

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

Note that these definitions are descriptive and not prescriptive. They may, however, operate in a prescriptive manner in some cases. For example, a proposed home occupation using an area of 1,500 square feet would not meet the definition of Home Occupation which is defined as having a maximum of 1,000 square feet, and would therefore not be permitted.

Definitions are given for some uses that are not allowed under the Table of Uses, but are included in this article for general reference.

### 175-7. Definitions.

As used in this chapter, the following terms shall have the meanings indicated. The inclusion of a particular use in this section does not necessarily indicate that the use is allowed anywhere in the town of Durham; some terms are included for general reference only.

Definitions pertinent to individual overlay districts and other specific topics (such as Agriculture and Signage) may be found in the article of this ordinance pertaining to that district and those topics.

**ABUTTER** – For notification purposes per RSA 672:3, an abutter is any property owner whose land is located in New Hampshire and either adjoins or is directly across the street or stream from the land under consideration by the Planning Board. "Directly across the street or stream" is determined by drawing perpendicular lines from all pairs of corner boundaries along the street or stream of the applicant to projected points on any property boundary across the street or stream where these lines intersect. Any property along the street or stream between each pair of projected points, or within 50 feet of any projected point, is considered an abutter. If the abutting property is under condominium or other collective ownership, "abutter" refers to the officers of the collective or association, as defined in RSA 356-B:3, XXIII.

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

**ACCESSORY DWELLING UNIT (ADU) – DETACHED** – A dwelling unit not attached to a single-family residence. A single-family residence with an accessory dwelling unit is considered a single-family residence (not a duplex residence). *See Article XX.*

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

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

**ACRE** – A measurement of area equal to 43,560 square feet.

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

**ADULT DAY CARE** – *See “Day Care Center.”*

**AGRICULTURE** – *See Article XX.1.*

**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.

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

**AND** – When used in a series, such as “Dogs may be used for herding, working, and guarding livestock,” means “and/or,” such that any and all of the items are included, individually or in combination. (In general, a reasonable judgment should be made based on the context for the intention of the use of “and.”)

**ANIMAL CARE** – A facility where animals or pets are given medical or surgical treatment and in which the boarding of animals is short-term and incidental to the medical care, grooming, or training.

**AQUIFER** – *See Article XVI.*

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

**ATTAINABLE HOUSING** – Housing which is designed to provide a broad range of living options, including a variety of dwelling types at affordable prices, that meet the needs of families and individuals representing New Hampshire’s diverse workforce and those of moderate means, including retirees, who are not currently employed.

**AUTOMOTIVE USES** – *See “Motor Vehicle” definitions.*

**AWNING** – A structure attached to a building projecting over a public way. It may be used for signage, for decorative purposes, or to protect pedestrians from adverse weather.

**BASAL AREA** – The cross sectional area of a tree measured at a height of 4 ½ feet above the ground, usually expressed in square feet per acre for a stand of trees. "Total basal area" is the sum of the "basal areas" of all vegetation in the zone.

**BASEMENT** – That portion of a building that is fully below finished grade or partly below and up to 2 feet above finished grade. *Also, see "Story."*

**BOARDING HOUSE** – An owner-occupied residential building principally used, designed or adapted to provide living accommodations for not more than 10 occupants and having common cooking and dining facilities.

**BOATYARD** – Waterfront facilities for recreational boating, launching facilities and other water-related activities.

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

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

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

**BUILDING FOOTPRINT** – The total area of the ground surface enclosed within the foundation of a building or within the downward projection of the exterior walls of a building.

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

**CAR SALES AND SERVICE** – *See "Motor Vehicle" definitions.*

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

**CARETAKER APARTMENT** – An on-site dwelling unit that is accessory to a principal use and occupied by the person(s) maintaining the property.

**CARPORT** – A roofed structure designed to shelter motor vehicles and that is open on at least two sides. A carport may be a freestanding structure or attached to a building.

**CHILD CARE** – *See "Day Care Center" and "Day Care Home."*

**CINEMA** – *See "Theater."*

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

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

**COMMUNITY CENTER** – A building that accommodates recreational, educational, entertainment, and cultural activities.

CONDITIONAL USE – *See Article VII.*

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

CONFERENCE CENTER – A facility used for conferences, seminars, and other gatherings. It does not include accommodations for sleeping.

