

**ARTICLE XVII
DURHAM HISTORIC OVERLAY DISTRICT**

175-90. Purpose.

This article establishes a Historic Overlay District (HOD) in the Town of Durham pursuant to NH RSA 673:4 and 674:45 through 674:50.

The purpose of the HOD is to preserve and promote the historic, cultural, educational, economic, and general welfare of the community by:

- A. Preserving structures, places, and properties that reflect elements of the cultural, social, economic, and political heritage of the Town;
- B. Promoting the preservation, restoration, rehabilitation, and adaptive reuse of structures and places of historical, architectural, and community value as well as vistas of significance within the HOD;
- C. Conserving property values in the HOD;
- D. Protecting and enhancing the attractiveness of the HOD;
- E. Promoting the use of the HOD for the education, pleasure, and welfare of the citizens of the Town.

175-91. Historic District Commission.

A. *Membership.*

- 1. Members of the Historic District Commission (HDC) shall be appointed by the Town Council.
- 2. The HDC shall consist of seven (7) members. All members shall be residents of the Town of Durham; one (1) shall be a member of the Town Council, and one (1) shall be a member of the Durham Planning Board. In determining the qualifications of a Commission member, consideration will be placed on her/his demonstrated interest and ability to understand, appreciate and promote the purpose of the HDC.
- 3. The Commission members shall be appointed for three-year terms, except that the initial appointments shall be staggered so that subsequent appointments shall not recur at the same time. Members shall serve without compensation and shall serve no more than two (2) successive terms. In the event of a vacancy on the Commission, interim appointments may be made to complete the unexpired term of such position.

4. The HDC shall annually elect a Chairman, Vice Chairman, and Secretary from among its membership.
 5. The HDC shall adopt and may from time to time amend such rules and regulations as are not inconsistent with the intention of this chapter and of state enabling legislation.
 6. The HDC shall develop and submit an annual request for funds to the Town Council. Subject to appropriations or other income, the Commission may employ clerical and technical assistants or consultants and may accept gifts of money or services, or grants, and may hold or expend such gifts or grants for the purposes of this chapter.
 7. The decisions of the Commission shall be by vote of the majority of the Commission members.
- B. ***Powers and Duties.*** The HDC shall have the following powers and duties:
1. Review and approve, approve with conditions, or deny applications for Certificates of Approval.
 2. Call upon Town staff, citizens, abutters to applicants, and professionals, as it sees fit, for input, consultation, and recommendations on matters before the Commission.
 3. Conduct small area or community-wide surveys of historic, architectural, and cultural resources.
 4. Nominate structures and districts for listing in the New Hampshire State Register of Historic Places and National Register of Historic Places and review all proposed National Register nominations within the Town; keeping a record of all properties that are included in local historic districts, listed in the National Register, or determined eligible for National Register listing.
 5. Prepare historic resources components of local master plans and ensure that the impacts on historical resources are considered at every level of local decision-making.
 6. Advise other elements of local, state, and federal government regarding, and advocate on behalf of, the identification, protection, and preservation of local historical, architectural, archaeological, and cultural resources.
 7. Consult on applications for zoning amendments, variances, conditional uses, and other approvals affecting property in the historic district.
 8. Investigate and recommend to the Planning Board and Town Council amendments to these provisions and appropriate areas for designation as historic districts.
 9. Act as a liaison between local government and individuals or organizations concerned with historic preservation.

10. Educate municipal officials, property owners, the public, and individual members of the Commission about the historic district and historic preservation.
11. Participate in informational, advisory, and policy setting meetings about historic preservation issues, historic district commissions, and Certified Local Governments.
12. Develop and administer a system of markers and monuments recognizing individual properties in the district and acknowledging special contributions toward historic preservation by members of the community.
13. Develop and submit an annual request for funds to the Town Council.
14. Subject to the availability of funds, the Commission may employ clerical and technical assistants and retain consultants as needed.
15. Adopt, and from time to time amend, rules and regulations that are consistent with the intent of this article and appropriate state statutes.
16. Coordinate with other Town boards in the review of items, such as lighting or parking areas, which might also be subject to review by those boards.
17. Undertake any other appropriate action or activity necessary to carry out its mission as embodied in this section.

