

# **ZONING AND LAND USE ORDINANCE**



**TOWN OF NEW DURHAM, NH**

**ADOPTED MARCH 8, 1971  
LATEST AMENDMENT MARCH 10, 2015**

## Adoption of Amendments Certification

- Public Hearing held January 6, 2015
- Placed on Ballot by Planning Board on January 6, 2015
- Amendments Approved at Town Meeting March 10, 2015
- Certified March 17, 2015
- Filed with Town Clerk March 19, 2015
- Effective March 10, 2015

Attest:

\_\_\_\_\_ Chair, New Durham Planning Board

\_\_\_\_\_ Member

\_\_\_\_\_ Member

\_\_\_\_\_ Member

\_\_\_\_\_ Ex-Officio Selectman Member

\_\_\_\_\_ Town Clerk

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## **I. Authority/Purpose**

This ordinance is enacted pursuant to the authority conferred by New Hampshire Revised Statutes Annotated (RSA) 674:16-21.

The general purpose of this ordinance is to promote the health, safety, convenience, and general welfare of the community by regulating the use of the land in the Town of New Durham. The town seeks to secure safety from fires, panic and other dangers; to promote health and the general welfare; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision for transportation, water, sewage, schools, parks and other public requirements; and to assure proper use of New Durham's Natural Resources.

## **II. Administrative Provisions:**

### **A. Conflicting Provisions**

Whenever the provisions of this Ordinance conflict with those of a valid statute, ordinance, or regulation, the provision that imposes the greater restriction or higher standard shall prevail. (See RSA 676:14)

### **B. Saving Clause**

If any section, provision, portion, clause, or phrase of this Ordinance shall be held invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair or invalidate any other section, provision, position, clause, or phrase of this Ordinance.

### **C. Enforcement**

1. Code Enforcement Officer
  - a. The Selectmen shall appoint a Code Enforcement Officer who may be the same person as the Building Inspector, for a term of one (1) year.
  - b. It shall be the duty of the Code Enforcement Officer to enforce the provisions of the Ordinance.
  - c. The Code Enforcement Officer will on request make copies of his/her administrative decisions available to the Planning Board, and will attend the PB meetings as requested.
2. Prosecution: Prosecution, if necessary, shall be handled by the Chief of Police of New Durham on evidence supplied by the Code Enforcement Officer.
3. Penalties: Every person, persons, firm or corporation legally determined to have violated any of the provisions of this Ordinance, shall be fined in an amount consistent with the provisions of RSA 676:17 for each day following conviction, that the violation may exist, plus costs in connection with settling the issue. All fines go to the Town of New Durham.
4. Zoning Board of Adjustment
  - a. The Zoning Board of Adjustment (ZBA) consists of five (5) members appointed by the Board of Selectmen as required per RSA 673:1, IV.
  - b. With respect to this Ordinance, the ZBA shall review and decide on appeals from Administrative Decisions, applications for Special Exceptions, applications for Equitable Waiver of Dimensional Requirements, and on applications for Variances. To authorize a variance the ZBA must find that:
    1. The variance will not be contrary to the public interest,
    2. The spirit of the ordinance is observed,
    3. Substantial justice is done,
    4. The values of surrounding properties are not diminished,
    5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

**D. Effective Date**

This ordinance shall take effect upon the date which it is voted upon and passed.

**E. Amendments**

This Ordinance may be amended as set forth in RSA 675:3. Amendment requires a majority vote by ballot at a Town Meeting.

**F. Documents**

The following documents are herein adopted as part of this Ordinance:

<b>Table 1: Documents Table</b>		
<b>Document</b>	<b>Date</b>	<b>Comment/Location</b>
Official Zoning Map of the Town of New Durham	2013	Land Use Office
Land Use Suitability Map	1979	Land Use Office; Article VII, Special Exceptions
Soils Map (Soil Survey of Strafford County, NH; Potential Unconsolidated Deposit Aquifers by Soils, Strafford County)	1973 1986	Soil Survey referenced in Article XII, Aquifer Protection Overlay; located in Land Use Office, and Article XIII, Wetland Conservation Overlay
Conservation Focus Area District for the Town of New Durham	2008	District Boundaries Article X, Conservation Focus Area District
New Durham Natural Resource Inventory Manual	2011	Land Use Office and town website
New Hampshire Stormwater Manual, NH-DES	2008	(three volume set, as amended); Article XV, Water Quality Protection: for required Best Management Practices
Innovative Land Use Planning Techniques: a Handbook for Sustainable Development, NH-DES	2008	Article XVII, Stormwater Management and Erosion Control: for required Best Management Practices

### **G. Guidance in Use of this Zoning and Land Use Ordinance**

To determine whether provisions of this Ordinance apply to a proposed development or activity, it is necessary to identify the geographic location as well as the proposed use. The Town of New Durham consists of two zoning districts which are the “underlying zoning districts” which form the base of land use regulations. Additional requirements/protections based on geographic or environmental factors are established with “overlay district areas” which are applicable within their respective boundaries. Refer to the Official Zoning Map of the Town of New Durham for property location and district. Several Articles of this Ordinance may apply to a given proposal. The zoning districts and overlay district areas are described within this Ordinance.

Use regulations apply to the proposed use; requirements, restrictions and prohibitions may vary depending on location. Refer to the General Use Regulations and specific zoning district and/or overlay districts articles for the subject property.

Other regulations should also be considered and may be applicable for a particular proposal including but not limited to the Town of New Durham Subdivision Regulations, Site Plan Review Regulations, Stormwater Management and Erosion Control Regulations, and various Town Ordinances.

### III. Definitions

For the purpose of this Ordinance, certain terms are defined as provided in this article:

Access: A path or route which may be lawfully used, such as but not limited to utility maintenance or a driveway. Any new access will comply with the Town of New Durham Driveway Regulations.

Adult Use Facility: A variety of adult, sexually-oriented businesses and services, including, but not limited to: movie theaters, bookstores, video stores, adult-only hotels/motels, peep shows, and erotic dancing establishments.

Article: Any section of this written Ordinance document that starts with a roman numeral.

Assessed property. With respect to an impact fee, means any land or buildings comprising new development that is subject to an impact fee assessment under the Impact Fee Article.

Best Management Practice (BMP): Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in storm water volumes and flows, reduce point source and non-point source pollution, and promote storm water quality and protection of the environment.

Bogs: Consist of peat or mulch deposit of significant depths and are characterized by a distinct group of trees and plants that are adapted to the bog's highly acidic conditions. The water in a bog is undrained glacial depressions. Typical plants are but not limited to:

Atlantic White Cedar, Black Spruce, Bladderworts, Bog or Buckbean, Bog-rosemary, Cotton Grass, High-bush Blueberry, Leatherleaf, Pale Laurel, Pitcher-plants, Rhodora, Sedge, Sheep Laurel, Sphagnum Moss, Sundews, and Sweet Gale.

Buildable lot: A lot of record that at the time of its creation met the requirements for a buildable lot and which meets the current regulations for subsurface waste disposal and potable water.

Building: A structure that provides or can provide housing, shelter, or enclosure for people, animals, vehicles, equipment, or other personal property and which is fully enclosed and protected from the weather with one or more floors (whether finished or not), walls on all sides, and a roof. (See also Structure).

Building, Accessory: Any building that does not contain a dwelling unit(s).

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Building Envelope: An area designated on each lot of a subdivision plan as the area where a dwelling and other buildings may be constructed.

Camper: A mobile dwelling under thirty (30) feet in overall length, in which the dwelling unit is mounted on, or built into, a motor vehicle.

Camping Area, Campground: A seasonal, for profit or not for profit commercial enterprise, where temporary shelter may be found for individuals or groups in tents, motorized campers, trailers or camp buildings. It may or may not provide organized on site or off site activities or meals.

Camping, Organized Youth Camp: A for profit or not for profit seasonal commercial activity that provides camping experience for underage individuals. It frequently provides within or outside the camp sports, crafts, water activities, etc. The campers are supervised by adults. State licensure and inspection may be required. Accommodations may be in tents, trailers or camp buildings known as cabins.

Collection: With respect to an impact fee, means the actual delivery of payment of the fee to the Town of New Durham on behalf of an assessed property.

Commercial Docking Facility: A multi-slip docking facility in which slips are rented to boat owners or to persons renting boats for short or long term use. This definition also applies to multi-slip facilities in which slips are rented or assigned to persons other than the owners of the property to which the docks are attached.

Commercial Use: A business that has direct individual consumer contact for sales or service as its principle concern. Also see “Commercial Use, Minor.”

Commercial Use, Minor: A commercial use the impact of which is less than or equal to that of a single family home. For this definition only, a single family home impact consists of daily use of water, waste generation and sewage disposal for a three (3) bedroom residential single family dwelling.

Conditional Use Permit: An innovative land use control authorized for Planning Board use per RSA 674:21.

Condominium Docking Facility: A multi-boat slip docking facility in which each boat slip is individually owned.

Conservation Easement: A legal agreement between a landowner and a land trust, government agency or other qualified party that permanently limits uses of land to protect conservation values. It allows the property owner to continue to own and use the land and to sell it or pass it on to heirs. The easement may permit or restrict public access, allow or

disallow recreational use and development, and have other similar provisions. Easements are recorded and linked to the title of land, regardless of its subsequent ownership.

Curve Number (CN): A numerical representation used to describe the storm water runoff potential for a given drainage area based on land use, soil group, and soil moisture, derived as specified by the U.S. Department of Agriculture, Natural Resources Conservation Service (USDA/NRCS).

Designated Open Space: A portion of a subdivision site held in common interest by the subdivision's property owners, Town, or recognized conservation organization that is permanently set aside for public or private use and shall not be developed.

Developable Land: The area of the lot minus that portion classified as "very poorly drained" and/or "poorly drained", or having a slope exceeding 15% as found in the Strafford County Soil Survey, dated March 1973 as amended, and/or as further delineated by qualified person(s) after a site inspection.

Developer: A person who undertakes or proposes to undertake land disturbance activities.

Development: Any use or activity that results in alteration of the land surface, the removal of vegetation, or alters the natural drainage of a site and/or the construction of buildings and/or structures.

Drainage Area: A geographic area within which storm water, sediments, or dissolved materials drain to a particular receiving water body or to a particular point along a receiving water body.

Duplex: A two family dwelling joined by a common wall, which is not an accessory dwelling to a single family dwelling, and which has two separate entrances.

Dwelling: A building with one or more sections or rooms for residential use, including but not limited to eating, cooking, sleeping, sanitary facilities and living areas.

Dwelling Unit: A separated area within a dwelling to be used by one person or family with its own and separate bath, toilet and kitchen facilities.

Dwelling Unit, Accessory: A single accessory dwelling unit related to a single family dwelling, not separately identified in the Registry of Deeds which provides facilities for cooking, eating and sleeping.

Easement: The authorization by a property owner for the use by another and for a specific purpose of any designated part of his/her property.

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Erosion: The wearing away or alteration of the ground surface as a result of the movement of wind, water, ice, gravity and/or land disturbance activities.

Flood Hazard Area: The area(s) in the Town of New Durham designated as subject to flooding on the Flood Insurance Rate Map of the Federal Emergency Management Agency.

Footprint: The area of land surface that lies directly beneath the limits of the exterior walls of a building. For purposes of determining impermeable area only, the footprint is the vertical projection of an impervious surface unto the ground that includes the protrusion of the roof over the walls, (i.e. the drip line).

Front Yard: Space extending from the front of a house or porch to within twenty five (25) feet of the center of the traveled portion of any public road.

Frontage: The distance along which land borders a street, highway, lake, pond, or stream.

Home Produce and Products: Everything of an agricultural nature, grown or otherwise carried on the property of the owner or resident

Homeowners' Association: A private corporation, association or other legal entity organized in accordance with state law and established by the developer for the benefit and enjoyment of its members.

Impact Fee: A fee or assessment imposed upon new development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to: water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public libraries; and public recreation facilities, not including public open space.

Impact Fee Assessment: A notification issued to an assessed property by the Town of New Durham, its Planning Board, or its Code Enforcement Officer stating the amount of an impact fee due and the conditions or schedule for its collection.

Impact Study: As defined in the Site Plan Review Regulations, Application and Site Plan Requirements Section, includes descriptions of impacts caused by the development or

project. An impact assessment should address the following except that the Planning Board may waive certain data requirements where considered appropriate:

- (a) attendance at public schools;
- (b) increase in vehicular traffic;
- (c) changes in local population;
- (d) increases in municipal costs;
- (e) public safety;
- (f) changes in tax revenue;
- (g) changes in surface drainage;
- (h) increased consumption of groundwater;
- (i) increased refuse disposal;
- (j) pollution of water or air;
- (k) blocking of views;
- (l) location of utilities
- (m) land erosion or loss of tree cover;
- (n) load on public utilities or future demand for them;
- (o) disturbance to other aspects of the natural ecology;
- (p) harmony with the character of surrounding development; and,

Impermeable Surface: Driveways, parking areas, walkways, or other features introduced to a property that are constructed of materials such as concrete, asphalt or stone that essentially prevent the passage of water through them to the soil substrate below.

Impervious Cover: A structure or land surface which prevents or retards the passage of water through the soil or earth substrate below, including but not limited to pavement, roofs, roadways, and compacted soils, that has a Curve Number of 98 or greater.

Impervious Cover, Disconnected: Impervious cover that does not contribute directly to storm water runoff from a site, but directs storm water runoff to on-site pervious cover to infiltrate into the soil or be filtered by overland flow so that the net rate and volume of storm water runoff from the disconnected impervious cover is not greater than the rate and volume from undisturbed cover of equal area.

Impervious Cover, Effective: The portion of a site that is directly connected to the storm drain network.

Impervious Cover, Total: The sum of Disconnected Impervious Cover plus Effective Impervious Cover.

Impervious Surface: A surface, which prevents or retards the passage of water through them to the soil or earth substrate below.

Industrial Use: A business that processes raw materials, warehouses products, fabricates products from component parts, services industrial businesses, or wholesales products as its principle concern.

Infiltration: The process by which water enters the soil profile (seeps into the soil).

Land Disturbance or Land Disturbing Activity: Refers to any exposed soil, sand, gravel, or rocks resulting from activities such as clearing of trees or vegetation, grading, blasting, and excavation.

Lot (Dwelling Unit Lot): A parcel of land capable of being used for a residential dwelling unit that is of sufficient size to meet the minimum requirements for use, building coverage, and area.

Lot of Record: A parcel, the plat or description of which has been recorded at the County Registry of Deeds.

Marina: A commercial docking facility with additional services and facilities such as (but not limited to) sales of boats, marine equipment and supplies, repairs, and dry storage.

Marshes: Treeless wetlands dominated by soft-stemmed herbaceous plants. The surface of the marsh is covered with water year around, though seasonal fluctuations in water depth are expected. Marshes range from the wet meadows variety to deep marshes that can be covered with several feet of water. The vegetative community is made up of some or all of the following:

Arums, Bladderworts, Burreeds, Cattails, Duckweeds, Eelgrass, Frogs bits, Horsetails, Rushes, Sedges, Smartweed, Cotton and wool grasses, Leatherleaf, Pickerel Weeds, Sweet gale, Water lilies, Water milfoil.

Mobile Home: A structure commonly known as a “house trailer”, with at least five hundred (500) square feet of floor space, equipped with sanitary, bath and toilet facilities, suitable for use as a dwelling for extended periods of time when properly connected to external water, sewage and electrical facilities, and so constructed that the basic structure may be towed, but not driven, over the road on its own undercarriage.

Mobile Home Park: Lot of record upon which two or more mobile homes are parked and occupied for dwelling or sleeping purposes, regardless of whether or not a charge is made for such accommodations.

Multi-family development: On one lot, a dwelling or dwellings containing from 3 to 6 dwelling units.

New development: A land use change that may include one or more of the following:

- a) The construction of any new dwelling unit;
- b) The expansion of any existing seasonal or year round dwelling that results in a cumulative increase in living area;
- c) Changes to an existing structure that would result in a net increase in the number of dwelling units or in the number of bedrooms within existing dwelling units;
- d) Construction of a new non-residential building, or any net increase in the gross floor area of an existing non-residential building;

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- e) The conversion of an existing seasonal dwelling unit to a year round home through winterization or other improvements that enable the structure to be occupied on a year-round basis, where the conversion could result in a measurable increase in the demand on capital facilities subject to impact fee assessment;
- f) The conversion of an existing use to another use that is determined by the Planning Board to result in a measurable net increase in the demand on the public capital facilities that are the subject of impact fee assessment; however,

New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

Non-conforming Building or Structure: A building or structure in whole or in part, which does not conform to the use and regulations of the District in which the building or structure is located, or the Zoning Ordinance.

Non-conforming Lot: An existing lot of record that does not meet the current regulations or zoning ordinance.

Non-conforming Use: A use which does not conform to the use regulations of the District in which such lot exists.

Non-Point Source Pollution: Pollution that is generated by various land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes such as rainfall, storm water runoff, or groundwater seepage rather than direct discharges.

Normal High Water: The limit of flowage rights in a regulated water body. In an unregulated water body normal high water is the high water level experienced in an average year. For lakes where dams are owned by the New Hampshire Water Resources Board, information on the level of flowage rights is available from the Board.

Off-site improvements: Those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the Planning Board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development.

Open Space Conservation Area: A portion of the Open Space that shall be maintained in a natural and undisturbed condition.

Open Space Other Use Area: The area of Open Space remaining after Conservation Area Open Space has been designated. The area may be used for passive or active recreation or stormwater management.

Owner: A person with a legal or equitable interest in a property.

Pervious Cover: A land surface with a high capacity for infiltration.

Public Open Space: A parcel of land owned by the Town of New Durham essentially unimproved and available to the public only for passive recreational uses such as walking, sitting, picnicking, table games, natural resource conservation, and similar uses. Town parks which do not include “public recreation facilities” constitute public open space within the meaning of the Impact Fee Article.

Public Recreation Facilities: The land and facilities owned or operated by the Town of New Durham, other than public open space, which are designed for the conduct of recreational sports or other active leisure time uses of an organized nature, which include equipment or substantial improvements to the land to provide active indoor or outdoor public recreation programs. Public recreation facilities may also include those portions of public open space that are improved with developed trail systems for uses such as hiking or cross country skiing.

Recharge: The amount of water from precipitation that infiltrates into the ground and is not evaporated or transpired.

Recreational Vehicle/Recreational Trailer: A vehicle which is a) built on a single chassis; b) 500 square feet or less when measured at the largest horizontal projection; c) designed to be self-propelled or permanently towable; and d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, travel or seasonal use.

Redevelopment: The reuse of a site or structure with existing man-made land alterations. A site is considered a redevelopment if it has thirty-five per cent or more of existing impervious surface, calculated by dividing the total existing impervious surface by the size of the parcel and converting it to a percentage.

Reference Line: The ordinary high water mark indicated by the line on the shore or edge of a lake, pond, and in the case of a stream or river running parallel to its main stem, 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. For artificially impounded fresh water bodies with established flowage rights, the Reference

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Line shall be the limit of the flowage rights, and for water bodies without established flowage rights, the Reference Line shall be determined at full pond by the elevation of the spillway crest. For all other wetlands including marshes, bogs, swamps and vernal pools the reference line shall be the line delineated as the wetland edge by a Certified Wetland Scientist in concurrence with the New Durham Conservation Commission.

Regulated Substance: Those substances as listed in the Code of Federal Regulations: Title 40 Protection of the Environment, Part 302.4 Designation of Hazardous Substances, and NH Department of Environment Substances as defined in Env-Ws 421.03(f) or successor rules.

Right-of-Way: A path or route which may lawfully be used by persons or entities to whom such use has been deeded.

Riparian buffer: An upland area that is contiguous with and runs parallel to a stream and that may or may not consist of natural vegetation including, trees, shrubs, and groundcover.

Road Frontage Property Line: That portion of a lot bordering on a highway, street, or right-of-way.

Runoff: That part of precipitation, snow melt, or irrigation water that flows across the land surface into surface waters, wetlands or onto adjacent lands.

School District: The Governor Wentworth Regional School District (or other regional or cooperative school district, of which the Town of New Durham is participating as a member municipality), or any successor school district of which New Durham is a member.

Seasonal or Intermittent Stream: Any stream shown as a seasonal or intermittent stream on a USGS 7.5 minute series topographic map. Also any other stream that flows for sufficient time to develop and maintain a defined channel with some sign of regular scouring and/or deposition of soil material, but which might not flow during dry portions of the year.

Sediment: Solid material—mineral or organic—that is in suspension, is being transported, or has been moved from its site of origin by air, water, or gravity as a product of erosion.

Sedimentation: The process by which soil or earth material is transported from the land surface as a result of accelerated erosion or disturbing activity and deposited elsewhere, such as in a floodplain, stream, wetland or other water body.

Semi-Pervious Materials: A surface or material that allows some passage of water through them to the soil or earth substrate below. It is recommended that applicants provide a perviousness rating from the manufacturer for such materials

Sensitive Area: For the purpose of Stormwater Management, includes lakes, ponds, perennial and intermittent streams, vernal pools, wetlands, and highly erodible soils.

Setback: The distance between a building or structure and the nearest property line, water body, wetland or sewage disposal system as measured from its footprint.

Sheet flow: Runoff that flows or is directed to flow across a relatively broad area at a depth of less than 0.1 feet for a maximum distance of 100 feet in such a way that velocity is minimized.

Sign: Consists of letters and/or symbols used to advertise or promote the interests of any person or entity when the same is placed in view of the general public.

Site: The lot or lots upon which development is to occur or has occurred.

Site Disturbance: Any activity that alters the land surface or removes the vegetative cover from the land surface.

Slope: Degree of deviation of a surface from the horizontal, measured as a numerical ratio, as a percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second number is the vertical distance (rise), as 2:1. A 2:1 slope is a 50% slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90° slope being vertical (maximum) and a 45° slope being a 1:1 slope.

Soil Based Lot Sizing Standards: The lot size is calculated by dividing the given area of each soil type by the area required per the Town's soil based lot sizing standards for the applicable soil type.