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 trails 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 portion of the site is set aside as common open space.

CONTIGUOUS – Touching at a point or along a boundary.

CONVENIENCE STORE – *See “Motor Vehicle Gas Station” and “Retail Store, Small.”*

CONVENTIONAL SUBDIVISION – A subdivision in which all or most of the area of the parcel is put into lots and roads, and any other allowed uses, with little or no common open space. (In contrast to a Conservation Subdivision.)

DAY CARE CENTER – A facility for the care of children or adults that is not located within the residence of the primary care provider. A nursery or a nursery school is also considered a day care center. *See Article XX.*

DAY CARE HOME – A facility for the daytime care of children that is located within the residence of the primary care provider. *See Article XX.*

DEVELOPER – An owner, the owner’s agent, or any other person, firm or organization with authorization from the owner, who intends to alter or to construct improvements upon their property.

DEVELOPMENT – Significant construction, reconstruction, alteration, or enlargement of any building or structure; paving, adding parking spaces, or adding or expanding driveways; a significant change of use; the subdivision, re-subdivision, or combination of lots or other units of a building or land; and mining, excavation, landfill, and other significant land disturbance.

DISTURBED AREA – An area where vegetation is removed, exposing the underlying soil or where the ground surface is altered.

DORMITORY – A building occupied by a resident manager and used, designed and adapted to provide housing for employees or students or people otherwise connected to an institution, such as a school, hospital, or church. Such units are distinguished by separate 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 the street to one or more structures or sites.

**DWELLING UNIT** – One or more rooms arranged, designed or used for residential purposes for one household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use the space for residential purposes.

**EDUCATIONAL FACILITY** – A facility principally used, designed or adapted for educational use or instruction, including a trade school, and operated by an educational institution approved by the New Hampshire Department of Education.

**EXCAVATION** – A land area that is used, or has been used, for the commercial removal 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.

**FINANCIAL INSTITUTION** – A business or nonprofit organization providing retail financial services, including banks, credit unions and financial exchanges.

**FLOOD HAZARDS.** *See Article XV.*

**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.

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

**FRATERNITY/SORORITY** – An organization officially recognized as such by the University of New Hampshire.

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

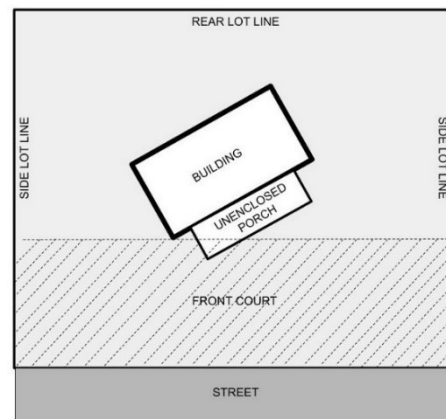
**FRONT COURT** – The portion of a lot in front of a house or the principal building demarcated by the front lot line, a line parallel to the front lot line running through the fully enclosed part of the building located closest to the front lot line, and sections of the two side lot lines that connect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

**FRONTAGE** – *See "Lot Frontage."*

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

**GAS STATION** – *See "Motor Vehicle" definitions.*

**GOLF COURSE** – A tract of land laid out with at least 9 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.



GOVERNMENTAL 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.

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.

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

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

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.

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. It is further defined as follows:

1. HOME OCCUPATION-1 – A home occupation with the following characteristics:
  - a. It occupies no more than 500 square feet of floor area.
  - b. The principal operator resides on the premises, has not more than 1 other person employed on-site and does not sell on-site any manufactured products prepared by others except for any products that are incidental to the service being provided on site. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
  - c. The activity is completely enclosed in a primary or accessory structure. There is no indication of such occupation visible on the exterior of the building or on the lot, except permitted signs.
  - d. The activity does not produce noise, odor, traffic or other nuisances perceptible at the lot line at a higher level than is usual in a residential neighborhood.
2. HOME OCCUPATION-2 – A home occupation with the following characteristics:
  - a. It occupies no more than 1,000 square feet of floor area, with the exception of existing farm structures, which may utilize 100 percent of the floor area.
  - b. The principal operator resides on the premises, has not more than 3 other persons employed on-site and does not sell on-site any manufactured products prepared by others except for any products that are incidental to the service being provided on site. 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 is located outside of any required setback or yard area and shall be at least 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 commercial operation offering multiple sleeping rooms or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for stays of less than 30 consecutive days and usually providing on-site dining facilities, recreational services, function rooms, housekeeping, laundry and related services. Access to guest rooms is provided through interior corridors. *See Article XX.*