175-92. Designation Of Historic District

- A. ***Procedures for Designation.*** The (HOD) District exists as a zoning overlay district. The District boundaries may be amended and new historic districts may be designated and delineated following the Amendment Procedure described in Article IV, Section 175-14 of this Zoning Ordinance.
- B. ***Criteria for Designation.*** The following criteria should be considered when the Commission, Planning Board, and Town Council deliberate the enlargement or reduction of an existing district or the creation of a new district. In any district which contains multiple properties or structures, not every property or structure need meet these criteria. Rather, the district overall should embody a meaningful degree of continuity, cohesiveness, integrity, and conformity with one or more of the following criteria.
 1. The site is identified with or significantly represents or exemplifies one or more significant cultural, social, political, economic, or military events in the history of the Town of Durham, region, state, or nation .
 2. The site is associated with a person or persons of historic significance;

3. The site embodies distinguishing characteristics of, or quality in, design, detailing, materials, craftsmanship, or a particular architectural style.
4. The site is identified as the work or representing the work of a master builder, designer, architect, engineer, or landscape architect whose individual work was influential in the development of the Town, region, state, or nation.
5. The site's unique location and characteristics make it an established and appreciated element or visual landmark for the community.
6. The site's age (typically 50 years or older), good condition, and special features make it worthy of preservation.
7. The site has yielded or is likely to yield significant archaeological information.
8. The site contributes to the visual continuity of the District.

175-93. Identification Of The Historic Overlay District.

A Zoning Map of the HOD as amended, including all the notations, references, district boundaries, and other information shown thereon, is incorporated by reference as part of this Ordinance and is on file with the Town Clerk. If there are any inconsistencies between the map and the listing of map and lot numbers under subsection (B), the listing of map and lot numbers shall prevail.

- A. **Locating Boundaries.** The District lines drawn on the HOD map are generally on or parallel to a street, watercourse, or lot line, and shall, unless there are indications to the contrary, be deemed to be:
 1. On the centerline of the right-of-way or watercourse;
 2. Parallel to the centerline at the distance noted; or
 3. On the lot line, or parallel to the lot line, at the distance noted in Section B.

- B. **Delineation of the District.** The HOD is defined as that area made up of the lots listed below as delineated on the Durham Tax Maps. Unless otherwise noted, all of the land composing each lot shall be considered to lie within the District. The District also includes all Town property necessary to make a contiguous District.
 1. Map 4: Lots 1, 52, 53, 54-2 (Episcopal Church), 54-3, 54-4, 55, 56, and 59.
 2. Map 5: Lots 1-4 through 1-10 inclusive, 1-12, 2-1 through 2-8 inclusive, 3-1, 3-2, 3-3, 4-0, 4-2 [seventy-five (75) feet from the centerline of Newmarket Road], 4-10, 4-11, 4-12, 5-6-6, 5-10, 5-11, 5-12, 5-14 and 7-0.

3. Map 6: Lots 9-1 through 9-5 inclusive, 9-6 and 9-8 [two hundred fifty (250) feet from the centerline of Newmarket Road], 9-7, 9-9, 11-1, 11-2, 11-3 [two hundred fifty (250) feet from the centerline of Newmarket Road and Durham Point Road], 11-4, 11-5, 11-6, 11-7 and 11-8 [two hundred fifty (250) feet from the centerline of Newmarket Road] and 12-1 through 12-8 inclusive.
4. Map 15: Lot 17-1

175-94. Purview Of Board.

