

Proposed Amendments to  
Chapter 175 Zoning Relative to the  
Shoreland Protection Overlay District

Proposed additions to the May 10, 2004 Ordinance are underlined;  
Proposed deletions are ~~struck through~~.

1. Amend Section 175-7. Definitions by adding the following definitions in proper alphabetical order in Sub-section A:

DISTURBED AREA – An area in which natural vegetation is removed, exposing the underlying soil.

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

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

PRIMARY BUILDING LINE – The setback from the reference line.

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

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

2. Amend Section 175-7. Definitions by revising the introduction to Sub-section C to read as follows:

1  
2 C. The following definitions apply to landscaping and buffering provisions including the  
3 provisions of the Wetlands Conservation Overlay and Shoreland Protection Overlay Districts:  
4  
5

6 3. Amend Section 175-7. Definitions by adding the following definitions in  
7 proper alphabetical order in Sub-section C:  
8

9 GROUND COVER – Any herbaceous plant which normally grows to a mature height of 4  
10 feet or less.  
11

12 NATURAL WOODLAND BUFFER – A forested area consisting of various species of trees,  
13 saplings, shrubs and ground covers in any combination and at any stage of growth.  
14

15 REMOVAL OR REMOVED – Cut, sawed, pruned, girdled, felled, pushed over, buried,  
16 burned, killed, or otherwise destructively altered.  
17

18 SAPLING – Any woody plant which normally grows to a mature height greater than 20 feet  
19 and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.  
20  
21

22 4. Amend Section 175-7. Definitions by revising the following definitions in  
23 Sub-section A. to read as shown:  
24

25 BASAL AREA – The cross sectional area of a tree measured at a height of 4-1/2 feet above  
26 the ground, usually expressed in square feet per acre for a stand of trees. ~~area of a tree trunk~~  
27 (~~or stems or other vegetation~~) measured in cross-section. "Total basal area" is the sum of the  
28 "basal areas" of all vegetation in the zone.

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

- 30
  - ~~Wetlands – the interface of the identified wetland and upland~~
  - ~~Tidal waters – the highest observable tide line or the furthest landward limit of tidal~~  
31 ~~flow not including storm events~~
  - ~~Natural fresh water bodies – the natural mean high water level~~
  - ~~Impoundments – the waterline at full pond as determined by the elevation of the~~  
34 ~~spillway crest or by the limits of flowage rights~~
  - ~~Rivers and streams – the ordinary high water level or mark~~

35  
36  
37  
38 1. For natural fresh water bodies without artificial impoundments, the natural mean  
39 high water level as determined by the NH DES.

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

5. Amend Article XIV Shoreland Protection Overlay District as follows:

## ARTICLE XIV SHORELAND PROTECTION OVERLAY DISTRICT

### 175-69. Purpose.

The Shoreland Protection Overlay (SPO) District is an overlay district intended to protect the quality of the Town's surface waters in order to promote public health and safety, maintain wildlife habitat, and conserve and protect shoreline and upland resources. The district is intended to implement and expand upon the provisions of the Comprehensive Shoreland Protection Act, NH RSA 483-B. The provisions of this article are intended to:

1. Protect the water quality of Great and Little Bays, the Oyster and Lamprey Rivers, and the Town's other surface waters by managing stormwater runoff, siltation and sedimentation, and the construction or alteration of buildings and structures in proximity to these resources;
2. Minimize the potential for the pollution of these water bodies;
3. Protect wildlife and fisheries habitats and travelways;
4. Conserve the natural beauty and scenic quality of the shoreland; and
5. Allow uses of the land adjacent to these water bodies that are consistent with these objectives.

### 175-70. Applicability.

The provisions of the SPO District shall apply to all land within two hundred fifty (250) feet of the reference line of Great and Little Bays, the Oyster River, the Lamprey River, Durham

1 Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal  
2 sections of their tributary streams; and within seventy-five (75) feet of all other perennial brooks.  
3 These water bodies are designated on the Durham Shoreland Protection Overlay District Map,  
4 which is based on United States Geological Survey quadrangle maps covering the Town of  
5 Durham.