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

**IMPERVIOUS SURFACE** – A material with low permeability that impedes the natural infiltration of moisture into the ground so that the majority of the precipitation that falls on the surface runs off or is not absorbed into the ground. Common impervious surfaces include, but are not limited to, roofs, concrete or bituminous paving, sidewalks, patios, driveways, roads, parking spaces or lots, and storage areas; compacted gravel including drives and parking areas; and 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 is included in the impervious surface area unless the surface of the deck or structure provides for precipitation to pass through it and reach the ground in a dispersed pattern and the material under the deck or structure is not an impervious surface.

**IMPERVIOUS SURFACE RATIO** – The impervious surface area of a site or parcel divided by the total area of the site or parcel expressed as a percentage.

**INN** – A commercial operation within an owner-occupied-property containing, in addition to living accommodations for the owner and their family, 4 to 6 guest rooms, without cooking facilities, for the purpose of providing lodging.

**JUNKYARD** – An area of land used for the exterior storage (i.e., not contained within a completely enclosed structure) 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 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 2 or more motor vehicles.

**KENNEL** – Any lot or premises on which 4 or more dogs, cats or similar small animals, or a combination thereof, at least 4 months old, which are boarded for compensation or bred for sale. A kennel does not include licensed veterinary medical facilities.

**LANDSCAPING** – Some combination of planted, living trees, shrubs, hedges, vines, ground cover and flowers suitable for the climate, exposure and site condition. In addition, landscaping may include earth sculpture, cobbles, bark, mulch, edgers, flower tubs, rock and such structures

as fountains, pools, artworks, screens, walls, fences or benches, but such objects alone do not define landscaping.

LIGHT MANUFACTURING – *See Article XX.*

LOT – A legally recorded and defined parcel of land.

LOT AREA – The total area within the boundary lines of a lot. The "lot area" does not include any part of a road right-of-way.

LOT, CORNER – A lot abutting 2 or more intersecting streets where the interior angle of intersection does not exceed 135 degrees. A "corner lot" is considered to be in that block in which the lot fronts. *See "Lot Line," Subsection (1)(a).*

LOT FRONTAGE – The lot line shared with a street right-of-way. In cases where an existing or proposed lot line is squiggly the frontage is measured along one or more chords from end point to end point of the lot line.

LOT LINE:

1. FRONT LOT LINE – The front property line of a lot is determined as follows:
  - a. CORNER LOT or LANDLOCKED LOT – The front property line on a corner lot is as determined by the Zoning Administrator based upon a reasonable consideration of the following: location of the front door, location of the driveway and garage, configuration of other buildings in the vicinity, the lot layout (generally, the shorter lot line is the front lot line as lots tend to be deep and narrow rather than wide and shallow), and other pertinent issues.
  - b. INTERIOR LOT – The front property line of an interior lot is the line bounding the street frontage.
  - c. THROUGH LOT – A through lot has frontage on opposite streets. The front property line of a through lot is that line where the house or building faces or is proposed to face.
2. REAR LOT LINE – The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line is assumed to be a line not less than 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 10 feet long lying within the lot and parallel to a line tangent to the front property line at its midpoint.
3. SIDE LOT LINE – The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

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 (formerly known as a mobile home) – Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 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 does not include pre-site built, modular or prefabricated housing as defined in RSA 674:31-a. *See Article XX.*



**MARINE SALES AND SERVICE** – A business establishment located on a navigable water providing boat sales, rental and storage, marine supplies and equipment, marine engine and hull repairs, construction and outfitting of commercial or pleasure craft, fuel and oil, electricity, freshwater, ice, and other supplies for owners and crew.