Steep Slope: Slopes having a grade of 15% or greater based on two-foot contours analyzed over ten-foot vertical intervals prior to cut and fill as measured perpendicularly to the slope.

Stormwater: Water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other drainage facility.

Stormwater Management: The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes and/or peak flow discharge rates.

Stormwater Runoff: Water flow on the surface of the ground or in storm sewers, resulting from precipitation.

Structure: A combination of materials that form a construction for use, occupancy, or ornamentation with a fixed permanent location on, above, or below the surface of land or water, exclusive of fences. (Note: All buildings are structures but structures are also gazebos, driveways, septic tanks, docks, etc. See also Building.)

Structure, Accessory: Any structure on the same lot and subordinate to the primary structure.

Structure, Water related: Any structure that must be near, over or in the water in order to function, e.g: boat ramps, walkways, boat houses, docks, four foot open wooden walkway to water, etc.

Subdivision: The division of the lot, tract, or parcel of land into two 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, relates to the process of subdividing or to the land or territory subdivided.

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

b. The grant 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 unmanned structure which is less than 200 square feet, shall not be construed as a subdivision, and shall not be deemed to create any new division of land for any other purpose.

Subdivision, Major: Any subdivision not classified as a minor subdivision.

Subdivision, Minor: A subdivision of land into not more than three lots with no potential for re-subdivision; that fronts on an existing street and requires no new streets, utilities, or other municipal improvements.

Subdivision, Open Space Conservation: A subdivision that sites houses on smaller dwelling unit lots with a density that will exceed the density permitted in conventional subdivision. Additional land that would have been allocated to individual lots is converted to common shared open space for the subdivision residents and/or the community. It is protected in perpetuity. Typically, road frontage, lot size, setbacks, and other traditional subdivision regulations are redefined to permit the developer to preserve ecologically sensitive areas, historical sites or other unique characteristics of the land being subdivided.

Subsurface Wastewater Treatment (Sewage Disposal) System (Individual): Any on-site sewage disposal or treatment system that receives sewage or other wastes, or both. For the purposes of this regulation, this means all components of the system, including the leach field.

Surface Waters: Those portions of waters of the state as defined by RSA 482-A:4, which have standing water or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds.

Swamps: Areas where the water table is at or near the ground surface for a significant part of the year. The vegetation community consists mostly of trees and woody shrubs, such as:

Alders, Arrow-wood, Atlantic White Cedar, Buttonbush, Common Elder, Highbush Blueberry, Rhodora, Sphagnum Moss, Spicebush, Black Ash, Black Gum, Black Spruce, Marsh Rose, Poison Sumac, Red Maple, Sweet Pepperbush, Tamarack (Larch), Willows, Winterberry.

Trailer: A structure having less than five hundred (500) square feet of floor space, suitable for short term use as a dwelling or sleeping place with or without sanitary, bath or toilet facilities, so constructed that it may be towed, but not driven, over the road on its own undercarriage.

Undisturbed Cover: A natural land surface whose permeability has not been altered by human activity

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

Vegetative Cover: Grasses, shrubs, trees, and other vegetation, which holds and stabilizes soils or the land surface.

Vernal Pool: A confined depression in which water is present for at least two continuous months in the spring and/or summer; and which becomes completely dry during a portion of the year (or other documentation proving the absence of adult fish populations) and which contains physical evidence that it is utilized by at least one species of which requires a vernal pool for a portion of breeding (e.g. Spotted Salamander, Jefferson Salamander, Wood Frog, Fairy Shrimp).

Water Course: The seasonal high water extent of a lake, pond, for swamp.

Water Resource: All or a portion of a pond, wetland, lake, perennial stream, seasonal or intermittent stream, river or vernal pool.

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Waterfront Access: Frontage on or access to a lake, pond or river.

Wellhead Protection Area: The surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. (RSA 485: 1.a. XVIII.)

Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

## **IV. Establishment of Districts**

For the purpose of this ordinance, the Town of New Durham is zoned as two districts as shown on the official Zoning Map of the Town of New Durham.

### **A. Residential/Recreational/Agricultural District**

As described in Article VIII and covers all land not included in the Town Center Mixed Use District.

### **B. Town Center Mixed Use District**

As described and geographically delineated in Article IX.

### **C. Additional Overlay Districts**

In addition to the above underlying zoning districts, the Town of New Durham has several conservation overlay districts which have guidelines that supplement or change the requirements of the underlying geographical district. Each overlay district area with associated requirements is described in a separate Article of this Zoning and Land Use Ordinance.

## V. Dimensional Requirements for Town of New Durham

### A. Applicability

Provisions of this section apply throughout the Town of New Durham unless otherwise addressed specifically in the overlay districts articles of this Zoning and Land Use Ordinance, other local regulation, or state or federal regulation.

### B. Dimensional Requirements

The following dimensional requirements shall apply to land within the Town of New Durham.

1. Except as noted below, all lots shall have frontage on a Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.
2. Lot Area Requirements
  - a. See Table 3 for Dimensional Requirements of lot sizes in the Zoning Districts.
  - b. Lot Requirement: Each lot proposed for residential use shall have at least one area suitable for a home site and a nearby area suitable for sewage disposal, with reasonable access to both.
  - c. Lot Area: Soil based lot sizing standards are used to determine lot area requirements based on the soil type. Minimum lot sizes for single and two family dwellings within all subdivisions shall meet the lot size requirements as specified in *Appendix A, Minimum Lot Size By Soil Type* either Table 1 or Table 2. Table 1: Minimum Lot Size by Soil Type is based on High Intensity Soil Sample (H.I.S.S.). Table 2: Minimum Lot Size by Soil type uses the U.S.D.A. Soil Survey.
    1. When using Table 1, tests for determining soil information shall be performed by a qualified soil scientist using on-site inspections.
    2. When using Table 2, soil information shall be determined by using the U.S.D.A. Soil Survey dated March 1973, or data generated by a qualified soil scientist.
    3. When more than one soil type is found on a lot, a weighted average of those soils occurring on the lot shall be used to determine the minimum lot size.
    4. The minimum lot size shall be sixty thousand (60,000) square feet.
    5. For every bedroom over four (4) in a proposed single family dwelling (including any accessory dwelling) or a two family dwelling, the minimum lot area shall be increased by one-fourth (1/4) of the original minimum lot size requirement.

- 6. Any lot with less square footage and/or width and/or depth than required under item (1), (2) or (3) above, which is a recorded lot may be built on for a single family dwelling and garage providing septic system approval is obtained and other Building and Zoning regulations are satisfied.

d. **Woodlots or Agricultural Lots**

Any lot may be used as a woodlot. Such a lot may be used for harvesting of timber or for agriculture. When a lot is used in this fashion, the lot is exempt from the frontage requirements specified in Table 2: Minimum Road Frontage Requirements below. A fifty (50) foot wide deeded right-of-way providing reasonable access will be considered adequate frontage and access for any such lot. Houses or camps may not be built on these lots. No dwellings are permitted on such lots, but campers and camp trailers may be present for a period no longer than 60 days when the land is in active use. Best management practices apply.

**C. Road Frontage**

The minimum road frontage on a road built to Town Standards and approved by the Planning Board shall be based on lot size and specified in Table 2.

<b>Table 2: Minimum Road Frontage Requirements</b>	
<b>Lot Size</b>	<b>Road Frontage</b>
80,000 sq. ft. or less	150 feet
From 80,000 sq. ft to 5 acres (217,800 sq ft)	200 feet
From 5 acres to 10 acres	250 feet
From 10 acres to 15 acres	300 feet
From 15 acres to 20 acres	350 feet
Over 20 acres	400 feet

**D. Setbacks**

No new building shall be less than twenty (20) feet from the road frontage property line of any road or fifteen (15) feet from the property line of an abutter.

**E. Flood Hazard Area and Water Body Setbacks**

No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river.

**F. Minimum Building Area**

Every dwelling unit to be used by a single family shall have a minimum ground floor area of five hundred (500) square feet, excluding garages and porches.

**G. Building Height**

Any dwelling or place of business on a conforming lot shall be 35 feet maximum from the average parent lot grade surrounding the building to the highest point of the roof.

<b>Table 3: Dimensional Requirements: Underlying Zoning Districts</b>	
<b>Requirement</b>	<b>Dimension</b>
Lot Area	Soil Based Lot Sizing; -See Appendix A
Lot Frontage	Based on Lot Size; See Table 2
Minimum Front Setback	Twenty (20) Feet
Minimum Side Setback	Fifteen (15) Feet
Waterbody/ Flood Hazard Area Setback	Seventy-five (75) Feet
Minimum Building Area: Single Family Dwelling Unit	Five Hundred (500) Square Feet
Maximum Building Height	Thirty-five (35) Feet
Minimum Setback from Leach field: Public Water Body	One Hundred Twenty-Five (125) Feet
Minimum Setback from Leach field: Any Well or Dwelling	Seventy-Five (75) Feet

## **VI. General Provisions/Use Regulations for Town of New Durham**

### **A. Applicability**

Provisions of this section apply throughout the Town of New Durham unless otherwise addressed specifically in the overlay districts articles of this Zoning and Land Use Ordinance, other local regulation, or state or federal regulation.

### **B. Allowed Uses in Overlay Districts**

Uses that are not otherwise provided for within specific Overlay District Articles and which are permitted in the underlying zoning district either by right or conditional use permit or special exception are permitted in the overlay district areas provided that all relevant requirements are met.

### **C. General Requirements**

1. No owner or occupant of the land shall permit any building or structure thereon to be left in a badly damaged, dilapidated, or unusable condition, whether caused by fire, the elements, or from any other cause. Property so damaged, dilapidated, or unusable as determined by the Fire Chief or Code Enforcement Officer shall be repaired or rebuilt, or the ruins shall be removed to ground level within one (1) year of the time of determination.
2. If clay, sod loam, sand, or gravel for either private use or for sale is removed within one hundred (100) feet of a highway, the area will be re-graded to assure that the premises will be left in a safe, sightly condition and protected against erosion. Removal of 1000 cubic yards or more of clay, sod loam, sand, or gravel for either private use or for sale, will require compliance with the New Durham Excavation Regulations, and be in compliance with RSA 155-E as amended.
3. Sewage Disposal and Leach field Setbacks
  - a. (a) No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed:
    1. less than one hundred twenty five (125) feet from the edge of a public water body; or,
    2. less than seventy five (75) feet from any well, or from a dwelling other than to which it is appurtenant.
  - b. No part of a leach field shall be located less than:
    1. twenty (20) feet from a property line on a lot less than 80,000 square feet;
    2. less than thirty (30) feet from a property line on an eighty thousand (80,000) square feet to one hundred fifty thousand (150,000) square feet lot; or,
    3. less than forty (40) feet from a property line on a one hundred fifty thousand (150,000) square feet lot.

#### **D. No Wastewater to be Discharged**

No wastewater or sewage shall be permitted to run free into a public water body or be discharged in any way that may be offensive or detrimental to the health of others. All such waste shall be conveyed away underground through use of an accepted sanitary system or in such a way that it will not be offensive or detrimental the health.

#### **E. All Buildings Built According to NH-DES Standards**

All dwellings, places of business, and sanitary systems shall be constructed and maintained in accordance with standards set forth and enforced by the New Hampshire Department of Health & Human Services, New Hampshire Department of Environmental Services by the Water Supply and Pollution Control Commission, and by the Town of New Durham.

#### **F. Public Utilities**

All Public Utilities and facilities such as sewer, gas, electrical and water systems shall be located, elevated if necessary, and constructed to minimize or eliminate flood damage.

#### **G. Flood Hazard Areas**

Land lying wholly within the Flood Hazard Area shall not be platted for subdivision. Land subject to flooding may be included in lots proposed for residential, commercial, or industrial use, but such land will not be counted or credited toward the minimum lot area requirements of Article V. B. 2 Lot Area Requirements, above. The portion of the lot not subject to flooding shall consist of not more than two (2) separate areas. When considering subdivisions including land subject to flooding, the Planning Board shall require that such areas be specifically designated on the subdivision plans as not suitable for building sites except for water-related structures such as boathouses, marinas, and boat repair facilities. See the New Durham Floodplain Development Ordinance for the standards and procedures required when developing on lands designated as special flood hazard areas by the Federal Emergency Management Agency.

#### **H. Cemeteries**

Existing cemeteries shall be left undisturbed by surrounding residential, commercial, or industrial development. There shall be no construction of any new buildings or new wells within seventy-five (75) feet of any cemetery. There shall be no new roads within twenty-five (25) feet of the right of way of any existing cemetery. Access to any cemetery shall be allowed to lineal descendants and/or authorized maintenance personnel. New or proposed cemeteries shall comply with RSA 289:2(a): "Location of Burial Sites."

#### **I. Design Review Required**

1. Design Review is required prior to formal application for all proposed site plans and for all proposed subdivisions, other than minor subdivisions.

2. Minor subdivisions will be required to have a Design Review prior to formal application under the following conditions:
  - a. Expansion of an existing roadway,
  - b. Environmental Factors:
    1. Development of land containing prime agricultural soils or soils of statewide importance as mapped by the Strafford County Soil Survey (1973 or as amended),
    2. The parcel contains land that falls within the shorefront conservation area, or abuts or includes a river or perennial stream,
    3. Slopes greater than 15% cover more than 20% of the parcel.
    4. The parcel contains documented rare, threatened or endangered species or contains habitat likely to support such species known to occur within the vicinity as determined by an environmental consultant.
    5. The parcel overlays a stratified drift aquifer as identified via United States Geological Survey aquifer mapping.
    6. The parcel falls within the Conservation Focus Area overlay district.
  - c. Other Factors
    1. The parcel contains historic, cultural or archeological sites.
    2. The parcel could potentially impact critical View sheds (i.e. hillsides and ridgelines).

#### **J. Outdoor Storage of Used or Dismantled Items and Materials**

1. Purpose: The outdoor storage or display of used, discarded, dismantled or salvaged items and materials, and machinery junk, though not necessarily meeting the definition of “junkyard” under RSA 236:112 can have just as substantial an adverse effect on surrounding properties, the environment and the public welfare as a junkyard. The purpose of this section, therefore, is the prevention and abatement of public nuisances.
2. Regulation: Notwithstanding any other section of this Ordinance, no land in any district shall be used for the keeping, storing, display or accumulation, in any unroofed area for more than 48 hours, of any used, second-hand, discarded, dismantled or salvaged items or materials or machinery junk of such volume as to constitute an eyesore and/or a public nuisance, except in conformity with the following:
  - a. All such items and materials shall be completely and opaquely screened from view from abutting parcels and from public ways.
  - b. The use of the premises is in compliance with all other New Durham Zoning Land Use Ordinances and Regulations.
3. The outdoor storage of machinery junk, or display of used, discarded, dismantled, or salvaged items and materials located or maintained in violation of the provisions of this ordinance is hereby declared a nuisance.
4. Applicability: This section shall not apply to the keeping, storage, or display of motor vehicles, or trailers, OHRVs, motorized heavy equipment, or watercraft, so

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long as such items are in good working condition and not considered as end-of-life junk; nor shall it apply to Solid Waste Disposal facilities permitted by the State nor to temporary yard sales. This section shall not apply to accumulations, at a construction site, of debris from the construction, provided such debris is removed within 60 days of the completion of construction. This section shall not be construed to excuse compliance with any other provision of this ordinance or of State Law, including but not limited to laws regulating junkyards, and solid waste.

5. Enforcement: The local governing body or other enforcement official of the Town may impose civil penalties for each day upon any person whose land is deemed a nuisance pursuant to this Ordinance, until such time as the nuisance is removed or abated to the satisfaction of the governing board or is in compliance with the provisions of this Ordinance. The building inspector or other local official with the authority to enforce the provisions of this section may commence an action to collect the civil penalties in the district court.
6. Imposition of civil penalties under this section shall not relieve the owner of any requirement to comply with the provisions of this Ordinance, nor shall it preclude the imposition of further actions or remedies under this Ordinance. The proceeds from the assessment of civil penalties under this Ordinance shall be for the use of the Town.

## VII. Special Exceptions

### A. Uses Permitted by Special Exception

The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance.

See Table 4 for a summary of uses and conditions which require a Special Exception. Refer to Article XII: Aquifer Protection Overlay District and the Article XIII: Wetland Conservation Overlay District for special exceptions required in those areas.

<b>Table 4 Special Exceptions Summary</b>		
<b>Use</b>	<b>Area of Town</b>	<b>Article Reference</b>
Commercial Use (including Minor Commercial Use)	In areas designated “Most Suitable” or “Moderately Suitable for Urban Growth” on <i>Land Use Suitability Map</i> also see <i>Groundwater Favorability Map</i> .	VII.A.1. & VII.B.
Industrial Use	In areas designated “Most Suitable” or “Moderately Suitable for Urban Growth” on <i>Land Use Suitability Map</i> also see <i>Groundwater Favorability Map</i> .	VII.A.2. & VII.B.
Multi-Family Developments	Residential/Recreational/Agricultural District	VII.A.4. & VII.B. Conditionally permitted in Town Center Mixed Use District
Mobile Home Parks	In areas designated “Moderately Suitable for Urban Growth” on <i>Land Use Suitability Map</i> .	VII.A.5. & VII.B.
Camping Areas and Campgrounds	In areas designated “Slightly Suitable for Urban Growth” and “Slightly Suitable for Resource Protection” on <i>Land Use Suitability Map</i> .	VII.A.6. & VII.B.
Utilities	All Zoning Districts	VII.A.7. & VII.B.

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1. Commercial Use

- a. Commercial uses of land in the Town of New Durham may be permitted as a Special Exception in the areas designated “Most Suitable or Moderately Suitable for Urban Growth” as shown on the Land Use Suitability Map.
  1. Where land so designated lies in a groundwater favorability area as shown on the Ground Water Favorability Map, or in an aquifer immediate to the vicinity of such an area, an impact assessment will be required in the Site Plan Review and in a Special Exception hearing by the ZBA. The assessment shall prove that the impact of the proposal will be that of a Minor Commercial Use.
- b. Commercial use may also be permitted in areas of “Slight Suitability for Urban Growth.”
  1. In land so designated, an impact assessment shall be required in addition to Site Plan Review. The assessment shall prove to the ZBA that the impact of the proposal will be that of a Minor Commercial Use.
- c. Commercial Use of land in the Town of New Durham will not be allowed in Flood Plain areas, where such commercial use would make large tracts (more than two (2) acres per twenty (20) acres of surrounding farmland) of Prime and/or Unique Farmland unfit for subsequent agricultural use.
- d. Minor Commercial Use may also be permitted as a Special Exception in all areas of the Town of New Durham where single-family dwellings or duplexes are permitted provided an impact assessment proves to the ZBA the commercial use would have an impact equal to or less than a single-family dwelling.

2. Industrial Use

- a. Industrial use of land in the Town of New Durham is permitted only as a Special Exception in areas “Most Suitable for Urban Growth” as shown on the Land Use Suitability Map,
  1. Where land so designated lies in a groundwater favorability area, as identified on the Ground Water Favorability Map, or in an aquifer or in the immediate vicinity of such an area, an impact assessment will be required for proposed industrial use of the land. The assessment will be in sufficient depth so that the ZBA can decide whether the development of the land for industrial will or will not have a detrimental effect on neighboring properties.
- b. Industrial use of land in the Town of New Durham will not be allowed:
  1. in Flood Plain areas,
  2. in areas of existing major residential/recreational use and,
  3. where such industrial use would make large tracts (more than two (2) acres per twenty (20) acres of surrounding farmland) of Prime and/or Unique Farmland unfit for subsequent agricultural use.

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- c. Acreage required will be determined by: type of industry, size of industrial complex, parking space required, sewage requirements, soil types of land, setbacks required, and any other requirements, soil types of land, setbacks required, and any other requirements or regulations as contained in this ordinance, in the New Durham Site Plan Review Regulations, in the New Durham Subdivision Regulations, or specified by the Zoning Board of Adjustment.
3. Multi-family developments
- a. Purpose: As an alternative to single and two-family dwellings, providing for multi-family uses following strict adherence to basic provisions of this ordinance. The purpose for making such a development possible is to provide affordable housing for the Town of New Durham.
  - b. Objectives: It is the objective of this ordinance to:
    - 1. Provide affordable housing that is consistent with the characteristics of the Town of New Durham,
    - 2. Promote the preservation of wetlands and steep slopes for the benefit of the community at large.
    - 3. Provide a wider range of housing options.
  - c. General Requirements:
    - 1. A multi-family development as defined in this Ordinance shall be allowed by Special Exception by the ZBA except in the Town Center where a Conditional Use Permit is required. In making its determination, the Zoning Board of Appeals has the authority to restrict or deny such development whenever road access, distance from the fire station, terrain, and other factors may cause such development to be contrary to public welfare and safety.
    - 2. Lot Size: The lot size for a multi-family development is determined by using the current required lot size for residential development and increasing the lot size by 50%.
    - 3. Density Control: The maximum number of dwelling units per multi-family development is six (6); the maximum number of bedrooms per development is twelve (12). The Planning Board, or the ZBA when granting a Special Exception, shall limit the number of multifamily dwellings in near proximity to each other when necessary to maintain the rural and small town character of New Durham.
    - 4. Setbacks: All multi-family development for three dwelling units shall have a minimum of a 30-foot setback from any structure to any public right-of-way or property line. All multi-family development for four or more dwelling units shall have a minimum of a 40-foot setback from any structure to any public right-of-way or property line. This area shall be properly landscaped.