6 The provisions of this article apply in addition to any state requirements for shoreland areas or  
7 other state approvals or permits. It is the intention of the Town that these provisions be  
8 coordinated with state requirements and standards but that these standards shall govern if they  
9 are more stringent than state standards.

10  
11 **175-71. Permitted Uses in the SPO District.**

12  
13 A. Notwithstanding the uses permitted in the underlying zoning district, the following uses  
14 shall be allowed without a permit in the SPO provided they do not alter the surface  
15 condition or configuration of the land, do not obstruct or alter the natural flow or  
16 infiltration of surface or ground water, and comply with the regulations of the SPO  
17 district:

- 18  
19 1. The planting of native or naturalized species and wetland vegetation as identified  
20 in “The United States Fish and Wildlife Service National List of Plant Species  
21 that Occur in Wetlands: New Hampshire” and other native or non-native, non-  
22 invasive vegetation in conjunction with the landscaping of a lot
- 23 2. The installation and observation of monitoring wells
- 24 3. Conservation activities
- 25 4. Accessory agriculture subject to the performance standards of 175-75.1. A and B
- 26 5. The removal of dead, diseased, unsafe or fallen trees
- 27 6. The maintenance of existing vegetation including shrubs, lawns, and fields,  
28 except as provided in 175-75.1, A.

29  
30 B. The following uses or activities shall be permitted in the SPO provided that the Zoning  
31 Administrator issues a permit for the activity after the Planning Board, with the advice of  
32 the Conservation Commission, determines that appropriate erosion control measures will  
33 be used, any disturbed area will be restored, and the activity will be conducted in a  
34 manner that minimizes any impact on the shoreland:

- 35  
36 1. The installation of private water supply wells serving a use on the lot
- 37 2. Water impoundments with a surface area of less than ten thousand (10,000) square  
38 feet
- 39 3. The installation of culverts or rock fords for existing driveways or woods roads in  
40 uplands
- 41 4. Temporary crossings for the maintenance of utility pipes or lines
- 42 5. Temporary coffer dams associated with the repair or replacement of existing  
43 structures

- 1                   6. Seasonal docks
- 2                   7. The repair or replacement of existing retaining walls
- 3                   8. The maintenance or replacement of existing docks or docking structures
- 4                   9. The control of aquatic weeds by harvesting
- 5                   10. The control of exotic weeds in accordance with NH RSA 487:17
- 6                   11. The construction of nature trails and paths

7

8                   **175-72.           Conditional Uses in the SPO District.**

9

10                  A. The following uses shall be permitted as conditional uses in the SPO District provided

11                   that the use is allowed in the underlying zoning district and a Conditional Use Permit is

12                   granted by the Planning Board in accordance with Article VII:

- 13                   1. The construction of streets, roads, access ways, bridge crossings, and utilities
- 14                   including pipelines, power lines, and transmission lines
- 15                   2. Commercial agriculture and plant nurseries subject to the performance standards
- 16                   of 175-75.1. A and B
- 17                   3. Timber harvesting subject to the performance standards of 175-75.1. C
- 18                   4. The construction or expansion of a principal building or structure
- 19                   5. Accessory buildings and structures other than those allowed as permitted uses
- 20                   6. Outdoor recreational facilities not involving the construction of buildings or other
- 21                   structures

22

23

24                  B. The Planning Board shall approve a Conditional Use Permit for a use in the SPO only if

25                   it finds, with the advice of the Conservation Commission, that all of the following

26                   standards have been met in addition to the general standards for conditional uses and any

27                   performance standards for the particular use:

- 28                   1. There is no alternative location on the parcel that is outside of the SPO District
- 29                   that is feasible for the proposed use;
- 30                   2. The amount of soil disturbance will be the minimum necessary for the
- 31                   construction and operation of the facilities as determined by the Planning Board;
- 32                   3. The location, design, construction, and maintenance of the facilities will minimize
- 33                   any detrimental impact on the adjacent shoreland and waterbody as well as
- 34                   downstream waterbodies, and mitigation activities will be undertaken to
- 35                   counterbalance any adverse impacts, and
- 36                   4. Restoration activities will leave the site, as nearly as possible, in its pre-existing
- 37                   condition and grade at the time of application for the Conditional Use Permit.