A. *Activity Within the Historic District Overlay District Subject to Review.* Approval of the HDC is required for the following activity respecting structures within the HOD:

1. Modifications to the exterior architectural appearance of the property including erection of new structures, additions to existing structures, alterations to existing structures, demolition of existing structures or portions of existing structures, or relocation of any structure into, out of, or within the HOD
2. Installation, modification, or removal of exterior freestanding lighting structures.
3. Erection, alteration, or removal of any kind of wall, barrier or fence.
4. Installation of pavement or other impervious or semi-impervious material on the ground or establishment of any parking or driveway area.
5. Installation of any new roofing material; provided that where failure to repair a roof will result in immediate damage to the structure the Code Enforcement Officer may grant approval for emergency temporary repairs and immediately notify the HDC of such action.
6. Signage (excluding political, contractor, and real estate signs), banners, flags, and similar displays, except for those of a temporary nature, i.e. those for which approval from the Town has been received to allow for display not to exceed two weeks at any one time.
7. Removal or destruction of any healthy tree with a diameter at breast height of 12" or more.
8. Any substantial change in topography (cuts and fills).

B. *Activity Exempt from Review.* No review or Certificate of Approval shall be required for the following:

1. Work performed on the interior of buildings.

2. General maintenance and repair which does not involve any change in materials or the outward appearance of the structure or site.
3. Installation or removal of any plant materials (except for tree removal as described in 175-94.A.7).
4. Any of the following items if they are situated on a building or on a lot such that no part of them will be visible from a public way at any time of the year: antenna, wall siding, outbuilding not exceeding 400 square feet, deck, swimming pool, fence, patio, wall, barbecue pit, satellite dish, septic tank, leach field, well, and other yard appurtenances.
5. Construction, alteration, or demolition of any structure or element of a structure that the Code Enforcement Officer certifies as being the only means of avoiding an immediate health or safety emergency prior to the HDC convening a meeting to consider the matter. In such instance, the Code Enforcement Officer shall immediately notify the Commission of his certification.

C. Review of Exterior Colors Within the Historic Overlay District - Painting. Painting, staining and other exterior decorative work not involving exterior construction shall be in accordance with the character of the Historic Overlay District. The Commission shall be notified thirty (30) days in advance of such exterior decorative work. Such work shall not begin if the owner is notified that an application to the Commission is required.

175-95. Procedures For Review Of A Certificate Of Approval.

A. **Application:** In order to be considered at the next scheduled HDC meeting, an application for a Certificate of Approval shall be submitted to the Durham HDC through the Department of Planning and Community Development no fewer than 10 days prior to that meeting. The application package shall include the items listed below:

1. A completed application form as provided by the Department of Planning and Community Development, stating the purpose of the proposed project and identifying the nature and extent of the work to be performed.
2. Site plans drawn to scale clearly depicting existing conditions and proposed work.
3. Elevation drawings to scale of each affected facade of the building, structure or sign, clearly depicting existing conditions and proposed work.
4. Detail drawings of project-specific elements.
5. Photographs of each side of any building proposed for alterations, additions or demolition, and one of the overall site.

6. Sample, swatch, and/or manufacturer's cut sheet of materials to be used as appropriate.
7. Any other items which the Commission may reasonably need to conduct its review.

The Commission may, at its discretion, waive requirements for the submission of any or all of the above items as well as for drawings to be precisely drawn to scale on smaller or less complex projects.

B. *Review of the Application.*

1. Determination of Appropriateness. In deliberating whether to grant or deny a Certificate of Approval, the HDC shall make a determination as to the "appropriateness" of the work proposed by determining whether or not the proposal conforms to the provisions of this article.
2. Scheduling and Completeness. The HDC will consider applications at its scheduled meetings. At that time a determination shall be made whether the application under consideration is complete in accordance with the list of required items, above, and whether or not further information is needed by the Commission in order to accept the application.
3. Dialogue with Applicant. The applicant may present his or her application at the Commission meeting(s). When there are aspects of the proposal which may not conform to this article, the Commission, at its discretion, may advise the applicant to find reasonable cost approaches to meet his or her objectives with a project which still conforms to the standards of this article.
4. Public Hearing. The Commission is authorized to hold a public hearing at which time opinions of abutters and interested citizens shall be heard. Notice of the Public Hearing shall be sent to abutters and posted in a newspaper of general circulation at least ten (10) calendar days prior to the hearing.
5. Professional Advice. The Commission may seek advice from such professional, educational, cultural, or other sources as is deemed necessary.
6. Recommendations. The Commission may make nonbinding recommendations to the applicant on elements outside of its purview such as planting materials.