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5. Location: Unless prohibited by an overlay District, multi-family development may be located anywhere residential development is allowed.
  6. Parking: Off street parking areas are required. Vehicle parking spaces shall be provided in sufficient numbers to meet the needs of the occupants and their guests without interference with the normal traffic movement nor access by emergency vehicles. Such facility shall be provided at a rate of at least two (2) vehicle spaces per dwelling unit. Parking areas will be located on the side of the building away from the road frontage if at all possible.
  7. Septic and Water: All units must have septic systems delineated on the final plat showing percolation rates meeting state and local standards. The location of water sources must also be shown on the final plat.
4. Mobile Home Parks
- a. Mobile Home Parks may be established by Special Exception in areas designated “Moderately Suitable for Urban Growth” as identified on the Land Use Suitability Map. Mobile Home Parks shall not be established in any other areas of New Durham.
  - b. Proposed and operating home parks shall abide by the New Durham Mobile Home Ordinance, as well as all other applicable Town or State Regulations.
5. Camping Areas and Campgrounds
- a. Use of land as a camping area or campground (including youth camps) may be allowed as a Special Exception in areas designated “Slightly Suitable for Urban Growth” and in areas designated “Slightly Suitable for Resource Protection” on the Land Use Suitability Map.
  - b. Camping areas and campgrounds (including youth camps) are not allowed:
    1. in areas where adequate fire protection cannot be provided in the form of fire trails and in the form of vehicles equipped to carry fire-fighting equipment and personnel to all camping sites. Said fire trails or the access paths within the camping area shall not disturb the natural terrain of the land in the form of filling or grading;
    2. in areas where two thirds (2/3) of the abutting land owners object;
    3. in areas of major residential use;
    4. in prime wetland areas; or,
    5. in such areas where such use would make more than five (5) acres of Prime and /or Unique Farmland unfit for subsequent agricultural use.
  - c. The minimum size of a campsite will be two thousand five hundred (2,500) square feet. The density of use will not exceed ten (10) campsites within each acre of land plotted with equal width and depth in the camping area. Each campsite will have a buffer zone of ten (10) feet between itself and the adjoining campsites.
  - d. Camping areas and campgrounds will comply with all local and State sanitation laws.

- e. Campsites may be used only as recreational camping sites and may not be the site for any year round living. No tent, camper, or trailer may remain in the camping area for more than six (6) months in any one year.
  - f. Dwellings and Other Structures:
    - 1. One permanent dwelling will be allowed for the use of the owner and/or his employees provided that frontage, access, and sewage requirements are complied with as in Article VI.
    - 2. In addition, one structure with kitchen facilities, bath facilities, toilet facilities and a large recreational/dining hall for campers and sleeping quarters for seasonal help will be allowed as long as there are adequate provisions for sewage.
  - g. Permanent buildings to be used as sleeping quarters only (and not as dwellings) may be constructed within the following guidelines:
    - 1. Buildings must be separated by at least fifty (50) feet.
    - 2. Buildings must be no larger than one story with five hundred (500) square feet of floor space.
    - 3. No plumbing or kitchen facilities are allowed in the building.
    - 4. No more than three (3) buildings within each acre of land measured with equal depth and width will be allowed.
  - h. A separate building for an infirmary will be allowed.
6. Utilities
- a. Public utilities such as high-tension lines, transmission lines, substations, radio or T. V. transmission facilities, and the like, may be permitted by Special Exception in all areas of the Town of New Durham, except shorefront land suitable for residential use.

### **B. General Requirements for Commercial or Industrial Uses Permitted by Special Exception**

- 1. A special exception shall be permitted only as expressly authorized by this Ordinance.
- 2. Prohibitions: No Business, Commercial, Industrial or other use shall be permitted which could cause any undue hazard to health, safety or diminish the property value of other land owners, or which is offensive to the public because of noise, vibration, excessive traffic, unsanitary condition, noxious odor, smoke or other similar reason.
- 3. Sufficient acreage shall be included to allow the following setbacks:
  - a. No new building shall be less than twenty (20) feet from the road frontage property line of any road. No parking lot shall be less than fifty (50) feet from the road frontage property line of any road.
  - b. Side and rear setbacks shall be not less than fifty (50) feet from a building or parking lot to the lot line.
  - c. Minor Commercial Uses shall be subject to the same setbacks as single-family homes.

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4. Sufficient off street parking to allow three hundred (300) square feet for each three (3) anticipated patrons or employees on the premises at the same time. In the case of service establishments, one car shall be deemed to contain four (4) patrons.

## VIII. Residential-Recreational-Agricultural District

### A. District Boundaries/Applicability

The Residential/Recreational/Agricultural District includes all land within the Town of New Durham not included in the Town Center Mixed Use District.

### B. Permitted Uses-Residential/Recreational/Agricultural District

A building may be erected, altered, or used, and a lot may be used or occupied only for the following purposes and in accordance with the following provisions:

1. Single Family Dwelling Unit: Single family dwellings with garages and accessory structures.
2. Accessory Dwelling Unit: An accessory dwelling unit shall:
  - a. Be contiguous to a structure such as a primary dwelling, garage, or barn;
  - b. Have a shared common wall, floor, or ceiling with the existing structure;
  - c. Consist of not more than seven hundred fifty (750) square feet of living area and total area not to exceed eight hundred fifty (850) square feet;
  - d. The area of the accessory dwelling unit may not exceed the area of the structure to which it is attached;
  - e. Only one accessory dwelling unit shall be permitted per lot;
  - f. No additional driveway shall be permitted for an accessory dwelling unit;
  - g. Accessory dwelling units are limited to one (1) bedroom, except that 2 bedrooms may be allowed by Special Exception;
  - h. Accessory dwelling units may not be built in conjunction with a two family or multifamily dwelling, and
  - i. Accessory dwelling units shall be designed to complement the style of the parent structure.
3. Two Family Dwellings: Two family dwellings, unless prohibited by an overlying district(s) are permitted throughout the District. The Code Enforcement Officer has the authority to restrict or deny such development whenever road access, distance from fire station, terrain and other environmental factors may be detrimental to public health and safety.
4. Home Produce and Products: Home Produce and Products may be exposed for sale in this district.
5. Farm and Garden Activities: Farm and garden activities are permitted, except that no person or persons shall be allowed to raise or propagate pigs within two hundred fifty (250) feet of another residence without the written approval of the owner of that residence.
6. Other Uses: The provisions of this Article shall apply to the use or occupation of any lot or site for any purpose not expressly covered in other Articles of this Ordinance, whether or not the user or occupier has exclusive right to use the lot or site, and/or owns an undivided interest in a larger tract of which the site is a part.

**C. Use Regulations: Residential/Recreational/Agricultural District**

1. Mobile Homes: Unless restricted by an Overlay district, a singly sited mobile home may be located within the District covered by this Article, provided that the owner or occupant complies with requirements contained herein pertaining to permanent dwellings.
2. Home Occupations: Home Occupations are permitted following the approval of a Home Occupation Application submitted to the Planning Board or its Designee. See the New Durham Home Occupation Ordinance for a list of the standards required for this use.
3. Multi-family developments: Multi-family developments are allowed in this district by Special Exception, as described in Article VII.A.4.

## **IX. Town Center Mixed Use Zoning District**

### **A. Authority/Purpose**

1. Authority:
  - a. The authority for this ordinance is found in New Hampshire Revised Statutes Annotated 674:16 (Grant of Power) and 674:21 (Innovative Land Use Controls).
  - b. The administration of the provisions of this ordinance shall be vested with the Planning Board.
2. Purpose: The purpose of the Town Center District is to provide for a compact mixed-use development pattern consisting of residential, commercial, civic, and institutional uses and public open space. The district will be developed in a traditional New Hampshire styled town center, pedestrian oriented, planned unit development environment that minimizes vehicular traffic conflicts and promotes walking, park and recreation areas, and street-scape beautification with appropriate landscaping and lighting. Within the Town Center District, desired uses will include a mixture of existing and new single-unit and multi-unit housing including affordable and elderly housing; retail shopping and service businesses; second story housing options or office space; restaurants, business and professional offices, public spaces, cultural, institutional uses, small inns and bed and breakfast establishments, agriculture and forestry.

### **B. District Boundaries/Applicability**

1. The Town Center Mixed Use Zoning District is comprised of all lots or portions of lots within 1,200 feet from the centerline of the road with frontage on and access to the following:
  - a. Main Street from the Merrymeeting River to the intersection of Depot Road, continues on to
  - b. Old Bay Road to the intersection of Tash Road, as marked by Tash Road on the south side of Old Bay Road, and the east end of Map 249, Lot 9 on the north side of Old Bay Road, turns on to
  - c. Tash Road to the intersection of Route 11, turns west on to
  - d. The south side only of Route 11 to the intersection of Depot Road, and returns on to
  - e. Depot Road to the intersection of Main Street and Old Bay Road.
2. The Town Center Mixed Use Zoning District is contained within Tax Maps 249, 250, 251, 252 and 257.
3. The Town Center Mixed Use Zoning District is delineated on the Town Zoning Map available at the Town Hall.

**C. Dimensional Requirements**

1. The following dimensional requirements represent minimum requirements within the Town Center Mixed Use District. (See Table 5) Dimensional requirements in Article V apply unless specifically identified in this Article. At the discretion of the Planning Board, these requirements may be increased to meet the purpose and intent of this Article.

<b>Table 5 Dimensional Requirements for Town Center/Mixed Use District</b>	
<b>Dimensional Standard</b>	<b>Town Center/Mixed Use</b>
Lot Dimensions	No lot shall exceed a ratio of 4:1 width to length, or length to width as defined in regulation.
Front Yard Setback	25 feet from the road right of way
Side and Rear Setbacks	15 feet for any building or structure
Maximum Footprint of an individual Building or Structure	6,000 feet

2. **Parking Areas, Sidewalks and Walkways:** All development constructed under the provisions of this Article shall comply with the required parking standards contained in the Site Plan Review and/or Subdivision Regulations of the Town of New Durham. However, the following additional requirements of this ordinance will apply within the Town Center District.
  - a. Parking areas shall be preferably located on the side and/or rear of a building, lot, or development. Parking in the side yard shall be limited to 30 percent of the total parking required for the use. Parking shall comply with the accessibility requirements of the Americans' With Disabilities Act, as amended.
  - b. Parking areas adjacent to Main Street, Old Bay Road, Depot Road or any other public road will be set back a minimum of 25 feet from the edge of any road right of way.
  - c. Design of parking areas shall incorporate low impact development (LID) methods for management of storm water. LID stormwater management methods and best management practices (BMPs) shall be selected from guidance manuals developed by the Center for Watershed Protection (Maryland) (available at [www.cwp.org](http://www.cwp.org)) or similar documents and manuals.
  - d. Design of parking areas and associated landscaping shall conform to the standards outlined in the New Durham Site Plan Review Regulations.

- e. All landscaped areas shall receive regular maintenance and upkeep including weed removal and irrigation, and shall be maintained for the duration of the permitted use. Severely injured, diseased, or dead plant materials must be replaced in kind in perpetuity. If the ownership of a site is conveyed to a new owner, the new owner shall be responsible for maintaining all landscaping in accordance with the Landscape Plan approved as part of the development approval or permit.
- f. Sidewalks and walkways should connect to or provide easements for connections to adjacent businesses, existing sidewalks, and/or adjacent properties.
- g. Sidewalks and walkways may be composed of a variety of materials, including brick, stone, stamped or textured concrete, porous pavement. Sidewalks shall comply with the accessibility requirements of the Americans With Disabilities Act, as amended.
- h. Sidewalk design may incorporate a meandering layout to encourage creative landscaping and incorporation of public spaces.

#### **D. Permitted Uses**

- 1. Uses in Town Center/Mixed Use District
  - a. Mixed Use Development: Development may include two or more permitted uses within the Town Center District on one parcel or within a site plan or subdivision proposal. Uses may be combined within a single structure or multiple structures on one parcel or as part of a site plan or subdivision proposal.
  - b. Non-Residential Uses: New or expanded development or redevelopment may combine any non-residential uses otherwise permitted in this district as part of a mixed-use development. This means that multiple primary structures and uses may be combined on a single lot provided the proposed development can comply with all other local and state requirements.
  - c. Residential Uses: Residential structures including single-unit dwellings, two-unit dwellings, and multi-unit dwellings are permitted within a mixed-use development and as a strictly residential use within the district.
- 2. Uses Permitted by Right
  - a. See Table 6 for specific uses that are permitted by right in the Town Center Mixed Use District. These uses shall be subject to all applicable local, state, and federal regulations, and in compliance with any conditions imposed as specified in the approval issued by and on site plans approved by the Planning Board.
  - b. Agriculture and Forestry as defined by RSA 21:34-a within the Town Center Mixed Use District is an allowable use not requiring a permit. However, All such activities must still comply with Article IX. I (1) below regarding the creation of a public nuisance.

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<b>Table 6 Uses Allowed in Town Center Mixed Use District</b>		
Use or Activity	Permitted by Right	Conditional Use Permit Required*
Assisted Living Facility (not to exceed 25 residents at any given time)	X	
Building Trade or Manufacture		X
Child Care Facility or Nursery, Kindergarten	X	
Commercial Recreational Facility	X	
General Retail and Business		X
Governmental Facility	X	
Grocery or Supermarket		X
Home Occupation	X	
Inn, Bed and Breakfast (10 Rooms or Less)	X	
Lumber Yard, Mill, Wood Storage and Sales		X
Machine and Appliance Repair		X
Medical Rehabilitation or Wellness Facility	X	
Medical or Dental Services or Office, Clinic, or Hospital	X	
Places of Worship, Cultural or Civic Facility	X	
Professional Business, Office or Services	X	
Residential Dwelling, Single Unit	X	
Residential Dwelling, Multi-Unit (Maximum of 6 Dwelling Units)		X
Residential Dwelling, Two-Unit (Duplex)	X	
Restaurant or Cafe	X	
Retail Printing, Copying, Document Processing		X
Salesroom and Storage of Associated Products		X
School or Educational Facility, Public or Private		X
Warehouse and Self Storage		X
* See Conditional Use Permit Process Section IX.G.		

## **E. Use Regulations**

1. Development Review: Notwithstanding the requirements of this Article, all multi-unit dwelling units and non-residential development shall comply with the Site Plan Regulations of the Town of New Durham. Notwithstanding the requirements of this Article, all subdivisions of land shall comply with the Subdivision Regulations of the Town of New Durham unless such requirements are otherwise specified in this Article.
2. Water Supply and Wastewater Treatment Systems: All water supply and wastewater treatment systems, whether for use as a single user system, a community system, or any other type of user or usage, shall be constructed and maintained in accordance with the standards established by the NH-DES.
3. Driveway Permit: Because Main Street from Old Bay Road to the Alton town line and Depot Road are state roads, a driveway permit from the New Hampshire Department of Transportation may be necessary for development along these roads.

## **F. Design Standards**

1. Declaration of Purpose: The Town of New Durham hereby finds the following relevant to design of the built environment of the community:
  - a. The community is surrounded by lakes, ponds and rural natural landscapes, which provide a unique visual appeal. The citizens of New Durham, through the Master Plan process, recognize that these settings comprise our landscape character and help to define our community.
  - b. New Durham's natural landscape is recognized as an important element of our community character. Public and private stewardship of these resources is fundamental to the well being of the community and to the well being of our citizens.
  - c. Non-residential development (such as "franchise architecture", monotonous buildings typical of "strip development" or "big box" retail buildings) could have a significant effect on the character and future of our community.
  - d. The management of future development can be guided to encourage building design that is functional, aesthetically pleasing, and compatible with the rural character of our community.
  - e. The landscape and built environment have evolved over time and will continue to evolve as the community grows. The regulation of design review must allow for flexibility, creativity, and innovation within the context of an articulated framework.
2. Procedures and Applicability
  - a. For purposes of assisting with the review of an Application for Site Plan Review for compliance with the Design Standards and Performance Criteria,

the Planning Board may secure the services of a Consulting Architect. The Planning Board may impose reasonable fees upon an applicant to cover its expenses associated with the use of a Consulting Architect.

- b. Planning Board approval of an Application for Site Plan Review shall be required prior to the issuance of a building permit for the following activities:
  1. New building construction to be used as a multi-unit dwelling or a non-residential use;
  2. Additions, alterations, renovation, rehabilitation, expansion or reconfiguration of an existing building(s) where the use is changed from a single-unit dwelling or two-unit dwelling to a multi-unit dwelling () or a non-residential use, and a change from a non-residential use to another non-residential use
3. Performance Criteria: The Performance Criteria contained in this section are intended to encourage building architecture that is complementary to the community. Each application represents unique circumstances, challenges, and opportunities that must be taken into account in both the design and design review processes. It is intended that the criteria be administered with flexibility and consistency in order to allow for responsive, creative, and innovative architectural designs. The criteria are not intended to dictate specific building styles, or to mandate historical preservation, restoration, or replication.

In order to approve an Application for Design Review, the Planning Board shall find that the application demonstrates substantial conformity with the following Performance Criteria:

- a. General Design Criteria
  1. The proposed building design is consistent with the purposes of the Design Standards; and
  2. The proposed building design demonstrates sensitivity towards and is complementary of the landscape and community character (as stated in the purpose section).
- b. Building Design Criteria
  1. Building Orientation: How a building is positioned or located on a site can complement or detract from the site and/or the architectural character of the surrounding area. The orientation of proposed buildings should take into consideration building setbacks, spacing between buildings and alignment of building(s) as evidenced in the development pattern of the surrounding area.
  2. Building Scale and Proportion: Building elevations, scale, massing, and the proportional relationship between structures can complement or detract from the architectural character of the surrounding area. The scale and proportion of proposed buildings should take into consideration the scale and proportion of buildings as evidenced in the development pattern of the surrounding area. Visual conflicts between properties should be minimized.

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3. Roofline: Rooflines can provide visual interest and help to reduce the mass of a building. Traditional roofline types such as gabled, hipped, and gambrel that are evidenced in New Hampshire's architectural heritage are strongly encouraged. Type, shape, pitch, and direction of roofs should be considered in the design. Flat roofs are strongly discouraged.
4. Massing: The physical bulk or mass of buildings, particularly larger or elongated ones, can either enhance or detract from the architectural character of the community. Structures should be carefully designed to break up their mass into smaller visual components providing human scale, variation, and depth.
5. Architectural Features and Details: Architectural features and details such as cornices, columns, corner trim, doorways, entrances, windows/trim, awnings, dormers, porches, etc., can provide or enhance visual interest, provide a pedestrian scale and help mitigate negative effects of building mass. Architectural features and details should be considered in every building design. Traditional features and details associated with New Hampshire's architectural heritage are strongly encouraged.
6. Materials and Texture: Exterior building materials and texture should be treated as significant design elements that help define the appearance of a structure and create visual interest. The use of traditional materials or manufactured materials that are consistent with New Hampshire's vernacular or indigenous architecture, or materials having the same visual effect, are strongly encouraged. Consideration should be given to the materials and textures used in original or historic construction.
7. Building Façade: Facades for new or renovated structures should provide visual interest from all visually accessible sides. Windows, doorways and architectural detailing and patterns should complement the building form and historical context. Facades should be designed to establish a complementary relationship with other site considerations such as pedestrian scale and orientation, signage, landscaping and lighting.
8. Building Renovation or Addition: Where an existing building has features that are consistent with the Performance Criteria, proposed renovations or additions should be designed to respect the proportions, patterns, detailing, materials, etc., of the original building. Where the existing building does not have features that are consistent with the Performance Criteria, the owner/ applicant is encouraged to upgrade the structure to meet the Performance Criteria.
9. Signs: Signs shall be designed to meet the needs of individual uses while complementing the building, the site, and its surroundings, and in compliance with the requirements of this Article. The design of building-mounted signs shall complement, not detract from the architectural features of the building. Signs shall be scaled to the architectural elements

that surround it. Consideration shall be given to sign form, color, lighting, and materials that are compatible with the building and its surroundings.

10. Gateways and Scenic Resources: Some landscape and architectural features in New Durham contribute to the landscape character of the community because of their visibility and scenic qualities. Many such properties and approaches act as gateways, providing first impressions and reinforcing New Durham's sense of place. Consideration shall be given towards complementing these resources through the careful siting of new buildings, and the application of the Performance Criteria.
11. Design Continuity: Each building design, from the simple to the complex, requires the coordination of multiple design elements such as architectural style, form, massing, materials, detailing, etc. The proposed building design shall demonstrate coordination of design elements and an overall design continuity.
12. Public Spaces: Site design should incorporate whenever possible public spaces into the landscape, including but not limited to walkways, open space areas, pocket parks, architectural details, benches, tables and other types of public gathering spaces.

#### **G. Uses Permitted by Conditional Use Permit**

1. Uses permitted by Conditional Use Permit are listed in Table 6 and shall comply with the procedures for application and criteria listed below and provided in the New Durham Subdivision Regulation Conditional Use permitting procedure.
2. Uses permitted in the Town Center Mixed Use District by issuance of a Conditional Use Permit by the Planning Board shall be in compliance with any conditions imposed in the Conditional Use Permit and recorded on site plans approved by the Planning Board. The Planning Board may issue a Conditional Use Permit upon finding that the following criteria have been met:
  - a. The building, structure, or use is specifically authorized under the terms of this ordinance.
  - b. If completed, the development in its proposed location and design will comply with all requirements of this Ordinance, and with specific conditions or standards established in the Conditional Use Permit.
  - c. The building, structure, or use will not materially endanger the public health or safety.
  - d. The building, structure, or use will not substantially de-value abutting property.
  - e. The building, structure, or use will be compatible with the neighborhood and with adjoining or abutting uses in the area in which it is to be located.
  - f. The building, structure, or use will not have a substantial adverse impact on roadway and transportation systems or pedestrian safety.
  - g. The building, structure, or use will not have a substantial adverse impact on the natural and environmental resources of the town.

- h. Adequate public utilities, community facilities, and roadway capacity are available to the property to ensure that the proposed use will not necessitate excessive public expenditures in providing public services.
- i. Where deemed necessary, the Planning Board may require that additional setbacks, screening or buffers be established or maintained to mitigate any adverse impacts from the proposed development from adjacent properties, uses, or roadways.
- j. The granting of the permit will not result in undue municipal expense.

#### **H. Special Exception for Other Uses**

Uses other than those listed in Table 6 and those prohibited in Section IX.I. may be permitted within the Town Center Mixed Use District in accordance with the requirements of Article VII, Special Exceptions, above.

