

BACK LOT DEVELOPMENT ORDINANCE

Durham, Maine

SECTION 1. Title

This Ordinance shall be known as the Back Lot Development Ordinance of the Town of Durham, Maine, and is referred to herein as the “Ordinance”.

SECTION 2. Legal Authority

This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution, and Title 30, M.R.S.A., Section 1917.

SECTION 3. Purpose

The purpose of this Ordinance is to protect the health, safety, and general welfare of the residents of Durham through the provisions for the development of back lots with acceptable rights-of-way.

SECTION 4. Applicability

This Ordinance shall apply to all back lots as defined. No back lot may be developed which fails to meet the requirements of this Ordinance.

SECTION 5. Administration

- A. This Ordinance shall be administered by the Building Inspector and the Planning Board.
- B. The Building Inspector shall not issue a building permit unless the provisions of this Ordinance are complied with.

SECTION 6. Back Lot Development Standards

- A. Back lots, including Family Owned Back Lots, may be developed although they lack any frontage on a Town accepted road if the development is in accordance with the following provisions:
 - 1) If a back lot, including a Family Owned Back Lot, is accessible only by a legally enforceable right-of-way, it may be used for one single-family dwelling (or more in the case of a Family Owned Back Lot) if the following conditions are met:
 - a) The right-of-way must be deeded to the owner of the back lot, including Family Owned Back Lots, and be a minimum of 50 feet in width.
 - b) A legal description of the right-of-way by metes and bounds shall be attached to any building permit application for construction of a single-family dwelling on the back lot, including Family Owned Back Lots.
 - c) The right-of-way deed must be recorded in the Registry of Deeds (i) at either the time the back lot, including Family Owned Back Lots, is first deeded out as a separate parcel, or (ii) at the time the single-family home on the lot is first sold.
 - d) Creation of the 50-foot right-of-way to serve the back lot, including Family Owned Back Lots, shall not create a nonconforming front lot by reducing such lot’s road frontage below the minimum for that district, or, if the front lot is already nonconforming, reduce its road frontage at all. Where the right-of-way is given by easement or irrevocable license,

or some grant less than a fee interest, the land over which such servitude is placed may not be counted toward meeting road frontage requirements for the front lot.

- e) The right-of-way may serve only one single-family dwelling with the exception of Family Owned Back Lots governed by Section 6.A.1.k below, unless Planning Board approval is obtained as required below.
- f) No more than one right-of-way for back lot development, including Family Owned Back Lots, may be created out of any lot fronting on a Town accepted road unless each subsequent right-of-way is created out of at least an additional 350 feet of Town road frontage, and the road entrances to such Town road are at least 600 feet apart.
- g) The dimension of the back lot, including Family Owned Back Lots, which borders upon the right-of-way shall be at least 300 feet in length and the depth of the lot perpendicular to said frontage shall be at least 200 feet for at least 300 feet along the right-of-way. The back lot shall have a minimum of five (5) acres not including any land constituting the right of way.
- h) With the exception of the paving requirement, if the right-of-way is brought up to subdivision road standards as found in Section 8.D. of the Town of Durham's Subdivision Ordinance, further dwellings may be constructed on a back lot with Planning Board approval. The standard for all roads in the Rural Residential – Transitional District is the private road standard (Section 8. E, Figure 3), and the standard for all roads in the Growth District is the public road standard (Section 8. E, Figure 1). For purposes of such approval, the construction of an additional dwelling or dwellings along the right-of-way shall be considered in the same manner and under the same restrictions and requirements as if such construction were in an approved subdivision except for paving. This provision shall not apply to Family Owned Back Lots which are governed with regard to road standards by Section 6.A.1.k
- i) New building lots located at the end of a cul-de-sac or along curves in the right-of-way serving the back lot, including Family Owned Back Lots, shall be designed so that they have at least 50 or more feet of frontage on the right-of-way along the front lot line, so long as lot width at the location where the principal building is to be constructed is at least equal to the distance normally required for lot frontage in that zoning district, and provided that the radius of the curve is not more than 300 feet, measured at the front lot line.
- j) At the time of conveyance of the right-of-way, the owner shall convey to the Town an easement described by metes and bounds, for sewer purposes over the entire right-of-way and shall record the easement in the Androscoggin County Registry of Deeds.
- k) All Family Owned Back Lots shall meet the requirements set forth in Section 6A where not exempted, and shall be exempt from certain sections of the applicable town road standard for the district in which they are located as follows: instead of the requirements of the applicable standard, the roadway shall be required to be 20 feet wide with 12 inches of aggregate sub base, 6 inches of aggregate base, and drainage as

