Town of Durham, Maine
Land Use Ordinance

As Adopted at Town Meeting
April 1, 2023

Attested a True Copy,

Durham Town Clerk

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APPENDIX 1: STREET STANDARDS ..... Attached

APPENDIX 2: DEP EROSION & SEDIMENTATION CONTROL MANUAL ..... Separate Document

APPENDIX 3: DEP STORMWATER MANAGEMENT MANUAL ..... Separate Document

APPENDIX 4: DEP PHOSPHORUS CONTROL MANUAL ..... Separate Document

ARTICLE 1: TITLE AND PURPOSE

Section 1.1. TITLE

This ordinance shall be known and may be cited as the "Land Use Ordinance of the Town of Durham, Maine" and will be referred to herein as the Ordinance.

Section 1.2. PURPOSE

This ordinance, adopted in accordance with the 30-A M.R.S.A. §3001 for power to adopt ordinances, 30-A M.R.S.A. §4352 for adopting any form of zoning consistent with a comprehensive plan adopted by the municipal legislative body, and 30-A M.R.S.A. §4403 for adopting subdivision regulations, is designed to encourage the most appropriate use of land throughout the Town; to promote the Town's Comprehensive Plan; to protect existing residential areas from incompatible uses and retain the rural character of the Town; to provide for healthy business, recreation, and agricultural-related areas; to promote traffic safety and efficient traffic circulation; to provide for safety from fire; to provide for adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to conserve natural resources, wildlife habitat, and scenic beauty; to protect groundwater supplies; to protect historic sites and areas; to protect visual and physical access to recreational water; and to provide for adequate public services, and for the future. This ordinance repeals the existing Land Use Ordinance with this Ordinance taking its place. The existing Official Zoning Map of the Town of Durham as of the date of the adoption of this Ordinance is used herein for reference but will be revised and replaced upon passage of this Ordinance so that it is consistent with the provisions hereof.

Section 1.3. SEVERABILITY

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the ordinance.

ARTICLE 2: ESTABLISHMENT OF DISTRICTS

Section 2.1. ZONING MAP

A digital map entitled "Town of Durham" is hereby adopted as part of this Ordinance and shall be referred to as the Official Zoning Map. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of Selectmen and attested by the signature of the Town Clerk. The official Zoning Map shall be located in the office of the Town Clerk, and it shall be the final authority as to the current status of the zoning of the land and water areas, buildings, and other structures and used in the town.

Section 2.2. ZONING DISTRICTS

A. **Primary Districts -** The Town shall be divided into two primary Districts as shown on the Official Zoning Map and shall also have four overlay Districts that shall exist within the primary districts as set forth below. The two primary Districts shall be known as the:

1. Rural Residential & Agricultural District (RRA)
2. Resource Protection District (RP)

B. **Overlay Districts** - There are also four overlay districts, which are imposed over certain sections of the above primary districts as shown on the Official Zoning Map. These are the:

1. Aquifer Protection Overlay District
2. Southwest Bend Historic Overlay District
3. Resource Protection (Shoreland Zoning) District
4. Limited Residential (Shoreland Zoning) District

The overlay districts are subject to additional performance standards contained in Article 9 (Shoreland Zoning), Article 10 (Aquifer Protection) and Article 12 (Historic Districts).

Section 2.3. DISTRICT BOUNDARIES

A. **Uncertainty of Boundaries** - Where uncertainty exists with respect to the boundaries of the various districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or right-of-way shall be construed to follow such center lines;
2. Boundaries indicated as approximately following well-established lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
4. Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline;

5. Boundaries indicated as being parallel to or extensions of features indicated in Paragraphs (1) through (4) above shall be so construed. Distances not specifically indicted on the Official Zoning Map shall be determined by the scale of the map. Any conflict between the Official Zoning Map and a description by metes and bounds in a deed shall be resolved in favor of the description by metes and bounds.

6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in circumstances where the items covered by Paragraphs (1) through (5) above are not clear, the Board of Appeals shall interpret the district boundaries.

B. **Division of Lots by District Boundaries** - Where a zoning district boundary line divides a lot or parcel of land in the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended into the more restricted portion of the lot by not more than twenty (20) feet, provided that the more restricted portion is not a Resource Protection District, and provided further, that minimum side setback and yard and rear setbacks and yard requirements for a non-residential use abutting a residential use shall be observed.

C. **District Boundaries** are defined as follows:

1. **Rural Residential & Agricultural District** is defined as that area not in the Resource Protection District as shown on the Official Zoning Map**.**

2. **Resource Protection District** boundaries shall be those designated on the Official Zoning Map of the Town for Resource Protection as meeting the following Comprehensive Plan criteria:

   a. 100-year floodplains as determined by the most recent FEMA flood mapping study;

   b. Areas subject to State mandatory shoreland zoning with the exception of areas designated as Limited Residential Shoreland Zoning (LRSZ);

   c. Land within one hundred (100') feet of a perennial stream designated on the Zoning Map;

   d. Land within a forested or emergent wetland that extends for an area of ten (10) or more acres as determined by Primary Map 1, Water Resources & Riparian Habitats, Durham produced by the Maine Department of Inland Fisheries and Wildlife Beginning with Habitat program (January 2018) and designated on the Zoning Map;

   e. Land within two hundred and fifty (250') of an emergent wetland designated by the Maine Department of Inland Fisheries and Wildlife as being of moderate to high value for waterfowl and wading bird habitat and designated on the Zoning Map; and/or,

   f. Land designated as having multiple natural resources as determined by Supplementary Map Natural Resource Co-occurrence, Durham (January 2018) with a rating of six (6) or more attribute values and designated on the Zoning Map.

3. **Southwest Bend Historical Overlay District** is defined as beginning at the southeast corner of lot 21 as shown on Town of Durham Tax Map 6 and on the westerly right-of-way line of said Route 9. Said point of beginning also being the northeasterly corner of lot 20 on said Map. Thence northerly and northeasterly along said right-of-way line to the most easterly corner of lot 47 on said Map. Thence northwesterly along the northeasterly property line of said lot 47 to the southeasterly line of lot 42 on said Map. Thence northwesterly across said lot 42 on an extension of said northeasterly property line of said lot 47 to the Androscoggin River. Thence southwesterly and westerly along said river and along lots 42, 41, 40, 34, and 31 all of the above referenced Tax Map to a line represented by the northeasterly extension of the northwesterly property line of lot 27 on said map. Thence southwesterly across said lot 31 and state Route 136 on said extension of the northwesterly property line of lot 27 to the most northerly corner of said lot 27. Thence southwesterly along the northwesterly property line of lot 27 to the most westerly corner of said lot 27. Thence southeasterly along the southwesterly property line of lot 27 to the northwesterly property line of lot 26 on said Map. Thence southeasterly across said lot 26 on an extension of the southwesterly property line of lot 27 to the northwesterly property line of lot 25 on said Map. Thence easterly across said lot 25 to the most westerly corner of lot 24 on said Map. Thence southeasterly along the southwesterly property line of lot 24 to the northwesterly property line of said lot 21. Thence southeasterly across said lot 21 on an extension of the southwesterly property line of lot 24 to the southeasterly property line of lot 21. Thence northeasterly, southeasterly, and northeasterly along lot 20 on said Map back to the point of beginning. Meaning and intending to describe an area in the Town of Durham that includes lots 22, 23, 24, 27, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, and portions of lots 21, 25, 26, 31, and 42 on said Tax Map 6.