#### **I. Prohibited Uses**

- 1. Any persistent uses that creates a public nuisance or may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse, fumes, noise, vibration, or similar conditions or that are dangerous to the comfort, peace, enjoyment, health, or safety of the community are prohibited.
- 2. The following are prohibited in the Town Center Mixed Use District as a principal use or accessory use:
  - a. Processing, reprocessing, recycling, treatment or disposal of chemicals, regulated substances, hazardous waste or materials (other than licensed medical or dental office or health care facility waste), municipal or industrial waste, or metals (Regulated substances are those substances as listed in the Code of Federal Regulations: Title 40 Protection of the Environment, Part 302.4 Designation of Hazardous Substances, and NH-DES Env-Ws 421.039(f) as amended or superseded.); and
  - b. Adult use facilities.

## X. Conservation Focus Area Overlay District

### A. Purpose/Authority

1. Purpose: The Conservation Focus Areas in New Durham are identified as lands having exceptional significance for the protection of living resources and water quality. The purpose of this ordinance is to:
  - a. Maintain diverse wildlife habitat, abundant wetlands, high water quality, productive forests, and outstanding recreational opportunities;
  - b. Conserve the best remaining lands of exceptional significance containing the critical ecological, biological, and water resources of the Town's Watershed;
  - c. Guide the location, density, and design of development within the Conservation Focus Areas to minimize harmful impacts while allowing for a reasonable level of use of these lands.
2. Authority: The provisions of this Article are authorized by RSA 674:16, Grant of Power; RSA 674:17, Purposes of Zoning Ordinance; RSA 674:21, Innovative Land Use Controls, and RSA 674:21 (j), Environmental Characteristics Zoning.

### B. District Boundaries/Applicability

1. District Boundaries: The Conservation Focus Area District is depicted on the map titled "Conservation Focus Area District for the Town of New Durham" dated January 22, 2008. The Conservation Focus Area District is an overlay district superimposed over the conventional zoning map of the Town.

The Conservation Focus Areas are: Cocheco Headwaters, Coldrain Pond, Cooper Cedar Woods, Beaver Brook, Marsh Pond, and Prospect Mountain, as shown on the map "Conservation Focus Area Protection District for the Town of New Durham." These Conservation Focus Areas are specific geographic areas that contain the primary natural features and habitat for which the conservation focus areas were identified using the methodology established in the Land Conservation Plan for New Hampshire's Coastal Watersheds (2006) and Map 9 "Conservation Focus Areas" in the New Durham Natural Resource Inventory (2011).
2. Applicability: The requirements of this ordinance shall apply to:
  - a. All applications for major subdivisions; and
  - b. All applications for site plan review that include two acres or more of proposed development, or three or more residential dwelling units within a Conservation Focus Area.

### C. Dimensional Requirements

Development proposed in the Conservation Focus Areas shall comply with the following dimensional requirements:

1. Overall residential density within a Conservation Focus Area shall not exceed one dwelling unit per five (5) acres.

2. For parcels in which 50 percent or less of the land is within a Conservation Focus Area, no more than 10 percent of the total land within the Conservation Focus Area may be developed.
3. For parcels that are entirely within a Conservation Focus Area, no more than 30 percent of the total land may be developed.

#### **D. Permitted Uses**

Uses that are not otherwise provided for within this article or another overlay district and which are permitted in the underlying zoning district either by right or conditional use permit are permitted in the Conservation Focus Area Overlay District provided that all relevant requirements are met.

#### **E. Use Regulations**

The following uses are permitted within this overlay district provided that the relevant conditions are met:

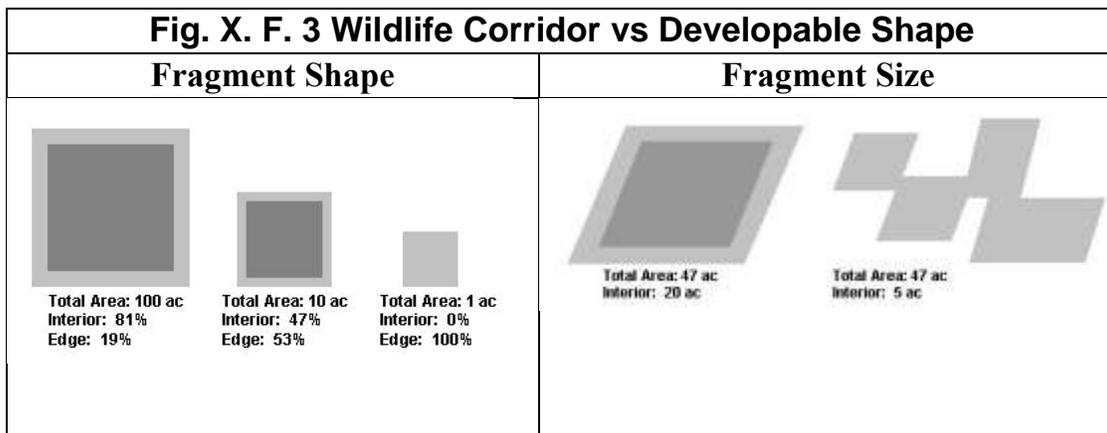
1. Forestry management and timber harvesting as permitted by RSA 485-A:17.IV, with implementation of best management practices as recommended in the document "Best Management Practices for Forestry: Protecting New Hampshire's Water Quality" (2005, as amended) by the University of New Hampshire Cooperative Extension.
2. Agriculture as permitted by RSA 21:34-a and 432:33, with implementation of best management practices as recommended in the document "Manual of Best Management Practices for Agriculture in New Hampshire" (2002, as amended) distributed by the NH Department of Agriculture, Division of Regulatory Services.
3. Recreational trails and paths for non-mechanized recreational uses, including but not limited to hiking, walking, bicycling, and horseback riding, are permitted providing the following standards are met:
  - a. Finished width not to exceed 6 feet;
  - b. Surface composed of pervious or semi-pervious materials;
  - c. No clearing of natural vegetation beyond 2 feet of the trail edge;
  - d. Location and configuration minimizes clearing, grading necessary for construction; and
  - e. Construction of new trails and maintenance of existing trails shall be consistent with standards in "Best Management Practices For Erosion Control During Trail Maintenance and Construction" (2004, as amended) by NH Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails or "Best Management Practices for Forestry: Protecting New Hampshire's Water Quality" (2005, as amended) by the University of New Hampshire Cooperative Extension.
4. Recreational trails and paths for use by snowmobiles and non-mechanized uses on snow are permitted provided best management practices are implemented as recommended above in X. E. 3e.

5. Telecommunications facilities in compliance with The New Durham Telecommunications Facility Ordinance and in conformity with applicable best management practices.
6. Public utilities including pipelines, power lines, transmission lines, and associated facilities are permitted in conformity with applicable best management practices.

**F Design/Performance Standards**

Development proposed in the Conservation Focus Areas shall comply with the following standards.

1. Subdivisions on parcels that have more than 10 acres in a Conservation Focus Area shall be according to Article XVI Open Space Conservation Subdivision.
2. Development, lots, roads, and utility infrastructure shall be situated in the part of the parcel closest to pre-existing development and furthest from the central or most critical portions of the Conservation Focus Area to prevent fragmentation of wildlife habitat, and forested and open space lands.
3. Refer to the diagram below (Fig. X.F.3) for illustrations of wildlife habitat corridors (in light grey) and developable space (dark gray) as it relates to shape and size of development.



4. Contiguous forested land and open space shall be preserved to connect wildlife corridors and habitat on the subject property and connect them with adjacent properties. A minimum 100-foot wide contiguous forested or naturally vegetated wildlife corridor shall be preserved along all side and rear property boundaries.
5. **Stream Buffer Requirement:** Within the Conservation Focus Areas, all first order and higher perennial streams shall have a minimum 100-foot naturally vegetated no-disturb buffer to protect riparian habitat and water quality. Buffers shall be measured from the reference line of streams. Buffers may be further expanded for steep slopes in accordance with Table 9, **Article XV, Water Quality Protection Overlay District**. If not present at the time of development, buffers can be

established through planting with native vegetation or allowed to regenerate naturally.

6. Development shall not disturb habitat for rare, threatened, or endangered species or exemplary natural communities. All subdivision and site plan applications shall be submitted to the New Hampshire Natural Heritage Bureau for review and their recommendations for protection of sensitive habitat and resources shall be submitted to the Planning Board as part of such application.
7. If the parent parcel(s) include land outside the Conservation Focus Area, as much of the development as possible will be located outside the Conservation Focus Area unless the applicant demonstrates that no alternative is present to locating some development within the Conservation Focus Area.
8. A stormwater management plan shall be prepared and stamped by a professional engineer. These plans will show specific methods that will be used to manage the quantity and provide water quality treatment of stormwater for the entire project site. These plans shall conform to the provisions outlined in **Article XVII, Stormwater Management and Erosion Control Ordinance.**
9. For all land disturbance associated with the application, an erosion and sedimentation control plan and a grading plan for the project site shall be prepared and stamped by a professional engineer. These plans will show specific methods that will be used to control soil erosion and sedimentation, soil disturbance and removal, grading, and stormwater collection. These plans shall provide for temporary protection measures during construction and permanent protection measures in the post-development condition. These plans shall conform to the provisions outlined in **Article XVII, Stormwater Management and Erosion Control Ordinance.**

## **XI. Steep Slope Conservation Overlay District**

(See also Article XV, Water Quality Protection Overlay and Article XVII, Stormwater Management Ordinance for specific requirements related to water management on land with steep slopes.)

### **A. Purpose/Authority**

1. Purpose: The purpose of this Article is to regulate the use of steeply sloping lands in order to limit soil loss, erosion, excessive stormwater runoff, and the degradation of surface waters, and to maintain the natural topography and drainage patterns of land. It is intended that the provisions of this ordinance shall:
  - a. Promote the general health, safety, and welfare of the community through restrictions on the uses and development of land within the Steep Slope Conservation Overlay District,
  - b. Reduce degradation of the ecological function and the quality of surface water bodies and wetlands,
  - c. Preserve the natural topography, drainage patterns, vegetative cover, scenic views, and wildlife habitats; and protect unique natural areas, and
  - d. Permit development that is harmoniously, appropriately, and safely located on steep slopes.
2. Authority: The provisions of this Article are authorized by RSA 674:16, Grant of Power; RSA 674:17, Purposes of Zoning Ordinance; and RSA 674:21, Innovative Land Use Controls.
3. Applicability: This ordinance shall apply to any application for a building permit, a site plan development, or a subdivision which requires or proposes disturbance to land with a slope of fifteen (15) percent or greater.

### **B. District Boundaries**

The Steep Slope Conservation Overlay District shall comprise all lands in the Town of New Durham with a slope of fifteen (15) percent or greater. The District is approximately identified on the “New Durham Steep Slope Conservation District Map” dated February 5, 2008 which is incorporated into this ordinance by reference. This map is for guidance purposes only. Slopes subject to this ordinance shall be field delineated on a site-specific basis.

### **C. Permitted Uses**

Table 7A identifies activities that are allowable in the Steep Slope Conservation Overlay District without need for a Conditional Use Permit; Table 7B identifies activities that are allowable with a Conditional Use Permit. These requirements vary depending on degree of slope as shown in the first column.

<b>Table 7A: Uses Permitted in Steep Slope District (No Conditional Use Permit Required)</b>
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Slope	Use/Activity
15% – 24.99%	1) Disturbance of less than 500 square feet of steep slopes on a parcel or lot; 2) Roads, rights of way and driveways of less than 100 continuous linear feet in compliance with New Durham driveway or roadway regulations; 3) Residential development on a pre-existing lot of record that disturbs an area of steep slopes less than: <ul style="list-style-type: none"> <li>a) 10,000 square feet of slopes or 25% of the square footage of the lot, whichever is less, if the lot is undeveloped; or</li> <li>b) 2,000 square feet or 15% of the square footage of the lot, whichever is less, if the lot is developed; and</li> <li>c) complies with the requirements of the Open Space Conservation Subdivision, if applicable,</li> <li>d) implements Stormwater best management practices consistent with standards. in <b>Article XVII. Stormwater Management and Erosion Control Ordinance.</b></li> </ul>
25% – 29.99%	Disturbance of less than 500 square feet of steep slopes on a parcel or lot.
30% and greater	No disturbance allowed.

**Table 7B: Uses Permitted in Steep Slope District  
(With Conditional Use Permit)**

Slope	Use/Activity
15% – 24.99%	All activities permitted in the underlying zoning district and <b>Article X. Conservation Focus Area District</b>
25% – 29.99%	1) Residential development on a pre-existing lot of record that disturbs less than 12,000 square feet of steep slopes, if there is no buildable location on the lot with slopes less than 25%, provided all other regulations are met; 2) New roads, rights of ways and driveways of less than 100 continuous linear feet in compliance with New Durham driveway or roadway regulations; and 3) Transitional grading
30% and greater	Residential Development on a pre-existing lot of record that disturbs less than 6,000 square feet of steep slopes if there is no buildable location on the lot with slopes less than 30%.

#### **D. Use Regulations**

The following uses are permitted within this overlay district provided that the relevant conditions are met:

1. Forestry management and timber harvesting as permitted by RSA 485- A:17.IV, with implementation of best management practices as recommended in the document “Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality” (2005, as amended) by the University of New Hampshire Cooperative Extension.
2. Agriculture as permitted by RSA 21:34-a and 432:33, with implementation of best management practices as recommended in the document “Manual of Best Management Practices for Agriculture in New Hampshire” (2002, as amended) distributed by the NH Department of Agriculture, Division of Regulatory Services.
3. Recreational trails and paths for non-mechanized recreational uses, including but not limited to hiking, walking, bicycling, and horseback riding, are permitted providing the following standards are met:
  - a. Finished width not to exceed 6 feet;
  - b. Surface composed of pervious or semi-pervious materials;
  - c. No clearing of natural vegetation beyond 2 feet of the trail edge;
  - d. Location and configuration minimizes clearing, grading necessary for construction; and
  - e. Construction of new trails and maintenance of existing trails shall be consistent with standards in “Best Management Practices For Erosion Control During Trail Maintenance and Construction” (2004, as amended) by NH Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails or “Best Management Practices for Forestry: Protecting New Hampshire's Water Quality” (2005, as amended) by the University of New Hampshire Cooperative Extension.
4. Recreational trails and paths for use by snowmobiles and non-mechanized uses on snow are permitted provided best management practices are implemented as recommended in “Best Management Practices For Erosion Control During Trail Maintenance and Construction” (2004, as amended) by NH Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails or “Best Management Practices for Forestry: Protecting New Hampshire's Water Quality” (2005, as amended) by the University of New Hampshire Cooperative Extension.
5. Telecommunications facilities in compliance with the New Durham Telecommunications Facility Ordinance and in conformity with applicable best management practices are permitted.
6. Public utilities including pipelines, power lines, transmission lines and associated facilities are permitted in conformity with applicable best management practices.

## E. Requirements for a Conditional Use Permit

1. Administration of Conditional Use Permit Process: In addition to meeting the requirements set forth in Section XV, Water Quality Protection and Section XVI, Open Space Conservation Subdivision Ordinance, Conditional Use Permits shall be granted in accordance with the following procedures:
  - a. Pursuant to RSA 674:21,II, the Planning Board may issue a Conditional Use Permit to an applicant who complies with the provisions of this ordinance.
  - b. The Building Inspector shall not approve any building permit, site plan, or subdivision subject to the terms of this article unless the Planning Board has issued a Conditional Use Permit, and the conditions have been met.
  - c. All costs pertaining to the consideration of an application under this ordinance, including consultants fees, on-site inspections, environmental impact studies, notification of interested persons, and other costs shall be borne by the applicant and paid prior to the Planning Board's signature of the approved plans.
2. Application Requirements: The following information shall be provided as part of a Conditional Use Permit application:
  - a. Pre-existing conditions plan showing all natural features including but not limited to: surface waters, wetlands soils, tree and vegetative cover, bedrock outcroppings, habitat for rare, threatened or endangered species or exemplary natural communities, manmade features on the site, and topography (showing slopes in classes of 0-14.99 percent, 15-24.99 percent, 25-29.99 percent, and 30 percent and greater based on two foot contours analyzed over ten foot vertical intervals). The plan shall show all areas where site disturbance is proposed and any surface waters and wetlands that would receive or be affected hydrologically by stormwater generated from the site in the post-development condition.
  - b. Proposed conditions plan showing all steep slopes and areas of planned development: including but not limited to all areas of disturbance, building footprints, structures, roads, driveway cuts, parking, sidewalks, grading, septic systems, wells, stormwater and utility infrastructure and other developed areas. The plan shall show all surface waters and wetlands that would receive or be affected hydrologically by stormwater generated from the site in the post-development condition.
  - c. An erosion and sedimentation control plan shall conform to **Article XVII. Stormwater Management and Erosion Control Ordinance.**
  - d. A hydrology, stormwater, and flooding analysis will be prepared for the 2-, 10-, 50-, and 100-year storm events. The analysis will be based on pre-development and post-development conditions and will show the impact on areas downstream of the proposed development as outlined in **Article XVII. Stormwater Management and Erosion Control Ordinance.**
  - e. The post development stormwater runoff shall be attenuated for the 2, 10 and 50 year peak runoff rates and shall adhere to standards and design

requirements outlined in **Article XVII. Stormwater Management and Erosion Control Ordinance.**

- f. New subdivisions will show a building envelope that conforms to this ordinance on each lot and will stipulate any erosion control or construction guidelines that would otherwise be stipulated in a Conditional Use Permit. The owner of a lot created after the adoption date of this ordinance may apply for a conditional use permit if he/she wishes to build outside the building envelope.
- g. The Planning Board may modify the requirements of this section if the Board determines that the Conservation Commission and/or any other professional or technical review deemed necessary for consideration of the application, has recommended such modification based on the finding that:
  1. Due to a unique condition or a particular environmental condition of the land, enforcement of a particular requirement of this section would be inconsistent with the spirit and intent of this ordinance; and,
  2. The applicant has provided alternative measures for protection of steep slopes consistent with the spirit and intent and complies fully with the performance standards of this ordinance.

**F. Performance Standards For Conditional Use Permit**

All uses requiring a Conditional Use Permit in the Steep Slope Conservation Overlay District must meet the following standards. These special development controls are provided in recognition of the potentially negative impacts of construction on steep slopes due to large-scale disturbance of natural topographic features, vegetative cover and drainage patterns:

1. All grading cut and fill shall be graded to a 3:1 ratio or less, or a 2:1 ratio if the stability of the increased slope is certified by a Licensed New Hampshire Professional Engineer. A steeper slope may be approved at the discretion of the Planning Board if it is supported by a retaining wall or other appropriate retaining structure. Any such structure greater than four feet in height shall be designed by a Licensed New Hampshire professional engineer or landscape architect.
2. There shall be no alteration of site elevations in excess of one foot on slopes 15 percent or greater that drain toward and are within 15 feet of an adjoining property.
3. Natural resources and topographic features, including tree and vegetative cover, will be preserved to the greatest extent possible on steep slopes. Implementation of resource protection measures should be consistent with the goals and policy standards in the “Natural Resources and Land Use” sections of the New Durham Master Plan. In the event that extensive amounts of natural vegetation, soil or earth materials are removed, the site shall be replanted with native vegetation and shall replicate the density and composition of the original vegetation as much as possible.

4. Proposed activities shall not disturb habitat for rare, threatened or endangered species or exemplary natural communities. All proposed projects requiring a Conditional Use Permit shall be submitted to the New Hampshire Natural Heritage Bureau for review and their recommendations for protection of habitat and sensitive resources shall be submitted by the applicant to the Planning Board as part of such application.
5. The applicant shall submit a written statement, supported by the application under consideration, demonstrating that no alternatives are available for the productive use of areas outside of the Steep Slope Conservation Overlay District, that no practicable alternatives exist to the proposal under consideration, and that all measures have been taken to minimize the impact that construction activities will have upon the Steep Slope Conservation Overlay District.

### **G. Prohibited Disturbances in Steep Slope Areas**

The following disturbances are prohibited:

1. In new subdivisions, no disturbance of more than 12,000 square feet will be allowed on slopes of 25%-29.99%, and no disturbance at all will be allowed on slopes of 30% or more; and
2. On existing lots of record, no disturbance of more than 12,000 square feet will be allowed on slopes of 25-29.99%; and no disturbance of more than 6,000 square feet will be allowed on slopes of more than 30%.
3. When steep slopes exceeding these levels have been left in a disturbed condition by a previous owner, in a manner that requires revegetation to manage stormwater and/or prevent erosion, the areas that meet these conditions shall not be considered in calculating the size of the new disturbance, but shall require the appropriate conditional use permit.

## **XII. Aquifer Protection Overlay District**

### **A Purpose/Authority**

1. Purpose: In the interest of public health, safety, and welfare, these regulations are intended to provide guidance for the use of land within the Aquifer Protection Overlay District. It is the objective of the ordinance to:
  - a. Protect alternative sources of water supply; and,
  - b. Protect the overall water quality; and,
  - c. Encourage wise development practices within the Aquifer Protection Overlay District Zone and,
  - d. Preserve and enhance the aesthetic values associated with the Town of New Durham.

The Aquifer Protection Overlay District identifies potential aquifer areas by soil types, which protects water supply sources and encourages wise development in areas associated with known aquifers.

### **B. District Boundaries**

1. The New Durham Aquifer Protection Overlay District areas are defined as those areas in town that fall into the County listing of “Potential Unconsolidated Deposit Aquifers by Soils” prepared by Strafford County (Soil Survey of Strafford County, New Hampshire, March 1973 or as revised) and are shown on a map on file in the Land Use Office.
2. Where there is a question or dispute as to whether the land in question does in fact lie within the Aquifer District, if it can be shown through an engineering analysis that it is not in the Aquifer District, then the provisions of this Article do not apply. All cost for the engineering analysis must be borne by the applicant or landowner and/or his/her agent. The engineer/consultant selected by the landowner must have expertise in groundwater hydrology and be approved by the Planning Board.

### **C. Dimensional Requirements: Aquifer Protection Overlay District**

Dimensional controls shall be the same as would normally be permitted in the underlying zoning district, except that not more than 20 percent of a lot shall be covered by impervious surfaces.

### **D. Permitted Uses**

Permitted uses, with the exception of those expressly prohibited below, shall be the same as those districts within which the aquifer protection overlay lies.

