



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

NOTICE: Although members of the Town Council will be meeting in the Council chambers, the Council meetings are still available for members of the public to participate via Zoom or in-person.

AGENDA

DURHAM TOWN COUNCIL
MONDAY, FEBRUARY 17, 2025
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM

NOTE: *The Town of Durham requires 48 hours notice if special communication aids are needed.*

- I. Call to Order
- II. Town Council grants permission for fewer than a majority of Councilors to participate remotely
- III. Roll Call of Members. Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person
- IV. Approval of Agenda
- V. Special Announcements
- VI. Public Comments (*) - **Please state your name and address before speaking**
- VII. Report from the UNH Student Senate External Affairs Chair or Designee
- VIII. Unanimous Consent Agenda (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*)
 - A. Shall the Town Council accept in fee simple ownership a parcel of land that is a portion of 65 Durham Point Road, Map 115, Lot 6, owned by Sarah P. Ford 1999 Trust? As stated in the deed to the Town, executed December 13, 2024, this parcel includes all of the land situated southerly and westerly of the boundary line shown on the Roadway Right-of-Way Adjustment/Two-Lot Subdivision plat dated November 18, 2024, prepared by Doucet Survey.

- B. Shall the Town Council Adopt Resolution #2025-02 Opposing House Bill 457, which prohibits a zoning ordinance from restricting the number of occupants of a Dwelling Unit to fewer than 2 occupants per bedroom and prohibits the adoption and enforcement of any Zoning Ordinance that discriminates based on familial, non-familial or marital status; and supporting instead an amendment to HB 457 (January 28, 2025 2025-0125h 09/02), introduced by Rep. Al Howland (Straf. 20)?

IX. Committee Appointments

Shall the Town Council, Upon Recommendation of the Parks & Recreation Committee Chair, Appoint Lynda Kuhne, 119 Dame Road, to fill an Alternate Membership on the Parks & Recreation Committee with a term expiration of April 2027?

X. Presentation Items

XI. Unfinished Business

- A. **Public Hearing and Possible Adoption of Ordinance #2025-03** Amending Chapter 175, "Zoning," Article II, "Definitions," Article XII.1, "Use and Dimensional Standards," and Article XX, "Standards for Specific Uses," Regarding Student Rentals.
- B. **Public Hearing and Possible Adoption of Ordinance #2025-01** Amending Chapter 175 "Zoning," Article II, "Definitions," Article XII.1, "Use and Dimensional Standards," Article XV, "Flood Hazard Overlay District," Article XVI, "Aquifer Protection Overlay District," Article XVII, "Durham Historic Overlay District," Article XVIII, "Personal Wireless Service Facilities Overlay District," Article XX.1, "Standards for Agricultural Uses," and Article XXIII, "Signs and Communications Devices."
- C. **Public Hearing and Possible Adoption of Ordinance #2025-02** Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board."

XII. Councilor and Town Administrator Roundtable

XIII. Approval of Minutes - February 3, 2025 Non Public Minutes & Regular Minutes

XIV. New Business

XV. Nonpublic Session (if required)

XVI. Adjourn (NLT 10:30 PM)

(*) *The public comment portion of the Council meeting is to allow members of the public to address matters of public concern regarding town government for up to 5 minutes.
Obscene, violent, disruptive, disorderly comments, or those likely to induce violence, disruption or disorder, are not permitted and will not be tolerated. Complaints regarding Town staff should be directed to the Administrator.*



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AGENDA ITEM: #8A TS
DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Michael Behrendt, Town Planner

AGENDA ITEM: SHALL THE TOWN COUNCIL ACCEPT IN FEE SIMPLE OWNERSHIP A PARCEL OF LAND THAT IS A PORTION OF 65 DURHAM POINT ROAD, MAP 115, LOT 6, OWNED BY SARAH P. FORD 1999 TRUST? AS STATED IN THE DEED TO THE TOWN, EXECUTED DECEMBER 13, 2024, THIS PARCEL INCLUDES ALL OF THE LAND SITUATED SOUTHERLY AND WESTERLY OF THE BOUNDARY LINE SHOWN ON THE ROADWAY RIGHT-OF-WAY ADJUSTMENT/TWO-LOT SUBDIVISION PLAT DATED NOVEMBER 18, 2024, PREPARED BY DOUCET SURVEY.

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

In 1985, the Town signed a Memorandum of Understanding (see attachment) with Serena Hurlbert, the former owner of the subject lot at 65 Durham Point Road, to convey a portion of the lot to the Town to allow for the relocation of a section of Durham Point Road.

This section of Durham Point Road had a 90-degree turn, which was dangerous given the speed of vehicles on this major collector road. The Town sought to incorporate a gentler curve. The Town actually completed the change in alignment of Durham Point Road on the ground, but the parcel from Ms. Hurlbert was never conveyed to the Town.

See the map at the bottom from the surveyor describing the situation. Everything in the curved area below the blue line and the purple polygon is conveyed to the Town. We have no old maps or surveys so we cannot be certain exactly where the road and road

right-of-way were located. While you can see the new road, no right-of-way to its northeast has been surveyed.

This was brought to our attention by realtor Val Shelton who is marketing the lot for sale. Due to this oversight the front line of the lot (i.e. the right-of-way line) is not determined. It should be clarified so that any buyer knows exactly the boundaries of their lot.

The Town handled all of the details of correcting this oversight as stated in #4 on the 1985 Memorandum of Understanding. We reached out to several surveyors about the work and heard back only from Doucet Survey, who we hired. Val Shelton, Rich Reine, April Talon, the surveyor, and I met on site and agreed that it made sense for Doucet to survey an appropriate new lot line (roughly the blue line on the map) located 25-feet from the centerline of the new road (assuming a right-of-way width of 50 feet).

The plat prepared by Doucet Survey is attached. I submitted a subdivision application and presented it to the Planning Board as a Town project. The board approved the plat, and we recorded it along with the deed (See the attached Quitclaim Deed from Daniel Ford to the Town). The Town Attorney prepared the deed, and I coordinated with the surveyor and Val Shelton on the proper description of the land being conveyed.

Old collector roads like Durham Point Road were never conveyed to the Town, so the Town does not own the road nor land in the right-of-way. The abutting property owners own usually to the centerline of the road. Again, we do not know exactly where that was so the deed refers to all of the land located southerly and westerly of the newly surveyed right-of-way/front lot line. While the Town does not own the land within the right-of-way for the rest of Durham Point Road, the Town Attorney advised that the land within this right-of-way also be conveyed to the Town. The memorandum states that the owner would convey the land in the right-of-way to the Town. If the owner retained that land in the right-of-way, they would own an odd parcel separated from the rest of their lot.

In order to assist the property owner in moving forward with marketing and selling their property we recorded the deed. The Town Attorney advised us that we needed acceptance from the Town Council for the parcel and so this issue is now brought to the Town Council. The entire matter should have been addressed in 1985 but was not.

While the Memorandum of Understanding refers to compensation in item 3. we are not aware of an appraisal having ever been done, nor any money being given to Ms. Hurlbert. The Town did not compensate the current owners at this time, but rather, attended to all of the details.

LEGAL AUTHORITY:

RSA 41:11, RSA 47:1, RSA 229:5.VI, Article 3.13 of the Town Charter.

LEGAL OPINION:

The Town Attorney recommended that the Town Council vote to accept this parcel.

FINANCIAL DETAILS:

n/a. The land is being conveyed at no cost to the Town, other than our costs in hiring the surveyor, preparing the deed, and recording the deed.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby ACCEPT in fee simple ownership a parcel of land that is a portion of 65 Durham Point Road, Map 115, Lot 6, owned by Sarah P. Ford 1999 Trust. As stated in the deed to the Town, executed December 13, 2024, this parcel includes all of the land situated southerly and westerly of the boundary line shown on the Roadway Right-of-Way Adjustment/Two-Lot Subdivision plat dated November 18, 2024, prepared by Doucet Survey.

MEMORANDUM OF UNDERSTANDING

NOW COMES THE TOWN OF DURHAM, a municipal corporation having a principal place of business at the Durham Town Hall in Durham, New Hampshire, and Serena Hurlbert of Durham Point Road, Durham, New Hampshire, individually and in her capacity as owner of property in Durham, Tax Map #11-36-4, and agree as follows:

1. The Town of Durham is desirous of obtaining fee simple ownership of a parcel of land owned by Serena Hurlbert located off of Durham Point Road in Durham, New Hampshire. Said parcel of land being shown on Exhibit A which is attached hereto and made part of this Memorandum of Understanding.
2. The Town of Durham is desirous of obtaining the property referred to in paragraph 1 in order to construct a new roadway, shoulders, and slopes across said property. Said construction to be in conjunction with Town of Durham Project Improvements to Paine's Corner.
3. Serena Hurlbert is desirous as compensation for conveyance of said property to the Town of Durham for obtaining appraisal of said property by a certified appraiser by the Town of Durham. Said appraisal shown by letter of Howard Promer, Representative for United Appraisal Company and being Exhibit B which is attached hereto and made part of this Memorandum of Understanding.
4. Serena Hurlbert agrees to convey said property to the Town of Durham within six (6) months of the signature of this Agreement on parcel Tax Map #11-36-4 and shown as land on said Exhibit A, one acre plus or minus, for the construction of new roadway, shoulders, and slopes across said property. The Town of Durham agrees to prepare formal registered survey of land to be conveyed, drawing of deed for said parcel in which roadway will be built and all legal costs thereto to complete above defined work.
5. Upon the execution of the Memorandum of Understanding, the Town of Durham can immediately go onto the property described in paragraph 1 and begin construction of the roadway, shoulders, and slopes across said property.

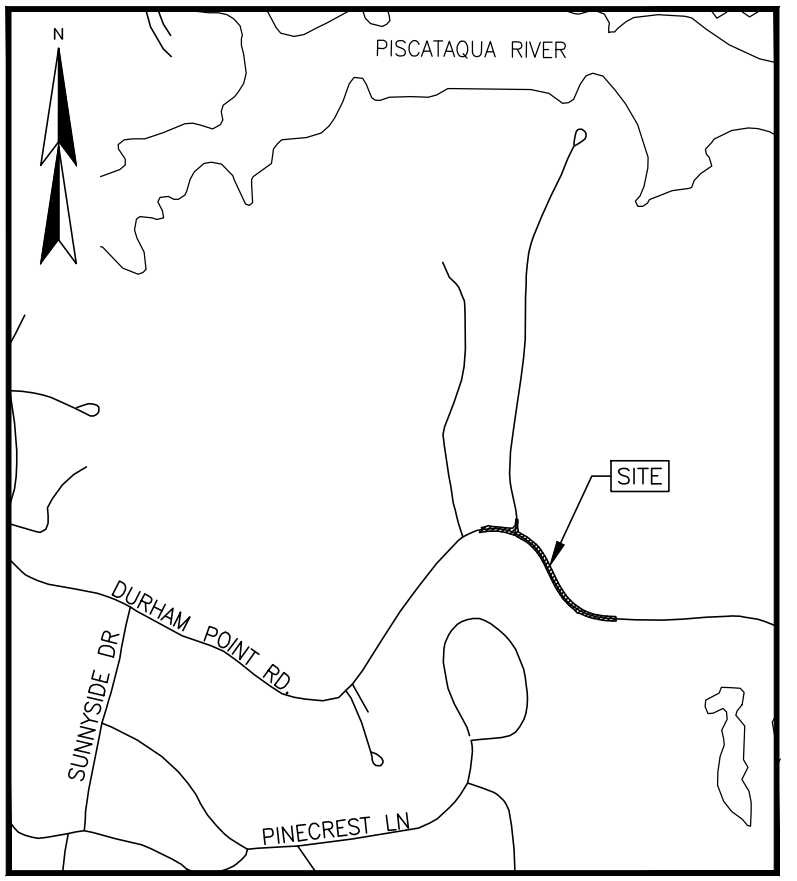
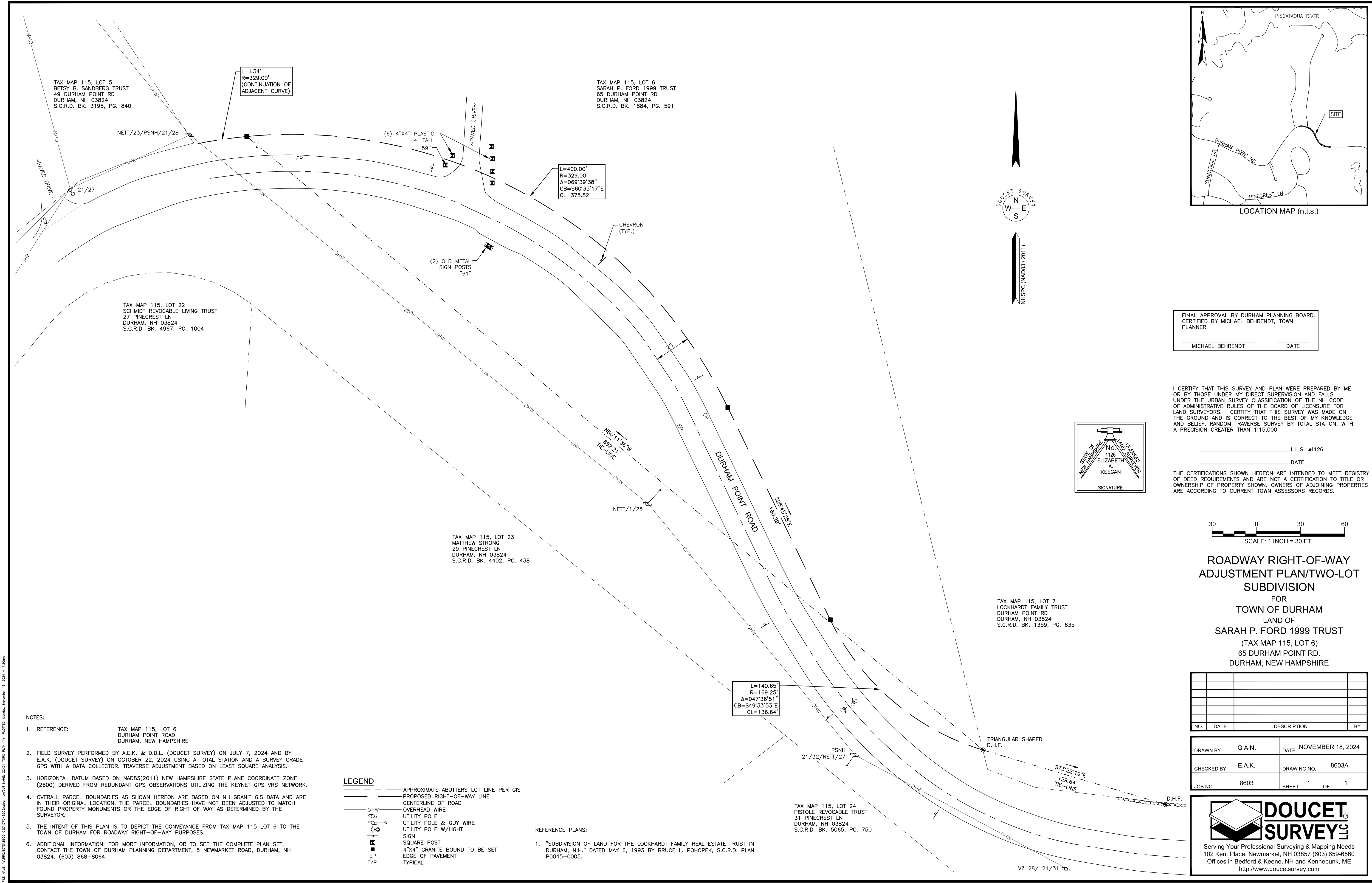
Dated: June 7, 1985

TOWN OF DURHAM:

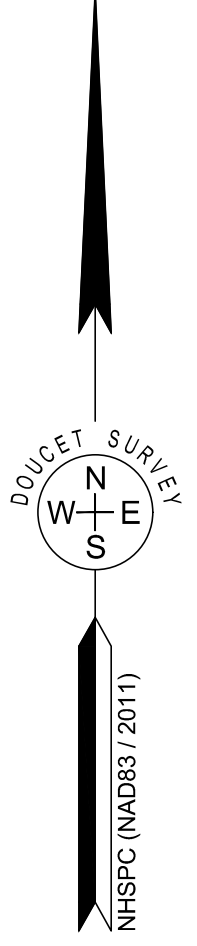
By: Ronald Goodman

OWNER OF PROPERTY, TOWN OF DURHAM
TAX MAP PARCEL #11-36-4

By: Serena C P Hurlbert



LOCATION MAP (n.t.s.)



FINAL APPROVAL BY DURHAM PLANNING BOARD.
 CERTIFIED BY MICHAEL BEHRENDT, TOWN
 PLANNER.

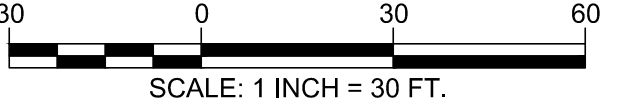
MICHAEL BEHRENDT DATE

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME
 OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS
 UNDER THE URBAN SURVEY CLASSIFICATION OF THE NH CODE
 OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR
 LAND SURVEYORS. I CERTIFY THAT THIS SURVEY WAS MADE ON
 THE GROUND AND IS CORRECT TO THE BEST OF MY KNOWLEDGE
 AND BELIEF. RANDOM TRAVERSE SURVEY BY TOTAL STATION, WITH
 A PRECISION GREATER THAN 1:15,000.

NEW HAMPSHIRE
 STATE OF
 LICENSED
 LAND SURVEYOR
 No. 1126
 ELIZABETH
 A. KEEGAN
 SIGNATURE

 L.L.S. #1126
 DATE

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY
 OF DEED REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR
 OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES
 ARE ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.



**ROADWAY RIGHT-OF-WAY
 ADJUSTMENT PLAN/TWO-LOT
 SUBDIVISION**

FOR
 TOWN OF DURHAM
 LAND OF
 SARAH P. FORD 1999 TRUST
 (TAX MAP 115, LOT 6)
 65 DURHAM POINT RD.
 DURHAM, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

DRAWN BY:	G.A.N.	DATE:	NOVEMBER 18, 2024
CHECKED BY:	E.A.K.	DRAWING NO.	8603A
JOB NO.	8603	SHEET	1 OF 1

DOUCET SURVEY
 Serving Your Professional Surveying & Mapping Needs
 102 Kent Place, Newmarket, NH 03857 (603) 659-6560
 Offices in Bedford & Keene, NH and Kennebunk, ME
 http://www.doucetsurvey.com

- NOTES:
- REFERENCE: TAX MAP 115, LOT 6 DURHAM POINT ROAD DURHAM, NEW HAMPSHIRE
 - FIELD SURVEY PERFORMED BY A.E.K. & D.D.L. (DOUCET SURVEY) ON JULY 7, 2024 AND BY E.A.K. (DOUCET SURVEY) ON OCTOBER 22, 2024 USING A TOTAL STATION AND A SURVEY GRADE GPS WITH A DATA COLLECTOR. TRAVERSE ADJUSTMENT BASED ON LEAST SQUARE ANALYSIS.
 - HORIZONTAL DATUM BASED ON NAD83(2011) NEW HAMPSHIRE STATE PLANE COORDINATE ZONE (2800) DERIVED FROM REDUNDANT GPS OBSERVATIONS UTILIZING THE KEYNET GPS VRS NETWORK.
 - OVERALL PARCEL BOUNDARIES AS SHOWN HEREON ARE BASED ON NH GRANIT GIS DATA AND ARE IN THEIR ORIGINAL LOCATION. THE PARCEL BOUNDARIES HAVE NOT BEEN ADJUSTED TO MATCH FOUND PROPERTY MONUMENTS OR THE EDGE OF RIGHT OF WAY AS DETERMINED BY THE SURVEYOR.
 - THE INTENT OF THIS PLAN IS TO DEPICT THE CONVEYANCE FROM TAX MAP 115 LOT 6 TO THE TOWN OF DURHAM FOR ROADWAY RIGHT-OF-WAY PURPOSES.
 - ADDITIONAL INFORMATION: FOR MORE INFORMATION, OR TO SEE THE COMPLETE PLAN SET, CONTACT THE TOWN OF DURHAM PLANNING DEPARTMENT, 8 NEWMARKET ROAD, DURHAM, NH 03824. (603) 868-8064.

- LEGEND**
- APPROXIMATE ABUTTERS LOT LINE PER GIS
 - - - PROPOSED RIGHT-OF-WAY LINE
 - CENTERLINE OF ROAD
 - OHW OVERHEAD WIRE
 - UTILITY POLE
 - UTILITY POLE & GUY WIRE
 - UTILITY POLE W/LIGHT SIGN
 - SQUARE POST
 - 4"x4" GRANITE BOUND TO BE SET
 - EP EDGE OF PAVEMENT TYPICAL

- REFERENCE PLANS:
- "SUBDIVISION OF LAND FOR THE LOCKHARDT FAMILY REAL ESTATE TRUST IN DURHAM, N.H." DATED MAY 6, 1993 BY BRUCE L. POHOPEK, S.C.R.D. PLAN P0045-0005.

FILE NAME: N:\PROJECTS\8603 - DURHAM\8603.dwg PLOT DATE: 22/11/2024 10:50 AM PLOT BY: DOUCET SURVEY, November 18, 2024 - 1:20am

VZ 28/ 21/31

THE SPACE ABOVE IS FOR RECORDING INFORMATION

QUITCLAIM DEED

BE IT KNOWN, that Daniel F. Ford as Trustee of the Sarah P. Ford 1999 Trust, dated May 24, 1999, as amended, with an address of 433 Bay Road, Durham, New Hampshire 03824, for consideration paid, and pursuant to a June 7, 1985 Memorandum of Understanding, grants in fee, subject to any easements and rights of way of record, to the Town of Durham, a municipal corporation duly organized under the laws of the State of New Hampshire with a mailing address of 8 Newmarket Road, Durham, New Hampshire 03824, with QUITCLAIM COVENANTS:

A parcel of land, situated in the Town of Durham, in the County of Strafford, and State of New Hampshire, shown on a certain plan entitled "ROADWAY RIGHT-OF-WAY ADJUSTMENT PLAN/TWO-LOT SUBDIVISION FOR TOWN OF DURHAM LAND OF SARA P. FORD 1999 TRUST" prepared by Doucet Surveying LLC, recorded in the Strafford County Registry of Deeds as Plan # _____, described as follows:

All of the land that is part of a contiguous parcel owned by the grantor or in which the grantor may have a property interest, situated southerly and westerly of the boundary line shown on said plan, surveyed in four continuous sections (three curving sections and one straight section), which extends approximately between the two front corners of the grantor's lot, identified as Map 115, Lot 6. The parcel includes land located within the Durham Point Road right of way which is or may be owned by the grantor, i.e., land that is situated adjacent to Map 115, Lot 6 which likely extends to the centerline of the Durham Point Road right of way.

Meaning and intending to convey a portion of the premises conveyed to Sara Paine Ford by deed of Serena Coe Pain Hurlbert dated August 26, 1996 and recorded in the Strafford County Registry of Deeds at Book 1884, Page 591.