C. *Action on an Application.*

1. To the extent practical and appropriate, as determined by Town staff, an applicant may file applications for permits simultaneously to the Planning Board, and the Commission. However, if approval from the Planning Board and the

Commission is required, the applicant shall first appear before the Commission, unless otherwise agreed to by the two boards and the applicant.

2. The HDC shall take action on all applications within forty-five (45) days after the meeting at which the Commission accepts the application as complete. This time frame may be extended either by consent or request of the applicant for an additional period not to exceed forty-five (45) days.
3. The Commission shall file a Certificate of Approval or a Certificate of Denial with the Department of Planning and Community Development. Failure by the Commission to act within the period of time specified above shall be deemed to constitute approval of the application as submitted. A Certificate of Approval, or approval by default of the Commission to take action, shall be effective for one year after the date of approval.
4. When an application is rejected as being incomplete or denied, the reason(s) for the decision shall be conveyed to the applicant and clearly stated in the record of proceedings of the Commission.

- D. **Appeals.** Any applicant, persons, or organizations aggrieved by a decision of the HDC may appeal the decision to the Durham Zoning Board of Adjustment in accordance with RSA 674:33 and any appeal procedures specified in the Town Ordinances.
- E. **Enforcement.** The provisions of this article shall be enforced as provided for in Article III, Administration and Enforcement.

175-96. Standards For Review.

The following standards shall be used by the HDC in reviewing applications for Certificates of Approval.

A. General Principles.

1. Every reasonable effort shall be made to minimize alteration of the significant features of the property.
2. The distinguishing original qualities or character of the property shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features shall be avoided where possible.
3. All structures and sites shall be recognized as products of their own time. Alterations that have no historical basis or that seek to create an earlier appearance shall be discouraged.
4. Changes that may have taken place in the course of time are evidence of the history and development of the property. These changes may have acquired

significance in their own right, and this significance shall be recognized and respected.

5. Distinctive stylistic features or examples of skilled craftsmanship that characterize a property shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other structures.
7. Every reasonable effort should be made to protect and preserve archaeological resources affected by, or adjacent to, any project.
8. Contemporary design for alterations and additions to existing properties should not be discouraged when such designs do not destroy significant historical, architectural, or cultural material, and when those designs are compatible with the size, scale, color, material, and character of the property, neighborhood, and surrounding environment.
9. Whenever possible, new additions or alterations to structures should be done in such a manner that if those additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

B. ***Elements of Design.*** Proposals should be harmonious with existing structures within the District. The Commission shall consider the following elements of design when evaluating an application:

1. **Scale.** The scale of a building is its size relative to common reference points: e.g. the human body and nearby structures. New construction should be consistent with the dominant cornice and peak or ridge height of other nearby structures within the HOD. Inordinately low buildings create a void at upper floor levels that interrupts the feeling of enclosure. Disproportionately tall buildings overpower other structures. Most buildings in the district are relatively large comprising 2-1/2 stories. Notable exceptions are the 1-1/2 story Samuel Yeaton House and the Red School House.
2. **Elevation of the first floor and floor-to-floor heights.** Many of Durham's historic buildings have a slightly raised foundation and floor-to-floor heights which are either greater than or smaller than prevalent heights used in contemporary construction.

