



**TOWN OF DURHAM**  
8 NEWMARKET RD  
DURHAM, NH 03824-2898  
603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

**Town Planner's Project Review**  
**Wednesday, March 14, 2018**

- XII. **Zoning Amendments**. Discussion about various proposed amendments to the Zoning Ordinance suggested for consideration now (rather than waiting for the zoning rewrite).
- I recommend that the board discuss the proposed amendments below and make appropriate changes/clarifications. When the amendments are acceptable a public hearing should be scheduled.

These are miscellaneous suggested amendments that have come up since the Town adopted a set of general amendments in October 2017. Some were brought to my attention by other staff to correct some oversights in the October amendments.

-----

Various proposed amendments to the Zoning Ordinance are offered below.

*Proposed additions are shown like this.*

~~*Proposed deletions are shown like this.*~~

*[Comments are shown like this. They will not be part of any ordinance changes.]*

-----

❖ **Bed and Breakfast.**

*[Audrey Cline, Building Official has had to deal with numerous instances of residents advertising through Air B and B. Here are some proposed changes. This is for discussion.]*

**ARTICLE II**  
**DEFINITIONS**

...BED AND BREAKFAST – An owner-occupied single-family residence containing, in addition to living **accommodations quarters** for the owner and the owner's family, not more than **two (2) four (4)** individual ~~sleeping rooms,~~ **living quarters, with or** 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.

-----

❖ **Usable square footage.**

*[Audrey pointed out that when we changed the non-conforming expansion from 30% usable building volume to 30% usable building square footage, in 175-30, below, we didn't then change the definition to match. If we use habitable floor area from the existing definition that will address this. "Usable building volume" is not used anywhere else and should be deleted.]*

**ARTICLE II  
DEFINITIONS**

...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 percent of the gross floor area.

...**HABITABLE FLOOR AREA.** See “*Floor Area, Habitable.*”

...~~**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.~~

**175-30. Nonconforming Structures and Buildings.**

**...D. Requirements for Nonconforming Buildings and Structures in the WCOD and SPOD.**

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 occupy the same footprint as, or be situated within the footprint of, 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 square footage~~ habitable floor area 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.

-----

❖ **Zoning Administrator.**

*[Audrey requested that we add the provision below.]*

**ARTICLE III  
ADMINISTRATION AND ENFORCEMENT**

**...175-9. Zoning Administrator.**

- A. The Zoning Administrator, his or her 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 or her 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.

*C. The Zoning Administrator, or her or his designee, may request that any landowner or association certify, under oath, compliance with any zoning restriction, including but not limited to age restrictions, rental restrictions, or occupancy restrictions, if, in her or his discretion, there is a reasonable basis to believe that there is a zoning violation on the property. Should the owner refuse to provide such certification, the Zoning Administrator may seek an administrative search warrant to confirm compliance with the Town's zoning ordinance.*

-----

❖ **Piers and docks.**

*[This is a follow up to changes made in the last set of amendments. Under the WCOD the intent with the October amendments was to allow a pier or dock that is reviewed by the Conservation Commission to be a permitted use. I inadvertently included this item under Conditional Uses on the amendments. I had it in the correct location for the Shoreland District.]*

**ARTICLE XIII  
WETLAND CONSERVATION OVERLAY DISTRICT**

**...175-60. Permitted Uses in the WCOD.**

- A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the WCOD 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 WCOD:

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.
  8. *A pier or dock, including the replacement or expansion of an existing pier or dock, provided the Conservation Commission has an opportunity to comment to the state on the proposed pier or dock (Otherwise it is considered a conditional use).*
  9. *The maintenance of an existing pier or dock.*
- B. The following uses or activities, including any necessary grading, shall be permitted in the WCOD 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: a.) appropriate erosion control measures will be used, b.) any disturbed area will be restored, and c.) 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 or for other utility structures;
  5. Temporary coffer dams associated with the repair or replacement of existing structures;
  6. The repair or replacement of existing retaining walls;

7. 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;
- ~~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 RSA 487:17;
11. The construction of nature trails and paths.
12. Grading of the site where grading within the WCOD is necessary to accommodate a structure located outside of the WCOD.

