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Town Planner's Review
Wednesday, September 25, 2024

- X. **Miscellaneous Zoning Amendments.** A set of minor zoning amendments on various issues for consideration by the Planning Board

Note. The impetus for these amendments is that various relatively small items have come up over the years. This is an opportunity to address some of these items.

MISCELLANEOUS ZONING AMENDMENTS
For Presentation to Planning Board on September 25, 2024

Proposed additions to the current ordinance are shown like this.

~~*Proposed deletions from the current ordinance are shown like this.*~~

[Comments are shown like this.]

AMENDMENTS TO BE MADE THROUGHOUT THE ORDINANCE

- ❖ Throughout the ordinance change formatting so that numbers within a specific ordinance provision that are ten or less are shown spelling out the number only without also including the numerical figure in parentheses. For example, change “within three (3) years” or “within 3 years” to “within three years.”
- ❖ Throughout the ordinance change formatting so that numbers within a specific ordinance provision that are greater than ten are shown with the numeral only. For example, change “a maximum of fifty (50) feet” or “a maximum of fifty feet” to “a maximum of 50 feet.”
- ❖ Change “single family home” and “single family residence(tial) to “single-family home” and “single-family residence(tial)” wherever the terms appear.
- ❖ Replace “chairman” wherever it may appear with “chair.”

[This will allow for consistency in the typical manner than numbers are shown in text. Including both the written number and the numeral in parentheses is redundant and distracting.]

ARTICLE III ADMINISTRATION AND ENFORCEMENT

[Audrey Cline requested adding the provision below. The Town Attorney did not object to this request.]

175-8. Administrative Officer.

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

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 their designee, may request that any landowner or association certify, under oath, compliance with any zoning requirement, including but not limited to age restrictions, rental restrictions, or occupancy restrictions, if, in their 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.

[Audrey Cline, Code Administrator, requested this change below as the provision is not consistent with the process that is followed.]

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

A. Any person, partnership, association, company, corporation or individual who violates, disobeys, omits, neglects, or refuses to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor offense and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a civil fine as set forth in RSA 676:17 for each day such violation continues.

B. A violation or suspected violation may be brought to the attention of the Zoning Administrator by any individual who suspects that such violation has or may be occurring. The Zoning Administrator shall conduct an investigation into the alleged violation. ~~*If the investigation appears to uphold the allegation, the Zoning Administrator shall first notify the offending party, who shall have a maximum of ten (10) days in which to correct the violation or in which to come to an agreement on a time frame in which the violation will be abated. Such an agreement shall be binding.*~~ In the event that ~~*these*~~ efforts fail to result

in an abatement of the violation, the Zoning Administrator shall notify the Town Administrator and file a complaint with the Town Attorney. The Town Attorney shall take appropriate legal action to address the complaint and the matter shall come before a court of competent jurisdiction for resolution.

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

ARTICLE VI - ZONING BOARD OF ADJUSTMENT

[The proposed change below is simpler and consistent with state law. "674:33 III. The concurring vote of any 3 members of the board shall be necessary to take any action on any matter on which it is required to pass."]

175-19. Powers and Duties.

A. The Zoning Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the efficient administration and enforcement of this chapter. In addition, the Zoning Board of Adjustment shall have the following powers pursuant to RSA 673:1 and 674:33:

1. Appeals. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter.
2. Variances. To authorize, upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.
3. Special Exceptions. The Board shall hear and decide requests for special exceptions only when the granting of a special exception is specifically provided for in this chapter. No other special exceptions shall be granted. The request for the special exception and the Board's action on the request shall reference the specific section whereby the granting of the special exception is provided for in this chapter. Appropriate conditions may be placed on special exception approvals when necessary to meet the standards of this chapter.
4. Equitable Waivers. To hear and decide requests for equitable waivers of dimensional requirements as provided for in RSA 674:33-a.
5. Appeals under the Building Code. The Zoning Board of Adjustment is hereby authorized and empowered to act as the Building Code Board of Appeals pursuant to RSA 673:1. The Building Code Board of Appeals shall hear and decide appeals of

orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of the state building code or the state fire code. (RSA 674:34)

B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

C. The concurring vote of three (3) voting members of the Board shall be necessary to ~~reverse any action of such administrative official or to decide in favor of the applicant~~ **take action** on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.

ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

Section 175-53 Table of Land Uses.

[This change was requested by the Energy Committee.]

- ❖ Change Small Group Net Metering Host – Principal Use. Freestanding. From X to P in the five Commercial Core Zones, below.

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Small Group Net Metering Host-principal use (See Article XX)													
• Building-mounted	P	P	P	P	P	P	P	P	P	P	P	P	P
• Freestanding	X	X	X	X	X	X	X	X	X	P	P	P	P

Section 175-55. General Use Standards.

[This concern has arisen in the past and there is no pertinent provision in the Zoning Ordinance. The article on Lighting in the Site Plan Regulations includes this provision but the regulations only apply when a site plan is proposed for a multifamily or nonresidential use.]

❖ Add the following new provision:

*10. **Lighting.** Exterior light sources for all uses, including single-family houses, shall be fully shielded in order that they do no cause glare onto any public way nor onto any neighboring property.*

ARTICLE XX – STANDARDS FOR PRINCIPAL USES

[This provision has been problematic in several cases where a person wanted to build a new freestanding garage with space above for storage or other appropriate uses. Removing the restriction here on agricultural buildings will make this provision consistent with Section 175-109.2 A. 13. Under Standards for Agricultural Uses which exempts agricultural buildings from this provision.]

175-109. Compliance Required.

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

B. *Accessory Buildings for Single-Family Use.* The following standards apply to buildings that are accessory to single-family use, not including garages, *agricultural buildings, a second floor above garages* and accessory apartments.

1. There is a limit of two accessory buildings per lot.
2. The maximum floor area of the building shall be 200 square feet.
3. The highest point on the building shall be not more than fourteen (14) feet above grade.
4. The building shall not be supplied with water, sewerage, or heat unless approved by special exception.
5. The building shall be used only for the personal use of the occupants of the premises on which it is located, and not for any commercial use except for an approved home occupation.
6. The building shall not be located forward of the front façade of the house.

7. The building shall be set back at least ten (10) feet from any property line.
8. The building shall be separated from any principal residential building on an abutting lot by not less than twenty (20) feet.

ARTICLE XX.1 - STANDARDS FOR AGRICULTURAL USES

[Change spelling for consistency.]

175-109.2. Compliance Required.

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

A. General Provisions. The following provisions apply to all agricultural uses and activities:

3. Site plan review.

- a. Site plan review is required as specified in the text of Section 175-53 – Table of Land Uses and in the Site Plan Regulations (except as specified in b., below). Site plan review is required for all buildings, driveways, parking areas, public use areas, and significant structures and for site changes that are part of any commercial agricultural operation. Site plan review is not required for *noncommercial non-commercial* agriculture.