The premises conveyed are not homestead property of the grantor.

This conveyance is exempt from transfer tax under RSA 78-B:2.

EXECUTED this 13TH day of DECEMBER, 2024.

[Handwritten Signature]

Daniel F. Ford as Trustee of the Sarah P. Ford 1999 Trust, dated May 24, 1999, as amended

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

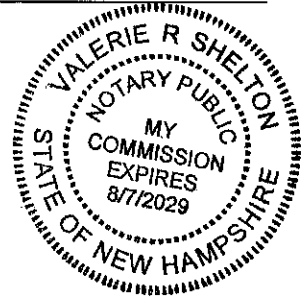
The foregoing instrument was acknowledged before me this 13TH day of December, 2024 by Daniel F. Ford as Trustee of the Sarah P. Ford 1999 Trust, dated May 24, 1999, as amended.

Before me,

[Handwritten Signature]

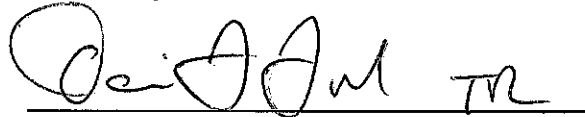
Notary Public/Justice of the Peace

My Commission Expires: _____



TRUSTEE'S CERTIFICATE

The undersigned trustee(s) as Trustee(s) under the Sarah P. Ford 1999 Trust, dated May 24, 1999, as amended created by Sara P. Ford as grantor under trust agreement dated May 24, 1999, as amended, and thereto have full and absolute power in said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.



Daniel F. Ford as Trustee of the Sarah P. Ford 1999 Trust, dated May 24, 1999, as amended

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

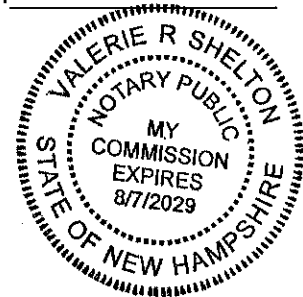
The foregoing instrument was acknowledged before me this 13th day of December, 2024 by Daniel F. Ford as Trustee of the Sarah P. Ford 1999 Trust, dated May 24, 1999, as amended.

Before me,



Notary Public/Justice of the Peace

My Commission Expires: _____





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AGENDA ITEM: **#8B** *TS*

DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: SHALL THE TOWN COUNCIL ADOPT RESOLUTION #2025-02 OPPOSING HOUSE BILL 457 WHICH PROHIBITS A ZONING ORDINANCE FROM RESTRICTING THE NUMBER OF OCCUPANTS OF A DWELLING UNIT TO FEWER THAN 2 OCCUPANTS PER BEDROOM? THE BILL ALSO PROHIBITS THE ADOPTION AND ENFORCEMENT OF ANY ZONING ORDINANCE THAT DISCRIMINATES BASED ON FAMILIAL, NON-FAMILIAL OR MARITAL STATUS.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

House Bill 457 has been proposed within the N.H. House Housing Committee regarding the regulation of the number of occupants within a rental property. This bill would significantly hamper the Town of Durham's ability to regulate student rentals.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby ADOPT Resolution #2025-02 Opposing House Bill 457 which prohibits a zoning ordinance from restricting the number of occupants of a Dwelling Unit to fewer than 2 occupants per bedroom. The bill also prohibits the adoption and enforcement of any Zoning Ordinance that discriminates based on familial, non-familial or marital status.

RESOLUTION #2025-02 OF DURHAM, NEW HAMPSHIRE

A RESOLUTION OPPOSING HOUSE BILL 457, WHICH PROHIBITS A ZONING ORDINANCE FROM RESTRICTING THE NUMBER OF OCCUPANTS OF A DWELLING UNIT TO FEWER THAN 2 OCCUPANTS PER BEDROOM AND PROHIBITS THE ADOPTION AND ENFORCEMENT OF ANY ZONING ORDINANCE THAT DISCRIMINATES BASED ON FAMILIAL, NON-FAMILIAL OR MARITAL STATUS; AND SUPPORTING INSTEAD AN AMENDMENT TO HB 457 (JANUARY 28, 2025 2025-0125H 09/02), INTRODUCED BY REP. AL HOWLAND (STRAF. 20).

WHEREAS, a State House Bill has been proposed and will be coming before the House Housing Committee regarding the regulation of the number of occupants within a dwelling unit; and

WHEREAS, the Bill would prohibit a local government's Zoning Ordinance from restricting the number of unrelated occupants in a dwelling unit to less than 2 occupants per bedroom; and

WHEREAS, Durham is host to UNH's flagship campus, and therefore, has a significant presence of college students who impact the socio-economic characteristics of our town of 15,410 residents. In comparison, UNH had enrollment of 11,387 undergraduate students at the Durham campus in the Fall of 2023; and

WHEREAS, managing student housing is a fundamental and overarching issue in the Durham community, as well as in the Towns of Plymouth, Keene, and Hanover; and

WHEREAS, the construction of approximately 2,400 new privately-owned off-campus apartment beds in Durham since 2011 has created opportunities for in-commuting students to move into local student housing from surrounding communities in Strafford and Rockingham Counties, freeing up regional apartments for traditional workforce housing and producing ample off campus housing for college students; and

WHEREAS, professional landlords in Durham, many represented by the Durham Landlords Association, report their occupancy levels are down from the traditional near 100% level to a current 80 - 90% occupancy, which is of significant concern to them, particularly amidst a softening enrollment at UNH; and

WHEREAS, the number of off-campus student-occupied ADUs/other smaller residences in town is approximately 85 units. These 85 units are generally located within the traditional residential family neighborhoods located in close proximity to the UNH campus and adjacent Durham downtown; and

WHEREAS, what is different about Durham's rental housing market, which is true of most college towns, is local rents are derived on a per-bed basis. This market factor creates an incentive for landlords and property owners to rent to students rather than conventional renters seeking workforce housing because their gross monthly rent can be twice as high, driving up property prices and rents to the point that most conventional renters and families cannot compete financially against the student housing rental market and its investors; and

WHEREAS, family workforce housing units behave fundamentally differently from non-family commercial congregate living catering to undergraduate college students, particularly with per bed student rentals with individual leases promoting a transient "boarding house" atmosphere; and

WHEREAS, while most people view college students as having less income or a lower ability to pay, many have their rent paid by their parents or through student loans and grants. Over time, lower rental rates increase to reflect market competition and inflationary influences. This works against workforce housing in Durham and in other nearby communities impacted significantly by college student rental pressures; and

WHEREAS, in response and over many decades, Durham has thoughtfully adopted a host of regulations including a noise ordinance, an open container ordinance, a trash ordinance, a disorderly house ordinance, parking ordinances, fire/life safety regulations, and more; but a cornerstone of the Town's ability to manage density within non-family commercial college student housing units and thereby minimize negative health, safety, and general welfare impacts of such commercial use for *both* inexperienced college students who can easily be taken advantage of by unscrupulous landlords and for the community as a whole who experience the impact of off campus commercial student rentals in traditional residential neighborhoods has been through local zoning; and

WHEREAS, on December 16, 2024, the Town Council adopted a major change to Durham's zoning ordinance establishing a new Attainable Housing Overlay District, which is designed to provide a broad range of living options, including a variety of dwelling types at affordable prices, that meet the needs of families and individuals representing NH's diverse workforce and those of moderate means, including retirees, who are not currently employed; and

WHEREAS, the NH Supreme Court has ruled in Paul Mackin v. Town of Durham Zoning Board of Adjustment that Durham's historical "Three-unrelated"

zoning provision is constitutional, is consistent with the Federal Fair Housing Act, and does not discriminate against college students. Further the NH Supreme Court has held that the Federal Fair Housing Act was *not* meant to protect a group of unrelated people, but rather to uphold the state's interest in protecting families from housing discrimination; and

WHEREAS, the Town of Durham does not support discrimination; and

WHEREAS, student rentals in Durham are a commercial use, and

WHEREAS, the designation of commercial zones and uses versus residential zones and uses within a community is an appropriate use of local zoning and helps to preserve the local character of New Hampshire municipalities; and

WHEREAS, on January 8, 2025, at the request of Administrator Todd Selig and Rep. Al Howland (Straf. 20), the Durham Planning Board, with help from the Housing Task Force and a working group of staff and officials pulled together by the Administrator, initiated an amendment to the Zoning Ordinance to create a commercial definition for student rental, which would replace Durham's "Three-unrelated rule;" and

WHEREAS, this proposed zoning change currently before the Town Council creates a commercial zoning use entitled student rental, defined as a residential dwelling composed of one or more dwelling units on a single parcel that includes five or more full time undergraduate college students, as defined by federal law, which would be a permitted commercial use within the Central Business Zoning District, Professional Office Zoning District, Church Hill Zoning District, and Courthouse Zoning District, all of which are commercial in nature, serviced by Wildcat Transit bus service, and are walkable to the core UNH campus; and

WHEREAS, under this proposed zoning change, four or fewer undergraduate college students would be able to live together in all zoning districts anywhere in town; and

WHEREAS, the proposed change limits occupants in a dwelling unit based on the State Fire Code; and

WHEREAS, the Town Council believes there is a public benefit to occupancy being based uniformly across New Hampshire on the State Fire Code; and

WHEREAS, the Town Council was scheduled to hold a public hearing on this amendment on February 17, 2025, and

WHEREAS, Durham State Representative Al Howland (Straf. 20) has introduced an amendment to HB 457 (2025-0125h), which would amend RSA 674:16 by including

after paragraph VII a new paragraph that provides, *“In its exercise of the powers granted under this subdivision, the legislative body of a city, town, village district, or county in which there are located unincorporated towns or unorganized places shall not adopt any occupancy ordinance that is more restrictive than allowed by the state fire code, RSA 153:1, VI-a.”* If the NH House Committee on Housing concludes a change is warranted to RSA 674:16, the Town Council believes the amendment presented by Rep. Howland (January 28, 2025 2025-0125h 09/02), to be an appropriate solution.

NOW, THEREFORE, BE IT RESOLVED, that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby approve **Resolution #2025-02** opposing HB457 as originally introduced, and supporting instead an amendment to HB457 (2025-0125h 09/02), provided by Durham Rep. Al Howland (Straf. 20).

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this ____ day of **February, 2025** by _____ affirmative votes, _____ negative votes, and ___ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector

HB 457 - AS INTRODUCED

2025 SESSION

25-0876
09/08

HOUSE BILL **457**

AN ACT relative to zoning restrictions on dwelling units.

SPONSORS: Rep. Pauer, Hills. 36; Rep. Alexander Jr., Hills. 29; Rep. Bean, Belk. 6; Rep. Berry, Hills. 44; Rep. Damon, Sull. 8; Rep. Farrington, Straf. 8; Rep. A. Murray, Hills. 20; Rep. Presa, Hills. 12; Rep. Read, Rock. 10; Rep. Wheeler, Hills. 33; Sen. Innis, Dist 7; Sen. Murphy, Dist 16; Sen. Reardon, Dist 15; Sen. Watters, Dist 4

COMMITTEE: Housing

ANALYSIS

This bill prohibits the adoption and enforcement of any zoning ordinance that restricts the number of occupants of a dwelling unit to fewer than 2 occupants per bedroom. The bill also prohibits the adoption and enforcement of any zoning ordinance that discriminates based on familial, non-familial, or marital status.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to zoning restrictions on dwelling units.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Zoning; Grant of Power; Dwelling Unit Occupancy. Amend RSA 674:16 by
2 inserting after paragraph VII the following new paragraph:

3 VIII. In its exercise of the powers granted under this subdivision, the legislative body of a
4 city, town, village district, or county in which there are located unincorporated towns or unorganized
5 places shall not adopt any ordinance that restricts the number of occupants of any dwelling unit to
6 less than 2 occupants per bedroom, and the governing body thereof shall not enforce any such
7 ordinance. Such legislative body shall not adopt any zoning ordinance within a municipality that
8 discriminates based on the familial or non-familial relationships or marital status among the
9 occupants of the dwelling unit, including but not limited to college students, and the governing body
10 thereof shall not enforce any such ordinance. Nothing in this section shall prohibit the enforcement
11 of the state building code or state fire code.

12 2 Effective Date. This act shall take effect 60 days after its passage.

Rep. Howland, Straf. 20
January 28, 2025
2025-0125h
09/02

Amendment to HB 457

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to occupancy zoning restrictions.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 New Paragraph; Zoning; Grant of Power; Dwelling Unit Occupancy. Amend RSA 674:16 by
8 inserting after paragraph VII the following new paragraph:

9 VIII. In its exercise of the powers granted under this subdivision, the legislative body of a
10 city, town, village district, or county in which there are located unincorporated towns or unorganized
11 places shall not adopt any occupancy ordinance that is more restrictive than allowed by the state fire
12 code, RSA 153:1, VI-a.

13 2 Effective Date. This act shall take effect April 1, 2026.

UNAPPROVED

2025-0125h

AMENDED ANALYSIS

This bill prohibits the legislative body of a city, town, village district, or county in which there are located unincorporated towns or unorganized places from adopting any occupancy ordinance that is more restrictive than allowed by the state fire code.

UNAPPROVED



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **#9**

DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Lynda Kuhne

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE PARKS & RECREATION COMMITTEE CHAIR, APPOINT LYNDA KUHNE, 119 DAME ROAD, TO FILL AN ALTERNATE MEMBERSHIP POSITION ON THE PARKS & REC COMMITTEE WITH A TERM EXPIRATION OF APRIL 2027?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's information and consideration is an application for board appointment submitted by Lynda Kuhne, requesting appointment as an alternate member to the Parks & Recreation Committee. Her appointment will fill one of the two vacancies for alternate members on the Parks & Recreation Committee.

Ms. Kuhne has attended one meeting of the Committee and has spoken with Chair, Cathy Leach. Attached for the Council's information is Chair Leach's endorsement of Ms. Kuhne's appointment.

Ms. Kuhne has been invited to attend Monday night's meeting.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon recommendation of the Parks & Recreation Committee Chair, appoints Lynda Kuhne, 119 Dame Road, to fill an Alternate Membership position on the Parks & Rec Committee with a term expiration of April 2027.



Town of Durham

8 Newmarket Road
Durham, NH 03824-2898

Tel: 603/868-5571

Fax 603/868-1858

kedwards@ci.durham.nh.us

Application for Board Appointment

Type of Appointment and Position Desired (Please select only one):

New appointment/regular member

New appointment/alternate member

Reappointment/regular member

Reappointment/alternate member

NOTE: New applicants are asked to attend AT LEAST ONE meeting, as well as to meet separately with the Chair(s) of the committee(s) to which they are applying, **prior to submitting an application for appointment.**

Applicant has:

ATTENDED A MEETING 1-28-25

SPOKEN WITH CHAIR/V CHAIR

BEEN RECOMMENDED FOR MEMBERSHIP

Name: LYNDA KUHNE

Date: 2-1-25

Address: 119 DAME RD DURHAM

E-Mail Address: lakuhne@aol.com

Telephone: 603-312-6031

Board/Commission/Committee to which you are interested in being appointed. (Please list in order of preference, if interested in more than one appointment).

1. PARKS + REC

2.

3.

Are you willing to attend ongoing educational sessions offered by the New Hampshire Municipal Association, Strafford Regional Planning Commission, et al, and otherwise develop skills and knowledge relevant to your work on the board/committee? YES NO

(Over)

From: [Cathy Leach](#)
To: [Karen Edwards](#)
Subject: Re: Application for Parks & Rec Committee
Date: Wednesday, February 5, 2025 8:57:52 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Karen --

Lynda did attend the January Parks & Rec meeting and we did speak.

I recommend her for an alternate position on the committee. We will be happy to have her.

Thank you.

Cathy Leach

On 02/04/2025 9:21 AM EST Karen Edwards <kedwards@ci.durham.nh.us> wrote:

Cathy,

Lynda Kuhne has applied to become an alternate on the Parks & Rec Committee. She has stated that she has attended a meeting and spoken with you. Please send me a recommendation for her membership.

Karen

Karen Edwards

Administrative Assistant

Administrator's Office

Town of Durham

8 Newmarket Road

Durham, NH 03824

(603) 868-5571

www.ci.durham.nh.us

She/her/hers



TOWN OF DURHAM

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AGENDA ITEM: **#11A** *TS*

DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE #2025-03 AMENDING CHAPTER 175, "ZONING," ARTICLE II, "DEFINITIONS," ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," AND ARTICLE XX, "STANDARDS FOR SPECIFIC USES," REGARDING STUDENT RENTALS.

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Paul Rasmussen, Planning Board chair

AGENDA DESCRIPTION:

The Planning Board voted to initiate this amendment on January 8. The proposed amendment would include the following changes:

- Provide a new definition for "Student Rental" and specify in the Table of Uses where it is allowed;
- Eliminate definitions for "family" and "unrelated household."
- Eliminate the "three-unrelated rule"
- Eliminate minimum habitable floor areas for unrelated households

Administrator Selig provided the following background information for the proposed amendment in the December 27 Friday Updates.

Background Concerning New Student Rental Ordinance Proposal:

A draft zoning amendment was initially prepared by Administrator Todd Selig with input from an ad hoc working group he assembled for advice including Code Officer Audrey Cline, Town Planner Michael Behrendt, Fire Marshall Brendan O'Sullivan, Fire Chief Dave Emanuel, Town Councilor Em Friedrichs, Town Councilor Heather Grant, Planning Board Chair Paul Rasmussen, State Representative Al Howland, and resident Jay Gooze. The proposal was written in response to evolving societal norms around the

definition of family, the community’s desire to preserve and support more housing opportunities, the economic and social impacts of college student rental housing impacting traditional residential neighborhoods and local housing stock, and recent statewide legislative efforts aimed at expanding housing opportunities for NH’s workforce and potentially impacting Durham’s existing local zoning. Administrator Selig recommended that the Planning Board take up the issue to work through the draft as part of the public process. The Planning Board has made several adjustments to the initial draft, which has been posted in advance of an upcoming public hearing on January 8, 2025.

Durham’s current family definition is rooted in the 1950’s definition of family. The zoning proposal addresses evolving societal norms around the definition of family. There are unmarried blended families, unmarried same-sex partners with children, and other family configurations that should be recognized.

The draft zoning change increases housing opportunities for workforce and young professionals by allowing more than three unrelated to share a dwelling.

Durham property owners have expressed concern that their existing 4 and 5-bedroom homes are unreasonably restricted by the “no more than 3-unrelated” ordinance.

The draft zoning change defines STUDENT RENTAL as a residential dwelling composed of one or more dwelling units on a single parcel that includes five or more full-time undergraduate college students, as defined by Federal law. The threshold of five applies to the total number in dwelling units on a parcel (For example: a three-unit building with two full-time undergraduate college students in one unit and four in another would be classified as a student rental).

The proposal indicates that Student Rentals (5 or more full time students) will be allowed in specified zones (Central Business, Professional Office, Church Hill, and Courthouse zoning districts), with fire code compliance (sprinklers, etc.). Up to 4 full-time students will be allowed by right in all zoning districts on one parcel (combined dwelling units, such as a Single-Family Dwelling with an Accessory Apartment). Any number of occupants, assuming no more than 4 full time students, will be allowed in any zoning district with fire code compliance.

There is a great deal of interest in the state legislature to address NH’s housing shortage. Durham’s historic “no more than 3-unrelated” provision of our zoning ordinance dating to the 1980’s was narrowly preserved in 2024. New legislation has already been introduced that will once again target Durham’s ordinance and our outdated definition of family. The new proposed student rental ordinance would protect Durham because occupancy is limited by the definition of student, rather than familial relationships. The state fire code dictates that more than 4 transient individuals sharing a cooking facility would trigger a lodging & rooming house definition, which imposes a sprinkler requirement among other life safety codes. If the more than 4 individuals are full time students, it would trigger a student housing definition in Durham and would only be allowed in certain zoning districts (see above). The overall

effect would be to increase the “3-unrelated ordinance” to 4 occupants allowed in every zone without fire code compliance. Otherwise, 5 or more occupants would require fire code compliance. If newly introduced legislation were adopted in 2025, as it was in 2024, that set an occupancy floor minimum of two occupants per bedroom, Durham would be in compliance. To allow more than 4 occupants in a unit, the landlord would need meet the fire code requirement, and if a property contained more than 4 full time students, it would be limited to the zones noted above because it would now be classified as a student rental.

Durham Rep. Al Howland has worked to keep the public, Planning Board, and Town Council in the loop concerning legislation pertaining to housing that would impact Durham. . He provided a write up of all the housing bills last spring, and strongly recommended the Planning Board and Town Council re-examine the “no more than 3-unrelated” ordinance as he feels it would be very challenging to continue to defend. Unfortunately, the Town was unable to have a chance to work on it until late October 2024. Following two meetings of the ad hoc working group organized by Admin. Selig, a framework was developed and introduced to the Planning Board on November 13, 2024. The community will have a chance to weigh in at the Planning Board public hearing on the proposed zoning change on January 8, 2025.

Rep. Howland reports the NH House Democratic Caucus feels the “no more than 3-unrelated” ordinance is a fundamentally flawed ordinance that they cannot support.

Questions/Answers concerning the proposed ordinance:

1. Student rental Defined

a. How do we define “Student”? Full time, Part-time, Taking a single class, trade school? In person? Remote? *Federal law outlined by the U.S. Department of Education defines a full-time college student as someone enrolled in at least 12 credit hours per term. Each individual educational institution defines their particular course credit requirements (i.e., remote v. in-person, number of terms per year, etc.) for registered students.*

b. By defining student rental and no other classifications in regard to occupants, could a rental company or individual rent a home to as many individuals as they wish as long as the occupants are not full-time students? *Yes, as long as they meet building and fire code requirements.*

2. Legal non-conforming

What is the impact on legal non-conforming properties?

a. *If the draft zoning changes is adopted, existing properties lawfully housing more than 4 full-time students in one dwelling unit would become legally non-conforming for zoning purposes and for fire code purposes.*

b. *Existing properties lawfully housing more than 4 full-time students across multiple buildings or multiple units would become legally non-conforming for zoning purposes and for fire code purposes.*

c. *If either of the prior two conditions noted exist in the zones where Student Rental is a proposed permitted use, going forward they would be existing “by right” per zoning, and legal non-conforming per fire code.*

3. **Cohabitation**

Would 4 Students and their significant others who are not students be permitted to cohabitate in a home? *Yes, as long as they meet building and fire code requirements.*

4. **Student Status**

How can you differentiate between a student and a non-student? *Federal law outlined by the U.S. Department of Education defines a full-time college student as someone enrolled in at least 12 credit hours per term. The UNH Office of Off-Campus Housing can confirm whether a student is enrolled or not and at what credit hour level.*

5. **Parking**

Do you plan on making any requirements for off street parking for these properties? *There is no change being proposed to the existing parking section of the zoning ordinance.*

6. **Unsightliness**

With an increase to the allowed number of occupants on single-family dwelling properties, is there a plan to keep them from becoming eyesores to neighbors and citizens? *The existing trash, parking, noise, and disorderly house ordinances will remain in effect.*

7. **Enforcement**

How do you plan to enforce these changes to the zoning rules? *The UNH Office of Off-Campus Housing may on a case-by-case basis confirm whether a student is enrolled or not and at what credit hour level.*

8. **Discrimination**

By creating a law singling out “Student rentals” could the Town be liable for discrimination by allowing a property to be rented to more than 5 occupants for non-students but not students in restricted zones? *We believe the answer is no. Students are not a protected class, the term "student" is defined and used in other states without issue, and in late-2024 a NH State Senate subcommittee was evaluating creating a definition of student housing on the state level.*

9. Why limit student housing to certain zoning districts?

Over the years, Durham has experienced a marked difference in lifestyles between off campus undergraduate college student housing and those households that are occupied by working professionals or families that frequently causes an undesirable impact.