38

39

40                  **175-73.           Prohibited Uses in the SPO District.**

41

42                  Any use that is not identified as a permitted use in 175-71 or a conditional use in 175-72 shall

43                   be a prohibited use. Notwithstanding this limitation, the erection of a structure or septic

44                   system on an existing lot within the SPO District may be permitted by special exception in

1 accordance with the provisions and standards of 175-29.B.

2  
3 The following uses are prohibited in the SPO District even if they are permitted or  
4 conditional uses in the underlying zoning district:

- 5  
6 1. Any land use that poses a particular threat to the water quality of the adjacent  
7 shoreland or waterbody or downstream waterbodies including but not limited to:  
8  
9 a. the establishment or expansion of salt storage yards  
10 b. automotive junk or salvage yards  
11 c. the storage or handling of hazardous wastes  
12 d. the bulk storage of chemicals, petroleum products, or hazardous materials  
13 e. use of any fertilizer, pesticide, or herbicide except in conjunction with  
14 accessory or commercial agriculture as provided for in 175-75.1. B.  
15 f. the processing of excavated materials  
16 g. the dumping of snow or ice removed from roads or parking lots  
17 h. the disposal, handling, or processing of solid wastes including transfer stations,  
18 recycling facilities, and composting facilities  
19 i. animal feedlots  
20 j. the disposal of septage or other liquid or leachate wastes except for an approved  
21 septic system  
22 k. construction on upland slopes which exceed 15%.

23  
24 **175-74. Dimensional Requirements.**

25  
26 All land, buildings and structures to be used, erected, altered, enlarged, or moved within the  
27 SPO District shall be in accordance with the dimensional standards of the underlying zoning  
28 district except as modified and required by this section.

29  
30 **A. Shoreland Setback of Buildings and Structures**

31  
32 Any new building or structure or any enlargement or modification of an existing building  
33 or structure shall be setback from the reference line of the waterbody as follows:

- 34  
35 1. Great and Little Bays, the Oyster River, the Lamprey 125 feet  
36 River, Durham Reservoir, Moat Island Pond, Johnson  
37 and Bunker Creeks, and Follett's Brook including  
38 the tidal sections of their tributaries  
39 2. All other perennial streams except College Brook and 75 feet  
40 Pettee Brook  
41 3. College Brook and Pettee Brook 25 feet

42  
43 This shoreland setback provision shall not apply to water dependent structures, nor to  
44 permitted uses that are specifically listed in 175-71. nor conditional uses that are

1 specifically listed in 175-72 other than principal and accessory buildings and structures.  
2 Such a use shall be setback the maximum practical distance from the reference line of the  
3 waterbody as determined by the Zoning Administrator, or in the case of conditional uses,  
4 by the Planning Board in consultation with the Conservation Commission. Septic  
5 systems shall be governed by Section B. below.

6  
7 **B. *Septic Setbacks***

8  
9 Any new septic system, leach field, or other sewage disposal system shall be setback  
10 from the reference line of the waterbody as provided for in 175-139 or as follows,  
11 whichever is greater:

- 12  
13 1. Great and Little Bays, the Oyster River, the Lamprey \_\_\_\_\_ 125 feet  
14 River, Durham Reservoir, Moat Island Pond, Johnson  
15 and Bunker Creeks, and Follett’s Brook including  
16 the tidal sections of their tributaries  
17 2. All other perennial streams \_\_\_\_\_ 75 feet

18  
19 The replacement of an existing septic system, leach field, or other sewage disposal  
20 system that is located within the required setback from the reference line of the  
21 waterbody shall comply with the required setback unless the Health Officer determines  
22 that such a location is not physically possible due to the shape or size of the lot and soil  
23 conditions. If the Health Officer determines that a replacement system must be located  
24 within the required shoreland septic system setback, the system shall be located to  
25 provide the maximum setback possible as determined by the Zoning Administrator and  
26 shall employ the best available technology.