4. **Aquifer Protection Overlay District** boundaries shall be defined shall be those defined on the Official Zoning Map of the Town for Aquifer Protection. In order to be excluded from the Groundwater Protection District, evidence must be presented to the Planning Board which shows that a saturated geologic strata of transmissivity greater than or equal to 100 ft, squared/day does not exist in that site bordering the mapped Sand and Gravel Aquifer.

5. **Shoreland Zoning Overlay District** boundaries shall be defined shall be those defined on the Official Zoning Map of the Town for Shoreland Zoning and more specifically determined as follows:

    a. All land areas within two hundred and fifty (250') feet, horizontal distance, of the normal high-water line of great ponds;

    b. All land areas within two hundred and fifty (250') feet, horizontal distance, of the normal high-water line of rivers;

    c. All land areas within two hundred and fifty (250') feet, horizontal distance, of the upland edge of a freshwater wetland consisting of ten (10) or more acres of contiguous wetland (other than forested wetland); and,

d. All land areas within one hundred (100') feet, horizontal distance, of the normal high-water line of a stream shown on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey (USGS Topography Map).

e. The Shoreland Zoning Overlay District is hereby further divided into the Resource Protection and Limited Residential sub-districts as set forth in Article 9.

ARTICLE 3: LAND USES PERMITTED IN ZONING DISTRICTS

Section 3.1. TABLE OF LAND USES

A. The "TABLE OF LAND USES" below establishes the uses allowed in each zoning district.

B. Any use not specifically listed in the Table of Land Uses is prohibited.

C. Any use similar to a use listed in the Table of Land Uses requires a determination by the Zoning Board of Appeals.

D. All uses are subject to the general performance standards of Article 5 and the specific standards of Article 9 (Shoreland Zoning), Article 10 (Aquifer Protection), Article 11 (Floodplain), Article 12 (Historic Districts), Article 14 (Extractive Industries), and Article 15, (Mobile Home Parks).

E. When there is a question as to which category a land use should be categorized as, the more specific land use category shall rule over a general category.

KEY

Reviewing Authority:

Yes – No Land Use Ordinance permit required (but activities are subject to specifically stated performance standards).

CER – Code Enforcement Review; CEO determines whether Planning Board Permit is required.

CU – Conditional Use Permit required by Planning Board

SB – License from Select Board Required

PB – Planning Board approval required

RC–Permit required from Road Commissioner

No – Prohibited

District Abbreviations:

AP – Aquifer Protection Overlay District

RRA – Rural Residential & Agricultural District

RP – Resource Protection District

RP(SZ) – Resource Protection Shoreland Zoning Overlay District

LR(SZ) – Limited Residential Shoreland Zoning Overlay District

TABLE 3.1 – TABLE OF LAND USES

Land Use	RRA	RP	AP	RP(SZ)	LR(SZ)
1. Access onto Town Road	RC	RC	RC	RC	RC
2. Accessory Apartment	CER	No	CER	No	CER
3. Agriculture	Yes	Yes	Yes	CU	Yes
4. Automotive Graveyards & Junkyards	CU & SB	No	No	No	No
5. Back Lot	CER	No	CER	No	CER
6. Bed & Breakfast	Yes	No	CU	No	No
7. Campgrounds	CU	No	No	No	CU
8. Cemeteries	CU	No	CU	No	CU
9. Churches	CU	No	CU	No	CU
10. Clearing or removal of vegetation for activities other than timber harvesting	Yes	Yes	Yes	CER	Yes
11. Clubs, Lodges & Other Community Buildings	CU	No	CU	No	CU
12. Day Care Center	CU	No	CU	No	No
13. Emergency operations	Yes	Yes	Yes	Yes	Yes
14. Essential services					
a. Roadside distribution lines (34.5kV and lower)	Yes	Yes	Yes	CER	Yes
b. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone				CU	CER
c. Non-roadside or cross-country distribution lines involving eleven or more poles or less in the shoreland zone				CU	CU
d. Other essential services	Yes	Yes	Yes	CU	CU
15. Extractive Industries & Gravel Pits	CU	No	CU	No	CU

Land Use	**RRA**	**RP**	**AP**	**RP(SZ)**	**LR(SZ)**
16. Filling or other earth moving activities not covered by other permit:					
a. 1-24 yd^3	Yes	CER	CER	CU	CER
b. 25-250 yd^3	Yes	CU	CU	CU	CU
c. 251-500 yd^3	CER	CU	CU	CU	CU
d. >500 yd^3	CU	CU	CU	CU	CU
17. Fire prevention activities	Yes	Yes	Yes	Yes	Yes
18. Gasoline Station and/or Repair Garage	CU	No	No	No	No
19. Groundwater Extraction	CU	No	CU	No	No
20. Home Based Business	CER	No	CER	No	CU
21. Institutional or Cultural Facilities	CU	No	CU	No	CU
22. Manufacturing-Light Industrial & All Other Industrial Uses not Otherwise Listed	CU	No	No	No	No
23. Mobile Home	Yes	No	Yes	No	Yes
24. Mineral exploration	Yes	No	Yes	No	Yes
25. Motels, Hotels, & Inns	CU	No	No	No	No
26. Motorized vehicular traffic on existing roads and trails	Yes	Yes	Yes	Yes	Yes
27. Non-intensive Recreational uses not requiring structures such as hunting, fishing and hiking	Yes	Yes	Yes	Yes	Yes
28. Nursing or Convalescent Homes	CU	No	CU	No	No
29. Open Space Uses	Yes	Yes	Yes	Yes	Yes
30. Parking Facilities	CU	No	CU	No	CU
31. Personal Service, Retail or Wholesale Business Service, Financial Service Establishment, all Other Commercial Services not Otherwise Listed	CU	No	CU	No	No

Land Use	RRA	RP	AP	RP(SZ)	LR(SZ)
32. Piers, docks, bridges and other structures and uses extending or located below the normal high-water line or within a wetland	CU	No	CU	CU	CU
33. Primitive Recreation	Yes	Yes	Yes	Yes	Yes
34. Private sewage disposal systems for allowed uses	CER	CER	CER	CER	CER
35. Public Buildings such as Schools, Libraries, & Museums	Yes	No	Yes	No	CU
36. Public & Private Parks & Recreational Involving Minimal Structural Development	CU	CU	CU	CU	CU
37. Research Facilities	CU	No	No	No	No
38. Road Construction (Private)	PB	PB	PB	CU	CU
39. Road Construction (Public)	Yes	Yes	Yes	CU	CU
40. Service drops, as defined, to allowed uses	Yes	Yes	Yes	Yes	Yes
41. Single-family Dwelling	Yes	No	Yes	No	CER
42. Sludge Spreading	CU	CU	CU	No	CU
43. Soil and water conservation practices	Yes	Yes	Yes	Yes	Yes
44. Small non-residential facilities for educational, scientific, or nature interpretation purposes	Yes	CU	Yes	CU	CER
45. Structures accessory to allowed uses	Yes	No	Yes	CU	CER
46. Surveying and resource analysis	Yes	Yes	Yes	Yes	Yes
47. Timber Harvesting	Yes	Yes	Yes	Yes	Yes
48. Two-family Dwelling	Yes	No	Yes	No	CER
49. Wildlife management practices	Yes	Yes	Yes	Yes	Yes

