

Proposed Amendments to the Durham Zoning Ordinance
DEVELOPMENT IN THE CENTRAL BUSINESS DISTRICT
AND RELATED ISSUES

Draft presented for Planning Board Public Hearing on September 12, 2018

Initiated by Town Council on August 20, 2018

For discussion on October 24, 2018

Additional comments from Town Planner – October 23, 2018

**Note to the Planning Board.* I include a number of additional suggested *changes shown in purple*. The Planning Board asked to me to put together several options that had been discussed for consideration by the board on October 24. I asked the working group that formulated the original draft to meet with me to provide me some additional input to prepare this draft. I met this morning (October 23) with the working group - Councilors Tobias, Howland, and Lawson, and Mary Ellen Humphrey. Todd Selig helped to prepare the original proposal but was not available for the meeting this morning. I include changes suggested to me by the working group also in purple.

The Planning Board has until the November 14 meeting to give its comments on the draft to the Town Council. The public hearing was held and it is not required that another hearing be held. However, if the board intends to offer comments that are significantly different from the original draft it may consider holding another public hearing.

This is the same document that was presented for the public hearing *along with a number of new suggested changes shown like this.* *[I include notes below like this.]*

❖ **Make the changes shown below**

New text to be added is shown like this

~~*Existing text to be deleted is shown like this*~~

➤ *Other changes to be made indicated like this.*

ARTICLE II – DEFINITIONS

➤ *Add new terms “Family,” and “Unrelated Household,” and “Unrelated Occupants,” and modify existing definition for Household as shown.*

Section 175-7. Definitions

BEDROOM – A fully enclosed room designed for sleeping.

[The board discussed including a limitation on bedrooms, below. We should thus include a definition for a bedroom. Also discussed with the working group.]

FAMILY – See “Household.”

HOUSEHOLD – A group of occupants of a dwelling unit defined by one of the following two categories: ~~restricted to the following categories:~~

1. FAMILY – An individual or two (2) or more persons related within the second degree of kinship by civil law or by marriage or adoption or foster care arrangement living together as a single housekeeping unit, including necessary domestic help such as nurses or servants not to exceed three (3) in number.
2. UNRELATED HOUSEHOLD – Any household not conforming to the definition of a "family," above. (Note. See specific requirements for unrelated households in Section 175-56 - General Dimensional Standards.) ~~provided that no such household shall have a number of members in excess of the figure provided in Table II-1.~~

[The Planning Board discussed possibly changing the definitions for “family” and “unrelated household.” I would suggest not changing these definitions as part of the current amendment. Such a change would involve a larger discussion including the Town Attorney. This could be explored later if desired.]

Table II-1. DWELLING DENSITY BY TYPE

<i>Dwelling type</i>	<i>Maximum number of occupants in unrelated household per 300 square feet of habitable floor area</i>
<i>Single-family dwelling</i>	<i>1</i>
<i>Duplex or townhouse</i>	<i>1</i>
<i>Apartment (excluding accessory apartments), except in the ORLI and MUDOR districts</i>	<i>.5</i>
<i>Apartment (excluding accessory apartments) in the ORLI and MUDOR districts</i>	<i>1.5</i>
<i>Accessory Apartment</i>	<i>1.5</i>
<i>Rooming/boarding, including accessory rooming/boarding</i>	<i>2</i>
<i>Dormitory</i>	<i>3</i>
<i>Fraternity or sorority</i>	<i>2</i>
<i>Nursing home</i>	<i>2</i>
<i>Senior housing</i>	<i>1.5</i>

~~***Notes:—No more than three (3) unrelated occupants may occupy a dwelling unit in an R, RA, RB, RC, PO, CH, C, or CC Zoning District. See Article XX. Note that there may be more restrictive loading requirements than these under the New Hampshire State Building Code and Fire Code and the Durham Rental Housing Ordinance.***~~

UNRELATED HOUSEHOLD – See “Household.”