You can see documents related to the proposed ordinance that were part of the Planning Board’s review here: https://www.ci.durham.nh.us/boc_planning/zoning-amendment-student-rentals-three-unrelated-rule-and-habitable-floor-area.

You can see the public hearing and discussion where the Planning Board voted to initiate the amendment at this link to DCAT:

<https://cloud.castus.tv/vod/durham/video/677fd03d5084ee00083fc24e?page=HOME>.

This includes comments from Town Administrator Todd Selig, Fire Marshal Brendan Sullivan, and Code Administrator Audrey Cline. The item starts at 1 hour and 5 minutes.

Administrator Selig has had discussions with officials at UNH regarding the revealing of whether someone is a student or not. The officials have indicated that UNH may release the information on student status, but it is not guaranteed.

At their meeting on February 3, 2025 the Town Council scheduled a Public Hearing on this item for their meeting of Monday, February 17, 2025. A Public Hearing notice was published in *Foster’s/Seacoast Online* on Thursday, February 6, 2025. The notice was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

LEGAL AUTHORITY:

RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council hereby OPEN the Public Hearing on Ordinance #2025-03 Amending Chapter 175, “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” and Article XX, “Standards for Specific Uses,” Regarding Student Rentals.

MOTION #2:

The Durham Town Council hereby CLOSE the Public Hearing on Ordinance #2025-03 Amending Chapter 175, “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” and Article XX, “Standards for Specific Uses,” Regarding Student Rentals.

MOTION #3:

The Durham Town Council hereby ADOPT Ordinance #2025-03 Amending Chapter 175, “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” and Article XX, “Standards for Specific Uses,” Regarding Student Rentals.

OR

MOTION #4:

The Durham Town Council hereby REMAND Ordinance #2025-03 Amending Chapter 175, “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” and Article XX, “Standards for Specific Uses,” Regarding Student Rentals back to the Planning Board for substantive amendments.

ORDINANCE #2025-03 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175, "ZONING," ARTICLE II, "DEFINITIONS," ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," AND ARTICLE XX, "STANDARDS FOR SPECIFIC USES," REGARDING STUDENT RENTALS

WHEREAS, Durham's current definition for "family" is outdated; and

WHEREAS, There is a strong desire in the community to protect traditional residential neighborhoods where there have been significant adverse impacts from the presence of large numbers of college students, especially in houses and dwelling units with four or five students living together; and

WHEREAS, Of course, Durham is a college town and greatly appreciates the presence of college students, it is widely recognized that college students, especially undergraduate college students who are often away from home for the first time, and older persons and families generally have different lifestyles which can be incompatible, with potential deleterious effects upon the quality of the neighborhoods; and

WHEREAS, The Town is looking for strategies to provide a wider range of opportunities for housing for its diverse populations; and

WHEREAS, In accordance with RSA 674:16 Grant of Power for Zoning, that Durham has the right and the responsibility to use its zoning powers to specify where particular uses - including those which may not be harmonious with each other - should be located within the town to promote health, safety, and the general welfare of the community; and

WHEREAS, Students are not a protected class, the term is defined and used under zoning in other states without issue, and in late 2024 a New Hampshire Senate subcommittee was evaluating creating a definition of student housing on the state level, recognizing that students are a unique population for which particular zoning standards may be in order; and

WHEREAS, the Durham Planning Board held a public hearing and duly voted to initiate this amendment on January 8, 2025; and

WHEREAS, the Durham Town Council held a duly noticed public hearing on February 17, 2025.

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire, hereby adopt Ordinance #2025-03 and does hereby amend the following sections of the Code.

-
- ❖ Add the new language below shown like this: *to be added*
Delete the existing language below shown like this: ~~to 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 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."~~

~~HOUSEHOLD – A group of occupants of a dwelling unit defined by one of the following two 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.)~~

STUDENT RENTAL - A student rental is a residential dwelling composed of one or more dwelling units on a single parcel that includes five or more full-time undergraduate college students, as defined by Federal law. The threshold of five applies to the total number in dwelling units on a parcel (For example: a three-unit building

with two full-time undergraduate college students in one unit and four in another would be classified as a student rental).

~~**UNRELATED OCCUPANTS** — *Persons living in an unrelated household. (See definition for "Household.")*~~

~~**UNRELATED HOUSEHOLD** — *See "Household."*~~

ARTICLE XII.1 - USE AND DIMENSIONAL STANDARDS

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	Durham Business Park (DBP)
III. RESIDENTIAL USES													
Principal Uses													
Residence, single-family	P	P	P	P	X	P	P	X	X	X	CU	CU	X
Residence, duplex	X	X	X	X	X	X	X	X	X	X	X	X	X
Residence, multi-unit	X	X	X	X	X	CUA	X	X	X	X	X	X	X
Senior housing, single family	P	P	P	P	X	X	P	X	P	CU	CU	CU	CU
Senior housing, duplex	P	P	P	P	X	X	P	X	CU	CU	CU	CU	CU
Senior housing, multiunit	P	P	P	P	CU	P	P	P	CU	CU	P	CU	CU
Senior Care facility	P	X	CU	P	X	X	P	P	P	P	P	P	P
Nursing Home	X	X	X	X	X	X	P	P	P	P	P	P	CU
Manufactured Housing	P	X	X	X	X	X	X	X	X	X	X	X	X
Porkchop Subdivisions <i>See Article XX</i>	P	X	X	P	X	X	X	X	X	X	X	X	X
<i>Student Rental</i>	X	X	X	X	P	P	P	P	X	X	X	X	X

- Delete Section 175-55. 1., below and renumber Section 175-55 accordingly.

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.~~

- Delete the following subsections A. and B.; insert a new subsection A., as shown; and reletter the subsequent subsections accordingly.

175-56. General Dimensional Standards.

~~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)**~~

~~(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**

DWELLING TYPE	Minimum habitable floor area per occupant in unrelated household
Single-family dwelling	300
Duplex or townhouse	300

~~Apartment (but not including apartments in the CB District as delineated in Section 175-42(B)(8) and (9), accessory apartments and apartments in the ORLI and MUDOR districts). 400~~

~~Apartment in the Central Business District (excluding apartments in the CB District as delineated in Section 175-42(B)(8) and (9) and accessory apartments) where the number of unrelated occupants does not exceed two 300~~

~~Apartment in the CB District located in a building within the area of the district delineated in Section 175-42 (B) (8) and (9) where the maximum height of three stories applies 250~~

~~Apartment in the ORLI and MUDOR districts (but not including accessory apartments) 200~~

~~Accessory Apartment 200~~

~~Rooming/boarding, including accessory rooming/boarding 150~~

~~Dormitory 100~~

~~Fraternity or sorority 150~~

~~Nursing home 150~~

~~Senior housing 200~~

~~(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.)~~

➤ *Add new section A. and reletter subsequent sections accordingly.*

A. Fire Code. Note that Fire Code NFPA 101 2021 ED, as amended, requires a minimum of 200 square feet per person (consult the Durham Fire Department for more information).

ARTICLE XX - STANDARDS FOR SPECIFIC USES

175-109. Compliance Required.

C. *Accessory Dwelling Units and Accessory Apartments.* Accessory dwelling units and accessory apartments shall conform to the following standards:

1. Only one accessory dwelling unit or one accessory apartment shall be located on a lot with a single-family residence. The location of an accessory dwelling unit and an accessory apartment in conjunction with one single-family residence shall not be permitted.
2. An accessory dwelling unit shall contain a minimum of 300 and a maximum of 850 square feet of floor space.
3. An accessory apartment shall contain a minimum of 300 and a maximum of 850 square feet of floor space.

~~4. In zoning districts where no more than three unrelated persons may occupy a dwelling unit (as specified in subsection 175-56 General Dimensional Standards), there shall be no more than three unrelated occupants in total for the single-family dwelling and the accessory dwelling unit combined or for the single-family dwelling and the accessory apartment combined.~~

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this ____ day of _____ by 2025, affirmative votes ____; negative votes ____; and ____ abstentions ____.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



TOWN OF DURHAM

8 Newmarket Road

Durham, NH 03824

Tel: 603-868-5571

Fax: 603-868-1858

www.ci.durham.nh.us

AGENDA ITEM: **#11B** *TS*

DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE #2025-01 AMENDING CHAPTER 175 "ZONING," ARTICLE II, "DEFINITIONS," ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," ARTICLE XV, "FLOOD HAZARD OVERLAY DISTRICT," ARTICLE XVI, "AQUIFER PROTECTION OVERLAY DISTRICT," ARTICLE XVII, "DURHAM HISTORIC OVERLAY DISTRICT," ARTICLE XVIII, "PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT," ARTICLE XX.1, "STANDARDS FOR AGRICULTURAL USES," AND ARTICLE XXIII, "SIGNS AND COMMUNICATIONS DEVICES."

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

The Planning Board voted to formally initiate the amendment at its meeting on November 20, 2024. The changes pertain to Article II - Definitions and other articles of the Zoning Ordinance, including the Table of Uses, related to the changes being made to Article II.

The Planning Board originally initiated changes to Definitions on April 24, 2024. That amendment was forwarded to the Town Council, which discussed the proposal and offered numerous comments. The comments from the Town Council were sent back to the Planning Board for consideration. The board reviewed the comments, incorporated some, deleted others and then made a number of additional changes. The board then put the revised document out for a new public hearing on November 20. The board closed the public hearing and then voted to formally initiate the revised set of amendments.

The original document and the attached document both include the full table of uses because it is easier to include the full table rather than including only those lines that are being changed. It is recommended that the Town Council review only the specific items related to definitions that are proposed for amendment. In the prior review the Town Council offered additional suggestions for other changes to the Table of Uses that were not related to definitions resulting in a more complicated review than necessary by the

Planning Board. The Planning Board expects to do a thorough review of the Table of Uses as one of the next steps in the Zoning Rewrite and desired changes to the table could be made at that time.

Changes are proposed to:

- Article II – Definitions. Changes are proposed to most existing definitions. All existing definitions are shown, including those that are not being changed.
- Table of Uses. Changes are made that are driven by changes in Definitions. For example, business services, professional offices, and business services are combined into simply *office* so the extra line items are deleted in the Table of Uses. Generally, the allowed uses with new names remain the same, though some changes (such as for parking as a principal use) are proposed.
- Several articles where a set of specific definitions is being relocated – Article XV – Flood Hazard Overlay District, Article XVI – Aquifer Protection Overlay District, Article XVII – Durham Historic Overlay District, Article XVIII – Personal Wireless Service Facilities Overlay District, Article XX.1 – Standards for Agricultural Uses. and Article XXIII – Signs and Communications Devices.
- At the meeting of January 6, 2025, there were suggestions given to amend the definitions of “Abutter” and “Parking Garage.” Those amendments have been incorporated into the Ordinance document.
- Since the January 6, 2025 meeting, Planner Behrendt has suggested another small amendment. The suggestion is NOT to use the proposed new definition for “boarding house” but rather retain the existing current definition. This is a very minor change, especially since it simply involves retaining the existing definition. This amendment has also been incorporated into the Ordinance document.

A boarding house (and a rooming house) is not allowed anywhere in the Table of Uses, but in reviewing the Definitions article the Planning Board thought it useful to retain the definitions as a reference for those trying to understand the different types of residential uses in the ordinance. A boarding house is a particular type of residential use in contrast to multifamily residential, for example.

The main change from the existing definition is eliminating owner occupancy as the owner did not necessarily live in the traditional boarding house. That is, a building often located in a city or large town with multiple separate rooms for rent typically on a weekly basis to accommodate a population with limited means or a transient population (often, but not necessarily, single men). These were often old hotels converted to boarding houses, hence the common name, “Victorian Hotel.”

Todd Selig, Audrey Cline, Dave Emanuel, Brendan O’Sullivan and Planner Behrendt met recently to talk about some specifics of the proposed Student Rental ordinance. They realized that the term “boarding house” could be construed to also apply to a house rented to a handful of students or other individuals. They would refer to that

as single-family residential under the ordinance, which is an allowed use in most zones. However, a situation should be avoided where somebody claims that a house with say, five individuals renting separate rooms, is not a single-family residence but rather a boarding house, which is not allowed in Durham.

This situation could also arise now. Likewise, one could argue that a single-family house with three individual renters is a boarding house, though we have not historically interpreted the ordinance in this manner. It is a little more likely though that this conflict could arise with the proposed Student Rental ordinance as that would allow a greater number of residents, perhaps giving more weight to an argument that it is a boarding house, not a single-family residence, and thus not allowed.

A simple fix to this conflict is to retain the existing definition which requires owner occupancy. Most likely, the owner of the vast majority of single-family houses that are rented out to individuals is absentee. In the unusual case where an owner-occupant rents out a few rooms, it would still be treated as a single-family residence, provided it is all one dwelling unit. If that situation proved to be problematic then an appropriate amendment could be made at that time (such as eliminating the definition for “boarding house.”) There need not be a change to the proposed definition for “Rooming House” as that simply refers to the “Boarding House” definition.

This change is not significant because one of the elements in the proposed amendment would simply be left as is and not affect anything else in the amendment. In contrast, if the Town Council were to make a modification to the amendment, such as deleting a current definition not included in the Planning Board’s proposal or making further changes to a definition included in the amendment, then it is possible such a change would be significant. Alternatively, if the Town Council simply eliminated “Boarding House” and “Rooming House” from the ordinance that would not seem to be a significant change, but there is no question that the approach suggested above would be a minor change.

At their meeting on January 6, 2025 the Town Council scheduled a Public Hearing on this item for their meeting of Monday, February 17, 2025. A Public Hearing notice was published in *Foster’s/Seacoast Online* on Friday, January 31, 2025. The notice was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

LEGAL AUTHORITY:

RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION#1:

The Durham Town Council does hereby OPEN the Public Hearing on Ordinance #2025-01 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XV, “Flood Hazard Overlay District,” Article XVI, “Aquifer Protection Overlay District,” Article XVII, “Durham Historic Overlay District,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XX.1, “Standards for Agricultural Uses,” and Article XXIII, “Signs and Communications Devices.”

MOTION#2:

The Durham Town Council does hereby CLOSE the Public Hearing on Ordinance #2025-01 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XV, “Flood Hazard Overlay District,” Article XVI, “Aquifer Protection Overlay District,” Article XVII, “Durham Historic Overlay District,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XX.1, “Standards for Agricultural Uses,” and Article XXIII, “Signs and Communications Devices.”

MOTION#3:

The Durham Town Council does hereby ADOPT (as amended) Ordinance #2025-01 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XV, “Flood Hazard Overlay District,” Article XVI, “Aquifer Protection Overlay District,” Article XVII, “Durham Historic Overlay District,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XX.1, “Standards for Agricultural Uses,” and Article XXIII, “Signs and Communications Devices.”

OR

MOTION#4:

The Durham Town Council does hereby REMAND (as amended) Ordinance #2025-01 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XV, “Flood Hazard Overlay District,” Article XVI, “Aquifer Protection Overlay District,” Article XVII, “Durham Historic Overlay District,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XX.1, “Standards for Agricultural Uses,” and Article XXIII, “Signs and Communications Devices” back to the Planning Board for substantive amendments.

ORDINANCE #2025-01 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175 “ZONING,” ARTICLE II, “DEFINITIONS,” ARTICLE XII.1, “USE AND DIMENSIONAL STANDARDS,” ARTICLE XV, “FLOOD HAZARD OVERLAY DISTRICT,” ARTICLE XVI, “AQUIFER PROTECTION OVERLAY DISTRICT,” ARTICLE XVII, “DURHAM HISTORIC OVERLAY DISTRICT,” ARTICLE XVIII, “PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT,” ARTICLE XX.1, “STANDARDS FOR AGRICULTURAL USES,” AND ARTICLE XXIII, “SIGNS AND COMMUNICATIONS DEVICES.”

WHEREAS, RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance authorize the Town Council to amend the Zoning Ordinance and specify the process for doing so;

WHEREAS, the Planning Board is undertaking an extensive rewrite of the Durham Zoning Ordinance pursuant to recommendations made in the 2015 Master Plan and the 2018 Future Land Use Chapter;

WHEREAS, the first initiative in the Town’s zoning rewrite is making significant changes to Article II – Definitions and other sections of the ordinance that follow from those changes;

WHEREAS, the zoning ordinance has not been thoroughly examined since the last rewrite of the Zoning Ordinance in 1999 and it is essential that the ordinance remain current and relevant given the substantial impacts of the ordinance upon property owners, residents, business owners, and other stakeholders in the community;

WHEREAS, crafting appropriate definitions is important because the language of the definitions impacts whether specific proposed uses are allowed or not allowed in particular zones and how those proposed uses are evaluated;

WHEREAS, the Planning Board has spent many months in detailed review of definitions in the Zoning Ordinance, carefully examining the appropriate terminology for every definition; and

WHEREAS, the Town Council held a First Reading on Ordinance #2024-04 on the changes to Definitions on June 3, 2024; and.

WHEREAS, the Town Council conducted a duly noticed Public Hearing on June 24, 2024;

WHEREAS, the Town Council voted to deny Ordinance #2024-04 and remand the Definitions section of the Zoning Ordinance back to the Planning Board for further amendments on June 24, 2024;

WHEREAS, the Planning Board made further amendments based on suggestions made by the Town Council and held a public hearing on November 20, 2024; and

WHEREAS the Planning Board voted to formally initiate these new amendments on November 20, 2024; and

WHEREAS, the Town Council conducted a duly noticed Public Hearing on February 17, 2025;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire, hereby adopt **Ordinance #2025-01** and does hereby amend the following sections of the Code.

Additions to the existing ordinance proposed by the Planning Board are shown like this.

~~*Deletions from the existing ordinance proposed by the Planning Board are shown like this.*~~

➤ *Directions for specific changes to be made to the current ordinance are shown like this.*

[Comments are shown like this.]

[All current definitions are shown below including those that are not proposed to be changed.]

ARTICLE II. DEFINITIONS

175-6. Meaning of Words.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section. Words used in the present tense include the future. The singular number includes the plural, and the plural the singular. Where terms are not defined in this *section article*, they shall have their ordinary accepted meanings or such as the context may imply. The words "shall" and "must" are mandatory, the word "may" is permissive, and the word "should" indicates a preferred or encouraged, but not *necessarily* a required, course of action. *Some definitions may incorporate the term itself in the definition, in which case that term as referenced has the customary meaning (See "Nursing Home," for example).*

Note that these definitions are descriptive and not prescriptive. They may, however, operate in a prescriptive manner in some cases. For example, a proposed home occupation using an area

of 1,500 square feet would not meet the definition of Home Occupation which is defined as having a maximum of 1,000 square feet, and would therefore not be permitted.

Definitions are given for some uses that are not allowed under the Table of Uses, but are included in this article for general reference.

175-7. Definitions.

As used in this chapter, the following terms shall have the meanings indicated. The inclusion of a particular use in this section does not *necessarily* indicate that the use is allowed anywhere in the town of Durham; some terms are included for general reference only.

Definitions pertinent to individual overlay districts and other specific topics (such as Agriculture and Signage) may be found in the article of this ordinance pertaining to that district and those topics.

- *Place all definitions in this section in alphabetical order once changes are made. Some changes below result in terms being shown out of alphabetical order.*

***ABUTTER** – For notification purposes per RSA 672:3, an abutter is any property owner whose land is located in New Hampshire and either adjoins or is directly across the street or stream from the land under consideration by the Planning Board. "Directly across the street or stream" is determined by drawing perpendicular lines from all pairs of corner boundaries along the street or stream of the applicant to projected points on any property boundary across the street or stream where these lines intersect. Any property along the street or stream between each pair of projected points, or within 50 feet of any projected point, is considered an abutter. If the abutting property is under condominium or other collective ownership, "abutter" refers to the officers of the collective or association, as defined in RSA 356-B:3, XXIII.*

ACCESSORY DWELLING UNIT (*ADU*) – *ATTACHED* – A dwelling unit located in, or attached to, a single-family residence as an accessory use. A single-family residence with an accessory dwelling unit is considered a single-family residence (not a duplex residence). See Article XX.

ACCESSORY ~~APARTMENT DWELLING UNIT (ADU)~~ – *DETACHED* – A dwelling unit ~~located in an accessory structure in conjunction with~~ *not attached to* a single-family residence ~~as an accessory use~~. A single-family residence with an accessory ~~apartment dwelling unit~~ is considered a single-family residence (not a duplex residence). See Article XX.

~~ACCESSORY SHED – A small shed for the storage of items in conjunction with a residential use. See Article XX~~

ACCESSORY STRUCTURE – A structure that is detached from the principal building; situated on the same lot as the principal building and use; incidental, subordinate, and related to the principal building and use; and customarily found as (or reasonably considered to be) an accessory to the type of principal building and use that is situated on the property.

ACCESSORY USE – A use of land or a building or structure which is situated on the same lot as the principal use; incidental, subordinate, and related to the principal use; and customarily found as (or reasonably considered to be) an accessory to the type of use that is situated on the property.

ACRE – A measurement of area equal to forty three thousand five hundred sixty (43,560) square feet.

~~*ADAPTIVE REUSE – The repurposing of an existing building for a new type of use in which the exterior appearance and the structural and architectural elements of the building remain essentially unchanged except for minor renovations needed to provide access or to comply with code requirements.*~~

ADAPTIVE REUSE – The repurposing of an existing building for a new use in which the overall form and exterior appearance remain largely unchanged except for changes needed to provide access or to comply with code requirements and other minor enhancements.

ADULT DAY CARE ~~*FACILITY*~~ – *See Day Care Center. A nonresidential facility for the care of adults.*

AGRICULTURE – See Article XX.1. Standards for Agricultural Uses.

[Items below being moved to Article XX.1 with no changes. See section toward end of this document.]