3. Proportions. Proportion deals with height, width, depth, and spacing relationships and is important both in the overall dimensions of the building and in its individual components. For example, most windows in the District are rectangular and vertical. Thus, square, polygonal, or horizontal windows would be inappropriate in many cases.
4. Massing. Massing refers to the shapes, sizes, articulation, composition, and voids created by the three dimensional forms that constitute the structure. While many buildings in the District are boxlike and massive with expansive wall areas and small windows, most have subtle detailing, graceful proportions, multiple appended additions, and numerous windows, all of which create appeal. Massing tends toward aggregations of simple geometric shapes in keeping with traditional New Hampshire rural and village architecture rather than the complex forms typical of the late 19th century Queen Anne style.
5. Roof shape. Most of the contributing residential buildings have a gable roof. In contrast, "The Ledges" has a distinctive hipped roof. Gambrel, mansard, and flat roofs are not found in the district and are therefore inappropriate.
6. Entrance. Many of the historic buildings in the District have a porch, a portico, or at least an articulated door surround at the entry. Entrances are generally situated in the center bay of the facade.
7. Fenestration. Fenestration refers to the pattern of window openings - spacing, size, proportion, symmetry vs. asymmetry. Most buildings in the District have five bays; many have a syncopated rhythm with windows in the outer bays closer to each other than to the window in the center bay.
8. Materials. Most buildings in the District are wood frame with wood clapboard siding. There is only one stone house in the District - the James Paul House. Vinyl and aluminum siding or other artificial materials should not be used although they may be acceptable on noncontributing structures and on elevations that are not visible from a public way. Where they are used, the reveal should be approximately four inches in width and detailing should be preserved or used to give articulation to the structure. Diagonal and vertical siding are generally inappropriate. The use of natural materials is encouraged.
9. Orientation. While most buildings have their narrower gable end perpendicular to the street in the Georgian manner, many are also oriented with the gable facing the street in the Greek Revival or Italianate manner. Most buildings within the District are oriented parallel or perpendicular to the street. Buildings should not be oriented at odd angles to the street, such as at a 45-degree angle, unless this is already the prevailing pattern in the area or if it is dictated by strong topographic or site considerations.

10. **Style and Details.** Most of the buildings in the District were built from the mid 1700s to the mid 1800s in the Georgian, Federal, Greek Revival, and Italianate styles. They are predominantly simple, conservative, and restrained in design. Common or distinct features include brick chimneys, dormers, attic gable windows, eave brackets, painted shutters, corner pilasters, ells, porches, three-sided window bays, sidelights, and transom windows, stone walls, and white picket fences.

C. ***New construction.*** New construction is an essential process in a vital community, representing the current phase of an evolution that has been ongoing since the settlement of Durham. Contemporary architecture may be appropriate, provided that it is respectful of the historic fabric of the District. New construction within the Historic District should be consistent with Sections A and B, above.

D. ***Demolition or Removal.*** No existing building or other structure may be demolished or moved out of the Historic Overlay District until approval has been granted by the HDC. Demolition or removal from the District of a contributing structure is strongly discouraged and shall rarely be permitted. An application which includes a detailed plan for the reuse of the site shall be submitted, and the Commission shall determine the appropriateness of the plan. It shall only be approved if the applicant demonstrates that 1) denial of the application would result in extreme hardship unique to the subject property; and 2) the Commission has approved a detailed redevelopment plan for the site. Financial hardship of the owner of the property shall not constitute a hardship for this purpose.

E. ***Relocation within the District.*** Relocation of a contributing structure on its site or within the District is discouraged. The Commission may approve such a relocation only if it determines that there are compelling reasons to do so after conducting a thorough review of the request.

F. ***Other Issues***

1. **Noncontributing Structures.** The procedures set forth in 175-95 will be followed. However, the HDC may, at its discretion, engage in a less stringent review of such structures. In some cases, demolition or relocation of a noncontributing structure may be entirely appropriate, depending upon how the site will be developed afterward.
2. **Parking.** Parking areas, particularly when paved and unbroken by landscaping, can have a significantly deleterious impact upon historic areas. All parking areas for other than single-family uses shall be located at the rear of buildings. Where the Commission determines that such placement is not practicable, parking may be located at the side of buildings provided that no part of the parking area is located forward of the front elevation of the building. Any parking area located on the side of a building shall be screened from the road.
3. **Fences.** Chain link fences shall not be used in front yards or in side yards if they would be visible from a public way.