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

ARTICLE XII - BASE ZONING DISTRICTS

175-42. Central Business District (CB)

B. Development Standards in the Central Business District

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

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

4. Front Entrance – The front wall of the principal building shall contain a front door providing access to the building for tenants, customers, or other users of the building, unless the Planning Board determines that placement of the front door on another facade is a practical approach and the design of the front facade will engage the street in an effective and attractive manner. If the front wall of the building is located behind the front property line, a paved sidewalk or other appropriate pedestrian way shall be provided from the sidewalk to the front door. This provision shall not be interpreted to prevent the creation of other entrances to the building. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
5. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
6. Minimum Building Height – All new principal buildings or additions to existing principal buildings that increase the building footprint by more than twenty percent (20%), shall have a minimum of two usable stories or a height equivalent of two stories above adjacent grade at the front wall of the building.
- ~~7. Maximum Height of Mixed-Use Buildings and Use by Floor – The height of a new or redeveloped mixed-use building that provides both residential and nonresidential space shall be a maximum of three (3) stories notwithstanding other height limitations. The first floor shall be nonresidential. However, if the building contains nonresidential uses on the first floor and one additional story of nonresidential, the maximum permitted height shall be four (4) stories. If the proposal is for a four (4) story building, the first floor shall be nonresidential and the remaining three floors shall consist of two residential and one nonresidential. Sections 8 and 9 below for limitations to this provision. For a mixed-use building where the nonresidential portion is specified to be “office/retail,” the uses in the nonresidential portion of the building shall be in conformance with the definition in Article II for “Office/Retail.”~~
- ~~8. Conditional use for nonresidential use – Where there is more than one building on a site, a building with a large or unusual footprint, or another unusual site condition, the requirement for nonresidential use on the first floor in 7., above, may be altered by conditional use when the Planning Board determines that: a) devoting the entire floor(s) to nonresidential uses is not practical; b) there is a reasonable alternative arrangement that will serve the intent of this requirement; and c) the amount of square footage of the~~

~~nonresidential use under this alternative arrangement is at least as much as would otherwise be required.~~

7. Maximum number of stories. The maximum number of permitted stories is four except as restricted in sections ~~10 and 11~~ 9 and 10, below.

[Correction to numbering]

8. Configuration of uses for a mixed-use with residential building. Where the building fronts on a Town/public road, the portion of the building facing the road must be office/retail to a depth of at least 50 feet. In addition, the minimum percentage of gross floor area that is office/retail is based on the number of building stories as follows:

[I noted this earlier. This provision applies specifically to mixed-use with residential so this is added for clarification.]

- a. One story: 100% of the gross floor area must be office/retail.
- b. Two stories: A minimum of 50% of the gross floor area must be office/retail.
- c. Three stories: A minimum of 33-1/3% of the gross floor area must be office/retail.
- d. Three Stories - Increased Nonresidential Option: For a three-story building where a minimum of 66-2/3% of the gross floor area is used for office/retail, the habitable square footage per occupant for unrelated households is established as specified in Section 175-56 – General Dimensional Standards.
- e. Four stories: A minimum of 50% of the gross floor area of the building must be office/retail. Alternatively, the entire first floor plus one other entire floor must be office/retail.

[I noted this earlier. Under the present ordinance, a developer can include the first floor plus one other floor as office/retail. In most cases this equates to 50% of the building. However, where the fourth floor has a smaller floor plate and is used for office/retail the overall percentage of office/retail would be less than 50%. It was not our intention to preclude this type of development.]

- f. For a building where there are distinct sections with a different number of stories and for sites where there are multiple buildings, the required

minimum overall office/retail gross square footage is determined by the sum of the minimum office/retail area required by each distinct section, or by each separate building, using the required office retail space specified above. For sites where there are multiple buildings, the disposition of office/retail and residential space on the site is flexible provided this minimum percentage of office/retail area is met.

