



TOWN OF DURHAM
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**Proposed Amendments to the Zoning Ordinance regarding
floor area, piers and docks, and sign master plans**

For Public Hearing by Planning Board on April 11, 2018
March 27, 2018

Make the various amendments to the Zoning Ordinance below as identified here:

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.]

❖ **Reference to habitable floor area.**

[The Town recently changed the non-conforming expansion from 30% usable building volume to 30% usable building square footage, in 175-30, below, but we did not then change the definition to match. The reference is now being made to habitable floor area and “Usable building volume” is being deleted from the definitions section because it is not used anywhere in the ordinance.]

**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.

❖ 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 structure is approved by the appropriate state agency (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, 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).~~

8. A pier or dock, including the replacement or expansion of an existing pier or dock, provided the structure is approved by the appropriate state agency (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.

❖ **Sign Master Plans.**

[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 specified in 175-126 L. The proposed amendment will give the board flexibility in considering requirements in Section 175-20 as well.]

**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.