~~*AGRICULTURE – Including but not limited to all uses, accessory uses, structures, functions, and events as defined in RSA 21:34-a – Farm, Agriculture, Farming, as amended. (See the Table of Uses and Article XX.1 for specific standards and restrictions.)*~~

~~*Accessory Uses. – The following are considered accessory uses to an allowed agricultural use:*~~

- ~~*1) The storage, use of, and spreading of soil amendments, as defined in this section.*~~
- ~~*2) The use and application of agricultural chemicals pursuant to state requirements.*~~
- ~~*3) The preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market of any products and materials from the farm.*~~
- ~~*4) The transportation of farm workers.*~~

~~5) The marketing and selling at wholesale or retail of any products from the farm, on-site and off-site, where not otherwise prohibited or regulated.~~

~~6) Irrigation of growing crops from private water supplies or public water supplies.~~

~~7) The use of dogs or other livestock guard animals for herding, working, and guarding livestock.~~

~~8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.~~

~~9) A farmstand situated on farm land owned by the operator of the farmstand provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms owned by the operator of the farmstand. Items not produced on the farm or farms owned by the operator are limited to agriculture-related products, specialty foods, gift items, crafts, and items reflecting agriculture and rural America.~~

~~10) Use of new technologies recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and appropriate agencies of the United States Department of Agriculture.~~

~~11) Agritourism, as defined in this section.~~

~~Agricultural Sales, Commercial. Sale of items specifically including agriculture-related products, trees, specialty foods, gift items, crafts, and items reflecting agriculture and rural America. (This use need not be located on a farm property, in contrast to Farmstand, Accessory, below.)~~

~~Agritourism. Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, and active involvement in the activity of the farm.~~

~~Animal Feedlot. A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock.~~

~~Aquaculture. The commercial raising, harvesting, and sale of fish and other aquaculture products.~~

~~Aquaculture—Accessory Use. The noncommercial raising and harvesting of fish and other aquaculture products for personal consumption.~~

~~Bees, Keeping of. The raising of bees and cultivation and sale of bee products.~~

~~Bees, Keeping of – Accessory Use.—The raising and breeding of bees for noncommercial purposes, other than incidental sales of bee products produced on the premises, in conjunction with a residence.~~

~~Best Management Practices For Agriculture (BMPs)—Those practices and procedures described in the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed and periodically updated by the New Hampshire Department of Agriculture, Markets, and Food, as revised. BMPs also include other practices and procedures recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and the United States Department of Agriculture. Other documents providing guidance for agricultural practices and procedures endorsed by the Durham Agricultural Commission as appropriate references for best management practices are also deemed BMPs.~~

~~[Reference ——— <http://agriculture.nh.gov/publications/forms/documents/bmp-manual.pdf>]~~

~~Chickens and Turkeys, Keeping of – Accessory Use.—The breeding and raising of chickens and turkeys for noncommercial purposes in conjunction with a residence. (Note that Poultry, keeping of as a principal use is not restricted to chickens and turkeys.)~~

~~Crop Cultivation.—The cultivation, conservation, and tillage of the soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, viticultural, and horticultural crops and any other plant including greenhouse and high-tunnel crops and tree products and any other plant that can be legally grown and harvested extensively for profit or subsistence.~~

~~Farm or Farming.—Any land, buildings, or structures on or in which agriculture and farming activities are conducted, including the residence(s) of owners, occupants, and employees located on the subject land. This includes all farm outbuildings and any other structures used in the farm operations. An operation may be deemed a commercial farm where at least \$10,000 of agricultural products is produced and sold in a year.~~

~~Farmers' Market.—An event or series of events at which two or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale include, but are not limited to, products of agriculture, as defined in RSA 21:34-a. A farmers' market does not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.~~

~~Farmstand, Accessory.—A farmstand as defined under Accessory Uses, above. (Contrast to Agricultural Sales, Commercial, above.)~~

~~Forestry.—The production, cultivation, growing, harvesting, and sale of any trees or nursery stock.~~

~~Fur-bearing Animals, Keeping of. The raising, breeding, and sale of domesticated strains of fur-bearing animals, such as mink, ermine, and chinchilla.~~

~~Goats and Sheep, Keeping of. The raising, breeding, and sale of goats and sheep.~~

~~Goats and Sheep, Keeping of—Accessory Use. The raising and breeding of goats and sheep for noncommercial purposes in conjunction with a residence.~~

~~Horses, Keeping of. The commercial breeding, boarding, raising, training, riding instruction, and selling of horses, mules, donkeys, and other equidae.~~

~~Horses, Keeping of—Accessory Use. The noncommercial breeding, boarding, raising, and riding of horses, mules, donkeys, and other equidae.~~

~~Livestock—Large, Keeping of. The raising, breeding, or sale of beef and dairy cattle, steer, oxen, domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).~~

~~Livestock—Large, Keeping of—Accessory Use. The raising and breeding of large livestock, specifically including the animals listed above, for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.~~

~~Poultry, Keeping of. The raising, breeding, and sale of poultry, including chickens, turkeys, ducks, geese, and gamebirds. (Note that Chickens and Turkeys, keeping of—Accessory Use is restricted to only those two types of poultry.)~~

~~Rabbits, Keeping of. The raising, breeding and sale of rabbits.~~

~~Rabbits, Keeping of—Accessory Use. The raising and breeding of rabbits for noncommercial purposes in conjunction with a residence.~~

~~Soil Amendments. Including commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.~~

~~Swine, Keeping of. The raising, breeding, or sale of swine and swine products.~~

~~Swine, Keeping of—Accessory Use. The raising and breeding of swine for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.~~

AIRPORT, COMMERCIAL – A facility used for landings and takeoffs by commercial and private fixed wing or rotary wing aircraft. Such a facility typically includes aircraft parking and service facilities.

AIRPORT, PRIVATE – A tract of land used for landings and takeoffs by fixed winged or rotary wing aircraft belonging to the owner or lessor of the land or to a third party using the tract of land with the permission of the owner or lessor of the land.

~~ALL TERRAIN VEHICLE—Any motor-driven vehicle designed or adapted for travel over surfaces other than maintained roads with one or more tires designed to hold not more than 10 pounds per square inch of air pressure, having capacity for passengers or other payloads, not to exceed 1,000 pounds net vehicle weight, and not to exceed 50 inches in width.~~

~~ALL TERRAIN VEHICLE/OFF-HIGHWAY RECREATIONAL VEHICLE FACILITY—A facility or site where people who do not own the site or reside on the site are allowed to operate all-terrain vehicles or off-highway recreational vehicles with or without compensation. A trail that crosses a parcel and that is used by all-terrain vehicle or off-highway recreational vehicle operators that do not own or reside on the parcel is an all-terrain vehicle/off-highway recreational vehicle facility.~~

ALLOWED USE – Any use that is legally permissible on a given site under this zoning ordinance (subject to all other approvals which may be required such as site plan approval, issuance of a building permit, granting of state permits, etc.), including permitted uses, conditional uses when a conditional use is approved, uses allowed by special exception when a special exception is granted, uses that have been approved through a variance, and legal nonconforming uses.

~~ALTERATION—A change or rearrangement in the structural parts of a building or structure or in the means of egress or an enlargement, whether by an extension on a side or by an increase in height, or the moving from one location or position to another.~~

AND – When used in a series *of allowed activities*, such as “Dogs may be used for herding, working, and guarding livestock,” means “and/or,” such that any and all of the *activities are allowed items are included*, individually or in combination. *(In general, a reasonable judgment should be made based on the context for the intention of the use of “and.”)*

~~ANIMAL FEEDLOT—A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock in accordance with USDA regulations. Any activity that requires the filing of a Schedule F as part of the owner’s or operator’s federal income tax return shall constitute a commercial operation.~~

~~APARTMENT—See "Accessory Dwelling Unit."~~

AQUIFER – See Article XVI. Aquifer Protection Overlay District.

[Pertinent items below related to aquifers are being moved to Article XVI. See section toward end of this document.]

~~AQUIFER—A geologic formation, group of formations or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies. Aquifer includes both bedrock aquifers and stratified drift aquifers.~~

~~**AQUIFER, BEDROCK**—Bedrock comprised of a high concentration of interconnected fractures, fissures, or cracks that is able to produce a high quantity of water.~~

~~**AQUIFER, STRATIFIED DRIFT**—A geologic formation of predominantly well-sorted sediments deposited by or in bodies of glacial melt water, including gravel, sand, silt or clay, that contains sufficient saturated permeable materials to yield significant quantities of water to wells.~~

~~**AQUIFER PROTECTION DISTRICT**—The recharge area of designated aquifers. The "Aquifer Protection District" is shown on an overlay to the Official Zoning Map of the Town and is described in detail in Section 175-85 of this Ordinance.~~

~~**AQUIFER RECHARGE AREA**—The area in which water is absorbed that eventually reaches the zone of saturation in one or more aquifers.~~

ART CENTER – *A facility for the display or sale of objects of art, the teaching of art, or the creation of works of art. A facility focused on arts education or small-scale arts and crafts production which may include classrooms, studios, workshops, exhibit spaces, and retail spaces related to its primary functions.*

~~**AUTOMOBILE CAR WASH**—A facility equipped for washing cars manually or automatically.~~

~~**AUTOMOTIVE SERVICE STATION**—Any building or premises used primarily for the retail sale of gasoline and lubricants but which may also provide for the incidental servicing of motor vehicles and small engine repair, including grease racks, tire repairs, battery charging, hand washing of automobiles and the sale of merchandise and supplies related to the servicing of motor vehicles, but excluding body and fender work, engine overhauling, painting, storage of autos not in operating condition or other work involving noise, fumes, glare or smoke.~~

AUTOMOTIVE USES – *See Motor Vehicle definitions.*

~~**AWNING**—Any structure made of cloth or metal with a frame attached to a building or structure and projecting over a public way, when the same is so erected as to permit its being raised to a position flat or rolled against the building when not in use.~~

AWNING – *A structure attached to a building projecting over a public way. It may be used for signage, for decorative purposes, or to protect pedestrians from adverse weather.*

BASAL AREA – The cross sectional area of a tree measured at a height of 4-1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees. "Total basal area" is the sum of the "basal areas" of all vegetation in the zone.

BASEMENT – That portion of a building that is fully below **existing finished** grade or partly below and up to two feet above **existing finished** grade. *(Also, see Story.)*

~~**BEDROOM**—A fully enclosed room designed for sleeping.~~

~~**BOARDING HOUSE**—An owner-occupied residential building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and having common cooking and dining facilities. See “Rooming House.”~~

BOARDING HOUSE – An owner-occupied residential building principally used, designed or adapted to provide living accommodations for not more than 10 occupants and having common cooking and dining facilities. See “Rooming House

~~**BOATYARD/BOAT CLUB** – Waterfront facilities for recreational boating, launching facilities and other water-related activities, but excluding the sale of products and accessories associated with boating needs.~~

~~**BOG**—A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.~~

~~**BUFFERING**—The use of landscaping (other than grass on flat terrain), or the use of landscaping along with berms, walls or fences that at least partially and periodically obstructs the view.~~

BUFFER (or BUFFERING) – The use of landscaping, earthen berms, walls, fences or some combination thereof serving to partially block or soften the view and mitigate the impacts from one site to another.

~~**BUILDABLE AREA**—That portion of a building site, exclusive of the required yard areas, on which a structure or building improvement may be erected.~~

BUILDABLE AREA – That portion of a lot, exclusive of required setback areas and buffers, in which a building or structure may be erected.

BUILDING – Any structure *with walls and a roof* designed or intended for the *continuous* support, enclosure, shelter or protection of persons, domestic animals, or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" ~~shall include~~ *includes* all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. See “Setback.”

BUILDING FOOTPRINT – The total area of the ground surface enclosed within the foundation of a building or within the downward projection of the exterior walls of a building.

BUILDING HEIGHT – See Section 175-56. General Dimensional Standards for procedure to determine building height.

~~**BUILDING INSPECTOR**—All references to Building Inspector are the same as if they were to the Code Enforcement Officer.~~

~~**BUSINESS SERVICES**—Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, building maintenance, employment service, management and consulting services, protective services,~~

~~office equipment rental and leasing, commercial research, development and testing, photo finishing and personal supply services.~~

~~CAMPGROUND—Any area or tract of land used or designed to accommodate two (2) or more camping parties, including tents, camping trailers, recreation vehicles or other camping outfits, and includes the necessary accessory uses normally associated with such use.~~

~~CANOPY—Any structure, other than an awning or a wedding canopy made of cloth or metal with frames attached to a building projecting over a public way, and carried by a frame supported by the ground or sidewalk.~~

CAR SALES AND SERVICE – See Motor Vehicle definitions.

CAR WASH – A facility equipped for washing cars and other vehicles manually or automatically.

~~CARETAKER APARTMENT—A dwelling unit that is incorporated into, and is accessory to, a nonresidential use and is occupied by an owner or an employee of the business occupying the principal use and having a gross floor area of less than two thousand (2,000) square feet.~~

CARETAKER APARTMENT – An on-site dwelling unit that is accessory to a principal use and occupied by the person(s) maintaining the property.

~~CATEGORY OF USE—Any use listed in Section 175-53, the Table of Land Uses or listed as permitted or conditional use in a zoning district.~~

CARPORT – A roofed structure designed to shelter motor vehicles and that is open on at least two sides. A carport may be a freestanding structure or attached to a building.

CHILD CARE – See Day Care Center and Day Care Home.

~~CHILD DAY CARE CENTER – A nonresidential facility for the care of preschool and/or school aged children or adults that is not located within a home or other residence the residence of the primary care provider. A nursery or a nursery school is also considered a day care center. See Article XX~~

~~CHILD-DAY CARE HOME – A nonresidential facility for the daytime care of preschool and/or school aged children that is located within the residence in which of the primary care provider resides. See Article XX~~

~~CHILD CARE NURSERY—A nonresidential facility for the care of children under~~

CINEMA – A motion picture theater See Theater.

~~CLUB—A building or portion thereof used by a group of people organized as a non-profit organization for a common purpose to pursue common goals, interests or activities, and~~

~~usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws. A club includes the facilities occupied by a fraternal or similar organization.~~

CLUB – A building or portion of a building used by a group of people established as a not-for-profit organization to pursue common goals, interests and activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

~~CO-HOUSING—An intentional community of private homes clustered around shared space. Each attached or single-family home has traditional amenities, including a private kitchen. Shared spaces typically feature a common house, which may include a large kitchen and dining area, laundry, and recreational spaces. Shared outdoor space may include parking, walkways, open space, and gardens. Neighbors also tend to share resources like tools and lawnmowers.~~

~~COMMERCIAL USE—A nonresidential use operated for profit or compensation.~~

~~COMMON OPEN SPACE—Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership, or conservation easements. Common open space is not part of any house lot or developable lot within the subdivision and it not owned by the developer nor another resident in the subdivision. Rather, common open space is owned by the Town, another government entity, a nonprofit organization, or jointly/in common by the lot owners in the subdivision.~~

COMMUNITY CENTER – A building that accommodates recreational, educational, entertainment, and/or cultural activities ~~primarily for use by residents of a subdivision or by residents of the community at large.~~

~~CONDITIONAL USE—Those uses that because of particular characteristics or because of size, technological processes or equipment or because of the exact location with reference to surroundings, streets and existing improvements or because of demands upon public facilities, require a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same area.~~

CONDITIONAL USE – See Article VII. Conditional Use Permits.

~~CONDITIONAL USE PERMIT—An authorization to conduct a conditional use when such authorization is required by these regulations and when established according to the procedures outlined in Article VII of these regulations.~~

~~CONDOMINIUM—A building or group of buildings in which units are owned individually, and the structure, common areas, and facilities are owned by all the owners on a~~

~~*proportional undivided basis. Condominiums shall be considered a subdivision and reviewed accordingly.*~~

CONDOMINIUM – A building, group of buildings or site in which units or portions of the building(s) or site are owned individually, and the larger structure, common areas, facilities and land are owned jointly by all of the owners on a proportional undivided basis. Condominiums are considered a subdivision and are reviewed accordingly.

CONFERENCE CENTER – *A facility used for conferences, seminars, and other gatherings. It does not include accommodations for sleeping. ~~A facility used for conferences and seminars which may include accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms. If sleeping accommodations are part of the facility, transients who are not attending activities at the center may occupy not more than fifty percent (50%) of the accommodations at any time.~~*

CONSERVATION ACTIVITIES – Non-structural activities involved with the maintenance of the natural resource value of land, including forest management activities that do not involve the creation of ~~motorized vehicle ways~~ *trails* or the disturbance of the soil. Activities to stabilize erosion or address emergency conditions are part of this use.

CONSERVATION SUBDIVISION – A subdivision meeting the requirements of Section 175-107 in which a **substantial** portion of the site is set aside as common open space.

CONTIGUOUS – Touching at a point or along a boundary; ~~Adjoining~~.

~~*CONTRIBUTING STRUCTURE – A property or structure in the Historic Overlay District that is part of Durham’s heritage and contributes to the district’s sense of time, place and historical development by virtue of its age, historical use, location, design, setting, materials, workmanship, aesthetics, or association.*~~

~~*CONVENIENCE STORE WITH GASOLINE SALES – A retail store with less than five thousand (5,000) square feet of gross floor area that includes the retail sales of gasoline and similar petroleum products but provides no other automobile services such as repairs or washing.*~~

CONVENIENCE STORE – See Motor Vehicle Gas Station and Retail Store, Small.

CONVENTIONAL **RESIDENTIAL** SUBDIVISION – A **residential** subdivision in which all or most of the area of the parcel is put into lots and roads, *and any other allowed uses*, with little or no common open space. *(In contrast to a Conservation Subdivision.)*

~~*CORNER CLEARANCE – An unobstructed area at street intersections free from any object, vegetation or slope that impedes visibility within a triangle, two (2) of whose sides extend twenty (20) feet from the intersection along the street lines and between two (2) planes three (3) feet and seven (7) feet above the level of the traveled way.*~~

~~**CRAFTSHOP WITH ACCESSORY PRODUCTION**—A studio of a crafts person or group of crafts people. A craftshop may include the sale of crafts and the production of crafts for sale on the premises.~~

~~**CURB LEVEL**—The elevation of the street curb as established in accordance with an ordinance.~~

~~**CURB LINE**—The vertical plane of the street side of a curb.~~

~~**DAYCARE**—A use which provides daytime care and supervision of any number of children or handicapped, disabled or elderly adults not related by blood or marriage and licensed by the appropriate state agency.~~

DEVELOPER – An owner, the owner’s agent, or any other person, firm or organization with authorization from the owner, who intends to **improve alter** or to construct improvements upon ~~his or her~~ **their** property.

~~**DEVELOPMENT**—Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.~~

DEVELOPMENT – Significant construction, reconstruction, alteration, or enlargement of any building or structure; paving, adding parking spaces, or adding or expanding driveways; a significant change of use; the subdivision, resubdivision, or combination of lots or other units of a building or land; and mining, excavation, landfill, and other significant land disturbance.

DISTURBED AREA – An area where **natural** vegetation is removed, exposing the underlying soil or where the ground surface is altered, ~~in any significant manner~~.

DORMITORY – A building occupied by a resident manager and used, designed and adapted to provide housing for ~~more than ten (10) occupants~~ **employees or students or people otherwise connected to an institution, such as a school, hospital, or church**. Such units are distinguished by separate ~~study and~~ sleeping quarters for each individual or pair of individuals; common social assembly rooms; common toilet facilities; and common cooking and dining facilities, where provided.

DRIVE-THROUGH FACILITY – A service facility designed for the convenience of the motoring public that is intended to enable the customer to transact business with a person located within a structure or a machine without exiting the motor vehicle.

~~**DRIVEWAY**—A private, vehicular access connecting a house, parking area, garage or other building with the street.~~

DRIVEWAY – A private, vehicular access connecting the street to one or more structures or sites.

~~**DUST-FREE SURFACE**—The top of a road, driveway, parking area, walkway or other area covered in bituminous paving, concrete, compacted crushed rock or gravel, or other such stable materials.~~

~~**DWELLING GROUP OR CLUSTER**—A pattern of residential development where units are grouped together on a single lot around access courts with the remainder of the lot left in its natural condition or as common open space.~~

DWELLING UNIT – One (1) or more rooms arranged, designed or used for residential purposes for one (1) household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use *the space* for residential purposes.

EDUCATIONAL ~~**FACILITIES FACILITY**~~ – ~~*A building or part thereof principally used, designed or adapted for educational use or instruction and operated by an educational institution approved by the New Hampshire Postsecondary Educational Commission.*~~ *A facility principally used, designed or adapted for educational use or instruction, including a trade school, and operated by an educational institution approved by the New Hampshire Department of Education.*

EXCAVATION – A land area that is used, or has been used, for the commercial *taking removal* of earth, including all slopes. This includes removal from its natural location of soil, sand, gravel, rock, topsoil, loam, clay, peat, or other mineral deposits. This does not include the excavation of material incidental to approved construction of buildings, driveways, or parking areas; or the excavation of material incidental to and at the site of construction or repair of streets.

~~**EXTERIOR ARCHITECTURAL APPEARANCE**—The architectural character, general composition, and arrangement of the exterior of the structure, including the kind, color, and texture of the building materials and type and character of windows, doors, light fixtures, signs, and appurtenant elements.~~

~~**FAMILY**—See “Household.”~~

FINANCIAL INSTITUTION – A business or nonprofit organization providing retail financial services, including ~~*but not limited to*~~ banks, credit unions *and financial exchanges.* ~~*, financial exchanges, free-standing Automatic Teller Machines (ATM), and check cashing facilities.*~~

FLOOD HAZARDS. *See Article XV. Flood Hazard Overlay District.*

[Items below are being moved to Article XV, with no changes. See section toward end of this document.]

~~**FLOOD HAZARD OVERLAY DISTRICT**—Specific definitions pertinent to the Flood Hazard Overlay District follow:~~

~~Area Of Special Flood Hazard – The land in the floodplain within the Town of Durham subject to a one percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the (FIRM).~~

~~Base Flood – The flood level having a one-percent possibility of being equaled or exceeded in any given year.~~

~~Base Flood Elevation – The water surface elevation having a one percent possibility of being equaled or exceeded in any given year.~~

~~Basement – Any area of a building having its floor subgrade on all sides.~~

~~Building – Any structure designed or intended for the support, enclosure, shelter or protection of persons, domestic animals, chattels or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" shall include all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. (Also see "Structure" for floodplain management purposes.)~~

~~Development – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.~~

~~FEMA – The Federal Emergency Management Agency.~~

~~Flood or Flooding – A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.~~

~~Flood Insurance Rate Map (FIRM) – The official map incorporated with this ordinance, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.~~

~~Flood Insurance Study – An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.~~

~~Floodplain or Flood-Prone Area – Any land area susceptible to being inundated by water from any source. See "flood or flooding."~~

~~Floodproofing – Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.~~

~~Floodway, Regulatory – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation more than a designated height.~~

~~Highest Adjacent Grade – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.~~

~~Historic Structure – Any structure that is:~~

~~a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;~~

~~b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;~~

~~c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or~~

~~d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:~~

~~(i) by an approved state program as determined by the Secretary of the Interior; or~~

~~(ii) directly by the Secretary of the Interior in states without approved programs.~~

~~Lowest Floor – The lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.~~

~~Manufactured Home – A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.~~

~~Manufactured Home Park Or Subdivision – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.~~

~~Mean Sea Level – The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.~~

~~New Construction – For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.~~

~~Recreational Vehicle – A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.~~

~~Special Flood Hazard Area – See "Area of Special Flood Hazard."~~

~~Start Of Construction – Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.~~

~~Structure (For Floodplain Management Purposes) – A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.~~

~~Substantial Damage – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or~~

~~exceed fifty (50) percent of the market value of the structure before the damage occurred.~~

~~**Substantial Improvement** – Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure."~~

~~**Violation** – The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.~~

~~**Water Surface Elevation** – The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.~~

FLOOR AREA, GROSS – The sum of the areas of all floors of a building as measured from the exterior dimensions, but not including cellars, attics, porches, garages or areas occupied by heating and ventilating equipment.