### **E. Uses Allowed with Special Exception**

Commercial, industrial and municipal uses shall be permitted by Special Exception after an environmental impact study has been completed and the study

concludes that the commercial use has an impact equal to or less than that of a single family dwelling, and constitutes a Minor Commercial Use.

#### **F. Prohibited Uses**

The following uses are prohibited in the Aquifer Protection Overlay in order to maintain the existing aquifer and restrict potential water contamination:

1. Storage of petroleum or related products, except within the buildings to be heated by such products.
2. Automobile service stations junk or salvage yards.
3. Storage of road salt or other deicing chemicals and the dumping of snow as a result of removal from other areas.
4. Disposal of liquid or leachable waters, except for one-unit residential subsurface sewage disposal systems.
5. Disposal of solid wastes.
6. Disposal or storage of hazardous materials and wastes.
7. Use of leach field degreasing materials.
8. Industrial use.
9. Multi-family dwellings.

### **XIII. Wetland Conservation Overlay District**

#### **A. Purpose:**

Restricts construction in environmentally sensitive wetland areas and disallows very poorly drained soils from being considered toward meeting the requirements of minimum lot sizes in new subdivisions. These regulations are intended to be in the interest of public health, safety, and welfare:

1. To provide guidance for the use of areas of land with standing water or extended periods of high water tables.
2. To control the development of structures and land uses on naturally occurring wetlands which would contribute to the pollution of surface and ground water.
3. To prevent the destruction of natural wetlands that provide flood protection, recharge the groundwater supply and augment stream flow during dry periods.
4. To prevent unnecessary or excessive expenses to the town by providing and maintaining essential service and utilities which arise because of unwise use of wetlands.
5. To encourage those uses that can be appropriately and safely located in wetland areas.
6. To preserve wetland for other ecological reasons such as those cited in R.S.A. 483-A:1-b.
7. To preserve and enhance those aesthetic values associated with wetlands of New Durham.

#### **B. Boundary**

1. The Wetlands Conservation Overlay District is defined as those areas delineated as very poorly and poorly drained soils by the U.S. Department of Agriculture, Soil Conservation Service, in the “Soil Survey of Strafford County, New Hampshire”, dated March 1973 (as amended). The Wetlands Conservation Overlay District also includes those areas such as swamps, marshes, bogs, ponds and lakes that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation adapted for life in saturated soil conditions.
2. The limits of the Wetlands Conservation Overlay District are hereby determined to be areas of one acre or more in size, or of any size if contiguous to surface waters such as lakes, ponds, and streams, subjected to high water tables for extended periods of time and include, but are not necessarily limited to, all such areas delineated as wetlands on the current “Soil Conditions” map (New Durham Natural Resource Inventory Map. Titled “Soil Conditions”).
3. Where it is alleged that an area has been incorrectly delineated as a wetland; or that an area not so designated meets the criteria for wetlands designation; or upon written petition of the land owner or abutter, the Planning Board shall determine whether the regulations contained herein have application.

The Planning Board shall make their determination under this section only upon the documentation by a qualified soil scientist(s) and/or plant scientist(s) on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Map is incorrect. This evidence shall be acceptable only when presented in written form by said scientist(s) to the Planning Board. Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer.

### **C. Relation to Other Districts**

Where the Wetlands Conservation Overlay District is superimposed over another zoning area, the more restrictive regulations shall apply.

### **D. Permitted Uses**

Permitted uses are those not requiring the erection or construction of any structures or buildings, not altering the natural surface configuration by the addition of fill or by dredging, and uses otherwise permitted by the zoning ordinance. Such uses may include the following:

1. Forestry-tree farming, using best management practices in order to protect streams from damage and to prevent sedimentation;
2. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
3. Wildlife refuges;
4. Parks and recreation uses consistent with the purpose and intent of this ordinance;
5. Conservation areas and nature trails;
6. Open spaces as permitted or required by the subdivision regulations or zoning ordinance.

### **E. Special Exceptions**

Special Exceptions may be granted by the ZBA, after proper public notice and public hearing for undertaking the following uses in the Wetlands Conservation Overlay District when the application has been referred to the New Durham Conservation Commission, NH-DES and to the New Durham Planning Board for review and comment at least twenty (20) days prior to the hearing:

1. Streets, roads and other access ways and utility right-of-way easements, including power lines and pipe lines, if essential to the productive use of land not defined as wetlands, and if located and constructed so as to minimize any detrimental impact upon the wetland;
2. Water impoundments;
3. Any use not otherwise permitted in the Wetlands Conservation Overlay District, if it can be shown the proposed use is not in conflict with any or all of the purposes and intentions listed in Section A of this article.

## **F. Special Provisions**

1. No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any wetland.
2. No part of very poorly drained soil type will be considered as part of minimum size requirement of any lot.
3. Poorly drained soil types may be used to fulfill 25 percent of the minimum size requirement of any lot.
4. All land included in the Wetlands Conservation Overlay District shall be appraised for tax purposes at its full value in money, based on its market value as undevelopable land required to remain in open space.

## **G. Soil Series and Land Types**

Soils commonly associated with wetlands as described by the Soil Survey of Strafford County, New Hampshire, dated March 1973, include the following “very poorly drained” and “poorly drained” soils:

1. Very Poorly Drained Soils include:
  - a. Fresh water marsh (FA)<sup>2</sup>
  - b. Muck and Peat (Mp)
  - c. Whitman very stony loam (Wa)
2. Poorly Drained soils include:
  - a. Leicester (LcB) (LeA) (LeB)
  - b. Leicester-Ridgebury (LrA) (LrB)
  - c. Ridgebury (RgA) (RgB) (RtA) (RiB)
  - d. Saugatuck (Sb)

Soils with drainage class of 5 or 6 on the high intensity soil map are wetland soil.

## **H. Separability**

If any section, provision, portion, clause, or phrase of this article shall be held invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair or invalidate any other section, provision, position, clause, or phrase of this ordinance.

## **I. Conflict with Other Regulations**

Where any provision of this article is in conflict with State law or other local ordinance, the more stringent provision shall apply.

## **XIV. Shorefront Conservation Overlay District**

### **A. Purpose/Authority**

1. Purpose: Most of the land immediately adjacent to New Hampshire's lakes, ponds and rivers is overlaid by soil types characterized by above average erosion and drainage hazards. These lands require conservation and land management practices that minimize environmental and aesthetic degradation. The following restrictions are applicable to land within the designated shorefront conservation area. They are designed to protect and enhance water quality, prevent overcrowding of the shore land in the interest of public health and safety, and to preserve the natural beauty and wildlife habitat of the water front areas in the Town of New Durham.
2. Authority: This ordinance is authorized by RSA 674:21, Innovative Land Use Controls, and RSA 674:21 (j) Environmental Characteristics Zoning.

### **B. District Boundaries**

The Shorefront Conservation Overlay District is an environmental overlay area superimposed over the conventional zoning map of the town. The Shorefront Conservation Overlay District extends to a line 300 feet inland from the normal high water level, on all lakes and ponds over ten (10) acres. Uses permitted in the underlying zoning district may be prohibited or require a special permit subject to conditions in the Shorefront Conservation Overlay District. In case of conflict, the more restrictive regulation shall apply. (See also provisions of Article XV. Water Quality Protection Overlay District, for Great Ponds less than or equal to ten acres.)

### **C. Dimensional Requirements**

1. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements:
  - a. Minimum Shore Frontage: Each dwelling with direct water access and with shore frontage as part of the lot dimension shall have a minimum shore frontage of one hundred fifty (150) feet. Shore frontage shall be measured in a straight line in fifty (50) foot increments, between the points of intersection of the side lot lines with the shoreline at mean high water.
  - b. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high water level.
  - c. Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the normal high water level. The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities.
  - d. Maximum Building Height: The maximum height of any building shall be thirty five (35) feet from the average parent lot grade to the highest point of the roof (For non-conforming shorefront lots see XX. F. 3).

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- e. Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.
- f. Shorefront Common Areas: Shorefront common areas for access by non-shorefront commercial or residential development shall meet the following minimum criteria:
  - 1. The shorefront common area shall contain a minimum of two acres.
  - 2. The shorefront common area shall have a minimum of 150 feet of shore frontage for the first residential dwelling unit and an additional 50 feet of shore frontage for each additional dwelling unit. For commercial uses, such common area will have 150 feet of shore frontage for the first five users, and 50 feet of shore frontage for each additional five users occupying the non-shorefront development.
  - 3. No building other than toilet and changing facilities, picnic shelters, and suitable recreation facilities shall be constructed on a shorefront common area.
  - 4. One half of the shore frontage shall be reserved for swimming. A swimming beach area shall be provided with a minimum of 800 square feet per dwelling unit or for commercial uses, per five users. Swimming areas shall be separated from boating areas by appropriate markers.
  - 5. No more than 25% of the total shore frontage may be dedicated to docks or other structures designed to accommodate boating. All docks require a permit from the NH-DES. Applications for dock permits shall be reviewed by the Conservation Commission. In making its recommendations to the NH-DES and the Planning Board, the Conservation Commission shall consider the size and depth of the water area, the total frontage proposed for the common area, boat traffic already existing in the area, impact on neighboring property owners, protection of water quality, wildlife habitat, and public safety.
  - 6. One off-street parking space (300 square feet) shall be provided for each dwelling unit situated more than 1/4 mile from the shorefront common area. Parking areas shall be set back a minimum of 75 feet from the normal high water level. A buffer of natural vegetation shall be maintained between the beach and/or docking area and the parking area. The buffer may include facilities permitted within the shorefront area.
  - 7. Toilet facilities, approved by the New Hampshire Water Supply and Pollution Control Commission shall be provided at the rate of one toilet facility each for males and females for each 25 dwelling units or (up to 125 persons) or portion thereof granted rights of access. The Planning Board may adjust this requirement at their discretion.
  - 8. A Natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of it shall have the additional requirements of RSA 483-B:9 V a (2013).

#### **D. Permitted Uses**

Uses that are not otherwise provided for within this article or another overlay district and which are permitted in the underlying zoning district either by right or conditional use permit are permitted in the Shorefront Conservation Area Overlay District provided that all relevant requirements are met.

#### **E. Use Regulations**

The following uses are permitted provided that they shall be conducted according to the applicable provisions:

1. Any Subdivision or Site Plan, which takes place wholly or partially in the Shoreland Conservation Overlay District, shall obtain approval from the NH-DES in accordance with NH RSA 483-B. This approval shall be obtained prior to final approval of the subdivision or site plan by the Planning Board. Prior to making application to the NH-DES for a permit, applicants are required to hold a Design Review Hearing with the Planning Board (See Article VI I Design Review Required).
2. Water Related Structures, docks for boating and swimming facilities, subject to required state permits (not covering more than 10% of the lot).
3. Single family dwellings (with or without ancillary dwelling units) provided that all buildings meet setback requirements of this Article and are constructed in accordance with erosion control requirements of **Article XVII. Stormwater Management and Erosion Control Ordinance.**
4. Sub-surface sewage disposal facilities, provided that leach field setback requirements of this Article are met.
5. The traveled portion of a road shall be set back a minimum of seventy-five (75) feet from the normal high water level except for bridges and bridge approaches and access ways for firefighting equipment and boat launching. All roads shall be constructed in accordance with an erosion and sedimentation control plan approved by the Planning Board in accordance with Article XVII.
6. Beach and dock construction may be permitted in accordance with shore frontage requirements set forth below. All alterations of the shoreline, including beach and dock construction, require a permit from the NH-DES as set forth in RSA 483-B. The Conservation Commission shall review all permit applications submitted to NH-DES and shall make recommendations to the NH-DES and the Planning Board.
7. Recreational Vehicles/Recreational Trailer or a Trailer may be stored on a lot only if they are:
  - a. Fully licensed and ready for highway use;
  - b. Used for sleeping accommodations for non-paying guests of the lot owner or lot lessee for a maximum period of six nights per calendar month;
  - c. Parked in compliance with the Town Ordinance Regulating the Obstruction of Class V Roads in New Durham (TO.03.003); and

- d. Parked at least 75 feet from the normal high water level.
- 8. Marinas, Commercial Docks and Condominium Docking Facilities
  - A proposal for a marina, condominium docking facility, or commercial docks, provided it is permitted in the underlying use district, shall be subject to site plan review by the Planning Board and and the following minimum standards:
    - a. All construction in or on ponds over 10 acres and other waters of the state require a permit from the New Hampshire Department of Environmental Services.
    - b. A marina, condominium docking facility, community docking facility, or commercial docking facility accommodating more than eight boats shall contain a minimum lot area of one acre plus 3000 square feet per boat slip or dry storage space to be used during the boating season.
    - c. The plan shall include appropriate recreation or play area.
    - d. If winter boat storage is proposed, the plan shall include a design for winter boat storage facilities.
    - e. Parking shall be provided at the rate of one space for each boat slip and for each dry storage space, except for those spaces used exclusively for winter storage.
    - f. One Toilet facility and one shower and sink each for males and females shall be provided for each 25 boat slips or dry storage space or fraction thereof, except for spaces exclusively for winter storage.
    - g. A pumping facility for the removal of holding tank waste shall be provided. The facility shall meet all standards established by the New Hampshire Department of Environmental Services and any other applicable State regulations.
    - h. The Planning Board may approve less restrictive conditions for common or commercial docks with accommodations for eight or fewer boats.

## **F. Design Standards/Erosion Control**

- 1. Construction
  - a. Erosion and sedimentation control plans shall be required for all filling, grading, dredging, and other activities requiring land disturbance. Erosion and Sedimentation control plans shall conform to the provisions outlined in **Article XVII. Stormwater Management and Erosion Control Ordinance.**
  - b. The Building Inspector/Code Enforcement Officer shall review all plans before construction begins, and may require the applicant to post a bond or other security to assure conformance with approved plans. Said bond or security may be in an amount of 100 percent of the estimated cost of erosion and sediment control measures and shall be filed in the name of the town. The bond shall be approved by the Building Inspector/Code Enforcement Officer

and legal counsel of the town and conditioned upon satisfactory completion of all required improvements within 12 months of the date of bonding. The bond shall not be released until the Building Inspector/Code Enforcement Officer has certified completion of the required improvements in accordance with the plan.

- c. Erosion and Sedimentation Control Plans shall not conflict with minimum N.H. Department of Environmental Services requirements for Alteration of Terrain or other environmental permits required.
2. Buffer Requirement for Agricultural Uses

To prevent runoff of fertilizers, pesticides and erosion of soils and sedimentation of surface water, a buffer strip of at least 75 feet consisting of permanent native vegetation shall be maintained between any agricultural uses such as farming, pasturing, and horticulture and the normal high water level.

3. Alteration of Existing Uses

For conforming lots or current conforming uses, an alteration or vertical or footprint expansion of a dwelling unit, or increase in impermeable surface shall require a permit from the Building inspector/CEO. (For non-conforming lots, see also the provisions in Article XX.). Conversion to year round use shall be considered a change of use. Before a permit may be issued, the following conditions must be met:

- a. The applicant shall supply a certificate of inspection from a qualified sanitary professional (e.g., engineer, system designer, etc.) certifying that the existing septic system is adequate for the proposed use and that the system meets current standards of the New Hampshire Department of Environmental Services, including lot size and number of bedrooms. If the existing system is found to be inadequate, a system approved by the New Hampshire Department of Environmental Services shall be installed before a building permit is issued.
- b. The applicant must demonstrate that site conditions and land area are adequate for installation of a replacement sewage disposal system should the existing system malfunction or fail.
- c. Dwellings converted to year-round use shall have a New Hampshire Department of Environmental Services Approved Septic system designed and installed that meets the current standards, including lot size and per bedroom capacity, of the New Hampshire Department of Environmental Services.

## **G. Prohibited Uses**

The following uses are prohibited in the Shorefront Conservation District:

1. Commercial or Industrial Storage or processing of materials which are pollutants, flammable, toxic, or which could be injurious to human, animal, or aquatic life. Storage and dispensing of essential materials associated with boating may be permitted provided that all state and local approvals are obtained.

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2. Garbage and solid waste disposal facilities, including any expansions of existing facilities within the Shorefront Conservation Overlay District.
3. Duplexes and Multi-family dwellings.

## **XV. Water Quality Protection Overlay District**

### **A. Purpose/Authority**

The surface waters (streams, rivers, lakes, and ponds) and wetlands of New Durham supply drinking water, wildlife habitat, and recreation opportunities for the community. In order to preserve these critically important resources, New Durham shall require conservation and land management practices that minimize environmental degradation and alteration of scenic and rural character.

1. Purpose: The Purposes of the Water Quality Protection Overlay District are to:
  - a. protect public and private water supplies;
  - b. trap sediment and other pollutants in surface and subsurface runoff;
  - c. promote bank stabilization;
  - d. protect riparian wetlands;
  - e. minimize the impact of floods;
  - f. prevent decreases in base flow;
  - g. protect wildlife habitat; and,
  - h. generally maintain water quality.

The Water Quality Protection Overlay District ensures areas of restricted development and limited land use adjacent to surface waters and wetlands in New Durham.

2. Authority: This ordinance has been enacted to implement the recommendations of the Town of New Durham Master Plan and is authorized by RSA 674:21, Innovative Land Use Controls and RSA 674:21 (j), Environmental Characteristics Zoning.

### **B. Applicability/District Boundaries**

1. Applicability: The provisions of the Water Quality Protection Overlay District shall apply to all lots of 10 acres or less that are created by standard subdivisions first filed after Town Meeting 2007; and to all lots and open space areas created by Open Space Conservation Subdivision first filed after Town Meeting 2007. This paragraph shall not prevent the Planning Board from adjusting the requirements of this Article as appropriate to accomplish the goals of Article XVI, Open Space Conservation Subdivision Ordinance.
  - a. Riparian Buffer Zone: The Riparian Buffer Zone is an environmental overlay area superimposed over the conventional zoning map of the town. Property owners may initially consult the most recent USGS map of New Durham to determine if their Subdivision project area contains surface waters or wetlands that are likely to fall within the Riparian Buffer Zone. Any question of the applicability of this ordinance may require wetlands delineation by a New Hampshire Certified Wetlands Scientist at the applicant's expense.
  - b. Manmade Features Not Applicable: In this Ordinance, "manmade" shall refer to recent structures or changes to the landscape and shall not include cellar

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holes, gravel pits, abandoned dams, or other prior manmade alterations that have become, over time, part of the natural topography. Any of the following features shall be exempt from this ordinance:

1. Manmade ditches, swales and stormwater management devices.
2. Manmade sedimentation/detention basins or ponds.
3. Rural use manmade ponds such as agricultural ponds, fire ponds, wildlife ponds, and the like, provided that they meet the NH-DES standards for design and construction.

2. District Boundaries

The provisions apply in the following areas of the Town of New Durham:

- a. Perennial Streams and Rivers,
- b. Ponds and Lakes that are greater than 3000 square feet and less than 10 acres in size,
- c. Wetlands that are not identified in list below and that are greater than 3000 square feet,
- d. Vernal Pools (as verified by a wetland scientist or qualified natural resource professional),
- e. Seasonal or Intermittent Streams,
- f. The following wetlands and surface waters of special local significance (Prime Wetlands or candidate, large or uncommon wetlands and headwater streams which are delineated in the Natural Resource Inventory, 2011):
  1. Cooper Cedar Woods,
  2. Davis Crossing Road, Old Bay Road and Mill Road Wetland,
  3. Old Route 11 and the Davis Crossing Road Wetland,
  4. Wetland off of Drew Road,
  5. Wetland on northeast side of Route 11,
  6. Wetland southwest of Route 11, close to Ridge Road, Valley Road,
  7. Wetland on inlet on eastern shore of Merrymeeting Lake,
  8. Wetland along southwestern shorelines of Chalk Pond and March's Pond,
  9. Wetland at headwaters of the Ela River,
  10. Wetland north of Caverly Road and southwest of Shaw's Pond,
  11. Wetland between Middleton Road, Old Bay Road,
  12. Ela River,
  13. Beaver Brook,
  14. Cocheco River,
  15. Hayes Brook,
  16. Mad River,
  17. Merrymeeting River,
  18. Peter Brook,
  19. Unnamed River (outlet of Coldrain Pond into Club Pond),
  20. Goodwin Brook,
  21. Jennings Brook.

(See provisions of **Article XIV. Shorefront Conservation Overlay District** for Great Ponds in excess of 10 acres.)

### **C. Dimensional Requirements**

1. Lot Area: The square footage area subject to this ordinance shall be countable toward meeting minimum lot size, lot area and density requirements for new subdivisions in accordance with Article V.B.1, Lot Area Requirements.
2. **Riparian Buffer Zone Setback Requirements**

Riparian areas are generally defined as those areas that influence or are influenced by aquatic systems. For the purposes of **Article XV. Water Quality Protection Ordinance**, a Riparian Buffer Zone shall be defined as an upland area that is contiguous, and within the buffer setback requirements outlined in Table 8: Buffer Setback Distances in Feet by Resource and Use Category, to a water resource that is considered jurisdictional by the NH Wetland Bureau as defined in RSA 482-A, the boundary of which has been delineated by a Certified Wetland Scientist, and the definition of which shall include vernal pools.

- a. Table 8. Buffer Setback Distances by Resource and Use Category below identifies the base buffer setback requirements for each identified resource type. Buffer setback distances in Table 8 refer to the total horizontal distance in one direction from a water resource Reference Line. In cases where an area qualifies under more than one resource category, the largest buffer/setback distance shall apply.

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<b>Surface Water and Wetlands Resource</b>	<b>Buffer Strip</b>	<b>Buildings</b>	<b>Septic</b>	<b>Impermeable</b>
Perennial Streams & Rivers	35'	75'	100'	50'
Lakes & Ponds < 10 Acres	25'	75'	100'	50'
Wetlands	25'	75'	75'	50'
Vernal Pools	50'	75'	75'	50'
Seasonal or Intermittent Streams	25'	50'	75'	50'
Wetland and Surface Waters of Local Significance	75'	100'	125'	75'
Wetlands Contiguous to Lakes & Ponds > 10 Acres	50'	100'	100'	75'
Where Buffer Strip = see Article XV.F.1 Buildings = Buildings and Structures Setback Septic = Septic systems Setback Impermeable = Impermeable Surfaces Setback (see Article XV. F.2.)				