ARTICLE 4: SPATIAL STANDARDS IN ZONING DISTRICTS

Section 4.1 DISTRICT REQUIREMENTS

A. Rural Residential & Agricultural District

1. Minimum Lot Size – 90,000 sq. ft.
    a. Minimum Buildable Area – Each lot must contain a contiguous 40,000 sq. ft. building envelope which does not contain areas in Resource Protection District, wetlands, or slopes greater than twenty (20%) percent.
2. Minimum Access to Lots – Only one single family detached dwelling or two-family dwelling shall be permitted on a lot. No dwelling shall be erected except on a lot that fronts on a street as defined, and the minimum street frontage, measured along the lot line at the street, shall be at least equal to the minimum lot width.
3. Minimum Road Frontage – 300 ft.
4. Minimum Setbacks
    a. Front Lot Line Residential – 50 ft.
    b. Front Lot Line Non-residential – 100 ft.
    c. Side Lot Line Residential – 20 ft.
    d. Side Lot Line Non-residential – 100 ft.
    e. Rear Lot Line Residential – 20 ft.
    f. Rear Lot Line Non-residential – 100 ft.
5. Maximum Structure Height[1] – 35 ft.
    a. For Schools and Municipal Structures – 50 ft.
6. Maximum Coverage for impervious surfaces (including structures) – 25%
7. Minimum Lot Size Two-Family Dwelling – 110,000 sq. ft.

B. Resource Protection District

1. Minimum Lot Size – 90,000 sq. ft.
2. Minimum Road Frontage – 300 ft.
3. Minimum Setbacks
    a. Front Lot Line – 100 ft.
    b. Side Lot Line – 100 ft.

[1] Features of structures such as chimneys, towers, spires and structures for electric power transmission and distribution lines may exceed the maximum structure height requirement.

c. Rear Lot Line – 100 ft.

4. Maximum Structure Height[2] – 20 ft.

5. Maximum Coverage for impervious surfaces (including structures) – 5%

[2] Features of structures such as chimneys, towers, spires and structures for electric power transmission and distribution lines may exceed the maximum structure height requirement.

ARTICLE 5: PERFORMANCE STANDARDS

Section 5.1. ACCESSORY APARTMENTS

The purpose of the provisions concerning accessory apartments is to provide a diversity of housing for town residents while protecting the single-family character of residential neighborhoods. Accessory apartments may be utilized for rental purposes as well as in-law accommodations subject to the following requirements. If the accessory apartment does not meet all of said requirements, then a conditional use permit shall be required:

A. The dwelling shall have only one main entrance and all other entrances shall appear subordinate to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted. No open or enclosed outside stairways shall be permitted above the first story.

B. The main dwelling unit shall have at least fifteen hundred (1500 sq. ft.) square feet of floor area and the accessory apartment shall not exceed fifty (50%) percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces, nor public hallways or other common areas.

C. Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence, or located in a separate building whose primary function is not as a dwelling unit, such as a garage or barn.

D. Accessory apartments shall not be permitted for any nonconforming structure or use, where the nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

Section 5.2. ACCESS MANAGEMENT

This section applies to new driveway and commercial entrances onto Town Roads.

A. Sight Distance Criteria:

1. All entrances shall be so located such that vehicles approaching or using the entrance will be able to obtain adequate sight distance in both directions along the public way or to maneuver safely and without interference with traffic.

2. Measurements to determine sight distance shall be made in the proposed entrance at a point ten (10’) feet from the edge of shoulder line with the height of eye three and one-half (3.5’) feet above the pavement. The sight distance shall be computed from this point measuring along the roadway to a point where an approaching height of object four and one quarter (4.25’) feet is first seen.

3. Driveway placement shall be such that an exiting vehicle has an unobstructed sight distance according to the following schedule:

Highway Speed (MPH)	Recommend Sight Distance (in feet)	Minimum Sight Distance (in feet)
25	250	200
30	300	250
35	350	305
40	400	360
45	450	425

4. The minimum allowable sight distances listed above for all accesses, may require up to fifty (50%) percent greater sight distances when at least thirty (30%) percent of the traffic using the driveway will be larger vehicles. A larger vehicle is a vehicle that has a larger length, width or turning radius and/or lesser acceleration capability than standard passenger vehicles or small trucks. Larger vehicles include busses, commercial trucks, and recreational vehicles.
5. Lots existing prior to the adoption of this Ordinance that cannot meet the Minimum Sight Distance may be able to have one driveway entrance that shall be located where best sight distance is available or at another location if approved by the Road Commissioner.

B. Geometry:

1. The entrance shall be designed such that the grade within the right-of-way does not exceed ten (10%) percent.
2. For uncurbed public ways the entrance shall in general slope away from the road surface at a rate of not less than one quarter inch (1/4”) per foot, nor more than one inch (1”) per foot for a distance of not less than the prevailing width of the existing shoulder, but in no case less than four (4) feet from the edge of pavement.
3. The driveway entrance should intersect the road at a horizontal angle of ninety (90°) degrees, but shall in no case be less than seventy-five (75°) degrees without approval of the Road Commissioner as set forth in the permit.
4. Radii for the edge of the driveway for ninety-degree intersections shall be at least twenty-five feet. Radii for less than ninety degrees intersections shall be at least thirty feet. The entrance shall not be located close to an intersection and should be back at least fifty (50) feet.

C. Drainage:

1. The applicant must provide at his/her expense suitable and approved drainage structures at all entrances.
2. Existing roadside drainage in gutter or ditch lines shall not be impeded by the applicant. The applicant shall be responsible for fixing any damage to existing roadside drainage in gutter or ditch lines.

3. Driveway entrances shall be constructed so as not to block the flow of surface water from the highway or to cause surface water to pool or create puddles on or along the highway. Surface drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the roadway.

4. Property Owners are responsible for the costs associated with the initial culvert placement in their driveway entrance. If a driveway culvert in the Town right of way is installed to the following specifications the Town will accept all future maintenance and replacement responsibilities:

   a. The culvert size shall be no less than fifteen (15") inches diameter and twenty-four (24') feet long unless otherwise approved by the Road Commissioner.

   b. The culvert may either be polyethylene smooth-walled pipe (ADS N-12 or approved equal) or made of aluminum, but in all cases must be approved by the Road Commissioner.

   c. The culvert must have a clay check dam located at the inlet and outlet ends to prevent water from piping through the stone and washing out the culvert.

   d. The driveway entrance width shall not exceed sixty (60') feet and in all cases must be approved by the Road Commissioner.

D. Construction:

1. The applicant is responsible for the restoration of disturbed areas in the vicinity of the driveway entrance, which are located within the limits of the right of way for a newly constructed or reconstructed driveway or entrance way.

2. Any portion of the driveway entrance, which is located within the limits of the right of way, shall be constructed with at least fifteen (15") inches of gravel, which meet M.D.O.T. Type D specifications (revision of December 2002 or latest revision).