FLOOR AREA, HABITABLE – Heated areas used daily for living, eating, cooking or sleeping, including bathrooms and bedroom ~~closets; closets.~~ **Habitable floor area does not include but excluding** garages, circulation areas **outside of individual units** (stairways, hallways, corridors), **and** storage ~~areas, areas~~ (including ~~but not limited to~~ attics, unfinished basements, and utility rooms). ~~For the purposes of this chapter, "habitable floor area"~~ **Habitable floor area** is deemed to be ~~seventy (70)~~ **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 **and approved by** the Durham Code Enforcement Officer. This presumption ~~shall does~~ not apply in any instance where the owner or occupant(s) of the building ~~allow allows~~ inspection and measurement of such interior floor areas by the Code Enforcement Officer. ~~It is recognized that under~~ **Under** this definition it is possible for the "habitable floor area" to exceed 70 percent of the gross floor area.

FOUNDATION, PERMANENT – A continuous perimeter foundation of masonry or concrete constructed in accordance with the Building Code of the Town of Durham.

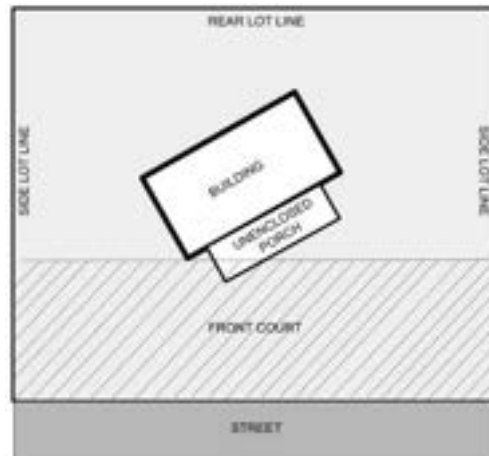
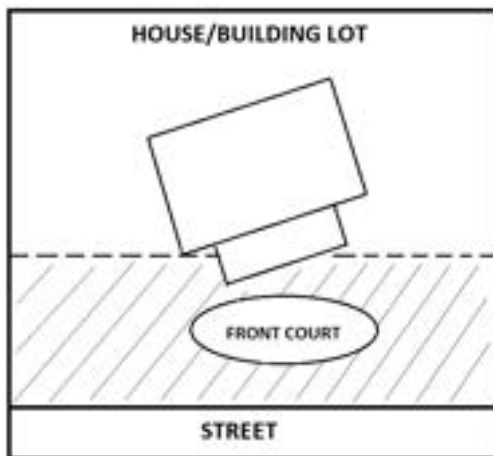
~~FRANCHISE ARCHITECTURE – A stylized building design in which the shape, detailing, ornamentation, materials, or use of color is clearly identified with a specific brand or company.~~

~~FRATERNITY/SORORITY – A fraternal organization officially recognized by the University of New Hampshire, and organized to benefit the Durham and University of New Hampshire communities through the efforts of its members, who are students currently enrolled at the University of New Hampshire.~~ An organization officially recognized as such by the University of New Hampshire.

FRATERNITY/SORORITY HOUSE – A building used to provide lodging facilities for the exclusive use of the *bonafide* members of a fraternity or sorority.

FRONT COURT – The portion of a lot in front of a house or the principal building demarcated by the front lot line, a line parallel to the front lot line running through the fully enclosed part of the building located closest to the front lot line, and sections of the two side lot lines that connect these two lines.

- *Remove the existing image that goes with the definition for “Front Court,” shown on the left below and insert the new image in its place, shown on the right below.*



FRONTAGE – See *"lot frontage."* Lot Frontage.

FUNERAL HOME – An establishment where the dead are prepared for burial or cremation and where wakes and *funerals funeral services* may be held. A funeral home may include a chapel and/or facilities for the storage of vehicles used in the business.

~~GALLERY – A business involving the display and sale of objects of art such as paintings, sculpture, assemblages, and collages. A gallery may include the studio of one or more artists.~~

GAS STATION – See Motor Vehicle uses.

GOLF COURSE – A tract of land laid out with at least nine holes for playing the game of golf and improved with fairways, greens, landscaping, and/or hazards. A golf course may include a club house that provides services to golfers and/or members including, but not limited to, the sale and repair of golf equipment and food and beverage service, and accessory buildings and structures necessary for the operation of the course.

~~***GOVERNMENT FACILITY**—A structure or parcel of land the use of which is governmental, as defined in RSA 674:54. As stated therein, the use, construction or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, or by a county, town, city, school district or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.*~~

GOVERNMENTAL USE – The use or development of a parcel of land or building by a governmental body, agency, or organization or by a quasi-governmental agency or organization carrying out a recognized governmental function.

~~***GREENWAY**—A network of connected common open spaces and/or other conservation land that typically extends along or around a natural feature such as a stream, pond, wetland, or wildlife travel corridor, or includes an area with significant scenic, historic, archeological, or cultural value, or provides for passive or active recreation such as trails or similar linear facilities.*~~

GROUNDWATER – All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

GROUNDWATER RECHARGE – The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

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

HELIPORT – A facility used for landings and takeoffs by helicopters.

HIGH INTENSITY SOIL SURVEY – See “Soil Survey, High Intensity.”

~~***HIGHEST ADJACENT GRADE**—The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.*~~

~~***HIGH WATER LEVEL**—On saltwater bodies, the seasonal high-water level (the wrack line where tidal debris is deposited at seasonal high tides); on freshwater rivers and streams, the average springtime high-water level, including contiguous wetlands; or for dammed streams, the height of the dam.*~~

***HISTORIC OR SPECIAL-INTEREST TREE** - A tree which has been found by the Tree Warden to be of notable interest because of its age, type, size or historic association.*

HOME OCCUPATION – Any occupation, profession, activity or use which is clearly an incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood. *It is further defined as follows: and is further defined as follows:*

1. HOME OCCUPATION-1 – A home occupation *meeting with* the following *requirements characteristics*:
 - a. It occupies no more than ~~five hundred (500)~~ 500 square feet of floor area.
 - b. The principal operator resides on the premises, has not more than one ~~(1)~~ other person employed on-site and does not sell on-site any *principal* manufactured products prepared by others *except for any products that are incidental to the service being provided on site*. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
 - c. The activity is completely enclosed in a primary or accessory structure. There is no indication of such occupation visible on the exterior of the building or on the lot, except permitted signs.
 - d. The activity does not produce noise, odor, traffic or other nuisances perceptible at the lot line at a higher level than is usual in a residential neighborhood.
2. HOME OCCUPATION-2 – A home occupation *meeting with* the following *requirements characteristics*:
 - a. It occupies no more than ~~one thousand (1,000)~~ 1,000 square feet of floor area, with the exception of existing farm structures, which may utilize ~~one hundred (100)~~ 100 percent of the floor area.
 - b. The principal operator resides on the premises, has not more than three ~~(3)~~ other persons employed on-site and does not sell on-site any *principal* manufactured products prepared by others *except for any products that are incidental to the service being provided on site*. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
 - c. The activity, except for outdoor storage, is completely enclosed in a primary or accessory structure. Outdoor storage of materials or equipment ~~shall not be is~~ located ~~in-outside of~~ any required setback or yard area and shall be at least ~~ten (10)~~ 10 feet from any lot line and so screened as not to be visible from any public way or shoreline or public park.
 - d. The activity does not produce noise, odor, traffic or other nuisances perceptible at the lot line at a higher level than is usual in a residential neighborhood.

HOSPITAL – An institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

HOTEL – ~~A building containing seven (7) or more~~ *A commercial operation offering multiple* sleeping rooms or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for stays of less than ~~30 thirty~~ consecutive days ~~for compensation~~ and usually providing on-site dining facilities, recreational services, function rooms, housekeeping, laundry and related services. Access to guest rooms is provided through interior corridors. *See Article XX*

HOUSEHOLD – A group of occupants of a dwelling unit defined by one of the following two 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.)

HYDROGEOLOGIST, QUALIFIED – Any person certified in New Hampshire as a Licensed Professional Geologist pursuant to RSA 310-A:125. The Planning Board, at its discretion, may accept as a Qualified Hydrogeologist any person possessing similar credentials from any other state.

IMPERVIOUS SURFACE – A material with low permeability that impedes the natural infiltration of moisture into the ground so that the majority of the precipitation that falls on the surface runs off or is not absorbed into the ground. Common impervious surfaces include, but are not limited to, roofs, concrete or bituminous paving, sidewalks, patios, driveways, roads, parking spaces or lots, and storage ~~areas, areas;~~ compacted gravel including drives and parking ~~areas, areas; and oiled or~~ compacted earthen materials, stone, concrete or composite pavers, wood, and swimming pools.

IMPERVIOUS SURFACE AREA – The total area of a site or parcel that is covered by impervious surfaces. The area covered by a deck or similar structure ~~shall be~~ *is* included in the impervious surface area unless the surface of the deck or structure provides for precipitation to pass through it and reach the ground in a dispersed pattern and the material under the deck or structure is not an impervious surface.

IMPERVIOUS SURFACE RATIO – The impervious surface area of a site or parcel divided by the total area of the site or parcel expressed as a percentage.

INN – *A commercial operation within an* ~~An~~ owner-occupied, ~~single-family residence property~~ containing, in addition to living accommodations for the owner and ~~his or her~~ *their* family, four ~~(4)~~ to six ~~(6)~~ *sleeping guest* rooms, without cooking facilities, for the purpose of providing ~~lodging to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for less than thirty consecutive days.~~

JUNKYARD – An area of land used for the exterior storage (i.e., not contained within a completely enclosed ~~structure~~) ~~building~~) of used and discarded materials, including but not limited to wastepaper, rags, metal, building materials, furnishings, machinery, vehicles or parts thereof. "Junkyard" also means any business or any place of storage or deposit which has stored or deposited two ~~(2)~~ or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles, or old iron, metal, glass, paper, cordage or other waste, or discarded or secondhand material which has been a part or is intended to be a part of any motor vehicle, the sum of which parts shall be equal in bulk to two ~~(2)~~ or more motor vehicles.

KENNEL – Any lot or premises on which four ~~(4)~~ or more dogs, cats or similar small animals, or a combination thereof, which are ~~in excess of four (4) months of age, at least four months old~~ are boarded for compensation or bred for sale. A kennel ~~shall does~~ not include licensed veterinary medical facilities.

~~LANDSCAPE BUFFER—See "solid planting" in landscaping definitions.~~

LANDSCAPING – Some combination of planted, living trees, shrubs, hedges, vines, ground cover and flowers suitable for the climate, exposure and site condition. In addition, ~~the combination or design landscaping~~ may include earth sculpture, cobbles, bark, mulch, edgers, flower tubs, rock and such structures as fountains, pools, artworks, screens, walls, fences or benches, but such objects alone ~~do not define landscaping. shall not meet the requirements of this provision. The selected combination of objects and plans for landscaping purposes shall be arranged in a manner compatible with the building and its surroundings. Specific definitions pertinent to landscaping, buffers, the Wetland Conservation Overlay District, and the Shoreland Protection Overlay District follow:~~

[These landscaping terms below are not used in the Zoning Ordinance.]

~~Damage—Includes any intentional or negligent act which will cause vegetation to decline and die within a period of five (5) years, including but not limited to such damage inflicted upon the root system by the operation of heavy machinery, the change of the natural grade above the root system or around the trunk of a tree and damages from injury or from fire inflicted on vegetation which results in or permits infection or pest infestation.~~

~~Diameter at Breast Height (DBH)—The diameter of a tree trunk at a height of four and one-half (4.5) feet.~~

~~Ground Cover—Low growing plants, below the shrub layer, that grow to form a continuous cover over the ground, such as grasses, vinca, English ivy or like material.~~

~~Hazard Tree—Any tree that has the potential to have parts of or the entire tree fall under moderate to mild environmental changes, conditions or man-made forces.~~

~~Historic or Special-Interest Tree—A tree which has been found by the Tree Warden to be of notable interest because of its age, type, size or historic association.~~

~~Landscaped Area – That area within the boundaries of a given lot devoted to and consisting of landscaping material, including but not limited to grass, trees, shrubs, flowers, vines and other ground covers, native plant materials, planters, brick, stone, natural forms, water forms, aggregate and other landscape features; provided, however, that the use of brick, stone, aggregate or other inorganic materials shall does not predominate over the use of organic plant material.~~

~~Landscape Development – Trees, shrubs, ground cover, vines, grass and other materials as listed in the definition of "landscaped area" above, installed in planting areas for the purpose of fulfilling the requirements of these regulations.~~

~~Landscaped Street Yard – The area of a lot which lies between the street right-of-way line and the actual front wall line of the building, parallel to the street, until such imaginary extensions of such front building wall line intersect the side property lines. In determining the actual building wall of the building for the purposes of this definition, steps and unenclosed porches shall be excluded, but such building wall line shall follow and include the irregular indentations of the building. Further, for the purposes of these regulations, canopies, gas pump islands, overhangs and similar extensions will be figured as part of the "landscaped street yard." A front building wall is a building wall fronting on a street or publicly used area.~~

~~A. On corner lots, the "landscaped street yard" shall consist of all of the area of such lot between all abutting street right-of-way lines and their corresponding actual front building wall lines, as such lines are imaginarily extended in the manner provided above.~~

~~B. When there are multiple buildings on a lot, the "landscaped street yard" shall consist of all the area of the lot between the street right-of-way line(s) and an imaginary line beginning at one side of the property line, running parallel to the street, connecting to the front most corner of the building wall, fronting the street and nearest such side property line, then following and connecting the front most walls of all buildings fronting on the street and then extending to the other side property line, running parallel to the street. If a building has a rounded front, the front building wall corners shall be the points closest to the side boundaries.~~

~~C. Notwithstanding all of the foregoing, on land used only for parking purposes or only as a commercial or private parking lot, the "landscaped street yard" shall consist of the area between the street right-of-way line and the back property line.~~

~~Landscaped Yard Area – The front, side and rear yard areas as established below. In defining the side and rear yard area, the property line shall replace the street right-of-way line defined in the landscaped street yard.~~

~~Maintenance (or Maintain) – In reference to landscaping, includes pruning, mulching, mowing, spraying, fertilizing, propping, bracing, treating for disease or injury, snow removal and any other similar act which promotes the life, growth, health or beauty of the landscape vegetation.~~

~~Natural Woodland Buffer – A forested area consisting of various species of trees, saplings, shrubs and ground covers in any combination and at any stage of growth.~~

~~Public Area – Includes parks, playgrounds, areas around public buildings and all other areas under the supervision and maintenance of the town.~~

~~Removal (or Removed) – Cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.~~

~~Sapling – Any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.~~

~~Shrub – Bushy, woody plant, usually with several permanent stems and usually not over ten (10) feet high at its maturity.~~

~~Solid Planting – A planting of evergreen trees and/or shrubs which will prevent the penetration of sight and light to a minimum height of five (5) feet.~~

~~Specimen Tree – A tree which has been determined by the judgment of the Tree Warden to be of high value because of its type, age or other professional criteria.~~

~~Tree – Any self-supporting, woody perennial plant which has a trunk diameter of two (2) inches or more when measured at a point of four and one-half (4 1/2) feet above the ground level and which normally attains an overall height of at least ten (10) feet at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of ash and others.~~

~~Tree Warden – The person whose duties shall include the inspection of landscaping installations according to the Town of Durham performance guaranty guidelines, and ensuring that the landscaping provisions of this chapter are being carried out and installed according to the plans submitted and approved.~~

~~Vegetation – Includes a tree, plant, shrub, vine or other form of plant growth.~~

~~LEACHABLE WASTES – Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes, that are capable of leaching contaminants to groundwater or surface water sources.~~

~~LIBRARY – A place in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, and prints are kept for reference or reading.~~

LIGHT MANUFACTURING – See "manufacturing, light." As described in Article XX.

LOT – A legally recorded and defined parcel of land or two (2) or more contiguous parcels to be used as a unit under the provisions of these regulations.

LOT, CORNER – A lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty five (135) 135 degrees. A "corner

lot" ~~shall be~~ **is** considered to be in that block in which the lot fronts. [See "lot line," Subsection (1)(a).]

LOT AREA – The total area within ~~the confines of~~ the boundary lines of a lot. The "lot area" ~~shall does~~ not include any part of a ~~public road~~ right-of-way ~~which it fronts or abuts~~.

~~LOT COVERAGE – The aggregate gross ground floor area of all buildings on a lot expressed as a percentage of the total lot area, excluding parking facilities, sidewalks and driveways.~~

LOT FRONTAGE – ~~A lot line dividing the lot from a street right-of-way. The lot line shared with a street right-of-way. In cases where an existing or proposed lot line is squiggly the frontage is measured along one or more chords from end point to end point of the lot line.~~

LOT LINE:

1. ~~LOT FRONT~~ **LOT LINE** – The front property line of a lot ~~shall be~~ **is** determined as follows:

a. CORNER LOT ~~or LANDLOCKED LOT~~ – The front property line on a corner lot is as determined by the Zoning Administrator based upon a reasonable consideration of the following: location of the front door, location of the driveway and garage, configuration of other buildings in the vicinity, the lot layout (generally, the shorter lot line is the front lot line as lots tend to be deep and narrow rather than wide and shallow), and other pertinent issues.

b. INTERIOR LOT – The front property line of an interior lot ~~shall be~~ **is** the line bounding the street frontage.

c. THROUGH LOT – ~~A through lot has frontage on opposite streets. The front property line of a through lot shall be is that line where the house or building faces or is proposed to face. that line which is obviously the front by reason of the prevailing custom of the other buildings in the block.~~

➤ *Switch the order of Rear Lot Line and Side Lot Line, below (as the side lot line is usually given first).*

2. ~~LOT REAR~~ **LOT LINE** – The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line ~~shall be~~ **is** assumed to be a line not less than ~~ten (10)~~ **10** feet long lying within the lot and parallel to the front property line. In the event that the front property line is a curved line, then the rear property line shall be assumed to be a line not less than ~~ten (10)~~ **10** feet long lying within the lot and parallel to a line tangent to the front property line at its midpoint.

3. ~~LOT SIDE~~ **LOT LINE** – The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

~~**LOWEST FLOOR**—The lowest floor of the lowest enclosed area, including the basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.~~

MAINTENANCE – The replacing or repair of a part or parts of a building or structure which have been made unusable, unsafe, or unsightly, or have been damaged by ordinary wear or tear or by the weather.

MANUFACTURED HOUSING (*formerly known as a mobile home*) – Any structure, transportable in one or more sections, which, in the traveling mode, is eight ~~(8)~~ body feet or more in width and ~~forty (40)~~ 40 body feet or more in length, or when erected on site, is ~~three hundred twenty (320)~~ 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing *shall does* not include *pre-site built, modular or pre-site built prefabricated* housing as defined in RSA 674:31-a. *See Article XX*

~~**MANUFACTURING, LIGHT**—An establishment engaged in the production, packaging, and/or distribution of products or components of products involving processing, fabrication, and/or assembly of parts or components produced off the site that meets the performance standards for a light manufacturing use. See Article XX.~~

MARINE SALES AND SERVICE – A business establishment located on a navigable water ~~within the Town of Durham~~ providing boat sales, rental and storage, marine supplies and equipment, marine engine and hull repairs, construction and outfitting of commercial or pleasure craft, fuel and oil, electricity, freshwater, ice, and other supplies for owners and crew.

MARQUEE - Any hood or awning of permanent construction projecting from the wall or roof of a building or structure above an entrance or extending over a public way.

MASTER PLAN – The Town of Durham Master Plan, and any amendments which may be made thereto, adopted by the Durham Planning Board as a guide to the prudent development and protection of the resources of the community, *as laid out in RSA 674:2 Master Plan.*

~~**MEDICAL CLINIC**—A structure or group of structures occupied by one or more medical practitioners for the purpose of providing health services to people on an outpatient basis.~~

~~**MINING**—Activities performed in the extraction of minerals including the excavation of pits, removal of minerals, removal of dimension stone, removal or quarrying for the production of construction aggregate, disposal of overburden, and the construction of roads for the haulage of mining materials but not including removal activities that are part of development projects that have received site plan or subdivision approval or that are undertaken only for the purpose of improvement of or use on the owner's property in which there will be no removal of materials from the site.~~

MINING – *Commercial extraction of materials from the earth.*

MINOR SITE COMMITTEE. A staff committee empowered to review minor site plan applications pursuant to RSA 674:43 III. (See Section 175-17 *and the Durham Site Plan Regulations*.)

MIXED USE WITH RESIDENTIAL ~~(OFFICE/RETAIL DOWN, MULTIUNIT RESIDENTIAL UP)~~ *(Office/Retail down, Multi-unit Residential Up)* – A building in which the first floor is used for office/retail uses ~~(as defined in this article)~~ and the upper floor(s) is used, in whole or in part, for multi-unit residential use. *(See alternative allowed options for this use specified in Section 175-42 in the Central Business District.)*

~~MIXED USE WITH PARKING (PARKING AND OFFICE/RETAIL) – A building in which all or part of the first floor or ground floor is used for parking and the upper floor(s) is used for office/retail (as defined in this article). If only part of the first or ground floor is used for parking, the remainder is used for office/retail.~~

~~MIXED USE WITH PARKING (PARKING AND OFFICE) – A building in which all or part of the first floor or ground floor is used for parking and the upper floor(s) is used for office or similar non-residential uses. (If only part of the first or ground floor is used for parking, the remainder is used for office or other non-residential uses.)~~

MODULAR HOUSING – See “Pre-site Built Housing.”

MOTEL – ~~A building containing seven (7) or more sleeping rooms~~ *A commercial operation offering guest rooms* or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for compensation ~~for stays of less than thirty consecutive days;~~ with or without meals, and usually providing ~~on-site function rooms;~~ housekeeping, laundry and related services. Access to guest rooms is provided directly from ~~a parking lot the outside~~ or from exterior corridors or walkways. *See Article XX*

MOTOR VEHICLE GAS STATION – The conventional gas station with gas sold and dispensed at pumps, but with no servicing or repairs performed. This use may include a retail store (small) with up to 5,000 square feet.

MOTOR VEHICLE SALES ~~FACILITY AND SERVICE~~ – The use of any building or land area for the ~~display and sale~~ *display, sale, lease and maintenance* of new or used automobiles, trucks, vans, trailers, recreation vehicles, motorcycles, or similar motorized vehicles. This use may include repair facilities ~~for such vehicles~~.