- b. Table 9, Distance Adjustments for Steep Slope Areas (below) shows how much the naturally vegetated buffer strip must be increased in properties with steep slopes. Steep slope areas will also be considered in determining the width of a vegetated buffer strip. If the vegetated buffer strip designated in Column A of Table 8 contains an area that has a slope of 10% or more for more than 10 linear feet in a direction perpendicular to the edge of a water resource, the width of the vegetated buffer zone will be increased as shown in Table 9.

Slope (%)	Naturally Vegetated Buffer Strip (feet)
0-9.9 %	No additional distance
10-19.9 %	15 additional feet
20-29.9 %	35 additional feet
30-39.9 %	55 additional feet
40 % or more	Buffer to extend up-slope until slope is less than 40% for at least 10 linear feet in a direction perpendicular to the Reference Line

- c. Larger buffer or setback distances may be required on a site-specific basis to protect against water quality degradation and to preserve significant wildlife and botanical habitats. The Town may look to the following documents (or as amended) or other documents for guidance as to the sensitivity of a habitat/resource and for recommendations for protective measures such as enlarged buffers and setbacks:
1. Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire, 1997. NH Division of Forests and Lands (DRED) and the Society for the Protection of New Hampshire Forests.
  2. Identifying and Protecting New Hampshire’s Significant Wildlife Habitat: A Guide for Towns and Conservations Groups, 2001. Kanter, J., R. Suomala, E. Snyder, et al. Nongame and Endangered Wildlife Program of the New Hampshire Fish and Game Department.
  3. Threatened and Endangered Plants and Animals in New Hampshire’s Forested Habitats, 1998. UNH Cooperative Extension, NH Fish and Game Department, US Fish and Wildlife Service.
- (All documents available for loan from the New Durham Land Use Office)

**D. Permitted Uses**

The following uses, if otherwise permitted in the underlying zoning district, shall be permitted in the naturally vegetated buffer strip, provided that they shall be conducted according to the applicable provisions. Such uses may include the following:

1. Trails or paths for non-motorized recreational purposes, and for motorized vehicles on snow;
2. Removal of dead, diseased, unsafe, or fallen trees;
3. Construction or placement of sheds, decks or structures which occupy a ground area no greater than 150 square feet in size that are incidental and subordinate to the primary building of the property and do not require the disturbance or improvement of the soil surface or construction of a sub-surface foundation may be constructed no closer than 20 feet from the water resource reference line;

4. Beaches that were existing prior to the March 2007 Town Meeting on lakes and ponds. New perched beaches may be created on lakes and ponds with the prior permission of the Conservation Commission and the NH-DES.

## **E. Use Regulations**

1. Identification: The subdivision applicant shall be responsible for showing a building envelope on each lot of the subdivision plan. The envelope will designate the outer limits of allowable construction for all buildings on the lot.

The subdivision applicant shall be responsible for placing a permanent monument (e.g., iron pin, granite bound) at all points of the lot lines that intersect with the upland limit of the naturally vegetated buffer strip prior to the start of any construction related activities. These monuments shall be shown on the subdivision plan.

The entire length of the upland limit of the naturally vegetated buffer strip shall be marked with highly visible construction tape prior to and for the full duration of construction related activities. The applicant shall also be responsible for affixing tags to trees or other durable objects (metal stakes, etc.), at intervals deemed acceptable by the planning board, along the upland boundary of the naturally vegetated buffer strip, and maintaining said tags as needed to provide evidence of the upland side buffer boundary. Under no circumstance shall the tag interval be required to be closer than 25 feet. Tags shall be obtained from the Town.

2. Enforcement: The Town of New Durham retains the right to inspect any property that is subject to this ordinance for the purposes of determining compliance.
3. Riparian Buffer Zone Reference in Deeds: A description of any applicable portions of the Riparian Buffer Zone shall be included in any deeds subsequently conveying all or a portion of a property, along with a reference to the recording information for any pertinent Plan Number from the Registry of Deeds.

## **F. Performance Standards**

All construction, alteration, placement, storage, introduction, or movement of structures or land in the Riparian Buffer Zone shall conform with the following performance standards:

1. Naturally Vegetated Buffer Strip: A Naturally Vegetated Buffer Strip adjacent to surface waters and wetlands to stabilize upland areas to prevent erosion, maintain wildlife habitats, and minimize pollution of the water shall be permanently maintained.

All existing vegetation including trees, shrubs, and undergrowth shall be allowed to remain undisturbed within the Naturally Vegetated Buffer Strip, as required in Table 8 and Table 9. Not-with-standing the foregoing, removal or control by non-chemical means of invasive non-native or poisonous plant species shall be allowed in the Naturally Vegetated Buffer Strip. No soil disturbance, removal, or cutting of vegetation or introduction of structures or materials of any

kind shall occur within this naturally vegetated buffer, except as may be allowed in Article XV. C or may be granted through a conditional use permit outlined in Article XV. G.

The size of the Naturally Vegetated Buffer Strip shall be established according to Table 8 and Table 9 in Article XV. C, and shall extend the entire length of any portion of any water resource occurring within the subject property.

2. **Sedimentation and Erosion Control:** All activities, construction, and the use of buildings, structures, and land within the Riparian Buffer Zone shall be carried out so as to minimize the volume and rate of stormwater runoff, the amount of erosion, and the export of sediment from the site. No structure or building, impermeable surface such as a paved driveway or parking area nor related topographical alteration shall be located, constructed or occur within the distance from the water resource reference line specified in Table 8 and Table 9 above, except as may be allowed in Article XV. C or may be granted through a conditional use permit outlined in Article XV. G. All such activities shall be conducted in accordance with Best Management Practices for stormwater management outlined in New Hampshire Stormwater Manual, 2008 (as amended) and in conformance with Article XVII. Stormwater Management and Erosion Control Ordinance.

#### **G. Uses allowed in Riparian Buffer Zone with Conditional Use Permit**

The New Durham Planning Board will be responsible for reviewing and permitting any Conditional Uses according to the following criteria:

1. The following conditional uses may be permitted as in the Riparian Buffer Zone:
  - a. The construction of streets, roads, access ways, bridge crossings, and utilities including pipelines, power lines, and transmission lines and related structures if essential to the productive use of land not defined as wetlands.
  - b. Outdoor recreational facilities that do not require the construction of buildings.
  - c. Trails and associated structures for use by year-round motorized recreational vehicles.
2. The Planning Board may approve a Conditional Use Permit for a use in the Riparian Buffer Zone only if it finds, with the advice of the New Durham Conservation Commission, that all of the following standards have been met in addition to any performance standards for the particular use:
  - a. There is no alternative location on the parcel that is outside the riparian buffer zone that is feasible and reasonable for the proposed use,
  - b. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the planning board,
  - c. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the riparian buffer zone and mitigation activities will be undertaken to counterbalance any adverse impacts,

- d. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the conditional use permit, and
- e. The proposed activities would not disturb habitat for rare, threatened, or endangered species or exemplary natural communities, such determination to be made by the New Hampshire Natural Heritage Bureau.

#### **H. Prohibited Uses**

Any use that is not identified as a permitted use in this Article shall be a prohibited use in the naturally vegetated buffer strip.

## XVI. Open Space Conservation Subdivision

### A. Statement of Purpose/Authority

1. General Purpose: The general purpose of this **Open Space Conservation Subdivision Ordinance** is to provide an alternative for the orderly present and future subdivision and development of the municipality by promoting the public health, safety, convenience and welfare of its residents and to promote the subdivision and development of an economically as well as environmentally sound and stable community.
2. Specific Purposes: The specific purposes of an Open Space Conservation Subdivision include:
  - a. Implement the Town's Master Plan,
  - b. Encourage greater flexibility and creativity in design, while encouraging flexibility in road design that will maintain acceptable safety design,
  - c. Protect water quality by minimizing: stormwater runoff (the main source of non-point source pollution) pollutant loads, land area covered by impervious surfaces, and soil erosion,
  - d. Protect water quality and quantity by conserving land that includes buffers along streams and rivers, wetlands and floodplains, ponds and lakes, and land overlying aquifers,
  - e. Conserve tracts of land of suitable size with productive soils for continued agricultural and forestry use,
  - f. Preserve naturally vegetated and wildlife habitat areas, thereby maintaining or increasing biodiversity,
  - g. Reduce capital cost of subdivision development while designing to potentially increase future property values,
  - h. Foster the creation of neighborhoods to create a sense of community,
  - i. Contribute where possible to a town-wide trail network for the health, enjoyment, and safe travel of residents and, where practical, retain open space accessible to the general public,
  - j. Support community-planning goals, such as farmland preservation, affordable housing, and architectural diversity,
  - k. Allow for siting infrastructure and providing public services in an efficient and economical manner for developers and the community,
  - l. Implement State and Regional smart growth principles,
  - m. Foster increased mobility by motorists, bicyclists, and snowmobilers, and non-motorized traffic through the development of interconnected streets, paths, and trails while increasing the service and mobility of public transportation within the Open Space Conservation Subdivision,
  - n. Protect unique natural features, scenic views and other special elements of rural character, and

- o. Foster protecting and enhancing the area's historic appearance and character including the construction of structures that enhance the traditional New Hampshire Architecture and Style character and appearance; locating electrical, telephone, and cable utilities underground when feasible; and ensuring lighting is not excessive to inhibit the rural "bright stars/dark sky" nightscape.
3. Authorization: The Planning Board is authorized to strongly encourage the preservation of open space and grouping of residential dwelling units or other uses as permitted in a zoning district by using an Open Space Conservation Subdivision design. Whenever a conventional subdivision application is filed, the applicant is encouraged to demonstrate that the Open Space Conservation Subdivision design is not feasible. Information in support of this determination shall include a comparison of the amount of grading and site disturbance, open space conservation, road and utility lengths, coverage and costs and other comparisons as required by the Planning Board. An Open Space Conservation Subdivision is strongly encouraged for all major subdivisions and minor subdivisions if a public or private road is needed.

## **B. Applicability/Districts**

1. Permitted District(s) and Land Uses: An Open Space Conservation Subdivision shall be permitted in all zoning districts in which residential development is permitted.
2. Open Space Conservation Subdivision Design May be Required:  
An Applicant, at the discretion of the Planning Board, may be required to use an Open Space Conservation Subdivision design whenever the property possesses one or more of the following special features:
  - a. Agricultural land used for producing crops, hay (forage), and/or forestry,
  - b. Rare, threatened or endangered species or known habitat area for those species,
  - c. Frontage on a pond, lake, perennial stream, or river,
  - d. A wellhead or aquifer protection area,
  - e. A portion of a snowmobile trail network,
  - f. Steep slope land covering more than 20% of the total area of the property,
  - g. Historic, cultural, archeological sites and/or structures.
3. Phased Subdivision Applications: The provisions of this Open Space Conservation Subdivision Ordinance shall also apply to the phased subdivision of a parcel over a period of time through separate successive applications. These requirements shall apply to phased applications for each phase as though the subdivision and development of the entire parcel were proposed in one application at one time. The total permitted density will be based upon the acreage and the characteristics of the original parcel that existed as of the date of the application.

4. Application and Review Process: The application and review process for an Open Space Conservation Subdivision shall conform to the Town of New Durham Subdivision Regulations, except as provided herein, and includes the Subdivision Regulations requirement for both a Preliminary Conceptual Consultation Phase and a Design Review Phase prior to formal application submittal.

### **C. Dimensional Requirements**

1. Setback: No structure shall be located within 15 feet of any lot line or within 20 feet of any road frontage property line within the Open Space Conservation Subdivision.
2. Buffer: A minimum 100 feet wide naturally vegetated and/or landscaped buffer area shall be provided along the perimeter of the parent lot except where:
  - a. Access streets into the subdivision are located,
  - b. Adjacent land is part of an Open Space area or conservation easement, or
  - c. Residential dwelling units in the Open Space Conservation Subdivision are grouped with residential dwelling units in an adjacent parcel's subdivision.The buffer area shall be owned in fee and managed by an association of the owners of the lots within the subdivision (i.e. homeowners' association).
3. Dwelling Unit Lot Area: The minimum lot area for residential dwelling sites shall be flexible to allow for consideration of dwelling sites and types, landscape and topography, adjacent Open Space and access.
  - a. Dwelling Unit Lot size may vary based on the requirements of the NH-DES and the Planning Board per the Subdivision Regulations for the location of a subsurface wastewater treatment system.
  - b. Dwelling Unit Lot shapes may be irregular.
  - c. Shared driveways are permitted.
  - d. Dwelling Unit Lots shall be laid out and graded to eliminate flood or stagnant water pools. No water shall be permitted to run across a street on the surface, but shall be directed into catch basins and pipes underground in a pipe of not less than 12 inches in diameter.
4. Maximum Density: The maximum density of dwelling units permitted shall be the same as permitted in the Zoning District(s) in which the Open Space Conservation Subdivision is located, provided in no case shall the density exceed the Town's soil based lot sizing standards outlined in Article V. B.
5. Residential Dwelling Units: The total number of dwelling units allowable within an Open Space Conservation Subdivision shall not exceed the number of units that would otherwise be allowed in the existing zoning district using conventional subdivision design and meeting all applicable Town, State, and federal laws, regulations, and standards.

### **D. Design Standards**

1. Street Design: Streets in Open Space Conservation Subdivisions shall:

- a. Be curved to follow the natural topography with no straight segment extending farther than 300 feet.
  - b. Not exceed 1,000 feet if a cul-de-sac, or 1,500 feet with a Conditional Use Permit as described in Article XV. F. below.
  - c. Meet the paved roadway minimum width recommendation in “Guidelines for Geometric Design of Very Low-Volume Local Roads” by the American Association of State Highway and Transportation Officials.
2. Septic Systems: A septic system located outside a Dwelling Unit Lot or shared septic system may be permitted provided the requirements of the State Department of Environmental Services are met, including appropriate provisions for legal obligations related to maintenance and replacement. Said system may be located in a Designated Open Space area provided the area shall not be sold to another property owner. All septic systems shall meet state and municipal setback requirements from poorly and very poorly drained soils. Per RSA 289:3, all septic systems must also meet state setback requirements from cemeteries.
  3. Parking: The number of parking spaces required for a residential Open Space Conservation Subdivision shall be two spaces per dwelling unit. Parking may be provided in driveways.
  4. Landscaping: Landscaping shall be installed per a Planning Board approved landscape plan showing all landscaped areas, fencing and the size and type of plant material (trees, shrubs, and ground cover) and other features to prevent soil erosion and enhance the site.
  5. Building Envelope: All residential lots shall show a building envelope, conforming to all applicable setbacks, and showing the outside limits for all structures, pavement, lawns, clearing, and grading.
  6. Street and Neighborhood Lighting: Street and neighborhood lighting shall be low intensity, and fully screened to maintain a dark sky.
  7. Pedestrian and Bicycle Paths: Pedestrian and bicycle paths shall be provided/installed within the subdivision and to adjacent developments to create walkable neighborhoods and areas in the Town. Pedestrian ways shall be separated from the paved roadway by a minimum of five (5) feet. Where appropriate, pedestrians and bicyclists may share the same pathway.
  8. Utilities: (Electrical, Telephone, Cable, Street Lighting, and Other Overhead Wired Utilities). All utilities shall be installed underground, unless the applicant demonstrates and the Planning Board finds that such installation is unfeasible.

#### **E. Open Space Requirements: Types, Area, Location, and Design.**

1. Designated Open Space: At least fifty percent (50%) of an Open Space Conservation Subdivision’s buildable area and a portion of the non-buildable area of the parent lot shall be permanently Designated Open Space by covenant recorded at the Registry of Deeds and shown on the recorded subdivision plan. The Designated Open Space shall not be used for additional building lots.

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2. The following activities or land uses may not be counted as a part of the buildable area:
  - a. Land covered by existing rights-of-way, utility easements, and structures, such as dwellings, garages, storage sheds, patios, parking areas, driveways, septic systems and leach fields; and,
  - b. Setbacks and lawns.
3. The following areas shall be high priorities for inclusion in Designated Open Space:
  - a. Riparian and other resource buffers,
  - b. High quality forest resources,
  - c. Individual trees,
  - d. Critical habitat areas, including core and supporting areas designated by the New Hampshire Fish and Game Wildlife Action Plan and the Land Conservation Plan for New Hampshire's Coastal Watersheds,
  - e. High quality soil resources,
  - f. Cultural and historic resources,
  - g. Viewsheds, and
  - h. Existing recreational, hiking, non-motorized recreational trails, and snowmobile trails.
4. Reasonable efforts must be made to locate Designated Open Space adjacent to other Open Spaces on adjoining property to the satisfaction of the Planning Board.
5. At least 75% of Designated Open Space shall be contiguous to other Open Space and with no portion less than 100 feet wide.
6. Open Space Conservation Area: At least 50% of Designated Open Space shall be designated as Open Space Conservation Area and shall be maintained to preserve existing sustainable forestry and agricultural practices or in a natural and undisturbed condition at the discretion of the Planning Board.
7. Limited access to Open Space Conservation Area may be allowed in the form of walking, hiking, bicycling, or horseback riding paths, the total area of which must be no more than 2% of the total Open Space Conservation Area.
8. Open Space Other Use Area: Of the remaining Designated Open Space, a minimum of 10% should be designated Open Space Other Use Area and may be used for passive or active recreation or for the location of storm water management facilities.
  - a. If the Open Space Other Use Area is used for stormwater management, all design, construction, maintenance and public safety requirements shall be met using New Hampshire Department of Environmental Services Best Management Practices.
  - b. If the Open Space Other Use Area is used for active recreation, impervious cover shall not exceed 5% of this Area.

**F. Cul de Sac Conditional Use Permit**

The Planning Board may issue a Conditional Use Permit allowing a cul de sac greater than 1,000 feet and less than 1,500 feet if the additional roadway over 1,000 feet:

1. Increases the protection of habitat for rare, threatened, or endangered species,
2. Does not reduce fire and safety protection,
3. Can be maintained with existing Highway Department vehicles,
4. Meets Police Department safety standards, and
5. Does not create an undue financial burden on the town.

## **XVII. Stormwater Management and Erosion Control**

### **A. Statement of Purpose/Authority**

1. Purpose: The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased stormwater runoff, decreased groundwater recharge, and non-point source pollution.
2. Authority: The provisions of this Article are adopted pursuant to RSA 674:16, Grant of Power, RSA 674:17, Purposes of Zoning Ordinance, and RSA 674:21, Innovative Land Use Controls.

### **B. Permanent Stormwater Management Goals**

1. Stormwater Runoff: At a point immediately downstream from the project site the post-development peak flow rate from the site and the off-site contributing area shall not exceed the pre-development peak flow rate at that point.
2. The treatment plan shall be designed according to the regulations to convey the design storm event without overtopping or causing damage to the stormwater management facility and downstream areas.
3. Water Quality: Stormwater management systems shall be designed to:
  - a. Remove a minimum of 80 percent of the average annual load of total suspended solids (TSS), floatables, greases, and oils after the site is developed.
  - b. Manage the increase in the levels of Nitrogen and Phosphorus due to the proposed development of Non-Incidental Disturbances. The applicant shall provide the necessary calculations that prove to the Planning Board that the appropriate Best Management Practices have been provided and that any increase in Nitrogen and Phosphorus loading that can not be accepted by the downstream water body has been mitigated. Calculations shall be provided as required by the Planning Board Regulations.
4. Recharge to Groundwater: The annual average post-development groundwater recharge volume (GRV) for each hydrologic soil group shall be similar to the predevelopment condition.

### **C. Applicability-Stormwater Management and Erosion Control Ordinance**

1. This Stormwater Management and Erosion Control Ordinance applies to all property owners or developers who propose the development of:
  - a. Any new subdivision;
  - b. For existing lots of record when there is:
    1. New disturbances of the land on slopes greater than 30%,
    2. New disturbances of the land greater than 500 square feet on slopes greater than 15% and less than 30%,

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3. New disturbances of the land greater than 2000 square feet on slopes of 15% or less,
4. All new construction or coverage of the land that would result in total impervious coverage of the lot above 20%.
2. Applicable Disturbances of Land: A disturbance of the land means anytime that soil, sand, gravel, or rocks are exposed by human activities such as clearing of trees or vegetation, grading, blasting, or excavation.
3. Non-Applicable Activities and Projects: The following activities and projects are excluded from the definition of disturbances of the land and therefore are not subject to the provisions of this ordinance:
  - a. Reseeding or repair of an existing lawn in which the topography of the site is not significantly altered and the existing runoff patterns remain unchanged;
  - b. Repair or replacement in kind of a septic system in which the topography of the site is not significantly altered and the existing runoff patterns remain unchanged;
  - c. Projects limited to subsurface explorations needed to assist in the design of a project including but not limited to test boring, test pits, observation wells, soil surveys, and other site characterization work;
  - d. Utility projects that meet all of the following conditions:
    1. The project is limited to trench excavation for installing, replacing, or repairing utilities, such as sewer, septic, water, closed drainage systems, gas pipes, or telephone or cable wires (that is not part of a larger project that would require a permit under this ordinance),
    2. The project is done by or at the direction of the entity with responsibility for maintaining the lines for which the work is being done, including the homeowner if he or she is the responsible party, and
    3. The trench is closed at both ends so no water can escape the trench if there is a storm;
  - e. An asphalt maintenance project that meets all of the following conditions:
    1. The project is limited to replacement of the existing asphalt surface to its existing grade,
    2. The project is limited to the footprint of the existing surface,
    3. There is no change in the existing drainage system, and
    4. If course gravels or other materials forming the base under the asphalt are removed, they are replaced within 72 hours;
  - f. Agricultural or forestry operations as defined by RSA 21:34-a;
  - g. All exempt activities and projects listed in this section above shall be completed in accordance with the relevant Best Management Practices.
4. Levels of Disturbance: There are two levels of disturbance defined by the size and slope of the area disturbed. Requirements of this Article relate to type of disturbance, if any. The levels are:
  - a. Incidental Disturbance: An incidental disturbance is any disturbance that is:

1. Greater than 2000 square feet and less than or equal to 12,000 square feet on slopes of 15% or less, and is
  2. 25% or less of the total lot area, and is
  3. 5,000 square feet or less of new impervious area;
- b. Non-Incidental Disturbance: A Non-Incidental Disturbance is any disturbance that is:
1. Greater than 500 square feet and less than or equal to 6,000 square feet on slopes greater than 29.9%, or
  2. Greater than 2,000 square feet and less than or equal to 12,000 square feet on slopes greater than 25% and less than or equal to 29.9%, or
  3. Greater than 2,000 square feet on slopes greater than 15% and less than or equal to 25%, or
  4. Greater than 12,000 square feet on slopes less than or equal to 15%, or
  5. More than 25% of the total lot area, or
  6. Will result in more than 5,000 square feet of new impervious area.

