such inspections shall be kept by the Chief or his/her designee.

23.11**Penalty****[3]**

Any person, persons, firm, corporation or partnership who shall violate any provision of Chapter 23 shall be guilty of a violation punishable by a fine of not less than one hundred dollars (\$100) or not more than five hundred dollars (\$500). Each day that the violation continues to exist shall constitute a separate offense.

23.12 Sprinkler Requirements for Certain Single-family Dwelling Units.**[6]**

In addition to sprinkler requirements for structures under the provisions of the applicable N.F.P.A. (National Fire Protection Association) Code and/or any other applicable law or regulation all newly constructed duplexes, triplexes and single-family dwelling unit combination structures that are attached to each other, shall be sprinkled in accordance with National Fire Protection Association (N.F.P.A.) Code standards as contained in the New Hampshire State Fire Code.

23.13 Prohibition and Regulation of Fireworks. [7][8][9]

- A. In accordance with the provisions of RSA 160-C, it shall be illegal for any person, firm, partnership or corporation to offer for sale, expose for sale, sell at retail, purchase, possess, use, explode or display any permissible fireworks within the City of Rochester, except as specifically provided for in this ordinance.
- B. As used in this ordinance:
 - i. “Display” means the use, explosion, activation, ignition, discharge, firing or any other activity which is intended to cause or which causes a firework to do what it was manufactured to do.
 - ii. “Permissible fireworks” means those consumers firework devices defined as

“permissible fireworks” in RSA 160-C, as the same currently exists or as, from time to time, hereinafter amended.

- iii. “Fire Chief” means the Fire Chief of the City of Rochester or his/her designee.
- iv. “Police Chief” means the Police Chief of the City of Rochester or his/her designee.

C. Subject to, and in accordance with the provisions of Chapter 160-C of the New Hampshire Revised Statutes Annotated it shall be lawful to possess and/or display permissible fireworks upon compliance with the following requirements:

- i. A person who is 21 years of age or older may display permissible fireworks on private property with the written consent of the owner or in the owner’s presence, subject to the provisions of this ordinance and RSA Chapter 160-C, and any other applicable ordinance regulation or statute.
- “ii No display of permissible fireworks shall be permitted within the City except between the hours of 6 PM and 11 PM on Saturdays in the months of June and July and between the hours of 6 PM and 10 PM on Saturdays between the months of August through May. Permissible fireworks shall be permitted on the following holidays; Labor Day, Fourth of July (including the evening of July 3rd beginning at 6PM, including from such time until midnight on any rain date established for the annual city-wide fireworks display held at the Rochester Fairgrounds), on New Year’s Eve (December 31st), provided, however, that on New Year’s Eve such display shall be permitted to occur between the hours of 6 PM on December 31st and 1:00 AM on January 1st.
- iii The display of permissible fireworks shall be of such a character, and so located and conducted, that it shall not be hazardous to property or endanger any person. In accordance with the provisions of RSA Chapter 160-C no permissible fireworks shall be permitted on public property and must be at least 50 feet from nearby buildings, nearby trees, electrical and telephone lines or other overhead obstructions, and the location of any nearby storage of flammable or combustible liquids or gases.
- iv No permissible fireworks may be used, discharged, exploded, or displayed during periods of very high or extreme fire danger as determined by the Fire Chief or the NH Division of Forests and Lands.
- v. Permissible fireworks may be used, discharged, exploded, or displayed in a manner such that any all discharge debris shall remain within the property lines of the lot on which the display originates.
- vi. Anyone using permissible fireworks shall be responsible for removing any debris accumulated due to the discharge of fireworks that fall onto the public way, public property, and any private property twenty-four hours. Anyone failing to remove such debris shall be financially responsible for its clean up.

- vii. Display of permissible fireworks shall be permitted on public property the evening of July 3rd beginning at 6PM, including from such time until midnight on any rain date established for the annual city-wide fireworks display held at the Rochester Fairgrounds, provided that such display shall be authorized in a duly issued Block Party Application/Permit from the City's Licensing Board covering the public property on which the display is to occur.”
[11]A violation of this ordinance shall be subject to the penalties provided for in Chapter 23, Section 23.11, Penalty, of the City of Rochester General Ordinance.
- D. This ordinance shall be construed consistently with NH Code of Administrative Rules Section 2600, as made applicable by state statute and as adopted by reference in Section 23.1, of the General Ordinances of the City of Rochester, and is not meant to repeal any section thereof. Nothing in this ordinance shall be interpreted so as to conflict with the provisions of Chapters 160-B or 160-C of the New Hampshire Revised Statutes Annotated, as currently written, or as from time to time hereafter amended. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct independent provision and such holding shall not affect the validity of the remaining portions thereof.11-9-10
- E. The Police Chief or Fire Chief may suspend the use of permissible fireworks for any of the following reasons:
 - i. Unfavorable weather conditions, including but not limited to, lightning storms or high wind conditions exceeding 20 miles per hour or higher.
 - ii. If any person under the age of 21 possesses, uses, discharges or explodes, used, discharged or exploded any permissible firework device.
 - iii. If any person who is using, discharging, exploding, or displaying the permissible fireworks appears to be under the influence of alcohol or drugs;
 - iv. If, in the opinion of the Police Chief or Fire Chief, the use, discharge, exploding, or display of permissible fireworks would create a threat to public safety.
- F. The Police Chief and/or Fire Chief are authorized to seize, take, remove or cause to be removed, at the expense of the owner, all firework devices that are being discharged in violation of this ordinance.”

23.14 Certificate of Fitness Program

In accordance with NFPA 1:2009 1.13, The Rochester Fire Department enacts the applicable section of the currently adopted version of NFPA 1 for the Certificate of Fitness Program. The Fire Chief or his designee shall promulgate administrative rules for the management of the Certificate of Fitness program.

23.15 Regulation of Fire Alarms

The Fire Chief or his designee shall promulgate administrative rules for the management of