MOTOR VEHICLE SERVICE FACILITY – A business that provides service, maintenance, and repairs for motor vehicles *and engines*, including *accessory sales*. ~~the accessory sale of parts and supplies. This use includes muffler, transmission, and brake shops, tune-up centers, repair garages, and similar uses but shall not include operations involving body work, painting, structural repairs or alterations.~~

MUSEUM – A nonprofit institution operated principally for the purpose of preserving, acquiring, and exhibiting objects of historical, cultural, scientific, or artistic interest and which may also engage in the incidental retail sales of items related to its principal purpose.

~~**NEIGHBORHOOD**—An area of land local to the use concerned, generally lying within a radius of one thousand (1,000) feet, which has a set of unifying characteristics such as housing style or quality, similar income strata, topographic features, water features, local recreational facilities or convenience shopping. Factors such as a railroad and highway rights-of-way, major streets, rivers, water bodies and severe topographic constraints may form boundaries and serve to separate "neighborhoods."~~

NEIGHBORHOOD – A contiguous area of a community with: a) defining characteristics such as an integrated network of streets, walkability within the area, similar architecture or period of development, a compatible mix of uses; and b) one or more distinct boundaries such as major roads, railroads, other physical barriers, or natural features like streams, woods, and steep topography.

~~**NEON**—Any tubular gas filled light or lighting device.~~

➤ Switch the order of the following two definitions:

NONCONFORMING STRUCTURE BUILDING – A structure or building, the size, dimensions and location of which were lawful prior to the adoption, revision or amendment of ~~a~~ **this** Zoning Ordinance but which fails, by reason of ~~such~~ **said** adoption, revision or amendment, to conform to the present requirements of the zoning ~~ordinance~~ **district**.

NONCONFORMING LOT – A lot, the area, dimensions and location of which were lawful prior to the adoption, revision or amendment of ~~the~~ **this** Zoning Ordinance but which fails, by reason of ~~such~~ **said** adoption, revision or amendment, to conform to the present requirements of the zoning district.

NONCONFORMING USE – ~~A use of a building, structure or parcel of land which was lawful prior to the adoption, revision or amendment of this Zoning Ordinance but which fails, by reason of said adoption, revision or amendment, to conform to the present requirements of the zoning ordinance. A lawful use of a building, other structure or use of land which predated the adoption of the zoning use regulations now and/or previously in effect and which would not be a use authorized in the district designation currently applied to that site.~~

~~**NONCONTRIBUTING STRUCTURE**—A property or structure which, due to its recent vintage, incompatible design, incompatible and irreversible alterations, or secondary or incidental use, would not be considered to contribute to that character or quality of the Historic Overlay District that the Town seeks to preserve.~~

~~**NONMUNICIPAL WELL**—Any well not owned and operated by the Town of Durham or its agent.~~

~~**NURSERY OR PRE-SCHOOL**—A school for children primarily between the ages of three and five that provides preparation for elementary school.~~

NURSING HOME – A facility licensed by the State of New Hampshire as a nursing home ~~and that provides intermediate and/or skilled nursing care to individuals, who by reason of~~

~~advanced age, chronic illness, or infirmity, are unable to care for themselves. (See Senior Care Facility.)~~

~~OCCUPANCY—The predominant use classification of a building, structure or land.~~

~~OFF HIGHWAY RECREATIONAL VEHICLE—Any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle. All legally registered motorized vehicles when used for off highway recreational purposes shall fall within the meaning of this definition; provided that, when said motor vehicle is being used for transportation purposes only, it shall be deemed that said motor vehicle is not being used for recreational purposes.~~

OFFICE – A place of business, including for nonprofit and governmental organizations, which includes these types of operations and practices: accounting, architecture, bookkeeping, business services, dentistry, engineering, financial services, general management, general sales, insurance, law, medicine, minor repair services (such as for bicycles, scooters, and lawnmowers but not including automotive engines or comparable components), personal services, professional services, real estate, research and development, telephone sales, and telecommunications. An “office” does not include uses that involve the sale of goods and materials or the physical production of goods and materials, other than those that are incidental to the primary office use, above.

~~OFFICE, BUSINESS—A place of business where activities such as general management, bookkeeping, accounting, telephone sales, and telecommunications take place, but where no “walk-in” consumer retail sales of physical products occur. A business office may include research and development activities, software development, and information transfer and management activities but shall not include the production of physical products for sale or distribution.~~

~~OFFICE, PROFESSIONAL—A building containing one (1) or more offices in which there is no display of unrelated stock or wares in trade commodity sold, nor any commercial use conducted other than the professional offices of a doctor, dentist, lawyer, architect, engineer and related laboratories, insurance agent, realtor or other similar professional services, but excluding barbershops, beauty salons or similar services.~~

OFFICE/RETAIL – For the land uses Mixed Use with Residential *or any other mixed use that includes office/retail uses and Mixed Use with Parking (parking and office/retail)*, “office/retail” includes retail sales, personal and business services, offices, restaurants, and other comparable commercial uses such as public, institutional, research, and industrial which are allowed in the zoning district. “Office/Retail” for this purpose does not include parking, storage uses, utility uses where there is minimal flow of people in and out of the building, nor uses that are accessory to the residential use in the building (such as laundry, bicycle storage, and exercise rooms).

OLDER SINGLE-FAMILY RESIDENCE – A single-family residence that has been at its current location since 1950 *or earlier*. See *Reuse of an Older Single-Family Residence in Article XX*.

~~OPACITY, VERTICAL VERTICAL OPACITY~~ – The percentage of the area of a fence or wall *that is* covered by boards, slats, metal links, and other materials, through which one cannot see. Vertical opacity is measured from an elevation drawing.

~~OPEN SPACE—Land such as, but not limited to, recreational areas, playgrounds, and conservation land that contains no structures other than those incidental to recreation or agriculture.~~

OPEN SPACE – Forests, fields, wetlands, and other undeveloped lands that contribute to the rural and pastoral character of Durham. Open space may include, but is not limited to, conservation areas, public lands, undeveloped land in private ownership whether protected or not, land being used for passive recreation, and agricultural lands (both cropland and grazing land). (Common Open Space is defined separately in Article XIX. Conservation Subdivisions.)

OR – When used in a series of two or more allowed activities, such as “Dogs may be used for herding, working, or guarding livestock,” means “and/or,” such that any and all of the activities are allowed, individually or in combination. (In general, a reasonable judgment should be made based on the context for the intention of the use of “or.”)

ORDINARY HIGH WATER MARK – The line on the shore, running parallel to the main stem of ~~the river~~ *a river or stream*, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the NH Department of Environmental Services (NH DES).

OVERLAY DISTRICT - A defined area(s) of the town within which an additional set of standards is applied to all property, independent of the standards established in the underlying base zoning district. Six overlay districts are established as described in Articles XIII-XVIII.

~~OVERSTORY—Vegetation ranging from fifteen (15) feet to the top of the forest canopy.—~~

~~OWNER—An individual, firm, association, syndicate, partnership or corporation having sufficient proprietary interest to seek development of land~~

PARKING GARAGE – A building or portion of a building that includes two or more levels of parking or a mixed-use building with two or more levels where parking is situated on at least one level. A parking garage may be completely or partially enclosed. A parking garage may include a fully enclosed parking area that is situated below ground.

***PARKING LOT** – An open-air parking area situated on the ground, at finished grade, on a single level and not within a parking garage. A parking lot may incorporate one or more retaining walls to provide an adequate finished grade. A car port and a parking lot covered with solar panels are considered parking lots.*

~~***PARKING SPACE** – A space within or outside of a building, exclusive of driveways, meeting the minimal requirements of this chapter, used to temporarily park a motor vehicle and having access to a public street or driveway.*~~

~~***PERENNIAL STREAM** – A stream or brook that, under normal circumstances, runs all year long.*~~

PERFORMANCE GUARANTY – Any security acceptable ~~by the town~~ to the Town as a guaranty that improvements required as part of an application for development ~~are will be~~ satisfactorily completed.

***PERMEABLE PAVEMENT** – See “Porous Pavement/Pavers.”*

PERMITTED USE – A use specifically permitted or analogous to those specifically permitted as set forth in the Table of Uses or the zoning district standards.

~~***PERSONAL SERVICES** – Establishments primarily engaged in providing services involving the care of a person or his or her apparel. Personal Services includes fitness centers.*~~

***PERSONAL WIRELESS SERVICE FACILITY** – See definitions in Article XVIII. Personal Wireless Service Facilities Overlay District.*

[Items below being moved to Article XVIII with no changes. See section toward end of this document.]

~~***PERSONAL WIRELESS SERVICE FACILITY** – Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment. Specific definitions pertinent to Personal Wireless Service Facilities follow.*~~

~~*Alternative Tower Structure – Innovative siting structures that include artificial trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.*~~

~~*Antenna – The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.*~~

~~*Antenna Array – A collection of antennas attached to a mount to send and receive radio signals.*~~

~~**Average Tree Canopy Height** – An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area, such as the area delineated in Section 175-103.A.4.~~

~~**Camouflaged** – A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.~~

~~**Carrier** – A company that provides personal wireless services, also sometimes referred to as a provider.~~

~~**Co-location** – The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.~~

~~**Concealment** – The enclosure of a personal wireless service facility within a natural or human-made feature resulting in the facility being not visible from the outside or being part of the feature enclosing it.~~

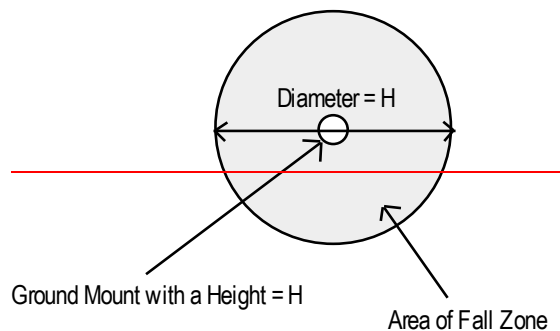
~~**Disguise** – Changing the appearance of a PWSF to appear to be something it is not.~~

~~**Environmental Assessment (EA)** – A document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.~~

~~**Equipment Shelter** – An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.~~

~~**Fall Zone** – The area on the ground from the base of a ground-mounted personal wireless service facility that forms a circle with a diameter equal the height of the facility, including any antennas or other appurtenances, as set forth in Figure H-1. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.~~

Figure H-1



~~Guyed Tower – A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.~~

~~Height – The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.~~

~~Lattice Tower – A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.~~

~~Mast – A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.~~

~~Monopole – A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel, concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.~~

~~Mount – The structure or surface upon which antennas are mounted, including the following four types of mounts:~~

~~A. — Roof-mounted. Mounted on the roof of a building.~~

~~B. — Side-mounted. Mounted on the side of a building.~~

~~C. — Ground-mounted. Mounted on the ground.~~

~~D. — Structure-mounted. Mounted on a structure other than a building.~~

~~Personal Wireless Services – The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.~~

~~Radio Frequency (RF) Engineer – An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.~~

~~Radio Frequency Radiation (RFR) – The emissions from personal wireless service facilities.~~

~~Security Barrier - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.~~

~~Separation – distance between one carrier's array of antennas and another carrier's array.~~

PLANNED UNIT DEVELOPMENT (PUD) - A Planned Unit Development is an innovative planning tool that 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.

PORKCHOP SUBDIVISION – A porkchop subdivision involves limited subdivision of relatively large lots where there is significant back land but not sufficient street frontage to provide the minimum required frontage for each new lot. *See Article XX*

POROUS PAVEMENT/PAVERS – An alternative to conventional asphalt that uses a variety of porous media, often supported by a structural matrix, concrete grid, or modular pavement, which allows water to percolate through to a sub-base for gradual infiltration.

PREFABRICATED HOUSING – See “Presite Built Housing.”

PREMISES – A lot, parcel, tract, *site* or plot of land together with the buildings and structures thereon. ~~*Premises may be further defined as the principal use dwelling unit/residence, or non-residential building, and any accessory structures to that principal use, where there are multiple principal buildings on a single lot.*~~

PRESITE BUILT HOUSING – Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. ~~*For the purposes of this subdivision, pre-site built housing shall*~~ *Presite built housing does* not include manufactured housing as defined in RSA 674:31. *Presite built housing is also called “Modular Housing” or “Prefabricated Housing.” (Presite built housing is not regulated under this Zoning Ordinance.)*

~~*PRIMARY BUILDING LINE – The setback from the reference line.*~~

~~*PRINCIPAL USE – The primary or predominant use to which the property is or may be devoted and to which all other uses on the premises are accessory.*~~

PRINCIPAL USE – The primary or predominant use(s) on a property to which all other uses are accessory. There is typically, but not necessarily, one principal use on a property.

~~*PROHIBITED USE – A use which is not specifically permitted.*~~

~~*PUBLIC UTILITY – A public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, telephone, television cable, gas and transportation for persons and freight.*~~

PUBLIC UTILITY – A public service corporation, municipal body, or authority providing a specific public service subject to special governmental regulations, for which the recipients pay the provider directly. Utilities may include water supply, sewer service, piped gas, electric supply, telephone, television cable.

PUBLIC WAY – A road, sidewalk, footpath, trail, ~~or~~ navigable waterway, *or right of way* accessible to the public.

QUALIFIED CONSERVATION ORGANIZATION ~~(See Article XIX – Conservation Subdivisions)~~ – As defined in Section 170(h)(3) of the Internal Revenue Code of 1986 or any successor section, and the regulations promulgated thereunder, an organization that is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of that Code. *(See Article XIX – Conservation Subdivisions.)*

~~RARE AND EXEMPLARY COMMUNITY – A natural community that has been identified by the New Hampshire Natural Heritage Bureau as being an exemplary example of a particular type of community and/or location of rare plants or animals.~~

~~RECREATION, ACTIVE – Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed sites, locations, or fields. Active recreation includes, but is not limited to, swimming, tennis and other court games, baseball, track and field sports, and playground activities. Active recreation generally requires altering the land for recreational use.~~

~~RECREATION, PASSIVE – Non-motorized recreational activities that typically occur in a natural setting, that do not have significant adverse impacts to natural, cultural, scientific, or agricultural values of the setting, and do not require structures. Such passive recreation uses include, but are not limited to, walking, hiking, picnicking, nature observation, and cross-country skiing.~~

RECREATIONAL FACILITY, INDOOR – *A building designed and equipped for leisure and recreational activities. A building or structure enclosed by walls and a roof designed and equipped for the conduct of indoor sports, leisure activities, and other customary and usual recreational activities. These include, by way of example only, skating rinks, gymnasia, bowling alleys, fitness centers, and arcades.*

RECREATIONAL FACILITY, OUTDOOR – A *place or structure site* designed and equipped for *the conduct of* outdoor sports, *leisure activities, and other customary and usual outdoor leisure and* recreational activities. *An outdoor recreational facility shall not involve* *It does not include* the use of individual motorized vehicles, all-terrain vehicles, off highway recreational vehicles, motorized rides *(except for electronic bicycles)*, or fire arms. *Outdoor recreation facilities include, by way of example only, miniature golf courses, cross-country ski centers, stadia, tennis courts, and ball fields.*

RECREATIONAL PLAYING FIELDS, OUTDOOR – Noncommercial *outdoor* playing fields for *organized practices like soccer, field hockey, baseball and similar* outdoor sports *as approved by the Planning Board of the Town of Durham through Site Plan Review*. No structures *allowed are included* except for necessities like small sheds for maintenance and portable toilets. No lighting, voice amplification equipment or paved parking lots or areas *shall be permitted are included*.

~~RECREATIONAL VEHICLE – A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be~~

~~*self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.*~~

RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, designed to be self-propelled or permanently towable by a light duty vehicle, and designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use. (Also called an “RV” or a “Motor Home.”)

REFERENCE LINE – The regulatory limit of a surface water or wetland determined as follows:

1. For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by NHDES
2. For artificially impounded water bodies with established flowage rights, the limit of the flowage rights and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.
3. For coastal waters the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.
4. For rivers and streams, the ordinary high water mark.

RELIGIOUS USE/FACILITY – A structure or place in which worship ceremonies, rituals and education pertaining to a particular system of beliefs are held.

~~*REPAIR—Work conducted to restore an existing legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so during construction.*~~

~~*REPAIR SERVICES—Businesses providing for the repair of personal and business property such as radios and televisions; electrical and electronic equipment; watches, clocks, and jewelry; furniture and upholstery; sporting equipment; small engines and equipment; and similar items but not including the repair of motor vehicles, boats, or heavy equipment. Retail sales of parts and supplies shall be allowed provided such sales are accessory to the repair service.*~~

~~*RESEARCH FACILITY—A facility for the investigation into the natural, physical, or social sciences, and other such disciplines, including commercial product development and testing.*~~

RESIDENCE, DUPLEX – ~~*A building and accessories thereto principally used, designed or adapted with two (2) dwelling units, each of which is completely separate. A building with two dwelling units that are part of the same building.*~~

RESIDENCE, MULTI-UNIT – ~~A building and accessories thereto principally used, designed or adapted with three (3) or more dwelling units. A multi-unit residence includes “townhouse” style attached dwelling units even if the units are separated by a fire wall. A building with three or more dwelling units.~~

RESIDENCE, MULTI-UNIT COMPLEX – Two or more buildings of any residential type (single unit, duplex, multi-unit or a combination thereof) with a total of three or more dwelling units.

RESIDENCE, SINGLE-FAMILY – A building **with a single dwelling unit and accessories thereto principally used, designed or adapted as a single dwelling unit. A single family residence is** situated on its own separate lot with no other dwelling units nor nonresidential uses other than those that are accessory to the single-family use **including** (such as accessory dwellings/apartments and home occupations, where allowed).

RESTAURANT – A commercial establishment open to the general public where food and beverage are prepared **and served.** ~~, served and consumed primarily within the principal building. Adequate seating shall be provided.~~

~~**RESTAURANT, CARRYOUT** – A commercial establishment open to the general public which, by design of physical facilities or by service or packaging procedures, permits or encourages the purchase, either within or outside the premises, of prepared ready-to-eat foods intended to be consumed either on or off the premises.~~

RESTAURANT OR CAFETERIA ACCESSORY TO ~~AN OFFICE BUILDING~~ **A NONRESIDENTIAL USE** – A food service establishment that primarily serves occupants and other users of ~~an office building or complex~~ **a nonresidential use** rather than the general public.

RETAIL STORE, MEDIUM **SIZED** – ~~An establishment A retail store with five thousand (5,000) to twenty thousand (20,000) 5,000 to 20,000~~ square feet of gross floor area **engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.**

RETAIL STORE, SMALL – A retail store with less than ~~five thousand (5,000) 5,000~~ square feet of gross floor area.

ROOMING HOUSE – ~~An owner-occupied building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and without individual or owner-provided cooking and dining facilities. See “Boarding House.”~~

SAWMILL, TEMPORARY – A portable facility for the sawing, milling, planing, or similar processing of timber or other wood products harvested from the site upon which the temporary sawmill is located. A portable sawmill use shall not include the retail sale of lumber or other wood products on the site. *See Article XX*

SCHOOLS – *See “educational facilities.” “Educational Facility.”*

~~**SCREENING**—A device or materials used to conceal one (1) element of a site from other elements or from adjacent or contiguous sites. Screening may include one (1) or a combination of the following materials of sufficient mass to be opaque or which shall become opaque after twelve (12) months and which shall be maintained year-round in an opaque condition: walls, fences, berms or plantings.~~

SCREEN (or SCREENING) – A device or materials used to visually shield one site or one element of a site from a neighboring site or the street. Screening devices may include walls, fences, berms, plantings or a combination thereof. Screening incorporates a high year-round vertical opacity. (Also see “Buffer.”)

~~**SEASONAL HIGH WATER TABLE**—The highest level of the groundwater table during the wettest season of the year, usually in the spring.~~

SENIOR CARE FACILITY – Housing principally used, designed, or adapted for use by citizens fifty-five (55) years of age and older who are not capable of living independently and who require assistance in activities of daily living. Residents of a senior care facility receive a package of services to meet their needs. A senior care facility may be contained in a single building or group of buildings and may include assisted living, memory care, and/or nursing home facilities. A ~~“life-care community”~~ **life-care community, continuous care retirement community (CCRC)** or other retirement community that provides a continuum of care including both independent living units and units for residents ~~that who~~ require ~~assistance,~~ **assistance** is considered to be a senior care facility. (See *Nursing Home*.)

SENIOR HOUSING – ~~In accordance with~~ Pursuant to RSA 354-A:15, **senior housing refers to a development in which** either: a) housing where at least 80% of the units are occupied by at least one person 55 years of age or older; or b) housing where 100% of the occupants are 62 years of age or older. **In any development or portion of a development in Durham referred to as “senior housing” 100% of the units include at least one person 55 years of age or older, unless otherwise specified.**

SEPTAGE - Material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, but not including sewage sludge from public treatment works and industrial waste and any other sludge. (As defined in RSA 485-A:2.)

SETBACK – The required minimum (except where “maximum” is specified) horizontal distance in feet from a lot line, shoreline, or other ~~designated referenced~~ **line or point to any a** structure. **See The Table of Dimensions and Subsection 175-56. D. Setbacks. Where eaves, overhangs, cladding materials, and architectural details on a building project 18” or less from the building face, the setback is measured from the applicable building foundation. Where eaves, overhangs, cladding materials, and architectural details on a building project more than 18” from the building face, the setback is measured from the furthest point where those elements extend from the building. Table 175-54, Table of Dimensions, gives front, side, and rear setbacks, which are measured from front, side, and rear lot lines, respectively. See “Building” and “Structure.”**

SETBACK AREA – The section of the front, side, or rear of a lot corresponding to the area within which structures may not be placed in accordance with front, side, or rear setbacks, respectively. *(Also called “Yard.”)*

SEWAGE - The water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present. (As defined in RSA 485-A:2.)

SHALL – Where the term “shall” is used, the person or party is required to do what is referred to.

~~SHOREFRONTAGE SHORE FRONTAGE~~ – The width of a lot bordering ~~on a waterbody or wetland on the following waterbodies~~, measured in a straight line between the intersections of the lot lines with the reference line *(See definition): Great Bay, Little Bay, the Oyster River, the Lamprey River, Johnson Creek, Bunker Creek, Folletts Brook, and the tidal sections of their tributary streams.*

~~SHORELAND PROTECTION ZONE~~—~~Encompasses all land within two hundred fifty (250) feet of the reference line of Great and Little Bays, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal sections of their tributary streams; and within seventy five (75) feet of all other perennial brooks. These water bodies are designated on the Durham Shoreland Protection Zone Overlay Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.~~

SHORT-TERM RENTAL – An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty consecutive days. A short-term rental is not considered a home occupation. *(See Article XX.)*

~~SIDEWALK~~—~~Any public or private way or thoroughfare, paved or unpaved, intended for the use of pedestrians or foot traffic.~~

SIGN – See definitions in Article XXIII. Signs.

[Pertinent items below being moved to Article XXIII. See section toward end of this document.]