27  
28 **C. *Use of Shoreland in Calculating Lot Area and Density***

29  
30 Land within the SPO District may be used to meet the minimum lot area, minimum lot  
31 size, or maximum density provisions of the underlying zoning.

32  
33 **D. *Shoreland Frontage***

34  
35 Any single lot that abuts a waterbody in the SPO District shall have a minimum of two  
36 hundred (200) feet of shoreland frontage. If such a lot contains more than one dwelling  
37 unit and is served by on-site sewage disposal, the lot shall have an additional fifty (50)  
38 feet of shoreland frontage per dwelling unit.

39  
40 **175-75. *Coordination with Other Districts***

41  
42 All land within the SPO District is also subject to the provisions of the underlying zone.  
43 Where there is conflict among the provisions of the SPO District, any other applicable  
44 overlay district, and the underlying district, the most restrictive or stringent provision shall

1           apply.

2  
3       **175-75.1.       Performance Standards in the SPO District**

4  
5       All buildings and structures shall be erected, altered, enlarged, or moved and all land within  
6       the SPO District shall be used in accordance with the following specific performance  
7       standards:

8  
9           **A.       Buffer**

10           The preservation of natural shoreland vegetation is intended to stabilize banks to  
11           prevent erosion, maintain wildlife habitats, minimize pollution of the water and  
12           preserve the scenic quality of shoreline properties.

13  
14  
15           Where existing, a natural woodland buffer shall be maintained within one hundred  
16           fifty (150) feet of the reference line or for the full width of the SPO District if the  
17           district is less than one hundred fifty (150) feet in width. The purpose of this buffer  
18           shall be to protect the quality of public waters by minimizing erosion, preventing  
19           siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical  
20           pollution, maintaining natural water temperatures, maintaining a healthy tree canopy  
21           and understory, preserving fish and wildlife habitat, and respecting the overall natural  
22           conditions of the protected shoreland.

23  
24           Where an existing natural woodland buffer does not exist, a naturally vegetated buffer  
25           strip at least fifty (50) feet in width, or the full width of the SPO District if the district  
26           is less than fifty (50) feet in width, shall be maintained adjacent to the reference line.  
27           Within the buffer strip, naturally occurring vegetation shall be maintained and  
28           encouraged. No new lawn, garden, or landscape areas shall be created within the  
29           buffer strip but existing lawns may be allowed to remain provided that a twenty-five  
30           (25) foot wide strip adjacent to the shore is not mowed and is allowed to reestablish  
31           naturally occurring vegetation.

32  
33           Within the buffer , the following standards shall apply:

- 34  
35           1. Selective cutting of trees and other vegetation other than ground cover shall be  
36           permitted provided that a healthy, well distributed stand of trees and other  
37           vegetation is maintained. No trees over six (6) inches in DBH [nineteen (19)  
38           inches in circumference] shall be cut within the Shoreland Protection Overlay  
39           District. Not more than fifty (50) percent of the basal area of trees, nor more  
40           than fifty (50) percent of the total number of saplings shall be removed in any  
41           fifteen (15) year period. A healthy, well distributed stand of trees, saplings,  
42           shrubs and ground covers and their living undamaged root systems shall be  
43           left in place.