#### **D. Requirements**

1. Requirements for Incidental Disturbances
  - a. Management of Incidental Disturbances
    1. Incidental disturbances shall require a Permit by Notification.
      - i. The application for a Permit by Notification shall be submitted to the Code Enforcement Officer at least 10 working days in advance of the commencement of work.
      - ii. The application shall demonstrate the plans for storm water management during and after the disturbance.
      - iii. The application shall become a valid permit if not revised by the Code Enforcement Officer within 7 working days of submission.
      - iv. The application shall give permission to the Code Enforcement Officer to inspect the storm water management systems during and after completion.
    - b. Stormwater management systems shall be designed to meet the Permanent Stormwater Management Goals in Article XVII.B.

The Town of New Durham Stormwater Management and Erosion Control Regulations include limited requirements for that purpose. Such requirements shall be significantly less extensive than those required for Non-Incidental Disturbances.
2. Requirements for Non-Incidental Disturbances
  - a. Management of Non-Incidental Disturbances
    1. Non-Incidental Disturbances shall require a Stormwater Conditional Use Permit issued by the Planning Board or the Code Enforcement Officer.
    2. The Town of New Durham Stormwater Management and Erosion Control Regulations identify the factors that determine if the Conditional Use

Permit may be granted by the Code Enforcement Officer, or shall be granted by the Planning Board.

The Town of New Durham Stormwater Management and Erosion Control Regulations include the requirements for stormwater management for Non-Incidental Disturbances to meet the stormwater management goals of Section XVII. B.

3. General Requirements for All Disturbances/Development
  - a. The total overall impervious cover shall not exceed 20% of a site or 30% of a site if the amount of impervious surface greater than 20% is disconnected from the offsite stormwater drainage network.
  - b. More restrictive limitations on impervious surface in other sections of this Stormwater Management and Erosion Control Ordinance, the Town of New Durham Stormwater Management and Erosion Control Regulations, Subdivision Regulations or the Zoning and Land Use Ordinance may apply.
  - c. Impervious cover may be disconnected from the stormwater drainage network, through such techniques as infiltration, sheet flow over a pervious area, or other techniques approved in the Conditional Use Permit. For acceptable techniques see (Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, 2008 or as amended, available in the Land Use Library.)
  - d. Stormwater management systems shall not discharge directly to surface waters, subsurface, or groundwater within 100 feet of a surface water; or within a water supply intake protection area; or as restricted by other sections of this Ordinance, the Town of New Durham Subdivision Regulations or the Zoning and Land Use Ordinance without meeting the requirements of this ordinance.
  - e. Stormwater management systems with contributing area of 1) greater than one-half acre; or 2) less than or equal to one-half acre but includes high load use areas as defined by regulation; shall not discharge within the setback area established in the regulations for a water supply well.

### **E. Design Requirements for All Development Activity**

All development activity must comply with the following provisions to reduce and properly manage stormwater post-construction:

1. Best Management Practices (BMP) techniques as identified in the following publications shall be used to meet the Permanent Stormwater Management Goals in Section XVII.B:
  - a. Innovative Land Use Planning Techniques: A handbook for Sustainable Development 2008 or as amended,
  - b. Department of Environmental Services Stormwater Manuals three volume set as amended;

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2. Stormwater management practices shall be selected to accommodate the unique hydrologic and geologic conditions of the site;
3. The use of stormwater management measures, including site design approaches to reduce runoff rates, volumes, and pollutant loads, are preferred and shall be implemented to the maximum extent practical. Such techniques include, but are not limited to:
  - a. Minimization and/or disconnection of impervious surfaces,
  - b. Development design that reduces the rate and volume of runoff,
  - c. Restoration or enhancement of natural areas such as riparian areas, wetlands, and forests, and
  - d. Use of practices that intercept, treat, and infiltrate runoff from developed areas distributed throughout the site (e.g. bioretention, infiltration dividers or islands, or planters and rain gardens);
4. Applicants shall demonstrate why use of nontraditional and/or nonstructural approaches such as those described in this section above are not possible before proposing to use traditional, structural stormwater management measures (e.g., stormwater ponds, vegetated swales);
5. The applicant shall demonstrate how the proposed control(s) will comply with the requirements of this ordinance. The applicant must provide design calculations and other back-up materials necessary;
6. At the discretion of the planning board, stormwater management systems shall incorporate designs that allow for shutdown and containment in the event of an emergency spill or other unexpected contamination event;
7. Stormwater management systems shall be designed to protect Natural Hydrologic Features and Functions as established in the stormwater and erosion control regulation. Priority shall be given to maintaining existing surface waters and systems, including but not limited to, perennial and intermittent streams, wetlands, vernal pools, and natural swales. The requirements below are established as a minimum and greater restrictions may be required by other sections of this Ordinance, the Town of New Durham Subdivision Regulations, the Zoning and Land Use Ordinance or State Regulations based on the location of the development site:
  - a. Existing site hydrology shall not be modified so as to disrupt on-site and adjacent surface waters. The applicant must provide evidence that this standard can be achieved and maintained over time;
  - b. Setback: Existing surface waters, including lakes, ponds, rivers, perennial and intermittent streams, wetlands, vernal pools, as regulated within the Town of New Durham Zoning and Land Use Ordinance, shall be protected by a minimum 25 foot no disturbance, vegetated buffer. The Planning Board with the consent of the Conservation Commission may reduce the minimum buffer requirement on slopes less than 15% if the applicant can demonstrate that the disturbance within the buffer is in conjunction with improving storm water

- quality or the construction of a storm water management system and the intent of this Ordinance is met;
- c. Steep Slope Setback: Structures related to Best Management Practice techniques shall not be located within 50 feet of steep slopes of 15 percent slope or greater;
  - d. Where roadway or driveway crossings of surface waters cannot be eliminated, disturbance to the surface water shall be minimized, hydrologic flows shall be maintained, there shall be no direct discharge of runoff from the roadway to the surface water, and the area shall be revegetated post-construction;
  - e. Stream and wetland crossings shall be eliminated whenever possible. When necessary, stream and wetland crossings shall comply with design standards identified in the University of New Hampshire Stream Crossing Guidelines, May 2009, as amended, to minimize impacts to flow and animal passage;
8. Pre-Treatment Requirements
    - a. All runoff from any source (with the exception of non-metal roofs) must be pretreated prior to its entrance into the groundwater recharge device to remove materials that would clog the soils receiving the recharge water;
    - b. Pretreatment devices shall be designed to capture the anticipated pollutants and be designed and located to be easily accessible to facilitate inspection and maintenance;
  9. Sizing and design of Infiltration/recharge BMPs shall be as established by the stormwater and erosion control regulation based on criteria in the NH-DES Stormwater Manual;
  10. Requirements for Parking Areas shall be as established by the Stormwater Management and Erosion Control Regulation;
  11. Requirement for Land Uses with Higher Potential Pollutant Loads are as established by the Stormwater Management and Erosion Control Regulation;
  12. Redevelopment or Reuse
    - a. Redevelopment or reuse of previously developed sites must meet the stormwater management standards set forth herein to the maximum extent possible as approved by the planning board. To make this determination the applicant shall provide sufficient materials to show the improvements of the redevelopment plan and the benefits of redevelopment as compared to the existing condition with respect to stormwater;
    - b. Redevelopment or reuse activities shall not infiltrate stormwater through materials or soils containing regulated or hazardous substances;
    - c. Redevelopment or reuse of a site shall not involve uses or activities considered “high-load uses” as defined in the stormwater and erosion control regulation;
  13. Easements.
    - a. When a site is traversed by or requires construction of a watercourse or drainage way, an easement of adequate width shall be required for such

purpose. The easement shall be recorded and provided to the Land Use Department for submission to the Strafford County Registry of Deeds and for the Town records;

- b. There shall be at least a ten (10) foot wide maintenance easement path for surface stormwater management components. For systems using underground pipes, if a maintenance easement is determined necessary, the width shall vary based on the depth of the pipe, and will be determined by the Planning Board;

14. Performance Bond

- a. To ensure that proposed stormwater management controls are installed as approved, a performance bond shall be provided as a condition of approval in an amount determined by the planning board;
- b. To ensure that stormwater management controls function properly, a performance bond shall be required, as a condition of approval, which may be held after final certificate of occupancy is issued;

15. Acceptance of Changes Required by State or Federal Regulators

If a plan approved by the New Durham Planning Board is changed in order to meet requirements for an Alteration of Terrain or other state or federal environmental permit the applicant shall submit the changes to the Planning Board. Provided that such an approved plan is more stringent, no further action by the New Durham Planning Board is required.

**F. Stormwater Management During Disturbance or Construction**

Erosion and sedimentation control plans shall be required to describe the nature and purpose of the land disturbing activity, the amount of grading involved, description of soils, topography, vegetation, drainage patterns and the specific methods that will be used to control soil erosion and sedimentation, soil disturbance and removal, grading and the stormwater collection systems. Erosion and Sedimentation Control Plans shall not conflict with minimum N.H. Department of Environmental Services requirements for Alteration of Terrain or other environmental permits required.

**G. Operation and Maintenance Plan Requirement**

1. All stormwater management systems for Incidental and Non-Incidental Disturbances shall have an Operations and Maintenance (O&M) Plan to ensure that systems function as designed. This plan shall be reviewed and approved as part of the review of the proposed permanent stormwater management system. Creation and fulfillment of the Operations and Management Plan shall be a condition of approval and continued operation of a subdivision or site plan. If the stormwater management system is not dedicated to the Town pursuant to a perpetual offer of dedication, the Planning Board may require an applicant to establish a homeowners association or similar entity to maintain the stormwater management system. The O&M Plan shall include implementation of the Stormwater Pollution Prevention Plan (SWPPP).

2. Contents of Operation and Maintenance Plan

The Town of New Durham Stormwater Management and Erosion Control Regulations, establishes requirements for the contents of the Operations and Maintenance Plan that will ensure continued and effective operation of the system.

3. Recording

- a. The owner shall provide covenants for recording with the Strafford County Registry of Deeds in a form satisfactory to the planning board, which provide that the obligations of the stormwater management system Operations and Maintenance Plan run with the land.
- b. The owner shall file with the registry of deeds such legal instruments as are necessary to allow the city/ Town or its designee to inspect or maintain the stormwater management systems for compliance with the O&M plan.

4. Modifications

- a. The owner shall keep the O&M plan current, including making modifications to the O&M plan as necessary to ensure that BMPs continue to operate as designed and approved.
- b. Proposed modifications of O&M plans including, but not limited to, changes in inspection frequency, maintenance schedule, or maintenance activity along with appropriate documentation, shall be submitted to the Planning Board for review and approval within thirty days of change.
- c. The owner must notify the Planning Board within 30 days of a change in owner or party responsible for implementing the plan.
- d. The Planning Board may, in its discretion, require increased or approve decreased frequency of inspection or maintenance or a change in maintenance activity. For a reduced frequency of inspection or maintenance, the owner shall demonstrate that such changes will not compromise the long-term function of the stormwater management system.
- e. The Planning Board shall notify the owner of acceptance of the modified plan or request additional information within 60 days of receipt of proposed modifications. No notification from the Planning Board at the end of 60 days shall constitute acceptance of the plan modification. The currently approved plan shall remain in effect until notification of approval has been issued, or the 60 day period has lapsed.

5. Record Keeping

Parties responsible for the operation and maintenance of a stormwater management system shall keep records of the installation, maintenance, and repairs to the system, and shall retain records for at least five years.

6. Enforcement

If the designated enforcement official for the Town of New Durham determines that the responsible party has failed to implement the Operations and Maintenance plan, the municipality is authorized to:

- a. Assume responsibility for the implementation of the Operations and Maintenance Plan,
- b. Secure reimbursement for associated expenses from the responsible party, including, if necessary, placing a lien on the subject property, and
- c. Utilize equitable remedies, including injunction to implement the Operations and Maintenance Plan.

#### **H. Stormwater Management Erosion and Sedimentation Control Plan Requirement**

1. All developments subject to the incidental and non-incidental disturbance requirements of this ordinance shall submit a permanent (post construction) Stormwater Management Erosion and Sedimentation Control Plan, which shall be prepared by a licensed New Hampshire professional engineer and shall address and comply with the requirements set within this Stormwater Management and Erosion Control Ordinance and Regulations as specified by the Planning Board.
2. Pre-and Post-Development Flow: The applicant shall provide pre- and post-development peak flow rates and total runoff volumes. The Planning Board may provide exemptions to following standards of this ordinance for projects that directly discharge to a stream or water body, and where the applicant has provided off-site drainage calculations.
3. Application Requirements  
The Town of New Durham Stormwater and Erosion Control Regulations include the information requirements to be submitted as part of an application for a Stormwater and Erosion Control Permit.
4. Engineering Review
  - a. The applicant upon request shall submit a fee to be held in escrow, to cover the cost of outside engineering review of the proposed stormwater management and erosion and sedimentation control plan if determined necessary by the Planning Board.
  - b. Additional Copies of all plans, engineering studies, and additional information as requested by the planning board describing the proposed permanent post-construction stormwater management system shall be provided as necessary to allow for a thorough outside engineering review

#### **I. Authorization to Issue Conditional Use Permit**

1. Grant of Authority: Authority is hereby granted to the Planning Board, as allowed under RSA 674:21, II, to:
  - a. Issue a Conditional Use Permit, and
  - b. To delegate permit granting authority for specific categories of applications by regulation.
  - c. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall

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be reviewed by the planning board prior to final consideration by the administrator.

2. The authority of the Board or a delegated agent to issue a Conditional Use Permit includes the authority to allow variations from the requirements and restrictions set forth in this Article; provided the development design and proposed stormwater management approach satisfy the following conditions:
  - a. Such modifications are consistent with the general purpose and standards of this Article and shall not be detrimental to public health, safety or welfare, and,
  - b. The modified design plan and stormwater management approach shall satisfy all state and/or federal permit requirements, as applicable.

## **XVIII. Impact Fee Ordinance**

### **A. Purpose**

The following regulations shall govern the assessment of impact fees for public capital facilities to accommodate the demands of new development on these facilities. These provisions are intended to:

1. Assist in the implementation of the Master Plan and Capital Improvements Program,
2. Provide for the public capital facilities necessitated by new development, and
3. Assess an equitable share of the cost of public capital facilities to new development in proportion to the facility demands of new development.

### **B. Authority**

These regulations are authorized by New Hampshire RSA 674:21, V, and other pertinent state law, as an innovative land use control. Under this authority, new development in the Town of New Durham may be assessed impact fees in proportion to its demand on the public capital facilities of the Town and School District.

### **C. Objective**

It is the objective of the Impact Fee Ordinance to provide general authority to the Planning Board to adopt methods for the calculation of impact fee assessments and related impact fee schedules for application to new development. Impact fee schedules and their supporting basis, or changes to these documents, would be adopted by the Board for application to new development only after a public hearing.

### **D. Authority to Assess Fees**

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance and to delegate the administrative functions of impact fee assessment, collection and disbursement as necessary. The administrative process of assessment and collection of impact fees is delegated to the Building Inspector. The management and disbursement of impact fee accounts is the responsibility of the Finance Director.

### **E. Standards and Basis of Assessment**

1. The amount of any impact fee shall be a proportional share of public facility improvement costs which are reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.
2. The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which

define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules therefore.

3. Where feasible, proportionate impact fee assessments for residential development shall be computed based on a charge per square foot of living area, and for non-residential development per square foot of gross floor area. Where the computation of residential fees per square foot of living area is not feasible for residential property, proportionate fees may be based on structure type, the number of bedrooms, or both characteristics.
4. No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.
  - a. In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this Ordinance.
  - b. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

#### **F. Review and Change in Assessment Schedules**

An impact fee assessment schedule adopted by the Planning Board shall be reviewed not less than every three years following its adoption, or upon the Board's adoption of revisions to the Capital Improvement Program that could affect the facility standards or capital cost assumptions used to define the fee schedules. Such review may result in recommended adjustments in one or more of the fees or the basis of assessment using the most recent data as they affect the variables in the fee calculations. A proposed change in the impact fee assessment schedules or the basis of assessment shall be effective only where such change is adopted following a public hearing.

#### **G. Assessment and Collection of Impact Fees**

1. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan. The amount of such assessment shall be applicable to subsequent building construction within the approved subdivision or site plan for a period of four years from the date of Planning Board approval. Once this four-year period has expired, remaining construction for which no building permit has been obtained shall be subject to the adopted fee schedule in force at the time that the building permit application is made. (See NH RSA 674:39 with respect to its provisions regarding impact fee assessment.)
2. With the exception of those plats and site plans meeting the conditions in (1) above, and when no other Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall

be assessed prior to, or as a condition for, the issuance of a building permit. The impact fee schedule in force at the time of the building permit application shall apply.

3. The collection of impact fees will take place at the time a certificate of occupancy is issued.
4. The Planning Board may establish an alternate, mutually acceptable schedule of payment of impact fees by an assessed property. If an alternate schedule of payment is established, the Planning Board may require security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of impact fees.

## **H. Waivers**

1. The Planning Board may grant full or partial waivers of impact fees to an assessed property, subject to its finding that the proposed development meets one or more of the applicable conditions set forth below:
  - a. A full or partial waiver of public school impact fees may be granted for those residential units that are lawfully restricted to exclusive occupancy by persons age 62 or older within a development that is maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy for a period of at least 20 years.
  - b. The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that involves a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers may not be based on the value of exactions for on-site or off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Ordinance.
  - c. The Planning Board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fees waived.
  - d. The Planning Board may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written

conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the public capital facility or system for which the impact fee is being assessed.

### **I. Appeals Under This Article**

1. A party aggrieved by a decision made by the Building Inspector or other Town official relating to an administrative decision in the assessment or collection of impact fees authorized by this Article may appeal such decision to the Zoning Board of Adjustment.
2. A party aggrieved by a decision of the Planning Board under this Article may appeal such decision to the Strafford County Superior Court as provided by RSA 677:15, as amended.

### **J. Administration of Impact Fees**

1. Impact fees collected by the Town shall be properly identified and promptly transferred by the Finance Director for deposit into an individual public capital facilities impact fee account for each of the categories under which impact fees are assessed, and shall be used solely for the purposes specified in this Ordinance. Impact fee accounts shall be special revenue fund accounts and under no circumstances shall such revenues accrue to the general fund.
2. Impact fees shall be paid out or applied to the provision of public capital facilities only upon specific authorization by the Board of Selectmen.
3. The Finance Director shall record all fees paid, by date of payment, name of the person making payment, and the parcel, lot or building for which the fee has been paid. The Finance Director shall maintain an updated record of the current ownership, tax map and lot reference number of each property for which an impact fee has been paid and the amount of that fee for a period of at least six (6) years.
4. Funds withdrawn from the public capital facilities impact fee accounts shall be used solely for the purpose of acquiring, constructing, expanding or equipping public capital facilities or improvements made within the individual categories established by the fee schedules and basis of assessment adopted by the Planning Board.
5. In the event that bonds or similar debt instruments have been issued for public capital facilities which were constructed in anticipation of new development, or are issued for advanced provision of capital facilities identified in this Ordinance, impact fees may be used to pay debt service on such bonds or similar debt instruments.

### **K. Refund of Impact Fees Paid**

1. The owner of record of an assessed property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:

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- a. The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the final payment of the fee, or
  - b. The Town, or in the case of school impact fees, the School District, has failed, within the period of six (6) years from the date of the final payment of such fee, to appropriate the non-impact fee share of related capital improvement costs.
2. The Board of Selectmen shall be responsible for determining whether, based on the above criteria, the owner of record is due a refund. If the Board of Selectmen determines that a refund is warranted, it shall issue a written notice of the refund amount due, including accrued interest, and make payment of same when requested by the owner.

**L. Other Authority Retained**

This Impact Fee Ordinance shall not be deemed to affect other authority of the Planning Board over subdivisions and site plans, including, but not limited to:

1. The authority of the Planning Board to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a); or
2. The authority of the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21, V (j); or
3. Other authority of the Town of New Durham to assess additional fees under the authority of other statutes, ordinances of the Town of New Durham or the New Durham Planning Board Site Plan Review and Subdivision Regulations.

## **XIX. Sign Regulations**

### **A. Purposes**

The purposes of these sign regulations are to:

1. Encourage the effective use of signs as a means of communication for the business community,
2. Maintain the rural character of the town, and
3. Enable fair and consistent enforcement of this ordinance.

### **B. Permitted Signs**

No sign shall be allowed within the town of New Durham except in accordance with the provisions of this article.

### **C. Permit and Fee Required**

1. Permits shall be issued by the Building Inspector.
2. An application for a sign permit shall include sign location, size, method of illumination, if any, and types of materials to be used in construction.
3. Replacement of existing signs, where the size or location is being altered, shall require a permit and such replacement shall conform to the regulations of this zoning ordinance.
4. Upon completion of sign(s), photo documentation of building and sign(s) shall be furnished by the applicant.
5. All applications for sign permits shall be accompanied by the payment of the fee for the sign permits at the rate of (\$1.00) one dollar per square foot with a five-dollar minimum.