**175-61. Conditional Uses in the WCOD.**

- A. The following uses, including any necessary grading, shall be permitted as conditional uses in the WCOD 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, driveways, access ways (but not including any parking areas other than those serving single-family uses), 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 core commercial or research/industry 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.
  - ~~6. *A pier or dock, provided the Conservation Commission has an opportunity to comment to the state on the proposed pier or dock (Otherwise it is considered a conditional use).*~~

**ARTICLE XIV  
SHORELAND PROTECTION OVERLAY DISTRICT**

**...175-71. Permitted Uses in the SPOD.**

- A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the SPOD 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 SPOD:

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.
  8. A pier or dock, *including the replacement or expansion of an existing pier or dock,* provided the Conservation Commission has an opportunity to comment to the state on the proposed pier or dock (Otherwise it is considered a conditional use).
  9. *The maintenance of an existing pier or dock.*
- B. The following uses or activities, including any necessary grading, shall be permitted in the SPOD provided that the Zoning Administrator issues a permit for the activity after the Planning Board, with the advice of the Conservation Commission, determines that: a) appropriate erosion control measures will be used, b) any disturbed area will be restored, and c) 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 or for other utility structures;
  5. Temporary coffer dams associated with the repair or replacement of existing structures;

6. The repair or replacement of existing retaining walls;
- ~~7. The maintenance or replacement of existing docks or docking structures;~~
8. The control of aquatic weeds by harvesting;
9. The control of exotic weeds in accordance with RSA 487:17;
10. The construction of nature trails and paths.
11. Grading of the site where grading within the SPOD is necessary to accommodate an allowed structure located outside of the SPOD.

**175-72. Conditional Uses in the SPOD.**

A. The following uses, including any necessary grading, shall be permitted as conditional uses in the SPOD 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, driveways, access ways (but not including any parking areas other than those serving single-family uses), 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.

-----

❖ **Parking.**

*[Audrey Cline and April Talon recommending adding back some provisions under Parking that were removed in the October amendments (most relocated to the Site Plan Regulations) However, in reviewing this article other questions have arisen.]*

**TABLE OF CONTENTS**

**ARTICLE XXI OFF-STREET PARKING AND ACCESS**

175-110.	Applicability .....	
175-111.	General Requirements.....	
175-112.	Central Business District Special Conditions .....	
175-113.	Required Parking .....	



ARTICLE XXI  
OFF-STREET PARKING AND ACCESS

**175-110. Applicability.**

This article applies to single-family dwellings, duplex/two-family dwellings, other sites and conditions that are not subject to site plan review, **and** exemptions in the Central Business District (See special provision below), and other uses as specifically referenced below.

**175-111. General Requirements.**

**A. Building permit. A building permit is required for all new driveways and parking areas for all uses.**

*[Audrey recommended including this provision here consistent with Town practice.]*

**A B. 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.

*[We should clarify what is intended by “front or side yard setback.” Which uses should this apply to?]*

**B C. Design Requirements**

1. All parking areas and driveways shall have, at a minimum:
  - a. A smoothly graded stabilized dust-free gravel surface.
  - b. Adequate drainage to minimize runoff from flowing onto adjacent property, sidewalks and public roads. The infiltration of stormwater on site is strongly encouraged.
2. Parking serving single-family and duplex units will be permitted in the front yard setback for up to three (3) vehicles per household.

*[This should be clarified. Does this refer to the front “yard,” the front setbacks, or front and side setbacks in the front?]*

**3. Parking is allowed in the side yard setbacks and rear yard provided that 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.**

*[Audrey recommended adding this provision as it was removed in the last set of general amendments. We should clarify what is appropriate as the language is ambiguous.]*

4. 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 visibility for drivers.

*[This provision was in the old parking ordinance. Audrey asked about adding it back in. Should this be added back for single family and duplexes?]*

**175-112. Central Business District Special Conditions.**

**Exemptions.** All allowed uses shall be exempt from the parking requirements for the number of spaces specified in the Site Plan Regulations 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.** Two parking spaces shall be provided for a single-family residence and four parking spaces shall be provided for a duplex residence.

*[Audrey recommends adding back the provisions below which would apply to single family and duplex units. I have modified the old language for clarity.]*

175-113.1 Access and Driveway Permits

A. Access to Town roadways. 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 any right-of-way of the Durham roadway system. The permit must be obtained prior to final approval of the building permit.