- 1                   2. Existing vegetation under three (3) feet in height including ground cover shall  
2                   not be removed except to provide for a single point of access to the shoreline  
3                   as provided for in G. below, and in case of disease as provided for in 5. below.  
4  
5                   3. No cleared opening in the forest canopy shall be created with a projected  
6                   surface area of greater than two hundred fifty (250) square feet as measured  
7                   from the outer limits of the tree crown unless a building is allowed within the  
8                   buffer strip. In such case, a cleared opening for the building site may be  
9                   created but the cleared opening shall not extend more than twenty-five (25)  
10                  feet outward from the building.  
11  
12                  4. Stumps and their root systems which are located within fifty (50) feet of the  
13                  reference line shall be left intact. The removal of stumps and roots in  
14                  conjunction with beaches or docks may be permitted with the approval of the  
15                  Conservation Commission based upon a determination that the removal in  
16                  combination with mitigation activities will not increase the potential for  
17                  erosion.  
18  
19                  5. Dead, diseased, or damaged trees, saplings or ground covers may be removed  
20                  with prior approval of the Conservation Commission, in consultation with the  
21                  Tree Warden. The stumps and root systems of the removed trees shall not be  
22                  disturbed and shall remain in place. If such removal results in the creation of  
23                  cleared openings, these openings shall be replanted with native species unless  
24                  existing new growth is present. Dead and living trees that provide dens and  
25                  nesting places for wildlife are encouraged to be preserved.  
26  
27                  6. The application of pesticides, herbicides and fertilizers within the buffer is  
28                  prohibited except in conjunction with allowed agricultural activities. In the  
29                  case of allowed agriculture, no fertilizers, pesticides or herbicides shall be  
30                  applied within seventy-five (75) feet of the reference line.  
31

32                  **B.     Agriculture**

33  
34                  In no case shall any soil disturbance or animal grazing occur within seventy-five (75)  
35                  feet of the reference line. No fertilizers (including manure), pesticides or herbicides  
36                  shall be applied within seventy-five (75) feet of the reference line. Any commercial  
37                  agricultural activity within the SPO shall be conducted in accordance with a  
38                  management plan approved by the Strafford County Natural Resources Conservation  
39                  Service as demonstrating Best Management Practices.  
40

41                  **C.     Forestry**

42  
43                  Any forestry activity within the SPO shall be conducted in accordance with a forest  
44                  management plan prepared by a state licensed professional forester and “Best

1 Management Practices for Erosion Control on Timber Harvesting Operations in New  
2 Hampshire” (Division of Resources and Economic Development (DRED), 1991) as  
3 updated and “Good Forestry for the Granite State” (DRED) and Basal Area Law. In  
4 no case shall any harvesting or clearing, except for the removal of dead or diseased  
5 trees, occur within fifty (50) feet of the reference line. If there is conflict among the  
6 standards, the most restrictive shall apply.

7  
8 **D. Sedimentation and Erosion Control**

9  
10 All activities and the use of buildings, structures, and land within the SPO District  
11 shall be designed and operated to minimize the volume and rate of stormwater runoff,  
12 the amount of erosion, and the export of sediment from the site, and to prevent the  
13 release of surface runoff across exposed mineral soils. All activities shall be carried  
14 out in accordance with a stormwater management and erosion control plan that  
15 incorporates Best Management Practices and is approved by the Strafford County  
16 Natural Resources Conservation Service.

17  
18 **E. Inspection of Nonconforming Septic Systems**

19  
20 When a property with a septic system that does not conform to the setback  
21 requirements of 175-74.B is sold or otherwise transferred, the septic system shall be  
22 inspected by the Town’s Code Enforcement Officer and, if inadequate, replaced prior  
23 to the transfer of the property. If it is replaced it shall be consistent with the setback  
24 requirements in 175-74, unless deemed by the Code Enforcement Officer to be  
25 unreasonable due to the site or soil conditions.

26  
27 **G. Access to the Shorefront**

28  
29 One point of access to the shorefront may be developed on any lot. Such access shall  
30 be limited to a maximum of twenty (20) feet in width.

31  
32 **H. Docks and Piers In or Over the Water**

33  
34 If otherwise permitted in the District, a maximum of ten (10) percent of the frontage  
35 of the lot on the waterbody, but no greater than fifty (50) feet may be used for a boat  
36 dock or ramp (excluding seasonal, temporary docks or ramps). Access to the facility  
37 shall be located on soils suitable for such use and shall be designed, constructed, and  
38 maintained to minimize erosion. The facility shall comply with all applicable federal,  
39 state, and local requirements.