**MARQUEE** - Any hood or awning of permanent construction projecting from the wall or roof of a building or structure above an entrance or extending over a public way.

**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, as laid out in RSA 674:2 Master Plan.

**MINING** – Commercial extraction of materials from the earth.

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

**MISSING MIDDLE HOUSING** – Types of housing that are intended to fill the gap in types of residential dwellings between single family houses (on their own lots) on one end and large apartment buildings and complexes on the other end. Missing middle housing includes duplexes, triplexes, triple deckers, quadraplexes, townhouses, rowhouses, single dwelling units not located on their own lot, tiny houses, cottage/bungalow courts, small courtyard apartment buildings, accessory dwelling unit - attached, and apartments over stores.

**MIXED USE WITH RESIDENTIAL** (Office/Retail down, Multi-unit Residential Up) – A building in which the first floor is used for office/retail uses and the upper floor(s) is used, in whole or in part, for multi-unit residential use. *See alternate allowed options for this use specified in Section 175-42 in the Central Business District.*

**MODULAR HOUSING** – *See “Pre-site Built Housing.”*

**MOTEL** – A commercial operation offering guest rooms or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for compensation, with or without meals, and usually providing housekeeping, laundry and related services. Access to guest rooms is provided directly from a parking lot or from exterior corridors or walkways. *See Article XX.*

**MOTOR VEHICLE GAS STATION** – The conventional gas station with gas sold and dispensed at pumps, but with no servicing or repairs performed. This use may include a retail store (small) with up to 5,000 square feet.

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

**MOTOR VEHICLE SERVICE FACILITY** – A business that provides service, maintenance, and repairs for motor vehicles and engines, including accessory sales.

**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** – A contiguous area of a community with: a) defining characteristics such as an integrated network of streets, walkability within the area, similar architecture or period of development, a compatible mix of uses; and b) one or more distinct boundaries such as major

roads, railroads, other physical barriers, or natural features like streams, woods, and steep topography.

**NONCONFORMING LOT** – A lot, the area, dimensions and location of which were lawful prior to the adoption, revision or amendment of this Zoning Ordinance but which fails, by reason of said adoption, revision or amendment, to conform to the present requirements of the zoning district.

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

**NONCONFORMING USE** – A use of a building, structure or parcel of land which was lawful prior to the adoption, revision or amendment of this Zoning Ordinance but which fails, by reason of said adoption, revision or amendment, to conform to the present requirements of the zoning ordinance.

**NURSING HOME** – A facility licensed by the State of New Hampshire as a nursing home. *See “Senior Care Facility.”*

**OFFICE** – A place of business, including for nonprofit and governmental organizations, which includes these types of operations and practices: accounting, architecture, bookkeeping, business services, dentistry, engineering, financial services, general management, general sales, insurance, law, medicine, minor repair services (such as for bicycles, scooters, and lawnmowers but not including automotive engines or comparable components), personal services, professional services, real estate, research and development, telephone sales, and telecommunications. An “office” does not include uses that involve the sale of goods and materials or the physical production of goods and materials, other than those that are incidental to the primary office use, above.

**OFFICE/RETAIL** – For the land uses Mixed Use with Residential, or any other mixed use that includes office/retail uses, “office/retail” includes retail sales, personal and business services, offices, restaurants, and other comparable commercial uses such as public, institutional, research, and industrial which are allowed in the zoning district. “Office/Retail” for this purpose does not include parking, storage uses, utility uses where there is minimal flow of people in and out of the building, nor uses that are accessory to the residential use in the building (such as laundry, bicycle storage, and exercise rooms).

**OLDER SINGLE-FAMILY RESIDENCE** – A single-family residence that has been at its current location since 1950 or earlier. *See Reuse of an Older Single-Family Residence in Article XX*

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

**OPEN SPACE** – Forests, fields, wetlands, and other undeveloped lands that contribute to the rural and pastoral character of Durham. Open space may include, but is not limited to, conservation areas, public lands, undeveloped land in private ownership whether protected or not, land being used for passive recreation, and agricultural lands (both cropland and grazing land). *See “Common Open Space” as defined in Article XIX.*

OR – When used in a series of two or more allowed activities, such as “Dogs may be used for herding, working, or guarding livestock,” means “and/or,” such that any and all of the activities are allowed, individually or in combination. (In general, a reasonable judgment should be made based on the context for the intention of the use of “or.”)