~~9. Conditional use for nonresidential use — Where there is more than one building on a site, a building with a large or unusual footprint, or another unusual site condition, the requirement for nonresidential use on the first floor in 7., above, may be altered by conditional use when the Planning Board determines that: a) devoting the entire floor(s) to the nonresidential space required in a building(s) is either not practical or not desirable uses is not practical; b) there is a reasonable alternative arrangement that will serve the intent of this requirement; and c) the amount of square footage of the nonresidential use under this alternative arrangement is at least as much as would otherwise be required.~~

9. 10. Maximum Height of Mixed-Use Buildings, Section of Main Street – No building in the Central Business District on any lot with frontage along either side of Main Street, from and including Tax Map 2, Lot 14-4 to the easterly boundary of the district, shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 14-4; Tax Map 4, Lot 7-0; Tax Map 4, Lot 6-0; Tax Map 4, Lot 5-0; Tax Map 4, Lot 4-0; Tax Map 4, Lot 3-0; Tax Map 4, Lot 2-0; Tax Map 4, Lot 1-0; Tax Map 5, Lot 1-0; Tax Map 5, Lot 1-2; Tax Map 5, Lot 1-3; Tax Map 5, Lot 1-17; Tax Map 5, Lot 1-4; Tax Map 5, Lot 1-5; Tax Map 5, Lot 1-6; Tax Map 5, Lot 1-7; and Tax Map 5, Lot 1-8.

10. 11. Maximum Height of Mixed-Use Buildings, Madbury Road – No building in the Central Business District on any lot with frontage along Madbury Road shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 12-0; Tax Map 2, Lot 12-2; Tax Map 2, Lot 12-3; Tax Map 2, Lot 12-4; Tax Map 2, 12-5; Tax Map 4, Lot 1-0; Tax Map 4, Lot 11-0; Tax Map 4, Lot 12-0; Tax Map 4, Lot 13-0UNH; and Tax Map 4, Lot 14-0.

~~10. Treatment of the Front Facade — The front wall of the principal building shall be designed to include windows appropriate to the proposed use. On the first floor, not less than twenty (20) percent of the surface area of the front wall shall be windows. On upper floors, not less than ten (10) percent of the surface area shall be windows.~~

11. Number of bedrooms. There shall be a maximum of two bedrooms in any dwelling unit within a mixed use with residential building or development.

[The Planning Board discussed this approach earlier. Also discussed with the working group. The approach of using maximum rooms or maximum square footage has also been discussed but I think using bedrooms is most effective. Note that there is no requirement that residents sleep in a bedroom but establishing this maximum along with the extension of 3 unrelated, below, should limit the number of occupants.]

ARTICLE XII.1 USE AND DIMENSIONAL STANDARDS

175-54. TABLE OF DIMENSIONS.

Table 175-54, Table of Dimensions shows the dimensional requirements that apply to buildings and structures in the various zones.

TABLE 175-54 TABLE OF DIMENSIONS

STANDARD	ZONING DISTRICTS												
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Rev. (MUDOR)	Office, Research Light Ind. (ORLI)	Durham Business Park (DBP)
Minimum Lot Size in Square Feet - Single-Family Residence (that is not part of a Conservation Subdivision)	20,000	40,000	150,000	150,000	NA	10,000	5,000	5,000	30,000	40,000	40,000	150,000	40,000
- Multiunit Housing	NA	NA	NA	NA	5,000	10,000	5,000	5,000	30,000	80,000	40,000	150,000	40,000
- Allowed Nonresidential Use	20,000	40,000	150,000	150,000	5,000	10,000	5,000	5,000	30,000	80,000	40,000	150,000	40,000
- Any Other Allowed Use	20,000	40,000	150,000	150,000	5,000	10,000	5,000	5,000	30,000	80,000	40,000	150,000	40,000
Minimum Lot Area Per Dwelling Unit² in Square Feet	20,000	40,000	150,000 ²	150,000 ²	1,200 600 450	3,000	4,200	4,200	4,200	4,200	40,000	150,000	35,000
Minimum Usable Area Per Dwelling Unit in a Conservation Subdivision² in Square Feet	20,000	40,000	150,000	150,000	1,200	3,000	4,200	4,200	4,200	4,200	40,000	150,000	NA
Minimum Lot Frontage in Feet - Minor Street - Collector Street - Arterial Street	100	150	300	300	50	100	50	50	100	50 100 200	100 100 200	150	150

[The original proposal is to increase the dwelling unit density by lowering it from 1,200 square feet of land per dwelling unit to 600 square feet. The working group suggests this actually be lowered to 450 square feet. The purpose is to provide more flexibility in creating more, smaller apartments.]

