

**PLANNED UNIT DEVELOPMENT ORDINANCE**  
**Town of Durham, NH**  
**Proposed New Ordinance**  
January 22, 2025 – For discussion by the Planning Board  
***\*DRAFT\****

**ARTICLE XVIII.2 PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT**

*[This numbering is based on the expectation that the proposed Workforce Housing Overlay District (WHOD), now being reviewed by the Town Council, will be adopted. The entirety of the WHOD will be numbered 175-106. As part of this PUD amendment, the numbering for Article XIX – Conservation Subdivisions should be renumbered to 175-108 with all of the sections lettered A, B, C, etc. These exact numbering changes will be incorporated into this PUD amendment later.]*

*I shared the draft with Paul Rasmussen, Planning Board chair, earlier. **His comments are shown like this.***

*I shared the draft with Ken Weston, UNH Campus Architect. His comments (sometimes paraphrased) regarding the prospective UNH Edge Project are shown like this.*

*I shared the draft with Craig Seymour, DRG Advisory Services out of North Hampton, NH, a planning consultant who is interested in the potential UNH project. He noted, “I reviewed the draft PUD language and ran it by some colleagues. We all agree that it will fit the bill for the Edge project. The only reservation I have is that it is very discretionary on the part of both the PB and the Town Council – which adds uncertainty and risk for a developer/investor. It will take UNH and or their private partner hundreds of thousands of dollars to put together the PUD plan which could then be turned down for almost any reason – or no reason at all. Any means by which the governing body (i.e. the Town) can reduce uncertainty as early as possible in the process the better. I do not know any sure fire way of doing that, other than good dialogue and communication throughout the process so that potential issues can be resolved early on. Perhaps having a quasi-independent advisory board as part of the Town’s negotiation team would help. Let’s keep moving forward!”*

*Councilor James Bubar asked if PUD’s would be considered Developments of Regional Impact. I believe that the PUD General Plan should generally be considered a DRI.*

➤ ***Include this PUD Overlay District in Part B in the Table of Contents.***

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**175-107. Planned Unit Development Overlay District (PUDOD)**

**A. Authority.**

This article is adopted pursuant to New Hampshire RSA 674:21 Innovative Land Use Controls subsection I. (e) Planned unit development.

## **B. Definition and Purpose.**

A Planned Unit Development (PUD) 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. (Note: Every reference to “master plan” in this PUD ordinance refers to the PUD master plan rather than the Town of Durham Master Plan, except where the latter is specifically referred to as such.)

The purpose of this article is to promote flexibility and excellence (*of what? I don't see the need for “and excellence” here*) in large-scale development by considering project proposals based upon a comprehensive, integrated and detailed individual plan rather than the constraints applicable to piecemeal lot-by-lot development under conventional zoning. A PUD should enhance the quality of new development by encouraging attractive and beneficial features and promoting exceptional site and architectural design.

A PUD affords a property owner the opportunity to negotiate with the Town of Durham, pursuant to the parameters in this article, to create a superior project that provides greater benefits to both the property owner and the Durham community than the ordinary ordinances and regulations would allow for. It is understood that the PUD approach is an alternative method selected by the applicant. Approval by the Town of Durham involves considerable discretion and the Town of Durham need not approve a proposal which the Planning Board or Town Council deems to not be in the interest of the community.

## **C. Basic Requirements.**

The following requirements apply to any proposed PUD.

1. Location. PUD's are permitted only in the MUDOR and ORLI zoning districts (or as these districts may be reconstituted in the future). *Could a project potentially be submitted under both the PUD and Workforce rules?*
2. Parcel size. The minimum area required for a PUD is 25 contiguous acres of land. Where portions of the tract are separated by a road, road right-of-way, utility, waterway, or another comparable element, or where portions are in close proximity such that a close relationship between those portions can be readily established, the land shall be deemed contiguous. Multiple separate lots may compose the PUD.
3. Ownership. The PUD shall be under unified ownership or control at the time of application. However, the tract may be subsequently subdivided consistent with the terms and conditions of the approved master plan. Multiple parties may own, manage, and/or develop various components of the PUD provided that the overall PUD remains integrated and the master plan explains how this ongoing integration will be ensured.
4. Utilities. Public water and sewer must be provided to the PUD.

#### D. Standards and Objectives of Development.

The following standards shall apply to all PUD's.