3. If the entrance grade within the limits of the right of way exceed five (5) percent, then the entrance shall have a paved surface.

4. The maximum grade of a driveway newly constructed after the effective date of this Ordinance shall not exceed twelve percent.

5. Driveways shall be "box cut" to remove organic material and constructed of a minimum of 15" of gravel that meets MDOT type "D" specifications, Revision of December 2002. If the driveway is to be gravel surfaced it shall be crowned to a cross slope of one half (1/2) inch per foot (4%). If the driveway is to be asphalt surfaced it shall be crowned to a cross slope of one quarter (1/4) inch per foot (2%). Provisions shall be made for convenient and safe emergency vehicle access to all buildings and structures at all times. Driveway width shall be a minimum of twelve (12) feet and clearing on each side of the driveway shall allow for snow removal from the driveway. Driveways of eight hundred (800) feet or more shall have at least one turnout to allow for two-way traffic near the mid-point.

6. Curves. Minimum centerline radii on curves shall be one hundred and twenty-five (125') feet. Minimum tangent length between reverse curves shall be fifty (50') feet.
7. In Slopes, Back Slopes. Driveway in slopes and back slopes shall not be steeper than a slope of two (2) horizontal to one (1) vertical (2:1).
8. The top or bottom of a cut or fill shall not be closer than ten feet to a property line unless otherwise mutually agreed to by the affected landowner and applicable Town Board or official granting the permit in question but in no instance shall said cut or fill exceed a (3) horizontal to one (1) vertical (3:1) slope. This section does not relieve a gravel pit operator from compliance with the Town Excavation Ordinance.
9. The driveway shall have an unobstructed vertical clearance of thirteen (13'6") feet six inches and horizontal clearance of twenty (20') feet, as required for emergency response vehicles.

E. Curb and Sidewalk:

1. When sidewalk or curb exists at the proposed entrance the applicant shall remove and replace such materials at the applicant's expense. Any granite curb to be removed by the applicant will remain the property of the Town.
2. Where curb exists, curb tip-downs shall be provided at each side of a new entrance.
3. Where sidewalk is removed to accommodate a new entrance a new walk surface of equal type construction is to be provided. The sidewalk area at all entrances is to meet handicap accessibility requirements and conform to the American with Disabilities Act guidelines. In general sidewalks shall meet the following:
   a. The maximum sidewalk longitudinal transition slope is not to exceed one (1) vertical to twelve (12) horizontal (1:12).
   b. The maximum sidewalk cross-slope is not to exceed two (2%) percent.
   c. No abrupt changes in grade are permitted.

F. Soil Erosion Control:

Erosion of soil, and sedimentation of any watercourse and water bodies shall be minimized by the following erosion control management practices:

1. The stripping of vegetation, removal of soil, regrading or other development of the site shall be accompanied by limiting the duration of exposure and area of the site to be disturbed. Dust control methods shall be employed during dry conditions.
2. Temporary vegetation, mulching, and/or siltation fabrics shall be used to protect critical areas during the development. Critical areas shall include all watercourses, water bodies, wetlands, and any areas of fragile vegetation, which is listed on any federal or state endangered species list, and areas within two hundred and fifty (250') feet thereof. Sedimentation of run-off waters

shall be trapped by debris basins, silt traps, sediment basins or other methods certified as acceptable by a registered soil scientist or registered professional engineer.

3. Permanent vegetation and/or other erosion control measures should be installed prior to completion of the construction, but no later than six months after completion of the construction.

Section 5.3. AGRICULTURE

A. **Manure Storage, Spreading, and Disposal** - All storage, spreading of disposal of manure shall conform to the recommendations outlined in a plan approved by a certified Maine nutrient management planner. If the operation does not meet the criteria for the development and implementation of a nutrient management plan, the operation shall comply with Maine Department of Agriculture, Conservation & Forestry, *Manure Utilization Guidelines March 14,2004.*

B. **Buffers from Waterbodies** - Where soil is tilled in the Resource Protection District, an untilled filter buffer of natural vegetation shall be retained between the tilled ground and the normal high water elevation of all adjacent waterbodies and watercourses. The width of this buffer shall vary according to the average slope of the land as follows

Average Slope of Land Between Tilled land and Normal High Water Elevation (percent)	Width of Strip Between Tilled Land and Normal High Water Elevation (feet along surface of the ground)
0-4	30
5-9	70
10-14	90
15 and over	100

C. **Control of Runoff -** Agricultural practices, including the creation of fire ponds, shall be conducted to minimize soil erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters. There shall be no direct discharge of field or pasture run-off into any watercourse or pond. Measures should include, where appropriate:

1. Diversions above cropland fields to reduce run-off water entering such fields.
2. Terracing and/or strip-cropping on moderate or steep slopes over 8%.
3. Crop rotation and cover crops to prevent soil erosion.
4. Careful application of fertilizers in accordance with application rates and setbacks from sensitive features as outlined in the farmer's Nutrient Management Plan or the Department of Agriculture, Conservation & Forestry's Manure Utilization Guidelines as applicable.
5. Careful application of pesticides pursuant to regulations of the Maine Pesticides Control Board.

Section 5.4. AIR EMISSIONS

No emission of dust, ash, smoke or other particulate matter, or of gases and chemicals shall be allowed which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity, which can cause soiling beyond the property boundaries, or which fail to meet or cannot meet the air emission standards set by the Maine Department of Environmental Protection which were in effect at the time of adoption of this Ordinance.

Section 5.5. ANIMAL HUSBANDRY

Animal husbandry shall be conducted according to the Acceptable Agricultural Practices as established and determined by the Maine Department of Agriculture.

Section 5.6. AUTOMOBILE GRAVEYARD & JUNKYARD

A. No motor vehicles or material in an automobile graveyard (as regulated under 30 M.R.S.A. §§ 2451 through 2460) shall be located on a sand and gravel aquifer, or on an aquifer recharge area, as mapped by the Maine Geological Survey.

B. No motor vehicles or material in an automobile graveyard shall be located within the 100-year flood plain, as mapped by the Federal Insurance Administration, the Army Corps of Engineers, or the U.S. Department of Agriculture.

C. A well-constructed and properly maintained visual buffer strip at a minimum height of six (6') feet, shall screen from ordinary view from any public way or abutting property the area of the property upon which are located junked automobiles, or other materials which cause the property to qualify as a "junkyard" under 30 M .R .S . A. §§3752(4). The visual buffer shall be so positioned on the property, and be of such height so as to achieve, in the opinion of the Municipal Officers, the most effective screening possible given the topography of the site of the junkyard or automobile graveyard.

D. No motor vehicles or material shall be stored in an automobile graveyard or junkyard within five hundred (500') feet of any dwelling, school, public building, public playground, church, or cemetery, with the exception of a dwelling used as the home of the owner of the automobile graveyard or junkyard, and located on the same lot with it.

E. No motor vehicles or materials shall be stored in an automobile graveyard or junkyard within three hundred (300') feet of any water body.