40  
41 ~~175-70—Designation of zone.~~

1       ~~The Shoreland Protection Overlay District shall encompass all land within one hundred fifty~~  
2       ~~(150) feet of the high-water level of Great and Little Bays, including tidal sections of their~~  
3       ~~tributaries; the Oyster River, Lamprey River, Follett's Brook, and seventy-five (75) feet from all~~  
4       ~~other perennial brooks, excluding College Brook and Pettee Brook. These water bodies are~~  
5       ~~designated on the Durham Shoreland Protection Overlay District Map, which is based on United~~  
6       ~~States Geological Survey quadrangle maps covering the Town of Durham.~~

7       ~~**175-71. Purpose and intent.**~~

8       ~~The purpose and intent of the Shoreland Protection Overlay District and accompanying~~  
9       ~~regulations are to protect and promote the public health, resource conservation and the general~~  
10       ~~welfare. Specifically, these regulations serve to:~~

- 11       ~~A. Protect the water quality of current and future public drinking water supplies from pollutants~~  
12       ~~such as septage, pesticides, herbicides and fertilizers.~~
- 13       ~~B. Protect water bodies from sedimentation, such as that caused by erosion.~~
- 14       ~~C. Maintain shorelands as habitats and travelways for wildlife.~~
- 15       ~~D. Prevent destruction of aesthetic qualities of the shores, thus protecting property and~~  
16       ~~recreational values.~~
- 17       ~~E. Protect the Great Bay Estuary from pollution by its tributaries or from uses of its shoreland.~~

18       ~~**175-72. Setbacks and permitted uses.**~~

19       ~~A. The required setback for all septic systems is one hundred fifty (150) feet in the Shoreland~~  
20       ~~Protection Overlay District. There shall be a one hundred twenty five foot setback in the~~  
21       ~~one hundred fifty foot zone and a seventy five foot setback in the seventy five foot zone for~~  
22       ~~all other structures.~~

23       ~~B. Landowners are allowed use of shoreland frontage sufficient for developing one (1) access~~  
24       ~~point to the water and a maximum of ten (10) percent of the total owned frontage dedicated~~  
25       ~~to a boat dock, ramp or other facility. Any such facilities must conform to all other town,~~  
26       ~~state and federal requirements applicable.~~

27       ~~C. Under the provisions of RSA 674:21, Subdivision II, the Planning Board may grant approval~~  
28       ~~for the construction of streets, roads and other accessways and utilities, including pipelines,~~  
29       ~~power lines and other transmission lines, provided that all of the following conditions are~~  
30       ~~found to exist:~~

- 31       ~~—— 1. No alternative location outside the shoreland or which has less detrimental impact on a~~  
32       ~~shoreland is feasible.~~
- 33       ~~—— 2. The proposed construction is essential to the productive use of other land which is not~~  
34       ~~within the Shoreland Protection Overlay District.~~

1 ~~3. Design, construction and maintenance methods will be such as to minimize detrimental~~  
2 ~~impact upon the shoreland and will include restoration of the site as nearly as possible to~~  
3 ~~its original grade and condition.~~

4 ~~4. Economic advantage is not the sole reason for the proposed location of the construction.~~

5 **~~175-73. Pollution prevention.~~**

6 ~~Pollution prevention requirements shall be as follows:~~

7 ~~A. There shall be no use which uses or stores hazardous or potentially polluting substances,~~  
8 ~~including underground storage of petroleum products, uncovered road salt, fertilizers or~~  
9 ~~leachable wastes.~~

10 ~~B. There shall be no animal feedlots.~~

11 ~~C. There shall be no use of fertilizers, pesticides or herbicides within seventy five (75) feet of~~  
12 ~~the high water level.~~

13 ~~D. There shall be no tilling of soil within seventy five (75) feet of the high water level.~~

14 ~~E. There shall be no excavation or filling of the land within the Shoreland Protection Overlay~~  
15 ~~District.~~

16 **~~175-74. Vegetation management.~~**

17 ~~A. The preservation of natural shoreland vegetation is intended to stabilize banks to prevent~~  
18 ~~erosion, maintain wildlife habitats, minimize pollution of the water and preserve the scenic~~  
19 ~~quality of shoreline properties.~~