1. Setting Standards. In devising the PUD master plan, subject to specific limitations, guidelines, and objectives stated elsewhere in this article, there is flexibility in the applicant's proposed selection of land uses, density, setbacks, buffers, building heights, lot sizes, lot dimensions, parking requirements, and most site design and development standards contained in the Zoning Ordinance, Site Plan Regulations, Subdivision Regulations. The master plan must be clear about the alternative standards that are proposed. The PUD may not depart from state and federal law and the building code.
2. Traditional Neighborhood Development. The site shall be designed following the principles of traditional neighborhood development (TND) and traditional downtown development. It shall include a network of walkable streets with interconnected sidewalks and pedestrian ways. The site shall not use a conventional suburban automobile-oriented pattern. Buildings shall front on streets and squares in a manner that will create an attractive walkable streetscape. *Attractive is a subjective term, If the phrase "create a walkable streetscape" (which I believe is sufficient) is insufficient then include an objective term like "shaded" or "protected".*  
  
*UNH will likely have some industrial/quasi-industrial uses and specialized uses.*
3. Form-Based Code. The preferred structure for the plan is the form-based code model. Applicants are encouraged to research form-based coding and to incorporate the approaches commonly used. A form-based code typically includes a regulating plan, building standards, public standards (where there will be streets and pedestrian ways), architectural standards, landscaping standards, sign standards (as appropriate), and environmental resource standards.
4. Street Design. A modified grid of walkable streets, including short blocks where feasible, is preferred. Street widths may be reduced from the provisions of the Zoning Ordinance and Subdivision Regulations where a reduction in street size is compatible with the harmonious development of the PUD and accommodates emergency vehicles and other functional needs. Use of traffic mitigation and traffic calming measures is encouraged. The project shall include a rich *(rich? like extensive?)* network of sidewalks and pedestrian ways. Private roads may be utilized provided acceptable arrangements are made for their ownership and maintenance. *I think the above sentence or two could be replaced with "Pedestrian and microtransit ways should be prioritized over vehicular traffic to the greatest reasonable extent.*
5. Mix of Uses. The PUD shall include a mix of uses designed to blend harmoniously together.

6. Design Elements. All elements of the PUD, including, but not limited to, the architecture, signage, lighting, landscaping, and street furniture, shall be carefully designed to promote an attractive, ~~attractive~~, harmonious pedestrian-oriented environment. The PUD shall include detailed provisions for these elements, especially architecture.
  
7. Parking. All off-street parking areas shall be located at the rear of buildings, at the side of buildings, or at peripheral locations within the PUD. Interim parking areas may be established along streets provided the plan calls for construction of a building in the near future. All parking areas shall be visually buffered to the extent feasible from streets and pedestrian ways. *Don't like the last sentence, "All" and "extent feasible" seems overly restrictive. It calls for fencing in many areas that will disrupt the normal flow of foot traffic. Do we need the sentence? Can we limit the requirement to parking areas over "X" spaces in size?*
  
8. Utilities. All utilities shall be located underground. The Planning Board may waive this requirement as part of site plan review if it determines that limited above ground installation, whether on an interim or permanent basis, will not impair the quality of the project.
  
9. Transportation. Accommodation for multiple modes of transportation beyond single-occupancy vehicles, including pedestrian ways, bicycle ways, public transportation, and transportation management demand methods, shall be incorporated.

Transportation. Accommodation for multiple modes of transportation beyond single-occupancy vehicles **shall be incorporated, including p** Pedestrian ways, **microtransit or** bicycle ways, public transportation, and transportation management demand methods, ~~shall be incorporated~~.

*Clarify when a traffic study would be needed. Would this be part of the main plan submission?*

10. Level of Development. The applicant shall provide a detailed analysis of the proposed density of residential uses and intensity of nonresidential uses to demonstrate that the site can handle the level and type of development. *What data are you looking for here? Floor-area-ratio, drainage, traffic?*
  
11. Building Heights. Proposed building heights will be reviewed carefully in order to minimize impact upon the surrounding rural and town character. Lower buildings shall be placed near to existing exterior roads and taller buildings shall be placed further from those roads so that they are relatively unobtrusive. The maximum potential building height is six (6) stories.
  
12. Open Space. At least 20% of the total acreage of the parcel must be designated as open space, parks, and green areas. Designation of a larger percentage of the total acreage is encouraged. Plans for ownership and maintenance of these spaces must

be determined at the time of master plan approval or site plan/subdivision approval.