ARTICLE XII.1 USE AND DIMENSIONAL STANDARDS

175-55. General Use Standards. The following additional standards apply to the specific uses listed below:

1. Occupancy of Residences. See Section 175-56 A. regarding limitations on the number of unrelated occupants. ~~No more than three (3) unrelated occupants shall occupy a dwelling unit located in a residence in an R, RA, RB, RC, PO, CH, C or CC District.~~

➤ *Re-number existing provisions B. through F. after the new items below accordingly.*

175-56. General Dimensional Standards.

~~A. Limitation on occupants. The number of unrelated occupants is subject to the provisions of Article II, Table II-1; Section 175-55.1, and to the parking requirements of Article XXI.~~

A. Limitation on number of unrelated occupants. Within the following zoning districts, any dwelling unit consisting of an unrelated household shall contain no more than three (3) unrelated occupants:

1. Rural (R)
2. Residence A (RA)
3. Residence B (RB)
4. Residence C (RC)
5. Central Business District (CB)
6. Professional Office (PO)
7. Church Hill (CH)
8. Courthouse (C) and
9. Coe's Corner (CC)

[I recommend adding the Central Business District here. This was not discussed by the Planning Board but offer this for the board's consideration. Smaller dwelling units are appropriate in the dense downtown core. This change would also reinforce the proposed maximum of 2 bedrooms per unit and limit the number of occupants per unit, hopefully making it more likely that units would be rented to families, singles, and graduate students.]

(Note that there may be more restrictive occupancy requirements than these under the New Hampshire State Building Code and Fire Code and the Durham Rental Housing Ordinance.)

B. Minimum floor area per occupant in unrelated household. The minimum required habitable floor area per occupant in an unrelated household is shown in Table 175-56 below. (See definition for “Household.”).

Table 175-56. MINIMUM HABITABLE FLOOR AREA BY DWELLING TYPE
FOR UNRELATED HOUSEHOLD

<u>DWELLING TYPE</u>	<u>Minimum habitable floor area per occupant in unrelated household</u>
<u>Single-family dwelling</u>	<u>300</u>
<u>Duplex or townhouse</u>	<u>300</u>
<u>Apartment (but not including accessory apartments, apartments in the ORLI and MUDOR districts, and apartment s in the CB District conforming the provisions of Section 175-42 B.8.d).</u>	450-400
<i>[The Planning Board discussed lowering the minimum habitable area here from 450 to 400 square feet. The current minimum habitable area is 600 square feet. The working group concurs in lowering this further to 400 square feet.]</i>	
<u>Three-story apartment in the CB District conforming the provisions of Section 175-42 B.8.d.</u>	<u>300</u>
<u>Apartment in the ORLI and MUDOR districts (but not including accessory apartments)</u>	<u>200</u>
<u>Accessory Apartment</u>	<u>200</u>
<u>Rooming/boarding, including accessory rooming/boarding</u>	<u>150</u>
<u>Dormitory</u>	<u>100</u>
<u>Fraternity or sorority</u>	<u>150</u>
<u>Nursing home</u>	<u>150</u>

(Note that there may be more restrictive occupancy requirements than these under the New Hampshire State Building Code and Fire Code and the Durham Rental Housing Ordinance.)

**ARTICLE XXI
OFF-STREET PARKING**

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).

175-112. Central Business District Special Conditions.

Exemptions. All proposed new development (including construction of new buildings and additions to existing buildings) may ~~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 established in the Master Fee Schedule 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 is~~ not reduced by any proposed development unless approved as part of a property redevelopment plan by the Planning Board. ; and
3. The Planning Board waives the requirement for the number of parking spaces specified in the Site Plan Regulations, as part of the Site Plan Review based upon pertinent information provided by the applicant, Planning Department and any other interested party and an analysis of the parking demand of the use(s), parking capacity available from municipal parking and the parking capacity of other property owned by the applicant for the use(s). The parking demand of the use(s) may vary from the parking requirements specified in the Site Regulations. The waiver should be granted only if it is demonstrated that adequate parking exists and the impact on municipal parking by the proposed uses(s) will not be materially detrimental to existing uses in the CB District.