F. Operational Considerations - Each automobile graveyard or junkyard shall upon receiving a motor vehicle, remove the battery, and engine coolant, placing the coolant in watertight, covered containers. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

Section 5.7. BACK LOTS

Back lots may be developed although they lack frontage on a Town and/or state maintained accepted road if the development is in accordance with the following provisions:

A. If a back lot is accessible only by a legally enforceable right-of-way, it may be used for one single-family dwelling if the following conditions are met:

   1. The right-of-way must be deeded to the owner of the back lot and be a minimum of fifty (50') feet in width.

   2. Creation of the 50-foot right-of-way to serve the back lot 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.

   3. No more than one right-of-way for back lot development may be created out of any lot fronting on a Town and/or state maintained road unless each subsequent right-of-way is created out of at least an additional three hundred and fifty (350') feet of Town road frontage, and the road entrances to such Town road are at least six hundred (600') feet apart.

   4. The dimension of the back lot which borders upon the right-of-way shall be at least three hundred (300') feet in length and the depth of the lot perpendicular to said frontage shall be at least two hundred (200') feet for at least three hundred (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.

   5. The driveway shall be required to be twenty (20') feet wide with twelve (12") inches of aggregate sub base, six (6") inches of aggregate base, and drainage as shown in Appendix 1, Section 1.3, Figure 3 of this Ordinance, however no shoulders or pavement are required.

B. A legally enforceable right-of-way may be used for more than one backlot or single-family dwelling if the following conditions are met:

   1. A street plan shall be prepared by a professional engineer, along with a cross section and drainage plan. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Code Enforcement Office and Road Commissioner. 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.

      a. The street plan shall bear notes: (1) The Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and (2) Further lot divisions utilizing the privately owned road are prohibited without prior approval of the 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. Acceptance of any road by the Town of Durham must be approved at Town Meeting

2. A maintenance agreement as described in Section 5.23 of this Article shall be 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.
3. No residential building permit for a dwelling shall be issued for second and subsequent Back Lots until the requirements of this Ordinance have been met.
4. The right-of-way and road must be brought up to subdivision road standards as found in Appendix 1. Section 1.3 of this Ordinance, with the exception of the paving requirement.

Section 5.8. CAMPGROUNDS

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following standards (in cases of possible conflict, the stricter shall apply):

A. A campground must be constructed on at least twenty (20) acres of land and all camping units or structures shall be located at least one hundred (100') feet from any property line and at least four hundred (400') feet from any residence (except residences belonging to the campground owners).

B. Campsites (i.e. sites where tents, or Recreational Vehicles (RV's) are placed) shall be laid out and screened in such a manner that none are within view from public roads, navigable rivers, existing residences (including from the second floor windows thereof) or approved subdivision lots. Any combination of evergreen planting, landscaped earthen berms, or solid fencing may be used to achieve this screening standard, when campsites would otherwise be visible from the locations described above.

C. No overnight sleeping shall be allowed in vehicles except for Recreational Vehicles (and trailers).

D. Tent sites and sites for recreational vehicles (RVs) shall be laid out so that the density of each developed acre of land does not exceed eleven (11) campsites per acre.

E. Campsites, roads and associated facilities shall not cover more than twenty (20%) percent of the land allocated to the campground.

F. The area intended for placement of the recreational vehicle, tent, or shelter and utility service buildings, shall be set back a minimum of two hundred and fifty (250') feet from the normal high-water mark of any pond, or river.

G. Campsites intended for placement of a recreational vehicle, tent shelter or structure for human use will not be permitted in a Resource Protection Zone. Notwithstanding the use limitations of Article 3, a campground may conduct non-intensive recreation, primitive recreation, open space uses in Resource Protection Districts.

H. A campground shall provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code and the State of Maine Department of Human Services. In no case shall fewer than one toilet, lavatory and shower be provided for each sex for every ten (10) camping and tent sites.

I. A campground shall provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code and the State of Maine Department of Human Services. In no case shall fewer than one toilet, lavatory and shower be provided for each sex for every ten (10) camping and tent sites.

J. A time limit is placed on the occupancy of any one camping space on a continuing basis as follows: Twelve (12) weeks for the period May 15 to September 15 of each year, and two (2) weeks for all other time. Only camping units such as defined herein (plus a towing vehicle), shall be permitted within any camper park, temporarily or otherwise.

Section 5.9. CEMETERIES

There shall be no construction or excavation done within a twenty-five (25') feet zone around burial sites and from all boundaries of an established graveyard unless the construction or excavation is pursuant to a lawful order or permit for the relocation of bodies or when necessary for the construction of a public improvement, as approved by a vote of Town Meeting, or in the case of a state highway, by the Commissioner of Transportation.

Section 5.10. CONSTRUCTION & PLUMBING STANDARDS

All construction must meet the standards of the following, if applicable, and as hereafter amended:

A. National Electrical Code – (as required by State law at the time of construction)

B. Code for Safety to Life in Buildings and Structures – (as required by State law at the time of construction).

C. The Maine Uniform Building and Energy Code (MUBEC) – (as required by State law at the time of construction)

D. The Maine State Plumbing Code (as required by State law at the time of construction.)

Section 5.11. EROSION CONTROL

Erosion of soil, and sedimentation of any water course and water bodies shall be minimized by the following erosion control management practices:

A. The stripping of vegetation, removal of soil, regrading or other development of the site shall be accompanied by limiting the duration of exposure and area of the site to be disturbed. Dust control methods shall be employed during dry conditions.

B. Temporary vegetation, mulching, and/or siltation fabrics shall be used to protect critical areas during the development. Critical areas shall include all watercourses, waterbodies, wetlands, and any areas of fragile vegetation which is listed on any federal or state endangered species list, and areas within two hundred and fifty (250') feet thereof. Sedimentation of run-off waters shall be trapped by debris basins, silt traps, sediment basins or other methods certified as acceptable by a registered soil scientist or registered professional engineer.

C. Permanent vegetation and/or other erosion control measures should be installed prior to completion of the construction, but no later than six months after completion of the construction.

D. The top or bottom of a cut or fill shall not be closer than ten (10') feet to a property line unless otherwise mutually agreed to by the affected landowner and applicable Town Board or official granting the permit in question but in no instance shall said cut or fill exceed a three to one (3:1) slope. This section does not relieve a gravel pit operator from compliance with the Town Excavation Ordinance.

Section 5.12. EXPLOSIVE MATERIALS

No flammable, explosive or combustible liquids, solids or gases shall be stored in bulk(defined as greater than the liquid equivalent of two hundred (200 gal) gallons above ground unless they are located at least seventy-five (75') feet from any lot line, or in bulk stored below ground unless they are located at least forty (40') feet from any lot line, and all such materials shall be stored in a manner and location which is in compliance with the rules and regulations of the Maine Department of Environmental Protection rules and regulations of the Maine Department of Public Safety, and any other applicable federal state and local regulations then in effect. This provision shall not apply to storage tanks for heating fuel located in basement areas of residential structures.

Section 5.13. GROUNDWATER EXTRACTION

A. The quantity of water to be taken from groundwater sources will not substantially lower the groundwater table beyond the property lines, cause undesirable changes in groundwater flow patterns, or cause unacceptable ground subsidence, based on the conditions of a drought with a probability of occurrence of once in ten (10) years.

B. The proposed facility shall not cause water pollution or other diminution of the quality of the aquifer from which the water is to be extracted.