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

OVERLAY DISTRICT - A defined area(s) of the town within which an additional set of standards is applied to all property, independent of the standards established in the underlying base zoning district. Six overlay districts are established as described in Articles XIII-XVIII.

PARKING GARAGE – A building or portion of a building that includes two or more levels of parking or a mixed-use building with two or more levels where parking is situated on at least one level. A parking garage may be completely or partially enclosed. A parking garage includes a fully enclosed parking area that is situated below ground.

PARKING LOT – An open-air parking area situated on the ground, at finished grade, on a single level and not within a parking garage. A parking lot may incorporate one or more retaining walls to provide an adequate finished grade. A car port and a parking lot covered with solar panels are considered parking lots.

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

PERMEABLE PAVEMENT – *See “Porous Pavement/Pavers.”*

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 WIRELESS SERVICE FACILITY – *See Article XVIII.*

PLANNED UNIT DEVELOPMENT (PUD) - A Planned Unit Development is an innovative planning tool that allows a landowner to propose their own development project with a fair degree of independence from zoning, site plan, and subdivision requirements otherwise applicable to that property. A PUD master plan functions as a special zoning district designation for a particular tract of land in terms of uses, dimensions, and other development standards.

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

POROUS PAVEMENT/PAVERS – An alternative to conventional asphalt that uses a variety of porous media, often supported by a structural matrix, concrete grid, or modular pavement, which allows water to percolate through to a sub-base for gradual infiltration.

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

PREMISES – A lot, parcel, tract, site or plot of land together with the buildings and structures thereon.

**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. Presite built housing does not include manufactured housing as defined in RSA 674:31. Presite built housing is also called “Modular Housing” or “Prefabricated Housing.” (Presite built housing is not regulated under this Zoning Ordinance.)

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

**PUBLIC UTILITY** – A public service corporation, municipal body, or authority providing a specific public service subject to special governmental regulations, for which the recipients pay the provider directly. Utilities may include water supply, sewer service, piped gas, electric supply, telephone, television cable.

**PUBLIC WAY** – A road, sidewalk, footpath, trail, navigable waterway or right-of-way accessible to the public.

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

**RECREATIONAL FACILITY, INDOOR** – A building designed and equipped for leisure and recreational activities.

**RECREATIONAL FACILITY, OUTDOOR** – A site designed and equipped for outdoor sports, leisure and recreational activities. It does not include the use of individual motorized vehicles, all-terrain vehicles, off highway recreational vehicles, motorized rides (except for electronic bicycles), or fire arms.

**RECREATIONAL PLAYING FIELDS, OUTDOOR** – Noncommercial playing fields for outdoor sports. No structures are included except for necessities like small sheds for maintenance and portable toilets. No lighting, voice amplification equipment or paved parking lots or areas are included.

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

**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 NHDES.  
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.
2. 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.

3. 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.

RESIDENCE, DUPLEX – A building with 2 dwelling units that are part of the same building.

RESIDENCE, MULTI-UNIT – A building with 3 or more dwelling units.

RESIDENCE, MULTI-UNIT COMPLEX – Two or more buildings of any residential type (single unit, duplex, multi-unit or a combination thereof) with a total of 3 or more dwelling units.

RESIDENCE, SINGLE-FAMILY – A building with a single dwelling unit situated on its own separate lot with no other dwelling units nor nonresidential uses other than those that are accessory to the single-family use (such as accessory dwellings/apartments and home occupations, where allowed.)

RESTAURANT – A commercial establishment open to the general public where food and beverage are prepared and served.

RESTAURANT OR CAFETERIA ACCESSORY TO A NONRESIDENTIAL USE – A food service establishment that primarily serves occupants and other users of a nonresidential use rather than the general public.

RETAIL STORE, MEDIUM – A retail store with 5,000 to 20,000 square feet of gross floor area.