13. Buffers. Landscaping, setbacks, and other appropriate methods shall be incorporated to provide a reasonable buffer between the PUD and adjoining property except where compatible uses adjoin one another.
14. Natural and Cultural Resources. Permanent protection of significant natural and cultural resources is strongly encouraged. *What are these? Have we identified any in these zones?*
15. Sustainability. Sustainable design and construction practices and energy conservation methods shall be incorporated to the extent practical. *to the extent practical. What about net-zero encouragement?*
16. Public Access. Accommodations for reasonable public access to the streets, pathways, open spaces, facilities, and establishments within the development shall be made to the extent practical. *established. made to the extent practical.*
17. Private covenants. Any proposed covenants, restrictions, and easements must be approved by the Planning Board. A provision may be built into the documents providing for effective enforcement and implementation of the covenants, restrictions, and easements.

#### **E. Allowed Uses.**

The following uses may be proposed for inclusion in a PUD. Any use must be specifically approved with any appropriate conditions as part of the PUD.

1. Residential Uses.
  - a. Duplexes;
  - b. Triplexes;
  - c. Fourplexes;
  - d. Rowhouses; and
  - e. Multi-family uses
2. Nonresidential Uses.
  - a. Offices;
  - b. Research and development;
  - c. High technology;
  - d. Light industry;
  - e. Neighborhood scale commercial uses such as convenience stores, craft stores, restaurants, beauty shops, personal services, tailors, laundromats, banks, and business services;
  - f. Civic uses such as schools, government offices, and churches;
  - g. Inns and hotels;
  - h. Conference centers;
  - i. Arts facilities;

- j. Community centers;
  - k. Medical facilities;
  - l. Day care facilities for adults and children;
  - m. Parking facilities;
  - n. Storage facilities serving nonresidential uses;
  - o. Indoor and outdoor recreation facilities; and
  - p. Sales office for the sale or rental of property in the PUD
3. Accessory Uses. Any uses that are customarily accessory to uses approved in the PUD Master Plan.
  4. Prohibited uses and designs. The following are not permitted as new uses in a PUD:
    - a. Automobile/vehicle dealerships;
    - b. Gasoline stations;
    - c. Other automobile-oriented uses;
    - d.** Drive-through facilities; **why?**
    - e. Heavy industry;
    - f. Storage facilities for residential use;
    - g. Billboard-type signs; and
    - h.** Short term rentals *Would this limit a hotel from renting to a professor for less than 30 days? (perhaps for any building with 3 or fewer units)*

*Adult book store, rifle ranges, amusement parks? This needs to be carefully considered. What does heavy industry refer to? We will have some industrial-type uses. Our marine-tech partners have cranes for uncrewed ocean vehicles.*

## **F. Process.**

Establishing a PUD constitutes an amendment to the zoning map. The process is the same as that for a zoning amendment initiated by the Planning Board with modifications to that process as shown below.

1. Discussion with Planning Department. The applicant should meet first with the Planning Department, and any other Town personnel which the Planning Department thinks should participate in the discussion, to discuss the general proposal and review the requirements of this article.
2. Preliminary review. The applicant then submits a letter of intent to the Planning Board to establish a PUD and maps and supporting documentation that explain the proposed project in a preliminary manner. The application is presented to the Technical Review Group (TRG) for preliminary comments. The Planning Board holds a public hearing on the proposal, offers any comments which may be helpful to the applicant in preparing a formal application, and closes the preliminary review. The preliminary review may continue for as long as both the applicant and Planning Board deem it to be useful. All comments by the Planning Board and Planning Board members are considered preliminary, nonbinding, and subject to change when the formal application is submitted. ***I recommend that this be***



*kept as short as possible rather than left open-ended. Two meetings max, can a Public Hearing be scheduled for the “first” meeting by the Board ahead of time? Our experience with subdivisions have shown that extra time on preliminary reviews doesn’t provide benefits down the road.*