C. The proposed facility is not within the defined aquifer recharge area of a public water supply, unless notice is given to the operator thereof and the Board has considered any information supplied by the operator and finds that no adverse effect on a public water supply will result.

D. The operator shall make monthly operating records of the quantity of water extracted, stored and removed from the site available to the Code Enforcement Officer or a designee.

E. Nothing in this procedure, and no decision by the Planning Board shall be deemed to create groundwater rights other than those rights which the applicant may have under Maine law.

Section 5.14. HISTORIC RESOURCES

No stone walls or granite posts, abutments or markers older than one hundred (100) years of age will be torn down unless relocated on the property, no cemetery or grave marker will be disturbed, no archeological site identified by the Maine Historic Preservation Commission will be disturbed, no structure listed on the National Register of Historic places will be torn down or its exterior facade altered except to restore it in accordance with the standards of the Secretary of the Interior, and no churches or school buildings older than one hundred (100) years of age will be torn down or altered except to restore them in accordance with their original design. The design of any remodeled existing structure, or of any new structure to be constructed in any District or any new use in any District, which is to be located within fifteen hundred (1500') feet of all lot lines of, or which are visible from any portion of a public way adjacent to:

A. Any structure, site or archaeological site or other property listed on, or deemed eligible by the Maine Historic Preservation Commission for listing on, the National Register of Historic Places, or

B. Which has been identified by the Maine Historic Preservation Commission as:

   1. A structure, site, archaeological site, or property of national, statewide or local historic significance, or

   2. A structure, site, archaeological site , or property whose exterior appearance is worthy of protection from incompatible uses due to its historically aesthetic qualities (such properties meeting the criteria in subsections A. and B. will be on file at the Town Office for review) shall be compatible with such historic properties, in terms of mass, scale, design, building material, and height. Appropriate buffer strips of twenty-five (25') feet shall be maintained at all lot lines of property abutting such historic properties.

Section 5.15. HOME-BASED BUSINESS

A. A home-based business shall be allowed if it meets the definitional requirements for such occupations found in this Ordinance and complies with all of the requirements of this section and will if it so complies, not require a conditional use permit. If the home-based business does not meet all of said requirements as determined in a required review by the Code Enforcement Officer, then a conditional use permit shall be required.

B. The use of a dwelling unit for a home occupation shall clearly be incidental and subordinate to its use for residential purposes.

C. A home occupation may not alter the residential character of the structure or change the character of the lot from its principal use as a residence.

D. The home occupation shall be carried on wholly within the principal structure. The outside storage or display of materials or products shall be screened from view from the abutting properties and street.

E. The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises, to catalog items ordered off the premises by customers, and to items which are accessory and incidental to a service which is provided on the premises.

F. No traffic shall be generated which would in the aggregate add twenty (20) trips to and from the lot per day by those engaged in the home-based business, or those coming to do business there.

G. Adequate off-street parking shall be provided, which shall consist of a space for the vehicles of each worker and a space for the vehicles of the maximum number of users the home-based business may attract during peak operating hours.

H. The home-based business shall not utilize more than thirty (30%) percent of the total floor area of the dwelling unit.

I. Not more than one full-time employee or equivalent, outside the family, shall work on the premises.

Section 5.16. LANDSCAPING

The landscape shall be preserved in its natural state insofar as possible when constructing buildings and accessory structures, parking lots, and drives or roadways, by minimizing tree removal and grade changes. Landscaping shall be designed to soften, screen, or enhance the physical design of structures and parking areas to avoid the encroachment of the proposed use on abutting land uses.

Section 5.17. LIGHTING

A. No lights shall be placed in view of any public roadway or street so that its beams or rays are directed at any portion of the roadway when such light is of such brilliance and so positioned as to impair the vision of the driver of any motor vehicle upon said roadway.

B. Lighting with a lumen output equal to or greater than a 200-watt mercury light shall not be directed toward the sky or adjacent properties.

Section 5.18. MANUFACTURED HOUSING & MOBILE HOMES

All manufactured housing and mobile homes to be located on any lot within the Town after March 5, 1988 must conform to the following:

A. The Maine State Plumbing Code.

B. All manufactured housing shall be at least fourteen (14’) feet in width, shall have a pitched roof with a minimum pitch of three (3”) inches in height for every twelve (12”) inches of horizontal movement.

C. Shall have exterior siding which is residential in appearance.

D. Shall be placed on a permanent foundation in compliance with the Building Code of the Town of Durham.

E. Notwithstanding the requirements in the immediately preceding sentence, and manufactured housing or mobile home which was legally sited within the Town as of January 1, 1989 may be replaced on any lot within said Town even though it may not meet the foregoing design criteria.

F. Any such relocated manufactured housing or mobile home must still comply with the State of Maine Plumbing Code as well as any requirements applicable to other types of single-family dwellings.

Section 5.19. NOISE LIMITS

A. The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity shall be limited by the time period and land use which it abuts listed below. Sound levels shall be measured at least four (4') feet above ground at the property boundary of the source.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leg 1) (Measured in dB(a) Scale)	
7 a.m. - 7 p.m.	7 p.m. - 7 a.m.
55	45

B. Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI SI 4-1961) ''American Standard Specification for General Purpose Sound Level Meters."

C. No person shall engage in construction activities, on a site abutting any residential use between the hours of 9 p.m. and 6:30 a.m.

D. The following activities shall be exempt from these regulations. Sounds emanating from:

   a. Safety signals;

   b. Warning devices;

   c. Emergency pressure relief valves; and,

   d. Other emergency activities.

Section 5.20. ODOR EMISSIONS

No person, wherever located, shall cause or allow the emission of odorous air contaminants from any source such as to result in detectable odors at the lot line of the source which are measured in excess of the following limits:

A. For areas used for residential or commercial purposes within five hundred (500') feet of the lot line of the source, it is a violation if odors are detected after the odorous air has been diluted with seven (7) or more volumes of odor free air.

B. In all other land areas, it is a violation if odors are detected after the odorous air has been diluted with fifteen (15) or more volumes of odor free air.

C. For the purposes of this Regulation, two odor measurements shall be made within a period of one hour, these measurements being separated by at least fifteen (15) minutes. These measurements shall be made outside the property line of the property from which the emission originates.

D. The Bamebey-Cheney Scentometer, suitably calibrated, or any other instrument, device, or technique equivalent may be used in the determination of the intensity of an odor and may be used as a guide in the enforcement of the performance standard.

Section 5.21. RECREATIONAL FACILITIES

All recreational facilities shall meet the provisions below:

A. There shall be provided adequate off-street parking for the anticipated maximum attendance at any event.

B. Containers and facilities for rubbish collection and removal shall be provided.

C. Adequate screening, buffer area, or landscape provisions shall be built, planted, or maintained, to protect adjacent residences from adverse noise, light, dust, smoke and visual impact.

Section 5.22. RESTAURANTS, FOOD SERVICE, TAKE OUT STANDS

A. The application for a conditional use permit shall state the maximum seating capacity (if any) of the restaurant. Any expansion or enlargement over the stated capacity shall require a permit.