~~SIGN~~—~~Any exterior or exterior-oriented structure, or part thereof, or device attached thereto, or other outdoor surface including billboards or any combination of one or more of the foregoing containing any word, letter, symbol, drawing, model, banner, flag, picture or design, or any device used for visual communication which identifies or calls attention to any premises, person, product activity, or business, directing the subject thereof to the attention of the public. Specific definitions pertinent to signage follow.~~

~~Accessory Sign~~—~~Any sign relating to a business on the premises on which the sign is located.~~

~~Advertising Sign – Any sign for the purpose of portraying a business, product or location situated on or away from the premises on which the said sign is located.~~

~~Combination Sign – Any sign which combines the characteristics of two or more types of signs.~~

~~Flashing Sign – Any sign that moves, flashes, contains traveling lights, or gives the impression of any movement or flashing.~~

~~Freestanding Sign – Any sign which is not a part of or attached to any building but is located elsewhere on a lot.~~

~~Identifying Sign – Any sign or plate giving the name and/or address only of the business or occupant of the premises on which the said sign or plate is located.~~

~~Illuminated Sign – Any sign that is lit by electricity either directly or indirectly.~~

~~Monument Sign – A type of freestanding sign that is anchored to the ground without poles or posts, often with a masonry surround.~~

~~Neon Sign – Any light sign using exposed neon tubes for illumination or display.~~

~~Non-Accessory Sign – Any sign advertising a business or businesses at other locations.~~

~~Private Directional Sign – Any sign of a permanent nature that directs the traveling public to specific buildings, areas, people or things.~~

~~Projecting Sign – Any sign which is attached to a building or other structure and extends more than twelve (12) inches beyond the line of the said building or structure or beyond the surface of that portion of the building or structure to which it is attached.~~

~~Public Clock and Thermometer – Any time piece or thermometer erected upon a structure upon the sidewalk or ground or on the exterior of a building or structure for the convenience of the public.~~

~~Pole Sign – A type of freestanding sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.~~

~~Reader Board – A sign that is flush mounted, does not exceed three (3) square feet in size and provides a fixed location for the advertisement of daily specials.~~

~~Roof Sign – Any sign erected upon or over the roof of any building.~~

~~***Sandwich Board Sign*** – A portable sign with an A-frame shape intended to be placed in a front yard or on a public sidewalk.~~

~~***Size of Sign*** – The total exposed surface area in square feet. Where a sign is composed of fabricated letters attached to a wall, the size of the sign shall be determined as twice the average height of the letters times the length of the message.~~

~~***Snipe Sign*** – Any sign of a non-permanent nature or construction attached to trees, poles, posts or sides of buildings or structures.~~

~~***Temporary Sign*** – Any sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard or wallboard or other light materials, with or without frames, intended to be displayed for a short period of time only.~~

SITE PLAN – A plan of a lot, tract or parcel of land showing the specific location of all existing and proposed features, such as buildings, other structures, driveways, parking, landscaping, easements, utilities, and drainage structures.

SLOPE – A measurement of the deviation of a ground surface from horizontal measured in percent (rise over run) or in degrees.

SLUDGE - The solid or semisolid material produced by water and wastewater treatment processes, but not including domestic septage. However, sludge which is disposed of at solid waste facilities as permitted by the New Hampshire Division of Environmental Services is considered solid waste. (As defined in RSA 485-A:2.)

SOIL, POORLY DRAINED – Any soil type having a soil drainage classification of “poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOIL, SOMEWHAT POORLY DRAINED – Any soil type having a soil drainage classification of “somewhat poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOIL SURVEY, HIGH INTENSITY – A soils map and related materials prepared and certified by a New Hampshire Certified Soil Scientist in accordance with ~~the most recent standards for high intensity soils surveys and/or mapping published by the~~ ***The Society of Soil Scientists of Northern New England (SSSNNE) Special Publication - No.1, High Intensity Soil Maps for New Hampshire (www.sssnne.org), as amended.***

SOIL, VERY POORLY DRAINED – Any soil type having a soil drainage classification of “very poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOLAR ENERGY SYSTEMS – Specific definitions pertinent to solar energy systems follow.

Building-Mounted Solar Energy System – A solar energy system attached to and completely supported by a building that does not extend more than 5 feet beyond the building footprint. The system may include necessary accessory equipment that is ground mounted.

Freestanding Solar Energy System – A ground-mounted solar energy system, including a stationary or tracking system (either single axis or dual axis). A Solar Photovoltaic (PV) Parking Canopy is not a Freestanding Solar Energy System.

Group Net Metering Host, Small – A Solar Photovoltaic (PV) System less than or equal to 100 KW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Group Net Metering Host, Large – A Solar Photovoltaic (PV) System greater than 100 KW and less than 5 MW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Multi-unit Residential or Nonresidential Solar Energy System – An accessory use designed to provide solar energy for the principal and accessory uses of Multi-Unit Residential, mixed Use with Residential and other Nonresidential uses.

Name Plate Rating - The maximum sustained electric power-generating capacity of the Solar Energy System.

Solar Energy – Radiant energy emitted by the sun.

Single-Family or Duplex Residential Solar Energy System – A Solar Energy System that is an accessory use designed to generate energy for use at the property. A Single-Family or Duplex Residential Solar System may also be a Small Group Net Metering Host up to the size limits specified in 175-109.N.4.

Solar Energy System – A structure and the related components used to transform solar energy into electricity (through a solar photovoltaic system) or heat (through a solar thermal system).

Solar Photovoltaic (PV) Parking Canopy – An elevated structure that supports solar panels over a parking area. A solar photovoltaic parking canopy is not a carport. The structure is not used with single-family and duplex uses, nor is it considered *structured parking*.

Solar Photovoltaic (PV) System – A solar collection, mounting, inversion, storage and distribution system that converts sunlight into electricity.

Solar Thermal System – A solar collection system that directly heats a heat-transfer medium.

Utility-Scale Solar Energy System, Small - A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity equal to or less than 100 kW that generates energy for use off site by customers. A Small Utility-Scale Solar Energy System does not function as a Small Group Net Metering Host.

Utility-Scale Solar Energy System, Large – A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity of greater than 100 kW and less than 5 MW that generates energy for use off site by customers. A Large Utility-Scale Solar Energy System does not function as a Large Group Metering Host

SOLID WASTE – Any discarded or abandoned material, including refuse, putrescible material, septage or sludge, as defined by New Hampshire Solid Waste Rule He-P 1901.03. ~~"Solid waste"~~ *Solid waste* includes solid, liquid, semisolid or gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations.

SPECIAL EXCEPTION – ~~A use which would not be appropriate generally or without restriction in a particular district, and accordingly, is allowable as specifically authorized in this chapter and only after a public hearing and determination by the Zoning Board of Adjustment.~~ *See Article VIII. Variances and Special Exceptions.*

~~SPECIAL FLOOD HAZARD AREA—~~ *See “Area of Special Flood Hazard.”*

~~START OF CONSTRUCTION—The date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations on the property or accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.~~

STEEP SLOPE – A slope exceeding 15% where there is a change in elevation of at least 4 feet. See Slope.

STORY - The complete horizontal division of a building, situated at or above ground level, comprising the usable space or room(s) on one level. Each such division is considered one full story, except for the top level when it is under a sloped roof, which is considered a half story. For the purpose of determining the total number of permitted stories, a sloped roof that does not contain usable space (other than crawl-type storage space) is not considered a half story. For the purposes of this ordinance, a lower level is considered to be a story if the front

exterior wall of the lower floor level rises more than two feet above the finished grade. Cupolas with areas of 100 square feet or less do not count as a story.

STREET, ARTERIAL – A high-order street designed to provide access to the regional transportation system and move traffic through or around the town or from one general area of the town to another. "Arterial streets" include Main Street west of Mast Road, U.S. Route 4, Route 108, Route 155A and Route 155.

STREET, COLLECTOR – A middle-order street which is functionally classified as a “collector” and ~~that~~ collects local traffic from neighborhoods and moves it to an adjacent neighborhood or transfers the traffic to the arterial system. *Bagdad Road*, Bay Road, Bennett Road, Durham Point Road, *Emerson Road*, Madbury Road, Main Street (from Newmarket Road to Mast Road), Mill Road, and Packers Falls Road are considered collector streets.

~~**STREET LINE**—The line dividing a lot from a street right-of-way.~~

STREET, MINOR – A low-order local street. If a particular street is not classified as an arterial or collector street, it is considered a minor street.

STREET, PRIVATE – A private right-of-way for vehicles which provides a principal means of access to two (2) or more lots and is subject to an easement for ingress and egress running with the land to the benefit of all lots having frontage thereon. ~~Such easement shall define the parties responsible for maintenance, the collection of trash and recyclables, and snow removal.~~

STREET, PUBLIC – A dedicated public right-of-way for vehicles which affords a principal means of access to abutting properties.

~~**STREET LINE** – The street right of way line/lot boundary line separating the street right of way from the lot.~~

STRUCTURE ~~(See additional definitions immediately below.)~~ – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. *See Section 175-56. D. for setbacks applicable to structures and exemptions thereof.* ~~Structure includes, but is not limited to, a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. Structure does not include a minor installation such as a fence six (6) feet high or less in height, a mailbox, a flagpole, or an accessory shed.~~

~~**STRUCTURE**—(For Historic Overlay District purposes) Anything within the Historic Overlay District that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.~~

~~**STRUCTURED PARKING**—A structure or portion of a structure that provides parking. The parking may be above or below grade, may be covered or uncovered, and may be on multiple levels. See “Surface Parking”~~

~~SUBDIVISION – The division of a lot, tract or parcel of land into two (2) or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division or resubdivision of a lot into two or more lots, a lot line adjustment, the creation of a condominium, or the conversion of land or a building(s) to a condominium form of ownership.~~

~~The division of a parcel of land, held in common and subsequently divided into parts among the several owners, shall be deemed a subdivision under these regulations.~~

~~The granting of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters, and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be construed as a subdivision under these regulations, and shall not be deemed to create any new division of land for any other purpose.~~

~~SUBSTANTIAL DAMAGE—Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.~~

~~SUBSTANTIAL IMPROVEMENT—Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure."~~

~~SURFACE PARKING—A parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure.~~

THEATER – A building or part of a building *devoted to* whose principal use is showing motion pictures or *providing* live *dramatic or musical* performances.

TOXIC OR HAZARDOUS MATERIAL – Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant actual or potential hazard to water supplies or other hazard to human health. "Toxic or hazardous materials" include, but are not limited to: volatile organic chemicals; petroleum products; heavy metals; radioactive materials;

infectious materials or wastes; acids; alkalis; products such as pesticides, herbicides, solvents and thinners; or such other substances as defined in New Hampshire Department of Environmental Services Rules Section Env-Wm-400, in New Hampshire Solid Waste Rule Env-Wm 100 and in the Code of Federal Regulations 40 CFR 261, as amended. The more-restrictive rules shall apply in all cases.

The following commercial activities are presumed to use toxic or hazardous materials and/or to generate wastes containing toxic or hazardous materials, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board. In all cases the burden of proof shall rest with the applicant:

- A. Airplane, boat and motor vehicle service and repair, including gasoline stations.
- B. Chemical and biological laboratory operations.
- C. Dry cleaning.
- D. Electronic circuit manufacturing.
- E. Metal plating, finishing and polishing.
- F. Motor and machinery service and assembly.
- G. Painting, wood preserving and furniture stripping.
- H. Pesticide and herbicide application.
- I. Photographic processing.
- J. Printing.
- K. Any other commercial or industrial activity which, in the judgment of the Planning Board, typically uses toxic or hazardous materials or produces wastes containing toxic or hazardous materials.
- L. Storage and/or distribution of chemicals or any other hazardous materials used in any of the above activities.

TREATED SOILS – Soils decontaminated by a treatment process and certified for distribution and use as soil under NH Env-Wm 3203.11, having originally been contaminated with liquids or materials not regulated by the State of New Hampshire as hazardous waste defined under NH Env-Wm 2603.01.

TREE WARDEN - The person designated by the Town Administrator to assist the Town boards, residents, and other Town staff in any appropriate matters related to the conservation, protection, and enhancement of native and naturalized trees and other vegetation located on both public and private property in Durham, in furtherance of the

goals of this Zoning Ordinance and other Town ordinances and regulations, and pursuant to RSA 231:139 (II).

~~**TRUCKING AND DISTRIBUTION FACILITY**—A facility for the short-term storage and trans-shipment of materials or goods including express delivery, common carriers, oil terminals, moving companies, and similar operations.~~

~~**UNDERSTORY**—Vegetation ranging from three (3) feet to fifteen (15) feet in height.~~

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

UNRELATED HOUSEHOLD – See “Household.”

UNSUITABLE AREA – The area of a parcel that must be subtracted from the gross area of the parcel to determine the usable area of the parcel. See “Usable Area.”

Reverse the order of Use and Usable Area, below.

USE – The specific purpose(s) for which a building or lot *or a portion thereof* is arranged, intended, designed, occupied or maintained.

USABLE AREA – The area of any conservation subdivision, that is suitable, in its natural state, for development or intensive use and, therefore, can be used in determining the allowed density of development. The usable area of a parcel of land ~~shall be~~ *is* determined in accordance with the provisions of Section 175-56(E).

VARIANCE – A ~~variation deviation~~ from the terms of this chapter, ~~not otherwise permitted within the district concerned, which may be granted by the Zoning Board of Adjustment pursuant to its discretionary power allowed when the Zoning Board of Adjustment determines that the required criteria are met.~~ See Article VIII.

~~**VERNAL POOL**—A body of water, typically seasonal, that provides essential breeding habitat for certain amphibians and invertebrates, does not support viable fish population, and meets the criteria established by the New Hampshire Fish and Game Department, Nongame and Endangered Wildlife Program, Identification and Documentation of Vernal Pools in New Hampshire, rev 2004, as amended.~~

VETERINARY CLINIC – See Animal Care.

~~**VETERINARY CLINIC/GROOMING ANIMAL CARE**~~ – A facility where animals or pets are given medical or surgical treatment, ~~provided with grooming, or provided with training or where animals and pets are groomed,~~ and in which the boarding of animals is short-term and incidental to the ~~medical care or grooming~~ *medical care, grooming, or training.*

~~**WAREHOUSE, MINI STORAGE SELF STORAGE FACILITY**~~ – Any self-service facility composed of individual units or lockers rented to the public for storage of personal or business belongings. ~~Any self-service storage building housing individual storage units or~~

~~lockers, each of which is accessible through a private entrance, and rented to the public for storage of personal or business belongings.~~

~~**WATER-DEPENDENT STRUCTURE**—A structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.~~

~~**WETLAND** – See the *Wetland and Shoreland Overlay District*. An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands include, but are not limited to, swamps, marshes, bogs, vernal pools, and similar areas.~~

~~**WETLAND, NON-TIDAL**—A wetland that is not subject to periodic inundation by tidal waters.~~

~~**WETLAND, PRIME**—A wetland designated by the Town Council in accordance with RSA 482-A:15 as having one or more of the values set forth in RSA 482-A:1 and that, because of its size, unspoiled character, fragile condition or other relevant factors, makes it of substantial significance.~~

~~**WETLAND, TIDAL**—A wetland whose vegetation, hydrology, or soils are influenced by periodic inundation of tidal waters.~~

~~**WHOLESALE SALES**—Trade that involves the sale of merchandise, in bulk or large quantities, exclusively to retailers for resale or to industrial, commercial, or institutional users.~~

~~**WORKFORCE HOUSING CONSERVATION SUBDIVISION** – A conservation subdivision that provides housing for rent and/or for sale which meets the standards for Workforce Housing in accordance with RSA 58-61. See Article XIX. Conservation Subdivisions.~~

~~**YARD** – See *Setback Area*.~~

PROPOSED CHANGES TO OTHER ARTICLES, RELATED TO THE PROPOSED CHANGES ABOVE

- Replacement of current terms with new terms. Replace the terms throughout the Zoning Ordinance, wherever they currently appear, as stated below. Capitalize letters as appropriate consistent with the current context.
- Replace *accessory dwelling unit* with *accessory dwelling unit – attached*.
 - Replace *accessory apartment* with *accessory dwelling unit – detached*.

- Replace *child care (or childcare) center* with *day care center*.
 - Replace *child care (or childcare) home* with *day care home*.
 - Replace *shorefrontage* with *shore frontage*.
 - Replace *structured parking* with *parking garage (or a parking garage, as appropriate)*
 - Replace *surface parking* with *parking lot (or a parking lot, as appropriate)*
- ***Throughout the ordinance, replace multiunit with multi-unit, wherever the former currently appears. Capitalize letters as appropriate consistent with the context.***

ARTICLE XII.1. USE AND DIMENSIONAL STANDARDS

175-53. Table of Land Uses.

- ***Change the term “eldercare facilities” in Note 3 at the end of the Table of Dimensions to “senior care facilities”.***

Table of Uses – [*Proposed changes pursuant to changes in Article II – Definitions]**

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	Durham Business Park (DBP)
I. NATURAL RESOURCE USES													
Principal Uses													
Conservation activities	P	P	P	P	P	P	P	P	P	P	P	P	P
Excavation and/or mining	CU	X	X	X	X	X	X	X	X	X	X	X	X
II. RURAL USES													
Principal Uses													
Commercial agriculture	P	X	X	P	X	X	X	X	X	P	P	P	X
Commercial animal husbandry	P	X	X	P	X	X	X	X	X	P	P	P	X
Plant nursery	P	X	X	P	X	X	X	X	X	P	P	P	X
Kennel	CU	X	X	CU	X	X	X	X	X	CU	X	CU	X

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	Durham Business Park (DBP)
Stable	P	X	X	P	X	X	X	X	X	CU	CU	CU	X
Forestry (See Article XX)	P	P	P	P	X	X	X	X	P	P	P	P	P
Temporary sawmill (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	P
Reuse of existing agricultural building (See Article XX)	CUA	X	X	CUA	X	X	X	X	X	P	P	P	P
Uses Accessory to Commercial Agriculture and Animal Husbandry													
Retail sales of farm products	P	X	X	P	X	X	X	X	X	CU	CU	CU	X
III. RESIDENTIAL USES													
Principal Uses													
Residence, single-family	P	P	P	P	X	P	P	X	X	X	CU	CU	X
Residence, duplex	X	X	X	X	X	X	X	X	X	X	X	X	X
Residence, multi-unit	X	X	X	X	X	CUA	X	X	X	X	X	X	X

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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Accessory agricultural activities (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	X
Accessory animal husbandry - livestock (See Article XX)	P	P	P	P	X	X	X	X	X	CU	CU	CU	X
Accessory animal husbandry - goats (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	X
Accessory animal husbandry - poultry (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	X
Uses Accessory To a Single Family Residential Use													
Accessory dwelling unit – <i>attached</i> (See Article XX)	P	P	P	P	X	P	P	X	X	X	P	P	X
Accessory apartment <i>dwelling unit - detached</i> (See Article XX)	P	X	X	P	X	P	P	X	X	X	P	P	X

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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Short term rental	SE	SE	SE	SE	P	P	P	P	P	SE	SE	SE	X
IV. INSTITUTIONAL USES													
Principal Uses													
<i>Adult day care facility</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>CU</i>
Art center	X	X	X	X	P	X	P	P	CU	X	X	X	X
<i>Child care center or child care nursery</i> Day care center (See Article XX)	P	X	X	P	P	P	<i>CU P</i>	P	<i>CU P</i>	P	<i>CU P</i>	<i>CU P</i>	<i>CU P</i>
<i>Nursery or pre-school</i>	<i>P</i>	<i>X</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>CU</i>	<i>P</i>	<i>CU</i>	<i>CU</i>	<i>CU</i>	<i>CU</i>	<i>CU</i>
Club	X	X	X	X	P	X	CU	CU	CU	X	X	X	X
Community center	X	X	X	X	P	P	CU	P	CU	CU	CU	CU	CU
Educational facility	X	X	X	X	CU	P	CU	P	X	X	CU	CU	CU
Fraternity/sorority house	X	X	X	X	CU	CUA	X	X	X	X	X	X	X
<i>Government facility</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>
Hospital	X	X	X	X	X	X	X	X	X	X	CU	CU	X

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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Library	X	X	X	X	P	P	P	P	P	P	X	X	X
Museum	CU	X	X	CU	P	P	P	P	CU	X	X	CU	CU
Religious use/facility	CU	CU	CU	CU	CU	P	P	X	CU	CU	X	X	X
V. RECREATIONAL USES													
Principal Uses													
Golf course	CU	X	X	CU	X	X	X	X	X	X	X	X	X
Recreational facility, indoor	X	X	X	X	X	X	X	X	X	P	P	P	P
Recreational facility, outdoor	CU	X	X	CU	X	X	X	X	CU	CU	CU	CU	CU
Recreational playing fields, outdoor	P	P	P	P	X	X	X	X	CU	P	P	P	CU
VI. UTILITY & TRANSPORTATION USES													
Principal Uses													
Structured parking Parking garage	X	X	X	X	CU	X	X	CU X	CU X	X	X	X	X

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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Surface parking Parking lot	X	X	X	X	CU	X	CU X	CU	X	X	X	X	X
Public utility facility	CU	X	X	CU	X	X	X	X	X	P	P	P	P
Personal Wireless Service Facility (See Article XVIII)	P	P	P	P	P	P	P	P	P	P	P	P	P
VII. COMMERCIAL & INDUSTRY USES													
Principal Uses													
Reuse of older single-family residence for a low impact nonresidential use (See Article XX)	CUA	X	X	CUA	P	P	P	P	P	P	P	X	X
Bed & breakfast	P	P	P	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Inn	P	X	X	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Conference center	X	X	X	X	CU	P	CU	P	P	CU	X	X	CU
Hotel	X	X	X	X	P	P	CU	P	CU	CU	CU	CU	CU
Restaurant	X	X	X	X	P	X	P	P	X	X	X	X	X
Restaurant, carry-out	X	X	X	X	P	X	X	P	X	X	X	X	X

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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Office, professional	X	X	X	X	P	P	P	P	P	P	P	P	P
Repair services	X	X	X	X	P	X	CUA	P	X	CU	CU	CU	CU
Automotive service Motor vehicle gas station	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle service facility	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle sales and service facility	X	X	X	X	X	X	X	P	X	X	X	X	X
Automobile/ear Car wash	X	X	X	X	X	X	X	P	X	X	X	X	X
Marine sales and service	X	X	X	CU	X	X	X	X	X	X	X	X	P
Boatyard/ Boat club	X	X	X	CU	X	X	X	X	X	X	X	X	P
Research facilities and labs	X	X	X	X	X	X	X	X	X	P	P	P	P
Manufacturing, light	X	X	X	X	P	P	P	P	P	P	P	P	P
Warehouse	X	X	X	X	X	X	X	X	X	CU	X	CU	CU
Self storage facility	X	X	X	X	X	X	X	X	X	X	X	X	X
Wholesale sales	X	X	X	X	X	X	X	X	X	CU	X	CU	CU

175-56. General Dimensional Standards.