### **D. Sign Construction and Maintenance**

All surfaces and supporting structures of signs, whether erected prior to the effective date of this ordinance or not, shall be maintained in a safe and sightly condition, to the satisfaction of the Planning Board or its designated agent. A sign or its support will be ordered repaired or removed for any of the following reasons:

1. Sign presents a safety hazard,
2. Sign is not readable,
3. Damage from any cause, including missing components,
4. Severe fading or weathering,
5. Sign does not comply with the permit,
6. Sign is obsolete,

Failure to correct a violation within thirty (30) days after notice thereof shall constitute a violation of this ordinance, subject to prescribed remedies whereupon the Code Enforcement Officer may remove, or cause to have removed, said sign at the owner's expense.

## E. Sign Requirements

### 1. General Sign Requirements

- a. Number of Signs: No more than 3 outdoor signs shall be permitted per lot, only one of which shall be detached from the building. One sign shall not exceed 16 square feet, and the others shall not exceed 12 square feet each.
- b. Sign Area: The measurement of the area of a sign shall be the surface area and shall include all lettering or elements of a sign, accompanying designs and symbols, together with the background, whether open or closed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself and which are not designed to attract attention. Where the sign consists of letter or symbols affixed to a surface or building, without any distinguishing border, panel, or background, the area shall be considered to be the smallest rectangle or shape that encompasses all of the letters and symbols. The area of one (1) side of a double-faced sign shall be regarded as the total area of the sign.
- c. Free Standing Signs: Free standing signs shall be not more than 12 feet high, at the highest point, from the level of the road surface to which their content is directed.
- d. Height of Wall Signs: The top edge of any wall sign shall not be higher than the roof ridge or the highest point of the roof if no ridge pole, nor higher than the plate of a flat roof.
- e. Distance from Lot Line and Public Right of Way: No sign shall be closer than five (5) feet to a lot line or public right of way.
- f. Sign Projection: No sign shall project above any roof line nor extend over or into a public right of way or in any way interfere with the safety of the motoring public.
- g. Illumination: Signs may be illuminated at the discretion of the owner using external white incandescent or fluorescent lighting only. Illuminated fixtures shall be arranged to direct the light away from streets, so as not to interfere with the motoring public, and away from adjoining structures. Flashing, blinking, or rotating illumination is expressly forbidden. Signs may be illuminated only during working hours for the respective business.
- h. Sign Movement: No sign shall move or create an illusion of movement through shimmering and rippling. No sign shall contain any parts which move except those parts unrelated to advertising and which solely indicate date, time, or temperature. No strings, banners, pennants, flags or streamers shall be permitted.

### 2. Sign Requirements in The Town Center Mixed Use District

All development constructed under the provisions of **Article IX: Town Center Mixed Use Zoning District** shall comply with the required sign standards contained in this Article of the Town of New Durham zoning ordinance except as expressly allowed in this section.

- a. Approval Required

A Site Plan or Subdivision application within the Town Center District may include approval of signage for which a separate permit and fee will not be required. A permit and fee as required by this Article will be required for signage associated with all other development and building permit applications within the Town Center District.

b. Sign Specifications

1. Number of Signs: For lots that contain more than one building, and no more than one business per building, no more than 2 signs per building shall be permitted. In both instances, one sign shall not exceed 16 square feet, and the other(s) shall not exceed 12 square feet each.
  2. Signs for Buildings with More than One Business: For buildings that house more than one business the Planning Board may permit one sign for each business in addition to other signs allowed in this article. The size of each sign shall not exceed 16 square feet. The Planning Board may require a smaller size if necessary to maintain the visual integrity of the district or the building.
  3. Height of Wall Sign: The top edge of any wall sign shall not be higher than or extend beyond the roof edge.
  4. Notwithstanding any other requirements of this article, the Planning Board may permit the following signs:
    - i. Sign Movement: Banners, pennants, and flags are permitted only attached to a building, so as not to interfere with the safe movement of pedestrian and motorized traffic, and shall be no closer than 10 feet from adjacent buildings.
    - ii. Detached and Moveable Signs: A-frame sandwich board and other signs are permitted only near the front entrance to a business. Such signs shall not interfere with safe movement of pedestrian and motorized traffic.
  5. Prohibited signs: Neon signs, and signs that emit sounds or smoke are prohibited.
3. Sign Requirements on Route 11
- The Planning Board may permit a commercial lot in active use on Route 11 a single sign that does not exceed 64 square feet in size. The sign may have up to 3 separate sections. The sign shall not exceed eight (8) feet in width nor shall any part of the sign extend more than twenty (20) feet above the ground.

## F. Agricultural Signs

Any agricultural product such as fresh fruit and vegetables produced and sold at the same location shall be allowed one sign not to exceed sixteen (16) square feet in size during the harvesting season. One off-site directional sign may be allowed in season, not to exceed two (2) square feet.

## **G. Vehicle Signs**

Parked vehicles or other device which by appearance and use meets the definition of a sign which is allowed to remain on-site during and after business hours shall conform to the provisions of this ordinance. No vehicle which is used primarily as an advertising display may be parked on any street or parking lot or any place within the Town.

## **H. Signs Allowed Without Permit or Fee**

1. Real Estate - For Sale or Lease: Two (2) temporary non-illuminated signs for the purpose of advertising the sale or lease of the premises thereon shall be allowed without a sign permit. Each such sign shall not exceed six (6) square feet each. In addition to the two (2) temporary advertising signs allowed herein, one off-site sign is allowed to serve as a directional sign to the property advertised. Said signs shall be removed within thirty (30) days of the sale of subject property.
2. Construction Signs: One (1) sign, not exceeding sixteen (16) square feet in area shall be allowed on the building site under construction identifying the owner, architect, contractor, and/or developer, and shall be removed within thirty (30) days after completion of work.
3. Special Occasion and Seasonal Signs: Special occasion signs such as signs announcing a Grand Opening, Anniversary Sale, etc., shall be allowed for no longer than twenty (20) days per calendar year provided they comply with this Ordinance.
4. Signs Advertising Yard/Garage Sales: Signs advertising yard/garage sales for the sale of goods belonging to or coming from the house where such a sale is held shall be allowed. Each sale may not last more than one week and each household may not have more than two (2) yard sales per year. One sign no larger than six (6) square feet may be posted within the property boundaries, directional signs no larger than two (2) square feet each may be posted at nearby intersections for the duration of the sale.
5. Political Signs: The provisions of this section are in addition to the political sign controls established by the State.
  - a. Political signs are permitted no sooner than forty-five (45) days before a primary or regular election, and must be removed during the period of time allowed in RSA 664:17.
  - b. Political signs shall not be affixed in any manner to natural objects nor to public structures, nor to utility poles and fixtures, nor to existing signs and their supporting structures, or painted, pasted, or affixed in any manner that prohibits quick and complete removal.
  - c. Political signs shall be no larger than sixteen (16) square feet.
  - d. The person whose name appears on each political sign as required by RSA 664:17, shall be responsible for the placement and removal of political signs in conformance with the requirements of this ordinance. Any candidate

failing to comply with the above requirements will be subject to a fine not to exceed twenty (20) dollars per violation.

6. Other Signs Allowed (No Fee):
  - a. Directional signs: Such signs shall be permitted, not to exceed two (2) square feet in area, to indicate entrance and exit driveways.
  - b. Parking lot signs: Signs located in parking lots to identify aisles or reserved area and spaces, not to exceed two (2) square feet in area.
  - c. Signs which identify special uses of property such as Tree Farms and Conservation areas may have a sign up to ten (10) square feet in area.
  - d. Government Signs: A sign required by federal, county or state or local law for safety purposes or which serve a public purpose shall be allowed.
  - e. Organizational Flag: The official identifier of organizations such as the American Legion, service clubs, scout troops, and churches may be publicly displayed at the place of meeting for these organizations.
  - f. Nothing shall prevent a property owner or leaseholder from displaying a nameplate sign on his property, of not more than six (6) square feet total area with his name or other means of identifying his property.

#### **I. Prohibited Signs**

1. Temporary portable signs are prohibited. These signs are customarily located on a trailer or similar wheeled apparatus, whether self propelled or pulled by another vehicle, intended for promotional purposes or to convey an advertising message of any kind, which are not permanently affixed to the ground or are temporarily fixed are prohibited. A-frame sandwich board and other signs not permanently affixed, directly or indirectly, upon a building, structure or land shall also be considered as "temporary portable signs."
2. Off premise advertising signs are prohibited. Signs not relating in subject matter to the premises on which they are located, or not related to products, accommodations, services, or activities on the premises are prohibited.
3. All signs not expressly permitted or allowed are prohibited under this ordinance.

#### **J. Obsolete Signs**

Any sign which is located on property that becomes vacant and unoccupied for a period of more than 6 months or any sign which pertains to a discontinued use shall be deemed to have been abandoned, and the sign shall be considered obsolete. Such obsolete signs are prohibited and shall be removed by the owner of the sign or owner of the premises. In the event that the said sign(s) and support(s) are not removed as requested by the Building Inspector, the Town of New Durham may assess all costs and expenses incurred in said removal against the structure's owners and/or the owner of the land upon which said structure(s) are located.

### **K. Non-Conforming Signs**

A sign installed prior to the effective date of this Article which meets the applicable requirements of the zoning ordinance then in effect but which is not in conformance with the provisions of this code shall be deemed a permitted nonconforming sign. Such nonconforming signs shall, however, be subject to the following regulation:

1. No nonconforming sign shall be altered in any way in structure or material which makes the sign less in compliance with the requirements of this section than it was before the alteration.

## **XX. Non-Conforming Buildings, Land or Uses**

### **A. Continuation of Existing Properties**

All non-conforming properties in active use when this ordinance is passed and adopted may continue in their present use.

### **B. Restoration of Destroyed Properties**

Any non-conforming property which is partially or totally destroyed by reason of obsolescence, fire or other acts of God or nature, may be restored or remodeled if done so within two (2) years; providing, however, that proximity to a lot line, reference line or right-of-way may be no nearer than the lesser of the original building location or the Non-Conforming Setback requirements below.

### **C. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses**

All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided:

1. They conform to Non-Conforming Setback and height requirements below; and,
2. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.
3. State requirements for underground waste disposal requirements are met.

### **D. Decks, Stairs, and Walkways**

For any existing building less than fifty (50) feet from the normal high water, no alteration shall extend the structure closer to the public water, except that an addition of an open deck is permitted up to a maximum of twelve (12) feet towards the normal high water.

All stairs and walkways within fifty (50) feet of the normal high water level shall not exceed four (4) feet in width.

### **E. Non-Conforming Setbacks**

The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article.

1. Leach fields:
  - a. Not less than ten (10) feet from a lot line,
  - b. Not less than seventy five (75) feet from open surface water or hydric A wetlands or fifty (50) feet from hydric B wetlands, and
  - c. Not less than ten (10) feet from the road frontage property line of any road except with the approval of the road agent.
2. Buildings:

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- a. No new building shall be less than twenty (20) feet from the road frontage property line of any road.
  - b. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.
  - c. The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.
  - d. No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.
  - e. No new building shall be less than fifteen (15) feet from the property line of an abutter or less than thirty (30) feet from an abutter's building.
3. Maximum Height:  
The maximum height of any dwelling or structure less than three hundred (300) feet from a great pond or navigable stream shall be thirty five (35) feet from the average parent lot grade surrounding the building to the highest point of the roof.
4. Accessory Structures:  
Accessory structures located between the normal high water and the primary building setback line shall be:
- a. Setback at least twenty (20) feet from the normal high water,
  - b. The structure height shall not exceed twenty (20) feet,
  - c. The footprint shall be no larger than one-hundred fifty (150) square feet, and
  - d. Structures shall meet local building codes.

## **Appendix A: Minimum Lot Size by Soil Type**

**Minimum Lot Size by Soil Type – High Intensity Soil Sample**  
**“N.A” means not allowed      “\*” means any number or letter**

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<b>Minimum Lot Size by Soil Type – High Intensity Soil Sample</b> <b>“N.A” means not allowed                      “*” means any number or letter</b>					
<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>
111BH	60000	122EH	NA	212BH	75000
111CH	60000	124*H	NA	212CH	80000
111DH	60000	12XBH	80000	212DH	95000
111EH	NA	12XCH	100000	212EH	NA
112BH	75000	12XDH	140000	213BH	60000
112CH	80000	12XEH	NA	213CH	75000
112DH	95000	161BH	60000	213DH	100000
112EH	NA	161CH	60000	213EH	NA
114*H	NA	161DH	70000	21XBH	80000
11XBH	80000	161EH	NA	21XCH	100000
11XCH	100000	164*H	NA	21XDH	140000
11XDH	140000	166*H	NA	21XEH	NA
11XEH	NA	16XBH	90000	221BH	60000
121BH	60000	16XCH	110000	221CH	60000
121CH	60000	16XDH	150000	221DH	60000
121DH	60000	16XEH	NA	221EH	NA
121EH	NA	211BH	60000	222BH	75000
122BH	75000	211CH	60000	222CH	80000
122CH	80000	211DH	60000	222DH	95000
122DH	95000	211EH	NA	222EH	NA
<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>

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<b>Minimum Lot Size by Soil Type – High Intensity Soil Sample</b>					
<b>“N.A” means not allowed                      “*” means any number or letter</b>					
222EH	NA	23XCH	100000	253BH	90000
223BH	60000	23XDH	140000	253CH	135000
223CH	75000	23XEH	NA	253DH	160000
223DH	100000	241*	NA	253EH	NA
223EH	NA	241BH	60000	254*H	NA
224*H	NA	241BH	60000	25XBH	130000
22X3H	60000	241CH	75000	25XCH	190000
22XCH	100000	241DH	100000	25XDH	240000
22XDH	140000	241EH	NA	25XEH	NA
22XEH	NA	243CH	75000	261BH	60000
231BH	60000	243DH	100000	261CH	60000
231CH	60000	243EH	NA	261DH	70000
231DH	60000	244*H	NA	261EH	NA
231EH	NA	24X3H	90000	263BH	60000
233BH	60000	24XCH	130000	263CH	85000
233CH	75000	24XDH	180000	263DH	110000
233DH	100000	24XEH	NA	263EH	NA
233EH	NA	251BH	90000	264*H	NA
234*H	NA	251CH	135000	266*H	NA
23XBH	80000	251DH	160000	26XBH	90000
23XCH	100000	251EH	NA	26XCH	110000
<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>

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<b>Minimum Lot Size by Soil Type – High Intensity Soil Sample</b> <b>“N.A” means not allowed                      “*” means any number or letter</b>					
26XDH	150000	321CH	75000	333CH	100000
26XEH	NA	321DH	100000	333DH	125000
275*H	NA	321EH	NA	333EH	NA
3113H	60000	322BH	85000	334*H	NA
311CH	90000	322CH	100000	33XBH	115000
311DH	120000	322DH	135000	33XCH	155000
311EH	NA	322EH	NA	33XDH	205000
312BH	95000	323BH	60000	33XEH	NA
312CH	125000	323CH	90000	341BH	75000
312DH	155000	323DH	120000	341CH	100000
312EH	NA	323EH	NA	341DH	125000
313BH	60000	324*H	NA	341EH	NA
313CH	90000	32EXH	NA	343BH	75000
313DH	120000	32XBH	100000	343CH	100000
313EH	NA	32XCH	120000	343DH	125000
314*H	NA	32XDH	160000	343EH	NA
31X3H	100000	331BH	75000	344*H	NA
31XCH	120000	331CH	100000	34XBH	115000
31XDH	160000	331DH	125000	34XCH	155000
31XEH	NA	331EH	NA	34XDH	205000
321BH	60000	333BH	75000	34XEH	NA
<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>	<b>Soil Type</b>	<b>Lot Size</b>

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<b>Minimum Lot Size by Soil Type – High Intensity Soil Sample</b>					
<b>“N.A” means not allowed</b>			<b>“*” means any number or letter</b>		
351BH	90000	364*H	NA	423BH	90000
351CH	135000	366*H	NA	423CH	135000
351DH	160000	36X3H	110000	424*H	NA
351EH	NA	36XCH	130000	42X3H	150000
353BH	90000	36XDH	170000	42XCH	190000
353CH	135000	36XEH	NA	431CH	150000
353DH	160000	36XEH	110000	432BH	115000
353EH	NA	375*H	NA	433BH	115000
354*H	NA	411BH	90000	433CH	50000
35X3H	130000	411CH	135000	434*H	NA
35XCH	190000	412BH	145000	43XBH	175000
35XDH	240000	412CH	190000	43XCH	235000
35XEH	NA	413BH	90000	441BH	115000
361BH	70000	413CH	135000	441CH	150000
361CH	100000	414*H	NA	443BH	115000
361DH	240000	41X3H	150000	443CH	15000
361EH	NA	41XCH	180000	444*H	NA
363BH	70000	421BH	75000	44X3H	175000
363CH	100000	421CH	115000	44XCH	235000
363DH	130000	422BH	130000	451BH	135000
363EH	NA	422CH	155000	451CH	205000

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<b>Minimum Lot Size by Soil Type – High Intensity Soil Sample</b>			
<b>“N.A” means not allowed                      “*” means any number or letter</b>			
Soil Type	Lot Size	Soil Type	Lot Size
453BH	135000	The Soil types listed below have one or more limiting characteristics that make the soil type “NA” (not allowed) or require on site investigation, regardless of other soil characteristics present.	
453CH	205000		
454*H	NA		
45XBH	195000	5***H	NA, poorly drained soil
45XCH	285000	6***H	NA, very poorly drained soil
461BH	105000	*75**H	NA, floodplain soil
461CH	150000	*66*H	NA, fill does not meet the Standards for Fill Material (See Key to Soil Types)
463BH	105000		
463CH	150000	*76*H	On-Site evaluation needed
464*H	NA		
466*H	NA		
46XBH	165000		
46XCH	195000		

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**Minimum Lot Size by Soil Type – U.S.D.A. Soil Survey**

<b>Minimum Lot Size by Soil Type – U.S.D.A. Soil Survey</b>						
Soil Type	Lot Size		Soil Type	Lot Size		
AcB	60,000		DeA	100,000	HfC	150,000
CfB	60,000		DeB	100,000	HgC	150,000
CfC	60,000		AdB	100,000	PbD	150,000
G1B	60,000		GsC	100,000		
G1C	60,000		HfB	100,000		
HaA	60,000		CsC	100,000		
HaB	60,000		HgB	100,000		
HaC	60,000		SnB	100,000		
WdA	60,000		SuB	100,000		
WdB	60,000		Wgb	100,000		
WdC	60,000		WsB	100,000		
GsB	80,000		AdC	150,000		
PbB	80,000		CsD	150,000		
PbC	80,000		GsD	150,000		
PdB	80,000		Gtc	150,000		
PdC	80,000		HdC	150,000		

**Appendix B: Town of New Durham Setback Requirements**

Zone	Dimensional Requirements (All measurements in feet)							Leachfield Requirements			
	Minimum Lot Frontage	Front Setback	Side/Rear Setback	Maximum Height	Maximum Lot Coverage	Minimum Lot Size	Minimum Shorefront	Public Water Body	Any Dwelling	Property Line Setback	
Residential-Recreational-Agricultural	See note #1	20' from road frontage property line	15' from property line	35'	See note #8	60,000 sq. ft. See note #2		125'	75'	75'	See note #6
Special Exception Uses See note #3	See note #1	20' from road frontage property line	50'	35'	See note #8			125'	75'	75'	See note #6
Shorefront Conservation Area See note #4	See note #1	75' from normal high water			See note #8		150' See note #5	125'	75'	75'	See note #6
Non-conforming Lots	N/A	20' from road frontage property line	15' from property line; 50' from any water body; 30' from abutter's building	35'	See note #8			75'			10' from side & rear lines; 10' from road frontage See note #7

**Appendix B Notes:**

Note 1

<b>Lot size</b>	<b># feet road frontage</b>
80,000 sq. ft. or less	150'
80,000 sq. ft. - 5 acre.	200'
5 acre - 10 acre	250'
10 acre - 15 acre	300'
15 acre - 20 acre	350'
20 acre & greater	400'
woodlot	50'

Note 2: Lot size is based on soils, See APPENDIX A.

Note 3: Minor Commercial Uses have same setbacks as single-family homes.

Note 4: This is an overlay area superimposed over the conventional zoning map

Note 5: Measured in a straight line in 50' increments, between the points of intersection of the side lot lines with the shoreline at mean high water.

Note 6:

<b>Lot size (sq ft)</b>	<b># feet from property line</b>
≤ 80,000	20
80,000 - 150,000	30
≥ 150,000	40

Note 7: Leach fields may be less than 10 ft from road frontage property line with the approval of the Town's Road Agent.

Note 8: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by all impervious surfaces.

## Appendix C: Reference Materials

The following documents are referenced within this Zoning Ordinance. They are all available in the New Durham Planning Board Office.

<b>Document</b>	<b>Article Referenced</b>
<u>Identification and Documentation of Vernal Pools in New Hampshire</u> , NH Fish & Game Dept, 2004	III. Definitions (Vernal Pool)
<u>Land Conservation Plan for New Hampshire's Coastal Watersheds, Moose Mountains Regional Greenway &amp; Strafford County Regional Planning Committee</u> , 2006.	Article X (used in identification of areas)
<u>Best Management Practices for Forestry: Protecting New Hampshire's Water Quality</u> UNH Cooperative Extension, 2005.	Article X & XI
<u>Manual of Best Management Practices for Agriculture in New Hampshire</u> , NH Department of Agriculture, Division of Regulatory Services., 2002, as amended.	Article X & XI
<u>Best Management Practices For Erosion Control During Trail Maintenance and Construction</u> , NH Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails, 2004, as amended.	Article X & XI
<u>Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire</u> ., NH Division of Forests and Lands and the Society for the Protection of New Hampshire Forests, 1997.	Article XV
Kanter, J., R. Suomala, E. Snyder, et al., <u>Identifying and Protecting New Hampshire's Significant Wildlife Habitat: A Guide for Towns and Conservations Groups</u> , Non-game and Endangered Wildlife Program of the New Hampshire Fish and Game Department, 2001.	Article XV
<u>Threatened and Endangered Plants and Animals in New Hampshire's Forested Habitats</u> . 1998. UNH Cooperative Extension, NH Fish and Game Department, US Fish and Wildlife Service.	Article XV