3. Committee. The Planning Board may form a committee at any time to assist in the board’s review of the preliminary or formal application and to make nonbinding recommendations to the board. The committee may consist of any people deemed appropriate by the board, including board members, members of other Town board and commissions, staff of the Town of Durham, and other members of the Durham community. All meetings of the committee shall be treated as public meetings.
4. Formal application. The applicant submits a formal PUD application as specified in this article. The formal proposal may deviate from the preliminary proposal as desired by the applicant. The application is presented to the TRG at the appropriate time. Once the Planning Board determines that the application is complete it votes to accept the application and schedules a public hearing on the proposal. A determination of completeness does not require that every detail and element be included at that time but rather that the application is substantially complete such that an in-depth review may commence. Neighbors within 300 feet *within 300 feet (where does this number come from?)* shall be notified about the hearing. The board must render its decision on the application within 65 days of acceptance unless the applicant provides an extension to the board. The board shall make a good faith effort to engage in productive discussions with the applicant to help move the project forward provided sufficient information has been submitted to allow for productive discussions. It is understood that certain elements of the project may best be developed after some initial discussions with the board and that the proposal will likely change and evolve during this review process. The Planning Board shall determine whether the proposed Planned Unit Development should be deemed a Development of Regional Impact in accordance with RSA 36:54. *It sounds like the Edge might trigger this. More information is needed.* The board may treat the overall PUD as a development of regional impact but find that the individual site plan and subdivision applications are not developments of regional impact. The board may request input about the proposed PUD from any parties, such as utilities, neighboring municipalities, and state agencies.
5. Initiation. If the Planning Board determines that the proposal, as submitted or as modified, meets the requirements and objectives of this article, it shall vote to initiate (i.e. formally recommend) the PUD as a zoning amendment. The Planning Board shall include proposed conditions of approval as part of its recommendation. The Planning Board may deny an application if it finds that the proposal fails to meet the requirements and objectives of this article in its sole judgment.

6. Town Council review. The Town Council reviews the proposed PUD in the same manner as a conventional zoning amendment. The Town Council approves and adopts or rejects the PUD proposal as it sees fit. If the Town Council proposes significant changes to the application it shall send the proposed changes back to the Planning Board for comments. The Planning Board does not need to hold additional public hearings on those changes or on its comments. The Town Council shall hold a public hearing on the final proposed PUD prior to adoption. The Town Council must take final action on the proposal within 65 days of the Planning Board's recommendation. This timeframe may be extended as mutually agreed to by the Planning Board and Town Council. *Not the applicant?*
7. Adoption. If and when the Town Council adopts the PUD, the parcel is designated on the Zoning Map as, for example, "PUD - Jones Development (name of the project)." It is treated as its own overlay district with its own specific standards. The underlying zoning district remains in place. The new PUD designation includes all of the approved documents including text material and maps provided by the applicant and conditions of approval specified by the Town Council. All of these materials shall be maintained by the Planning Department.
8. Development. Site plan and subdivision applications for the parcel are reviewed in accordance with the provisions of the adopted PUD General Plan.
9. Changes to the PUD. Changes may be made to an approved PUD General Plan as follows:
  - a. The Planning Board may approve a minor modification following a public hearing.
  - b. The Planning Board may approve a significant change to the PUD by conditional use. *Why CU?*
  - c. In order to incorporate any new land into the PUD the adoption procedure above must be followed.
10. Significant changes from the approved PUD including, but not limited to, an increase in building heights, an increase in density, a reduction in open space, a significant change in proposed uses or configuration of the uses shall be reviewed as amendments to the PUD. Reducing the area of the PUD shall be reviewed as an amendment, *What about increasing the area of the PUD? That should be included here.* in which case, the Planning Board shall determine whether or not removal of that area compromises the quality and purpose of the PUD. *This paragraph is designating the thresholds between #1 and #2 above, but within it there are few hard thresholds. How much increase in density? How much reduction in open space? What about a decrease in density or building height where density is the desired result? Also, amendments are not mentioned above so how are they handled?*
11. Commencement of work. In the event that active and substantial physical development or building has not begun on the site by the owner or the owner's successor in interest in accordance with the approved PUD within 36 months after the



date of approval, or in accordance with other specific terms of the approval, or as may be extended by the Planning Board for good cause, then the PUD shall be deemed null and void and the zoning for the parcel shall revert to the underlying zoning district.

12. Termination. A landowner may terminate an adopted PUD for which significant development has not occurred by notifying the Planning Board in writing that they do not intend to utilize the PUD. In that event, the PUD will be terminated and the underlying zoning designation will prevail. If significant development has occurred on the parcel then the Planning Board shall determine whether or not to terminate the PUD following a public hearing. When a PUD is terminated, any developed areas of the former PUD that do not conform with the underlying zoning designation shall be deemed nonconforming development under this ordinance.

### **G. Criteria for Review of PUD Proposals.**

The Town Council and Planning Board shall determine in their sole reasonable discretion if the proposal meets these criteria and is worthy of the special consideration afforded a Planned Unit Development.