- *Change “D. Permitted uses in setback areas.” to “D. Setbacks. Setbacks apply to all structures with the following exceptions and additional provisions:”*
 - *Add the following provisions under D. Setbacks:*
3. *Setbacks do not apply to the following structures unless another provision provides setbacks specifically to those structures: fences, retaining walls less than six feet in height, signs, light poles, utility poles, flagpoles, structures such as piers and docks where the setback would prevent installation of the structure where it must inherently be situated, driveways, and minor installations like mailboxes,*
 4. *Where eaves, overhangs, cladding materials, and architectural details on a building project 18” or less from the building face, the setback is measured from the applicable building foundation. Where eaves, overhangs, cladding materials, and architectural details on a building project more than 18” from the building face, the setback is measured from the furthest point where those elements extend from the building.*

ARTICLE XV. FLOOD HAZARD OVERLAY DISTRICT

- *Add a new Section 175-77.1. Definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-77.1 Definitions. Specific definitions pertinent to the Flood Hazard Overlay District, as defined by the Federal Emergency Management Agency, follow:

Area of Special Flood Hazard - The land in the floodplain within the Town of Durham subject to a one percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map.

Base Flood - The flood level having a one-percent possibility of being equaled or exceeded in any given year.

Base Flood Elevation - The water surface elevation having a one percent possibility of being equaled or exceeded in any given year.

Basement - Any area of a building having its floor subgrade on all sides.

Building - Any structure designed or intended for the support, enclosure, shelter or protection of persons, domestic animals, chattels or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" includes all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. (Also see “Structure” for floodplain management purposes.)

Development - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FEMA - The Federal Emergency Management Agency.

FIRM –Flood Insurance Rate Map.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) - The official map incorporated with this ordinance, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

Floodplain or Flood-Prone Area - Any land area susceptible to being inundated by water from any source. See "flood or flooding."

Floodproofing - Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway, Regulatory - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation more than a designated height.

Highest Adjacent Grade - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure - Any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(i) by an approved state program as determined by the Secretary of the Interior, or

(ii) directly by the Secretary of the Interior in states without approved programs.

Lowest Floor - *The lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.*

Manufactured Home - *A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.*

Manufactured Home Park or Subdivision - *A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.*

Mean Sea Level - *The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's FIRM are referenced.*

New Construction - *For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.*

Recreational Vehicle (RV) - *A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.*

Special Flood Hazard Area - *See "Area of Special Flood Hazard."*

Start Of Construction - *Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site presite built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of*

accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

Structure (for Floodplain Management Purposes) - A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement - Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Violation - The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

ARTICLE XVI. AQUIFER PROTECTION OVERLAY DISTRICT

➤ *Insert a new Section 175-84.1 Definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-84.1. Definitions.

The following definitions apply in this overlay district:

Aquifer. *A geologic formation, group of formations or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies. Aquifer includes both bedrock aquifers and stratified drift aquifers.*

Aquifer Recharge Area. *The area in which water is absorbed that eventually reaches the zone of saturation in one or more aquifers.*

Leachable Wastes. *Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes, that can leach contaminants into the groundwater or surface water resources.*

ARTICLE XVII. DURHAM HISTORIC OVERLAY DISTRICT

➤ *Create a new Section 175-90.1 Definitions with new definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-90.1 Definitions. The following definitions apply within the Historic Overlay District:

Contributing Structure. *A property or structure in the Historic Overlay District that is part of Durham’s heritage and contributes to the district’s sense of time, place and historical development by virtue of its age, historical use, location, design, setting, materials, workmanship, aesthetics, or association, as determined by the Historic District Commission.*

Exterior Architectural Appearance. *The architectural character, general composition, and arrangement of the exterior of the structure, including the kind, color, and texture of the building materials and type and character of windows, doors, light fixtures, signs, and appurtenant elements.*

Noncontributing Structure. *A property or structure which, due to its recent vintage, incompatible design, or incompatible alterations would not be considered to contribute to that character or quality of the Historic Overlay District that the Town seeks to preserve.*

Structure. *Anything that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.*

ARTICLE XVIII. PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT.

➤ *Add new Section 175-100.1 Definitions, as follows:*

[The definitions below are not being changed, only relocated.]

175-100.1. Definitions.

The following terms apply to personal wireless service facilities.

Alternative Tower Structure - Innovative siting structures that include artificial trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna - The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.

Antenna Array - A collection of antennas attached to a mount to send and receive radio signals.

Average Tree Canopy Height - An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area, such as the area delineated in Section 175-103.A.4.

Camouflaged - A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

Carrier - A company that provides personal wireless services, also sometimes referred to as a provider.

Co-location - The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Concealment - The enclosure of a personal wireless service facility within a natural or human-made feature resulting in the facility being not visible from the outside or being part of the feature enclosing it.

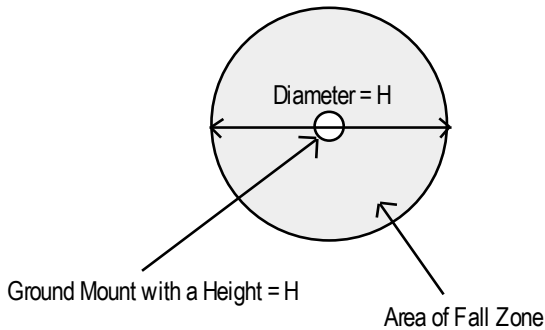
Disguise - Changing the appearance of a Personal Wireless Service Facility to appear to be something it is not.

Environmental Assessment (EA) - A document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

Equipment Shelter - An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Fall Zone - The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal the height of the facility, including any antennas or other appurtenances, as set forth in Figure II-1. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Figure XVIII-1



Guyed Tower - A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height - The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

Lattice Tower - A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.

Mast - A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole - A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel, concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount - The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. *Roof-mounted. Mounted on the roof of a building.*
- B. *Side-mounted. Mounted on the side of a building.*
- C. *Ground-mounted. Mounted on the ground.*
- D. *Structure-mounted. Mounted on a structure other than a building.*

Personal Wireless Service Facility – Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment. Specific definitions pertinent to Personal Wireless Service Facilities follow.

Personal Wireless Services - The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

Radio Frequency (RF) Engineer - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Radio Frequency Radiation (RFR) - The emissions from personal wireless service facilities.

Security Barrier - *A wall, fence, or berm that restricts an area from unauthorized entry or trespass.*

Separation - *distance between one carrier's array of antennas and another carrier's array.*

- *Change the label for the figure in Section 175-104 A. 7. from “Figure XVIII” To “Figure XVIII-2*

ARTICLE XX.1 STANDARDS FOR AGRICULTURAL USES.

- *Add a new Section 175-109.2 Definitions as follows (and renumber the current section 175-109.2 to 175-109.3):*

[The definitions below are not being changed, only relocated.]

175-109.2 Definitions. The following definitions apply to this article:

AGRICULTURE – Including but not limited to all uses, accessory uses, structures, functions, and events as defined in RSA 21:34-a - Farm, Agriculture, Farming, as amended. (See the Table of Uses and Article XX.1 for specific standards and restrictions.)

Accessory Uses. *The following are considered accessory uses to an allowed agricultural use:*

- 1. The storage, use of, and spreading of soil amendments, as defined in this section.*
- 2. The use and application of agricultural chemicals pursuant to state requirements.*
- 3. The preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market of any products and materials from the farm.*
- 4. The transportation of farm workers.*
- 5. The marketing and selling at wholesale or retail of any products from the farm, on-site and off-site, where not otherwise prohibited or regulated.*
- 6. Irrigation of growing crops from private water supplies or public water supplies.*
- 7. The use of dogs or other livestock guard animals for herding, working, and guarding livestock.*
- 8. The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.*

9. *A farmstand situated on farm land owned by the operator of the farmstand provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms owned by the operator of the farmstand. Items not produced on the farm or farms owned by the operator are limited to agriculture-related products, specialty foods, gift items, crafts, and items reflecting agriculture and rural America.*
10. *Use of new technologies recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and appropriate agencies of the United States Department of Agriculture.*
11. *Agritourism, as defined in this section.*

Agricultural Sales, Commercial. Sale of items specifically including agriculture-related products, trees, specialty foods, gift items, crafts, and items reflecting agriculture and rural America. (This use need not be located on a farm property, in contrast to Farmstand, Accessory, below.)

Agritourism. Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, and active involvement in the activity of the farm.

Animal Feedlot. A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock.

Aquaculture. The commercial raising, harvesting, and sale of fish and other aquaculture products.

Aquaculture – Accessory Use. The noncommercial raising and harvesting of fish and other aquaculture products for personal consumption.

Bees, Keeping of. The raising of bees and cultivation and sale of bee products.

Bees, Keeping of - Accessory Use. The raising and breeding of bees for noncommercial purposes, other than incidental sales of bee products produced on the premises, in conjunction with a residence.

Best Management Practices For Agriculture (BMPs) – Those practices and procedures described in the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed and periodically updated by the New Hampshire Department of Agriculture, Markets, and Food, as revised. BMPs also include other practices and procedures recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and the United States Department of Agriculture. Other documents providing guidance for agricultural practices and procedures endorsed by the Durham Agricultural Commission as appropriate references for best management practices are also deemed BMPs.

[Reference: <http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>]

Chickens and Turkeys, Keeping of - Accessory Use. *The breeding and raising of chickens and turkeys for noncommercial purposes in conjunction with a residence. (Note that Poultry, keeping of as a principal use is not restricted to chickens and turkeys.)*

Crop Cultivation. *The cultivation, conservation, and tillage of the soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, viticultural, and horticultural crops and any other plant including greenhouse and high-tunnel crops and tree products and any other plant that can be legally grown and harvested extensively for profit or subsistence.*

Farm or Farming. *Any land, buildings, or structures on or in which agriculture and farming activities are conducted, including the residence(s) of owners, occupants, and employees located on the subject land. This includes all farm outbuildings and any other structures used in the farm operations. An operation may be deemed a commercial farm where at least \$10,000 of agricultural products is produced and sold in a year.*

Farmers' Market. *An event or series of events at which two or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale include, but are not limited to, products of agriculture, as defined in RSA 21:34-a. A farmers' market does not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.*

Farmstand, Accessory. *A farmstand as defined under Accessory Uses, above. (Contrast to Agricultural Sales, Commercial, above.)*

Forestry. *The production, cultivation, growing, harvesting, and sale of any trees or nursery stock.*

Fur-bearing Animals, Keeping of. *The raising, breeding, and sale of domesticated strains of fur-bearing animals, such as mink, ermine, and chinchilla.*

Goats and Sheep, Keeping of. *The raising, breeding, and sale of goats and sheep.*

Goats and Sheep, Keeping of – Accessory Use. *The raising and breeding of goats and sheep for noncommercial purposes in conjunction with a residence.*

Horses, Keeping of. *The commercial breeding, boarding, raising, training, riding instruction, and selling of horses, mules, donkeys, and other equidae.*

Horses, Keeping of - Accessory Use. *The noncommercial breeding, boarding, raising, and riding of horses, mules, donkeys, and other equidae.*

Livestock - Large, Keeping of. *The raising, breeding, or sale of beef and dairy cattle, steer, oxen, domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).*

Livestock – Large, Keeping of – Accessory Use. *The raising and breeding of large livestock, specifically including the animals listed above, for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.*

Poultry, Keeping of. *The raising, breeding, and sale of poultry, including chickens, turkeys, ducks, geese, and gamebirds. (Note that Chickens and Turkeys, keeping of – Accessory Use is restricted to only those two types of poultry.)*

Rabbits, Keeping of. *The raising, breeding and sale of rabbits.*

Rabbits, Keeping of – Accessory Use. *The raising and breeding of rabbits for noncommercial purposes in conjunction with a residence.*

Soil Amendments. *Including commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.*

Swine, Keeping of. *The raising, breeding, or sale of swine and swine products.*

Swine, Keeping of – Accessory Use. *The raising and breeding of swine for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.*

ARTICLE XXIII. SIGNS AND COMMUNICATIONS DEVICES

- *Change the name of this Article from “Article XXIII. Signs and Communications Devices” to “Article XXIII. Signs.” wherever the name of this article appears in the Zoning Ordinance.*
- *Insert a new Section 175-119.1 Definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-119.1 Definitions.

Accessory Sign - *Any sign relating to a business on the premises on which the sign is located.*

Flashing Sign - *Any sign that moves, flashes, contains traveling lights, or gives the impression of any movement or flashing.*

Freestanding Sign - *Any sign which is not a part of or attached to any building but is located elsewhere on a lot.*

Neon Sign - *Any light sign using exposed neon tubes for illumination or display.*

Projecting Sign - Any sign which is attached to a building or other structure and extends more than twelve (12) inches beyond the line of the said building or structure or beyond the surface of that portion of the building or structure to which it is attached.

Pole Sign - A type of freestanding sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.

Reader Board - A sign that is flush mounted, does not exceed three (3) square feet in size and provides a fixed location for the advertisement of daily specials.

Roof Sign - Any sign erected upon or over the roof of any building.

Sandwich Board Sign - A portable sign with an A-frame shape intended to be placed in a front yard or on a public sidewalk.

Sign - Any exterior or exterior-oriented structure, or part thereof, or device attached thereto, or other outdoor surface including billboards or any combination of one or more of the foregoing containing any word, letter, symbol, drawing, model, banner, flag, picture or design, or any device used for visual communication which identifies or calls attention to any premises, person, product activity, or business, directing the subject thereof to the attention of the public.

Snipe Sign - Any sign of a non-permanent nature or construction attached to trees, poles, posts or sides of buildings or structures.

Temporary Sign - Any sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard or wallboard or other light materials, with or without frames, intended to be displayed for a short period of time only.

PASSED AND ADOPTED this _____ day of _____ by a majority vote of the Durham Town Council with ___ affirmative votes, ___ negative votes, and ___ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk/Tax Collector



TOWN OF DURHAM

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AGENDA ITEM: **#11C**

DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE
#2025-02 AMENDING CHAPTER 175, "ZONING," ARTICLE XVII,
"DURHAM HISTORIC OVERLAY DISTRICT," SECTION 175-94,
"PURVIEW OF THE BOARD."

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

The Historic District Commission voted to request this amendment on October 10, 2024. It was presented to the Planning Board which then held a public hearing for the change on December 11. Following the hearing the board voted to formally initiate the amendment. The amendment involves: 1) establishing a procedure for the review of tree removal; and 2) eliminating review of benches, other types of seating, and tables.

Tree removal. The Historic District Commission has purview over the removal or destruction of any healthy tree in the Historic District with a diameter of 12 inches or more. The Durham Tree Warden is the appropriate person to determine whether or not a tree is healthy. The Tree Warden is customarily the Director of Public Works. The current tree warden is a certified arborist so that is helpful. In the event that the tree warden is not an arborist (as was the case with the prior tree warden), they would seek assistance in making a determination, when needed.

The procedure for review needs to be clarified. If the tree warden determines that a tree is "not healthy," then arguably removal of that tree is not subject to review by the Historic District Commission. However, there is no reference to the tree warden in the provision regarding tree removal, so one might argue that their "determination" does not rule.

Currently, except in very obvious situations, the opinion and recommendation of the tree warden has been requested, and then an application has been presented to the Commission for a decision. If the tree warden is the best person to make the determination, then it should not be necessary to also present an application to the Commission once such a determination is made. The proposed ordinance spells out a revised procedure accordingly.

Benches and tables. The Historic District Commission has purview over the installation of structures in the Historic District. Structure is defined as follows. In the proposed amendment for Definitions, this definition would be relocated to the article on the Historic District but the language would not change.

STRUCTURE – (For Historic Overlay District purposes) Anything within the Historic Overlay District that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.

Recently, an individual sought to install a bench in the Town Landing Park (where the HDC does have purview). Because the bench would be permanently attached to the ground it was considered a “structure.” The HDC reviewed and approved the bench but questioned the value of its reviewing such a minor item. The HDC decided it would be appropriate to remove review of benches, other types of seating, and tables, as the impact of such elements is not significant.

Entirety of current purview. The information below lists from the current Zoning Ordinance which items the Historic District Commission reviews and those that are exempt from review.

175-94. Purview of Board.

A. ***Activity Within the Historic District Overlay District Subject to Review.*** Approval of the HDC is required for the following activity within the HOD:

1. Modifications to the exterior architectural appearance (See definition) of the property including erection of new structures (See definition for “Structure” in the Historic District), additions to existing structures, alterations to existing structures, demolition of existing structures or portions of existing structures, or relocation of any structure into, out of, or within the HOD.
2. Installation, modification, or removal of exterior freestanding lighting structures.
3. Erection, alteration, or removal of any kind of wall, barrier or fence.

4. Installation of pavement or other impervious or semi-impervious material on the ground or establishment of any parking or driveway area.
5. Installation of any new roofing material where the material, form, or color will change significantly. However, where failure to repair a roof will result in immediate damage to the structure the Code Enforcement Officer may grant approval for emergency temporary repairs and immediately notify the HDC, which will then review the work at its next opportunity (unless exempt under Section B., below)
6. Signage, except for temporary signs (See Subsection 175-126.C), such as political, contractor, and real estate signs. See section on Signage, below, for special provisions.
7. Removal or destruction of any healthy tree with a diameter at breast height (4-1/2 feet above grade) of 12" or more.
8. Any substantial change in topography (cuts and fills).
9. Building and ground-mounted utilities and roof penetrations that would be visible from a public street within the Historic District at any time of the year.

B. ***Activity Exempt from Review.*** No review or Certificate of Approval shall be required for the following:

1. Work performed on the interior of buildings.
2. General maintenance and in-kind repair which does not involve any significant change in materials or the outward appearance of the structure or site. Alternative materials may be used for general maintenance when the material and its application have been preapproved by the HDC. See the Historic District Regulations for acceptable alternative materials.
3. Installation or removal of any plant materials (except for tree removal as described in 175-94.A.7).
4. Any of the following items if they are situated on a building or on a lot such that no part of them will be visible from a public street within the Historic District at any time of the year: antenna, wall siding, a change in roofing material, outbuilding not exceeding 400 square feet, deck, swimming pool, fence, patio, wall, barbecue pit, satellite dish, solar panels, roof vents and other structures situated on or penetrating through the roof, septic tank, leach field, well, any other utilities, and other yard appurtenances.
5. Construction, alteration, or demolition of any structure or element of a structure

that the Code Enforcement Officer certifies as being the only means of avoiding an immediate health or safety emergency prior to the HDC convening a meeting to consider the matter. In such an instance, the Code Enforcement Officer shall immediately notify the Commission of his or her certification. The HDC may review such work at its first opportunity if it deems appropriate.

6. Painting or staining a building when the color will not change.
7. Colors of paint and stain applied to a single-family house.
8. Flagpoles, mailboxes, window air conditioning units in a single-family residence or accessory apartment, utility poles.
9. Installation of any new roofing material where the material, form, or color will not change significantly.
10. Items which are not explicitly addressed in this subsection but for which the proposed work clearly:
 - a. would not have any significant adverse impact;
 - b. would be barely noticeable, if at all, from any public street; and
 - c. would be consistent with the intent of this article, all as reasonably determined by the Planning Department in consultation with the HDC chair.

At their meeting on January 6, 2025 the Town Council scheduled a Public Hearing on this item for their meeting of Monday, February 17, 2025. A Public Hearing notice was published in *Foster's/Seacoast Online* on Friday, January 31, 2025. The notice was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

LEGAL AUTHORITY:

RSA 674:16, RSA 674:46-a, and RSA 675:2 and Section 175-14 of the Durham Zoning Ordinance

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby OPEN the Public Hearing on Ordinance #2025-02 Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board."

MOTION #2:

The Durham Town Council does hereby CLOSE the Public Hearing on Ordinance #2025-02 Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board."

MOTION #3:

The Durham Town Council does hereby ADOPT Ordinance #2025-02 Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board."

OR

MOTION #4:

The Durham Town Council does hereby REMAND Ordinance #2025-02 Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board" back to the Planning Board for substantive changes.

ORDINANCE #2025-02 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175, "ZONING," ARTICLE XVII, "DURHAM HISTORIC OVERLAY DISTRICT," SECTION 175-94, "PURVIEW OF THE BOARD,"

WHEREAS, RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance authorize the Town Council to amend the Zoning Ordinance and specify the process for doing so; and

WHEREAS, the Historic District Commission recognized it necessary to specify a procedure for the review of applications to remove trees with a diameter of 12 inches or greater incorporating the expertise of the Durham Tree Warden, and thought it appropriate to eliminate review of benches, other seating areas, and tables from its purview since installation of those items does not have a significant impact on the Historic District; and

WHEREAS, the Historic District Commission voted on October 10, 2024 to recommend these appropriate changes to the Historic District section of the Zoning Ordinance; and

WHEREAS, the Planning Board reviewed the proposed amendment from the Historic District Ordinance on November 13 and held a public hearing on the proposal on December 11; and

WHEREAS, following the public hearing and deliberations, the Planning Board voted unanimously to formally initiate the amendment after making a few minor adjustments; and

WHEREAS, the Town Council determined that the proposed changes to the Zoning Ordinance are appropriate and beneficial; and

WHEREAS, the Town Council conducted a duly noticed Public Hearing on February 17, 2025;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire, hereby adopt **Ordinance #2025-02** and does hereby amend the following sections of the Code.

- ❖ Add the following text *shown in this manner* to **Section 175-94. Purview of Board under Article XVII - Durham Historic Overlay District.**

175-94. Purview of Board.

A. *Activity Within the Historic District Overlay District Subject to Review.* Approval of the HDC is required for the following activity within the HOD:

7. Removal or destruction of any healthy tree with a diameter at breast height (4-1/2 feet above grade) of 12" or more, *per the following procedure:*

a. When a request or an inquiry is made, the Durham Tree Warden will consult with the Durham Town Planner, visit the site, and prepare a report or commentary as appropriate. The Durham Tree Warden may authorize the removal of the subject tree, without review by the Historic District Commission, if the Durham Tree Warden finds that the tree is: i) unhealthy or diseased such that a substantial recovery is unlikely; ii) dead; iii) invasive or toxic; or iv) a realistic threat to persons or property. In such case the Durham Town Planner will notify the commission at their first opportunity.

b. If the Durham Tree Warden does not authorize the removal of the subject tree then the property owner may apply to the Historic District Commission for removal.

B. *Activity Exempt from Review.* No review of Certificate of Appropriateness shall be required for the following:

11. Benches, other types of seating, and tables.

PASSED AND ADOPTED this ____ day of _____ by a majority vote of the Durham Town Council with ___ affirmative votes, ___ negative votes, and ___ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



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AGENDA ITEM: **#13**

DATE: February 17, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: APPROVE THE TOWN COUNCIL MEETING MINUTES FOR
FEBRUARY 3, 2025 NON-PUBLIC MEETING AND FEBRUARY 3, 2025
REGULAR MEETING.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the two meetings held on February 3, 2025. Please call or email Karen Edwards with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

LEGAL AUTHORITY:

RSA 91-A:2 (II) specifies what must be contained in minutes of public meetings:

"Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of anybody or agency, or any subordinate body thereof, without exception."

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby approve the Town Council meeting minutes for February 3, 2025 Non-Public Meeting. (as presented/as amended).

MOTION #2:

The Durham Town Council does hereby approve the Town Council meeting minutes for February 3, 2025 Regular Meeting. (as presented/as amended).