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

ROOMING HOUSE – *See “Boarding House.”*

SAWMILL, TEMPORARY – A portable facility for the sawing, milling, planing, or similar processing of timber or other wood products harvested from the site upon which the temporary sawmill is located. A portable sawmill use shall not include the retail sale of lumber or other wood products on the site. *See Article XX.*

SCHOOL – *See “Educational Facility.”*

SCREEN (or SCREENING) – A device or materials used to visually shield one site or one element of a site from a neighboring site or the street. Screening devices may include walls, fences, berms, plantings or a combination thereof. Screening incorporates a high year-round vertical opacity. *See “Buffer.”*

SELF STORAGE FACILITY – Any self-service facility composed of individual units or lockers rented to the public for storage of personal or business belongings.

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

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

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

SETBACK – The required minimum (except where “maximum” is specified) horizontal distance in feet from a lot line, shoreline, or other referenced line or point to a structure. *See Table of Dimensions and Subsection 175-56. D.*

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

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

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

SHORE FRONTAGE – The width of a lot bordering on the following waterbodies, measured in a straight line between the intersections of the lot lines with the reference line (See definition): Great Bay, Little Bay, the Oyster River, the Lamprey River, Johnson Creek, Bunker Creek, Folletts Brook, and the tidal sections of their tributary streams.

SHORT-TERM RENTAL – An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than 3 sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty consecutive days. A short-term rental is not considered a home occupation. *See Article XX.*

SIGN – *See Article XXIII.*

SITE PLAN – A plan of a lot, tract or parcel of land showing the specific location of all existing and proposed features, such as buildings, other structures, driveways, parking, landscaping, easements, utilities, and drainage structures.

SLOPE – A measurement of the deviation of a ground surface from horizontal measured in percent (rise over run) or in degrees.

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

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

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

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

**SOIL SURVEY, HIGH INTENSITY** – A soils map and related materials prepared and certified by a New Hampshire Certified Soil Scientist in accordance with the Society of Soil Scientists of Northern New England (SSSNNE) Special Publication - No.1, High Intensity Soil Maps for New Hampshire ([www.sssnne.org](http://www.sssnne.org)), as amended.

**SOLAR ENERGY SYSTEMS** – Specific definitions pertinent to solar energy systems follow.

Building-Mounted Solar Energy System – A solar energy system attached to and completely supported by a building that does not extend more than 5 feet beyond the building footprint. The system may include necessary accessory equipment that is ground mounted.

Freestanding Solar Energy System – A ground-mounted solar energy system, including a stationary or tracking system (either single axis or dual axis). A Solar Photovoltaic (PV) Parking Canopy is not a Freestanding Solar Energy System.

Group Net Metering Host, Small – A Solar Photovoltaic (PV) System less than or equal to 100 KW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Group Net Metering Host, Large – A Solar Photovoltaic (PV) System greater than 100 KW and less than 5 MW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Multi-unit Residential or Nonresidential Solar Energy System – An accessory use designed to provide solar energy for the principal and accessory uses of Multi-Unit Residential, mixed Use with Residential and other Nonresidential uses.

Name Plate Rating - The maximum sustained electric power-generating capacity of the Solar Energy System.

Solar Energy – Radiant energy emitted by the sun.

Single-Family or Duplex Residential Solar Energy System – A Solar Energy System that is an accessory use designed to generate energy for use at the property. A Single-Family or Duplex Residential Solar System may also be a Small Group Net Metering Host up to the size limits specified in 175-109.N.4.

Solar Energy System – A structure and the related components used to transform solar energy into electricity (through a solar photovoltaic system) or heat (through a solar thermal system).

Solar Photovoltaic (PV) Parking Canopy – An elevated structure that supports solar panels over a parking area. A solar photovoltaic parking canopy is not a carport. The structure is not used with single-family and duplex uses, nor is it considered *parking garage*.

Solar Photovoltaic (PV) System – A solar collection, mounting, inversion, storage and distribution system that converts sunlight into electricity.

Solar Thermal System – A solar collection system that directly heats a heat-transfer medium.

Utility-Scale Solar Energy System, Small - A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity equal to or less than 100 kW that generates energy for use off site by customers. A Small Utility-Scale Solar Energy System does not function as a Small Group Net Metering Host.