1. The proposed PUD master plan conforms with the intent, standards, and objectives of this article.
2. The proposed PUD incorporates a general standard of excellence and it is expected to provide a strong positive benefit to Durham.
3. The proposed PUD is consistent with the Town of Durham Master Plan, particularly the Land Use Chapter.
- ~~4. The proposed PUD is generally consistent with the eight conditional use criteria. These criteria are used as only a very general reference for evaluating the quality and compatibility of the project. ***This paragraph is designating the thresholds between #1 and #2 above, but within it there are few hard thresholds. How much increase in density? How much reduction in open space? What about a decrease in density or building height where density is the desired result? Also, amendments are not mentioned above so how are they handled?***~~

*[Delete above per discussion on October 23, 2024]*

### **H. Submission Requirements.**

The formal PUD submission shall include the items below. The Planning Board may waive the requirements for specific elements as it deems appropriate. The Planning Board shall use its judgment in determining the level of detail needed recognizing that site plan and subdivision applications to be submitted later will include more details.

1. Completed PUD application form.

2. Narrative, including a statement of the purpose of the PUD, how the PUD meets the objectives and standards of this ordinance, and the ways in which the proposal would benefit the community.
3. A clear statement of all of the proposed standards for the PUD to be used in place of the standards otherwise applicable in the Zoning Ordinance, Site Plan Regulations, and Subdivision Regulations.
4. A surveyed plan of the parcel showing metes, bounds, and existing conditions.
5. General information about the existing parcel and proposed project including:
  - a. acreage;
  - b. ownership;
  - c. underlying zoning;
  - d. land uses;
  - e. number and type of dwelling units;
  - f. square footage of nonresidential uses;
  - g. parking information;
  - h. the general approach to stormwater management;
  - i. utilities information;
  - j. a plan for mitigating potential impact on neighboring properties;
  - k. expected ownership and management of infrastructure and project components;
  - l. type of private covenants and private management/association envisioned;
  - m. expected taxability of the project;
  - n. general financing arrangement as appropriate;
  - o. timeframe for development; and
  - p. the general strategy for development.

***The rest should be moved to section F since they do not pertain to the existing conditions.***

- j. a plan for mitigating potential impact on neighboring properties;*
- k. expected ownership and management of infrastructure and project components;*
- l. type of private covenants and private management/association envisioned;*
- m. expected taxability of the project;*
- n. general financing arrangement as appropriate;*
- o. timeframe for development; and*
- p. the general strategy for development.*

6. Proposed land plan including:
  - a. a regulating plan; *This is a new urbanism term. Need to define.*
  - b. an architectural plan, including sample renderings or templates, with standards/guidelines including a clear process for how the standards/guidelines will be implemented (such as through an architectural review committee);
  - c. other design standards/guidelines (for lighting, street furniture, etc.);

- d. a plan for streets and paths;
  - e. a general landscaping plan;
  - f. an open space plan; and
  - g. a sign standards plan, if proposed;
7. Transportation plan including analysis of traffic impacts and proposals to encourage transportation modes other than single occupancy vehicles.
  8. Natural and cultural resources analysis of the tract prepared by a qualified professional and a plan for managing and preserving resources.
  9. Completed abutters list of owners within 300 feet of the site. *Where does 300ft come from? I think this should be 50ft now.*
  10. PUD application fee.
  11. Any other information *This is too vague. Add "reasonable"* that the Planning Board determines is needed to properly evaluate the proposal.
  12. The applicant shall submit the number of copies of the above documents and in a format as specified by the Planning Department.

#### **I. Interpretation/application of PUD Master Plan.**

The Planning Board reviews any subsequent site plan or subdivision application for its conformity with the approved PUD master plan. The Planning Board is granted wide latitude in interpreting the adopted PUD when considering applications provided its interpretations are reasonably consistent with the intent of the adopted PUD.

The Planning Board may allow for departures from the approved PUD as part of a site plan and subdivision review where it determines that the proposed use and design is consistent with the intent of the PUD.

The PUD Master Plan need not include exact lot locations and layouts, exact locations of roads and paths, size and configuration of parking lots, utility information, water and sewer details, drainage, landscaping, and architectural renderings. (For example, the land plan may show numerous trees to be planted. The applicant would be able to significantly modify the locations and types of planting at the site plan stage provided the intent of the landscaping element as presented in the land plan is met.)

All development standards must ultimately be determinable. Where specific development standards are neither stated nor implied in the PUD master plan, the most appropriate standards otherwise applicable (from the Zoning Ordinance, Site Plan Regulations, and/or Subdivision Regulations) shall apply as determined by the Planning Board. (For example, if a particular section of the master plan does not specify front setbacks, the front setbacks contained in the underlying zoning district or a different, more applicable zoning district, would then apply.)

**Fees.**

The application fees for a PUD are as follows:

- (1) \$50 per gross acre of the tract.
- (2) \$500.00 at the preliminary review with the balance due at the regular review