shown in Diagram 1 with no shoulders or pavement. All other applicable road standards shall apply. A maintenance agreement as described in Section 6.B.4. below shall be required. If any Family Owned Back Lot(s) is sold to a person not related to the donor as defined in 30-A M.R.S.A. Section 4401 4.D.4, the road which serves the Family Owned Back Lot(s) shall be brought up to the road standard applicable in the district in which the Family Owned Back Lot(s) is located by the seller within six months.

B. When the Planning Board is asked to approve development of more than one single-family dwelling whose access is off of a right-of-way pursuant to Section 6.A. (1) (h) above, in addition of any other requirements for approval, the following shall apply:

1. A street plan showing the private way shall be prepared by a registered land surveyor. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Planning Board members. The Plan shall delineate the proposed way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds prior to construction of the second or subsequent dwelling.
2. The street plan, a cross section, and the drainage plan shall be submitted to the Planning Board for each private way serving two or more lots.
3. The street plan shall bear notes that the Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and that further lot divisions utilizing the privately owned road are prohibited without prior approval of the Durham Planning Board. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws.
4. If the private way is to provide access to two or more lots, a maintenance agreement as described in the Town Land Use Ordinance Article VI B 2 shall be required by the Planning Board and recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.

C. No building permit shall be issued for Family Owned Back Lots until the Code Enforcement Officer and Road Committee certify that the requirements of this ordinance have been met.

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SECTION 7. Nonconforming Back Lots of Record

A single back lot of record, which on April 2, 2005, does not meet the area or width requirements of this Ordinance may be built upon provided that such lot shall be in separate ownership and not contiguous with another back lot and that all other provisions of this Ordinance and the Town of Durham's Land Use Ordinance shall be met.

SECTION 8. Enforcement

- A. **Code Enforcement Officer:** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.
- B. **Legal Actions:** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.
- C. **Fines:** Any person who violates any of the provisions of this Ordinance after receiving notice of such violation shall be guilty of a misdemeanor, and, on conviction, shall be subject to a minimum fine of \$100 up to a maximum of \$2,500 for each violation or provided by state law.

SECTION 9. Effective Date, Separability & Amendment

- A. This Ordinance shall not repeal, annul, or otherwise impair or remove the necessity of compliance with any federal, state or other local laws or ordinances. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall prevail.
- B. The effective date of this Ordinance shall be the date that it is enacted by the Town Meeting.
- C. Should any section or provision of this Ordinance be found by the courts to be invalid, illegal, or enforceable, such decision shall not effect any other section or provision of this Ordinance either singly or collectively.
- D. This Ordinance shall be amended in accordance with procedures specified in state law at any Town Meeting.

SECTION 10. Appeals

- A. **Variance Appeals:** The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of the Ordinance under the following conditions:
 - 1. The strict application of the terms of this Ordinance would result in undue hardship to the applicant. The term “undue hardship” shall mean:
 - a) that the land in question cannot yield a reasonable return unless a variance is granted;
 - b) that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c) that the granting of the variance will not alter the essential character of the locality; and

- d) that the hardship is not the result of action taken by the applicant or a prior owner.

A variance is authorized only for dimensional requirement. A variance shall not be granted to permit a use or structure otherwise prohibited.

- B. **Administrative Appeals:** The Board of Appeals, may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer or Building Inspector in the administration of this Ordinance. Such hearings shall be held in accordance with state laws. Following such hearing, the Board of Appeals may reverse the decision of the Code Enforcement Officer or Building Inspector only upon finding that the decision is clearly contrary to specific provisions of this Ordinance.

SECTION 11. Definitions

- A. **Back Lot:** A parcel of land, which does not have any frontage on a Town accepted road.
- B. **Family Owned Back Lot:** A parcel of land, which does not have any frontage on a town accepted road, which was given or transferred to a person related to the donor after the property was held by the donor for a period of five continuous years, all of which is described in Maine State Statutes Title 30-A Section 4401 4.D.4.