B. All proposed subsurface disposal systems shall meet the Maine State Subsurface Wastewater Disposal rules.

C. All parking and loading facilities shall be located to the side or rear of the building and shall be screened from abutting residences or those within two hundred (200') feet. Screening shall be comprised of a continuous landscaped area not less than eight (8') feet in width, containing evergreen shrubs, trees, fences, walls, berms, or any combination, forming a visual barrier not less than six (6') feet in height.

D. Restroom facilities for the patrons shall be provided on the premises (except for take-out stands).

Section 5.23. ROADS

A. The Town shall not accept as a Town Road any private road or way that is not built to public road standards. Acceptance of any road by the Town of Durham must be approved at Town Meeting.

B. After March 6, 2004 any person or persons, prior to:

1. Developing a private road or way developed to provide access to two or more dwelling units or a structure intended for commercial, industrial or light industrial uses; or,

2. Extending an existing private road or way which will thereafter serve two or more dwelling units, or a structure intended for commercial, industrial or light industrial uses; or,

3. Putting to use for the first time an existing private road or way to serve two or more dwelling units or a structure intended for commercial, industrial or light industrial uses,

shall be required to submit for the approval of the Planning Board a maintenance agreement or escrow agreement executed by the owners of the lots containing the dwelling units or structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such dwelling units or structures are located with respect to the maintenance, repair and snow plowing of such road or way. The applicant shall prepare and submit for approval of the Planning Board a maintenance agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair, and plowing.

C. The maintenance agreement shall also include:

1. A detailed statement of how the ownership interests in the private way will be structured (i.e., whether ownership will be single or joint, whether lot owners will own the fee or have easements, etc.).

2. A statement that in the event any of the lots shown on the plan are divided or in the event any remaining land of the declarant is subsequently divided into lots which are served by the private way, then such resulting lot or lots shall become subject to the maintenance agreement and to any modifications to the maintenance agreement advisable to adjust the duties and responsibilities equitably among the owners of all the lots served by the private way.

3. An acknowledgment by the declarant and any other persons signing the maintenance agreement that the Town of Durham is not responsible for the construction, maintenance, repair or plowing of the private way.

4. A statement that the duties and obligations imposed by the maintenance agreement run with the land and shall be transferred to purchasers or other transferees of any portion of the real estate subject to the maintenance agreement and that, upon such transfer, the Planning Board shall be notified in

writing and provided with a copy of any changes or amendments to the maintenance agreement.

5. A requirement that the maintenance agreement be referenced in all deeds to any lots served by the private way.

6. If the private way subject to the maintenance agreement is an extension of an existing private way which served lots created prior to March 6, 2004, a statement that the applicant for private way approval has contacted the owners of such lots, has offered them the opportunity to make their properties subject to the maintenance agreement and that they have either accepted or declined that offer; and that the Declarant has submitted to the Code Officer a notarized affidavit confirming the Declarant's compliance with this paragraph.

7. An agreement which permits the other signatories of the maintenance agreement to place a lien on the property of any signatory who has not paid the share of expenses allocated to them in the amount of the unpaid assessment for costs for the private way.

8. Upon approval of the agreement the person or persons submitting the agreement shall record it in the Androscoggin County Registry of Deeds so that the obligations therein shall be covenants that run with the land upon which the dwelling units or structures are located. No building permit or other approval required by this Ordinance for the dwelling units or structure to be served by such road or way, shall be issued or approved unless this provision has been complied with.

Section 5.24. SIGNAGE

A. No sign shall be illuminated with flashing, moving or animated-type lights.

B. No sign advertising goods or services shall be located off the site of the lot on which the related services or goods are to be sold or located, except as provided for in this Ordinance section.

C. Signs containing name of business, or person residing on the site or advertising goods, or services to be sold on the site or events to be held on the site, shall not exceed twenty-four (24 sq. ft.) square feet in total area. This area may be divided between up to two signs.

D. The square footage of only one side of a double-sided sign shall be counted, provided that the two sides say the same thing.

E. The top of no sign shall extend higher than fifteen (15') feet above the ground.

F. In addition, up to two Official Business Directional Signs are permitted.

G. Signs may be erected and maintained under the Maine Traveler Informational Services Act (23 M.R.S.A. §§1901-1925), to identify and point the way to public accommodations and facilities, commercial services for the traveling public, and points of scenic, historical, cultural, recreational, educational, and religious interest.

The second line of the legend may be used to indicate additional directional information such as the street name.

H. The following are exempt from the signage standards:

1. Flags and insignia of any government.
2. Legal notices, identification, information, or directional signs erected or required by governmental bodies.
3. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter or commercial identification.
4. Yard and garage sale signs posted for less than seven (7) days.

Section 5.25. STORAGE OF MATERIALS

All materials stored outdoors shall be stores in such a manner as to prevent the breeding and harboring of insects, rats, or other vermin. This shall be accomplished by enclosures in containers, raising materials above the ground, separation of materials, prevention of stagnant water, extermination procedures or other means.

Section 5.26. STORAGE OF HAZARDOUS MATERIALS

A. **Outdoor Storage Facilities** - All outdoor storage facilities for fuel, chemicals, and chemical or industrial waste shall meet the following requirements:

1. Be located on impervious pavement, and be contained within a dike which shall be high enough to contain the total volume of materials kept within the storage area, plus the rain falling into this storage area during a 100-year storm, so that the stored materials or rain water shall not be able to spill onto or seep into the ground surrounding the paved storage area.
2. All chemicals and wastes shall be stored in closed fifty-five (55 gal) gallon containers and be properly identified on the outside of such container.
3. Above ground storage tanks for heating oil and diesel fuel, not exceeding two-hundred and seventy-fie (275 gal) gallons, may be exempted from this requirement by the Code Enforcement Officer in situations where neither rapidly permeable soils or high seasonal water table (within 18" of the surface) are involved.

B. **Underground Petroleum Storage** – All underground storage facilities for petroleum products shall meet the following requirements:

1. New Tank Approval – Prior to the issuance of a building permit, the placement of new underground petroleum tanks shall be approved by the Planning Board pursuant to the rules and procedures set forth in the Conditional Use provision of this Ordinance. Underground fuel tanks shall not be installed within three (3’) feet vertical of the 100-year flood plain, or below the maximum high seasonal water table elevation.

2. Installation of New or Replacement Tank – All new or replacement of underground petroleum tanks shall conform to all applicable state and federal regulations.
3. Leak Reporting – Any person who is aware of a spill or abnormal loss of any flammable fluids shall report such spill or loss immediately to the Maine Department of Environmental Protection and the Code Enforcement Officer.

Section 5.27. TEMPORARY ACTIVITY

An activity that is of a decidedly temporary nature or of short duration which will, because of unusual circumstances, be unable to meet the minimum requirements of these performance standards, may be allowed under the provisions of a Special Permit issued by the Select Board. The conditions of issuance or of renewal for any such permit are:

A. The proposed activity or use will not continue beyond a maximum time period of one (1) week. The activity must be in conformance with the following minimum performance standards or it will be in violation of this Ordinance:
   1. The proposed activity will not create, cause or increase any health, safety or public nuisance problems.
   2. The proposed activity will not cause immediate or future damage to adjacent properties.
   3. Reasonable provision is made to prevent or minimize harmful environmental impacts of the proposed activity.