4. Signage. In addition to meeting the minimum standards set forth in Article XXIII, all signs shall be constructed of non-synthetic or natural-looking materials reviewed by the Commission. Signs may be painted, but shall not exceed six (6) square feet in size. Any illumination shall be designed to illuminate only the sign.
5. All utility elements such as dumpsters, garbage cans, propane tanks, above-ground oil tanks, and ground-mounted air conditioning units shall be screened and located such that they are not visible from a public way .
6. The U.S. Secretary of the Interior's "Guidelines for Historic Preservation" shall also serve as a guide for the Commission.

175-97. Demolition By Neglect.

- A. **Responsibility.** A property owner in the HOD is prohibited from allowing his/her property to deteriorate in the manner specified in section B and failing to correct those conditions.
- B. **Conditions.** Conditions leading to Demolition by Neglect include but are not limited to the following:
 1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, splitting, listing, collapsing, or buckling.
 2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, collapsing, or buckling.
 3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, collapsing, or buckling.
 4. Deterioration or crumbling of exterior plasters or mortars.
 5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
 6. Defective protection or lack of weather protection for exterior wall and roof coverings, including paint, or weathering due to lack of paint, peeling paint, or lack of other protective covering.
 7. Rotting, holes, and other forms of decay.
 8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, wall facings, and architectural details that causes delamination, instability, loss of shape and form, collapsing, or crumbling.
 9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
 10. Deterioration of fences, gates, and accessory structures.
 11. Deterioration, except by irreversible natural processes, of vegetation, trees, shrubs, plantings, and all landscaping.

12. Deterioration that has a detrimental effect upon the special character of the Historic Overlay District as a whole.
13. Deterioration of any exterior feature so as to create or permit the creation of any conditions hazardous or unhealthful to life, environment, or other property.
14. Severely peeling or deteriorating exterior paint.
15. Other conditions as determined by the Code Enforcement Officer (CEO) or the Commission.

C. **Enforcement Actions.** Upon written notification by the HDC to the Code Enforcement Officer regarding noncompliance with this section, the CEO shall send written notification to the owner of the property in question, informing the owner of the noncompliance and ordering that the condition be corrected within 60 days. If the owner chooses to contest the CEO's notification with respect to either the existence of the conditions or the number of days allowed for correction, the owner may appeal to and request a hearing before the HDC no later than 30 days following the mailing of the notification. At the hearing, the owner and the CEO may present evidence, after which the HDC shall enter an Order affirming, modifying, or rejecting the CEO's notification.

A building permit for all repairs shall be issued by the Code Enforcement Officer after having received a complaint from the HDC. Building permit guidelines and regulations will be followed and monitored by the Code Enforcement Officer. If a building owner fails to comply, the Code Enforcement Officer shall notify in writing the Town Administrator and Town Council of a breach of this regulation. The Town may cause the maintenance and repairs to be completed, the cost of which shall be recovered by lien on the property.

D. **Waivers and Hardship Cases.** The HDC may grant a waiver of up to one year from part or all of this ordinance in cases where strict compliance would create a financial hardship.

175-98. Appeals.

Appeals may be taken to the Durham Zoning Board of Adjustment by any owner or tenant of property wholly or partly within the HOD, as well-as by any other person, agency or group, if aggrieved by a ruling of the Durham HDC. The Durham Zoning Board of Adjustment shall hear and act upon such appeals within the periods of time prescribed by New Hampshire statute.

175-98.1 Applicability to the Town of Durham.

Any property owned by the Town of Durham within the HOD shall be subject to the provisions of Article XI; provided, however, that following a public hearing, the Durham Town Council may, by a two-thirds vote of its members, override any vote of the Commission pertaining to such property.

175-98.2 Heritage Commission.

The HDC shall also assume the composition and duties of a Heritage Commission as set forth in Article IV, Section 4-17.A.8 of the Town of Durham Administrative Code.

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