B. Construction requirements. The driveway design and 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.

C. Access points/curb cuts.

1. 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.

2. 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.

3. In the CB, PO, CH, C, CC, OR, ORLI, MUDOR, and DBP Zoning Districts, a maximum of two (2) driveways per lot may be permitted by the Public Works Department should site conditions warrant.

4. 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.

-----

❖ **Signage.**

*[The Planning Board reviews sign master plans for multi-tenant buildings. Because these situations can be unusual there is an allowance for the Planning Board to have flexibility in considering sign requirements as specified in 175-126 L. Kennebunk Savings seeks to add an additional directional sign on the building at Madbury Commons but a variance (and a modification to the Madbury Commons sign master plan) would be needed because the proposed sign does not comply with 175-120 4. In reviewing their proposal Mary Ellen Humphrey and I observed that it made sense for the Planning Board to have flexibility in considering the provisions in Section 175-120 as well as those in Section 175-126. While this proposed change could help one particular business, the broader purpose is to make a change that appears to be appropriate and useful.]*

**ARTICLE XXIII  
SIGNS AND COMMUNICATIONS DEVICES**

**...175-120. General Provisions.**

1. See Article XVII for additional provisions that apply to signage located in the Durham Historic District.
2. In measuring signage, the square footage shall be computed based on the smallest rectangle (or other appropriate regular shape) that will encompass the outer limits of the writing, representation, logo, and other images, along with any material or color forming an integral part of the background of the sign. A conventional border around the sign panel shall not count toward the sign size except if the size of the border is unusually large or prominent in which case it shall count toward sign size. In unusual circumstances, the Zoning Administrator may make reasonable adjustments in determining how to measure the sign.
3. The sign shall have a matte finish.

4. On commercial buildings, the appropriate zone for signage, including the brackets for projecting signs, is above the storefront windows and below the sills under the second floor windows.
5. Signs shall be placed where they respect an existing sign line established by the signs on adjacent establishments.
6. Signs shall not obscure architectural features.
7. Projecting signs shall be placed perpendicular to the building.
8. Sign brackets shall be made of painted wood, wrought iron, prefinished/pre-painted metal or a comparable material. The specifications for the sign bracket (including dimensions, materials, design and color) shall be provided with the application.
9. Signs shall be mounted without damage to buildings. On masonry buildings, bolts shall extend through mortar joints rather than through masonry units.
10. Use of environmentally sustainable materials is encouraged.
11. Use of fluorescent or “day glow” colors is not permitted.
12. Typefaces shall be carefully selected to be complementary to the building and nature of the business. Type shall be high quality and classic and shall not be digitally expanded nor condensed nor distorted in any way.
13. When lighting is used it shall illuminate only the sign and shall be: a) low key; b) low wattage; and c) shielded to prevent glare.

**...175-126. Types of Signs Permitted.**

A. **Total Sign Area.** Each business establishment will be allowed a maximum of forty-eight (48) square feet of total 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.

...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 conform with the same regulations that apply to residential accessory signs in the R District (175-126.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 but the signs may not cover more than 25% of the total visible window area.

L. **Multi-Tenant Developments.**

Owners of new multi-tenant developments shall submit a Signage Master Plan to the Planning Board for approval. Owners of existing multi-tenant developments shall submit a signage master plan to the Code Enforcement Officer for approval though he or she may refer the master plan to the Planning Board for review and approval at his or her discretion. ~~The Planning Board may alter any of the standards for signage in this section—Types of Signs—at its discretion for good cause provided it specifies in the approval which standards are being altered.~~ The Planning Board may alter any of the standards for signage in Section 175-120 General Provisions and in Section 175-26 Types of Signs Permitted at its discretion for good cause provided it specifies in the approval which standards are being altered.

Free Standing or Ground Mounted Directory 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 by conditional use.

- M. **Freestanding 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. **Sandwich Board Signs.** The message area shall 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 no taller than three (3) feet. The location of all sandwich board signs shall be limited to the outer edge of the sidewalk within the public ROW and shall be 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 (unless the entrance is located such that this is not possible), shall not obscure or impede pedestrian travel, and shall allow a minimum of a four (4) foot accessible path along the side walk.

- O. **Roof Signs and Pole Signs.** No such signs shall be permitted anywhere.