Utility-Scale Solar Energy System, Large – A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity of greater than 100 kW and less than 5 MW that generates energy for use off site by customers. A Large Utility-Scale Solar Energy System does not function as a Large Group Metering Host

**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** – *See Article VIII.*

**STEEP SLOPE** – A slope exceeding 15% where there is a change in elevation of at least 4 feet. *See “Slope.”*

**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 1 full story, except for the top level when it is under a sloped roof, which is considered a ½ 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 ½ story. For the purposes of this ordinance, a lower level is considered to be a story if the front exterior wall of the lower floor level rises more than 2 feet above the finished grade. Cupolas with areas of 100 square feet or less do not count as a story.

**STREET, ARTERIAL** – A high-order street designed to provide access to the regional transportation system and move traffic through or around the town or from one general area of the town to another. "Arterial streets" include Main Street west of Mast Road, U.S. Route 4, Route 108, Route 155A and Route 155.

**STREET, COLLECTOR** – A middle-order street which is functionally classified as a “collector” and collects local traffic from neighborhoods and moves it to an adjacent neighborhood or transfers the traffic to the arterial system. Bagdad Road, Bay Road, Bennett Road, Durham Point Road, Emerson Road, Madbury Road, Main Street (from Newmarket Road to Mast Road), Mill Road, and Packers Falls Road are considered collector streets.

**STREET LINE** – The street right of way line/lot boundary line separating the street right of way from the lot.

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

**STREET, PRIVATE** – A private right-of-way for vehicles which provides a principal means of access to 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.

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

**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. *See Section 175-56.E.*



**STUDENT RENTAL** – A student rental is a residential dwelling composed of one or more dwelling units on a single parcel that includes five or more full-time undergraduate college students, as identified according to the criteria of the U.S. Department of Education’s Office of Federal Student Aid. The threshold of five applies to the total number in dwelling units on a parcel (For example: a three-unit building with two full-time undergraduate college students in one unit and four in another would be classified as a student rental).

**SUBDIVISION** – The division or re-subdivision of a lot into 2 or more lots, a lot line adjustment, the creation of a condominium, or the conversion of land or a building(s) to a condominium form of ownership.

**THEATER** – A building or part of a building whose principal use is showing motion pictures or providing 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:

1. Airplane, boat and motor vehicle service and repair, including gasoline stations.
2. Chemical and biological laboratory operations.
3. Dry cleaning.
4. Electronic circuit manufacturing.
5. Metal plating, finishing and polishing.
6. Motor and machinery service and assembly.
7. Painting, wood preserving and furniture stripping.
8. Pesticide and herbicide application.
9. Photographic processing.
10. Printing.
11. 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.
12. 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.

TREE WARDEN - The person designated by the Town Administrator to assist the Town boards, residents, and other Town staff in any appropriate matters related to the conservation, protection, and enhancement of native and naturalized trees and other vegetation located on both public and private property in Durham, in furtherance of the goals of this Zoning Ordinance and other Town ordinances and regulations, and pursuant to RSA 231:139 (II).

UNSUITABLE AREA – The area of a parcel that must be subtracted from the gross area of the parcel to determine the usable area of the parcel. *See “Usable Area.”*

USE – The specific purpose(s) for which a building or lot, or a portion thereof, is arranged, intended, designed, occupied or maintained.

USABLE AREA – The area of any conservation subdivision, that is suitable, in its natural state, for development or intensive use and, therefore, can be used in determining the allowed density of development. The usable area of a parcel of land is determined in accordance with the provisions of Section 175-56(E).

VARIANCE – A deviation from the terms of this chapter, allowed when the Zoning Board of Adjustment determines that the required criteria are met. *See Article VIII.*

VETERINARY CLINIC – *See “Animal Care.”*

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

WETLAND – *See Article XIII and Article XIV.*

WORKFORCE HOUSING CONSERVATION SUBDIVISION – A conservation subdivision that provides housing for rent and/or for sale which meets the standards for Workforce Housing in accordance with RSA 58-61. *See Article XIX.*

YARD – *See “Setback Area.”*