20 ~~B. No trees over six (6) inches in DBH [nineteen (19) inches in circumference] shall be cut~~  
21 ~~within the Shoreland Protection Overlay District.~~

22 ~~C. The cutting or pruning of the overstory, understory and ground cover shall be permitted so~~  
23 ~~long as the existing undisturbed natural vegetation is left in place on at least fifty (50) percent~~  
24 ~~of the shorefront.~~

25 ~~D. Where vegetation is removed, including pruning, it shall result in well distributed stands with~~  
26 ~~varying levels of maturity and vegetative cover, to include overstory, understory and ground~~  
27 ~~cover. No clear cutting shall be permitted in the Shoreland Protection Overlay District.~~

28 **~~175-75 Procedures for existing uses.~~**

29 ~~A. Structures and uses existing prior to the date on which this Article was enacted may be~~  
30 ~~continued, provided that such use shall not be expanded further to encroach upon the~~  
31 ~~shoreland or designated buffer zone.~~

32 ~~B. Notwithstanding other provisions of this Article, the construction of attached additions to~~  
33 ~~one and two family dwellings shall be permitted within the Shoreland Protection Overlay~~  
34 ~~District, provided that:~~

- 1 ~~1. The dwelling lawfully existed prior to the date on which this Article was enacted.~~
- 2 ~~2. The number of dwelling units is not increased.~~
- 3 ~~3. The proposed construction conforms to all other applicable ordinances and regulations of~~  
4 ~~the Town of Durham.~~
- 5 ~~C. Where an existing building within the shoreland or buffer zone is destroyed or in need of~~  
6 ~~extensive repair, it may be rebuilt, provided that:~~
- 7 ~~1. Such building is completed within one (1) year of the event causing destruction.~~
- 8 ~~2. The new or rebuilt structure shall not extend further into the shoreland or buffer zone than~~  
9 ~~the original foundation.~~
- 10 ~~3. The result will not be a new or increased threat to the shoreland.~~
- 11 ~~D. Preexisting landscaping, including lawns and cultivated bushes and trees, may be maintained,~~  
12 ~~but fertilizers, herbicides and pesticides shall not be used within seventy five (75) feet of the~~  
13 ~~high water level.~~
- 14 ~~E. On existing lots of record, the erection of a structure within the Shoreland Protection Overlay~~  
15 ~~District may be permitted by special exception if the Zoning Board of Adjustment, after due~~  
16 ~~public notice and public hearing, finds that such exception complies with all other applicable~~  
17 ~~requirements set forth in this Article and with each of the following:~~
- 18 ~~1. The lot upon which the exception is sought was an official lot of record, as recorded in the~~  
19 ~~Stafford County Registry of Deeds, prior to the date on which this Article was posted and~~  
20 ~~published in the town.~~
- 21 ~~2. The use for which the exception is sought cannot be carried out on a portion or portions of~~  
22 ~~the lot which are outside the Shoreland Protection Overlay District without undue~~  
23 ~~hardship.~~
- 24 ~~3. Due to the provisions of the Shoreland Protection Overlay District, no reasonable and~~  
25 ~~economically viable use of the lot can be made without the exception.~~
- 26 ~~4. The design and construction of the proposed use will, to the extent practical, be consistent~~  
27 ~~with the purpose and intent of this Article.~~
- 28 ~~F. Because of the potential threat to public health, safety and welfare, whenever additions or~~  
29 ~~alterations are made to a septic system located within the Shoreland Protection Overlay~~  
30 ~~District, the system must be made to comply with the requirements of this Article as nearly as~~  
31 ~~possible. This includes complete relocation of the system where feasible.~~
- 32 ~~G. When a property with a nonconforming septic system is sold or otherwise transferred, the~~  
33 ~~septic system must be inspected and, if inadequate, replaced as per the preceding Subsection~~  
34 ~~F.~~
- 35 ~~H. Property owners are encouraged to consult with the appropriate town officials about~~

1 landscaping recommendations within the Shoreland Protection.