Section 5.28. TEMPORARY STRUCTURES

A. Temporary structures intended for human occupation and used in conjunction with construction work shall be permitted only during the period that construction work is in progress. Permits for temporary structures shall be issued for a six (6 mo.) month period and may be renewed by the Code Enforcement Officer for additional six (6 mo.) month periods up to three (3 yrs.) years. A valid plumbing permit shall be required.

B. Residing in basement or foundation structures before the completion of the total structure shall be permitted for a period of three (3 yrs.) years from the date of issuance of a building permit, subject to issuance of a temporary Certificate of Occupancy. The Code Enforcement Officer may issue a temporary Certificate of Occupancy for two (2) additional one (1 yr.) year periods, if in his judgment, reasonable progress is being made and if nuisance conditions do not exist. Applications for permit extension shall be made before the permit expires. The temporary Certificate of Occupancy may require such conditions and safeguards as will protect the safety of the occupants and the public. A valid plumbing permit shall be required.

Section 5.29. VIBRATIONS

No activity shall, as a result of normal operations, cause or create a vibration at or beyond a lot line or a boundary line which is in excess of that indicated in the table below:

Frequency/Cycle per Second	Vibration Steady State	Displacement (in.) Impact
Under 10	.0005	.0010
10-19	.0004	.0008
.001020-29	.0003	.0006
30-39	.0002	.0004
40 and over	.0001	.0002

Section 5.30. WATER QUALITY IMPACTS

A. No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quality, obnoxiousness, toxicity, or temperature that run-off may seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness, or be harmful to human, animal, plant, or aquatic life.

B. A holding tank application for wastewater disposal shall comply with the State Plumbing Code. An alarm system shall be installed indoors to warn the owner that the tank must be pumped. A notarized statement must be submitted to the Plumbing Inspector from all abutters indicating their consent to placement of and easement to place a holding tank or subsurface disposal system on their property before issuance of a plumbing permit.

ARTICLE 6: SUBDIVISION REGULATIONS

Section 6.1. PURPOSES

The purposes of these regulations are:

A. To provide for an expeditious and efficient process for the review of proposed subdivisions;

B. To assure new development in the Town of Durham meets the goals and conforms to the policies of the Durham Comprehensive Plan;

C. To assure the comfort, convenience, safety, health and welfare of the people of the Town of Durham;

D. To protect the environment and conserve the natural and cultural resources identified in the Durham Comprehensive Plan as important to the community;

E. To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures;

F. To minimize the potential impacts from new subdivisions on neighboring properties and on the municipality; and,

G. To promote the development of an economically sound and stable community.

Section 6.2. SUBDIVISION REVIEW CRITERIA

A. When reviewing any application for a subdivision, the Planning Board shall find that the following criteria as found in 30-A M.R.S.A. §4404 as well as all applicable provisions of this Land Use Ordinance have been met before granting approval. The proposed project:

1. **Pollution:** Will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:

    a. The elevation of the land above sea level and its relation to the flood plains;

    b. The nature of soils and subsoils and their ability to adequately support waste disposal;

    c. The slope of the land and its effect on effluents;

    d. The availability of streams for disposal of effluents; and,

    e. The applicable State and local health and water resources rules and regulations;

2. **Sufficient Water:** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

3. **Erosion:** Will not cause unreasonable soil erosion or reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

4. **Traffic:** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway, located outside the urban compact area of an urban compact municipality, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. §704 and any rules adopted under that section;

5. **Sewage Disposal:** Will provide for adequate sewage waste disposal;

6. **Municipal Solid Waste Disposal:** Will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized;

7. **Aesthetic, Cultural, and Natural Values:** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

8. **Conformity with Local Ordinances and Plans:** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;

9. **Financial and Technical Capacity:** The developer has adequate financial and technical capacity to meet the standards of this Article;

10. **Surface Waters:** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250') feet of any wetland, great pond or river as defined in 38 M.R.S.A. §§ 435-490, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;

11. **Groundwater:** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

12. **Flood Areas:** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval prohibiting the construction of any dwellings or other structures except for access roads and essential utilities within the 100-year floodplain;

13. **Fresh Water Wetlands:** All freshwater wetlands within the proposed subdivision have been identified on maps submitted as part of the application, regardless of the size of these wetlands;

14. **Farmland:** All farmland of five (5) or more acres that is in active farm production or consisting of five (5) or more acres of prime farmland soil or soil classified as unique farmland or farmland of State or local importance has been identified on maps submitted as part of the application;
15. **River, Stream, or Brook:** Any river, stream or brook within or abutting the proposed subdivision has been identified on maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. §480-B.9;
16. **Storm Water:** The proposed subdivision will provide for adequate storm water management;
17. **Spaghetti-Lots Prohibited:** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond as these features are defined in 38 M.R.S.A. §480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5:1) to one;
18. **Great Pond Phosphorus Concentration:** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;
19. **Impact on Adjoining Municipalities:** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
20. **Land Subject to Liquidation Harvesting:** Timber on the tract being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A §8869.14.

Section 6.3. AUTHORITY AND ADMINISTRATION

A. **Authority:** These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. §4403. These standards shall be known and may be cited as "Subdivision Regulations of the Town of Durham, Maine."

B. **Administration:** The Planning Board of the Town of Durham, hereinafter called the Board, shall administer these regulations. The provisions of these regulations shall pertain to all land and buildings proposed for subdivision within the boundaries of the Town of Durham.

C. **Amendment:** These regulations may only be amended by vote of Town Meeting. A public hearing shall be held prior to the adoption of any amendment. Notice of the hearing shall be provided at least seven (7) days in advance of the hearing.

Section 6.4. ADMINISTRATIVE PROCEDURE

In order to establish an orderly, equitable and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare a written agenda for each regularly scheduled meeting. The agenda shall be prepared no less than one (1) week in advance of the meeting, distributed to the Board members and any applicants appearing on the agenda, and posted at the municipal offices. Applicants shall request to be placed on the Board's agenda at least fourteen (14) days in advance of a regularly scheduled meeting by contacting the Code Officer.

Section 6.5. PRE-APPLICATION SKETCH PLAN PHASE

A. **Purpose:** The purpose of the sketch plan meeting and onsite inspection is for the applicant to present general information regarding a contemplated subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying, soils identification, and engineering by the applicant.

B. **Procedure:** The applicant shall present the pre-application sketch Plan and make a verbal presentation regarding the site and the proposed subdivision. Following the applicant's presentation, the Board may ask questions, point out potential problems or issues for future discussions, and make suggestions to be incorporated by the applicant into the subsequent application. Substantive, lengthy discussions about compliance with review standards shall be postponed until the subsequent review of the full application. The applicant should state any anticipated requests for waiver of submissions and the justification for requesting them. As with determination of compliance with review standards, any formal decision on granting waivers of submission requirements must wait until Board formal action on a preliminary plan application.

C. **Sketch Plan Submissions:** Ten (10) printed copies and one (1) digital PDF of the sketch plan and all supporting materials must be submitted fourteen (14) days prior to a regularly scheduled Planning Board meeting, in order to be placed on the Board's agenda. The sketch plan does not need to be prepared by a registered professional engineer but must be accurate and contain all the following information submittals to help the Board and applicant fully understand the project site and issues related to it:

   1. A sketch plan application form;
   2. A copy of a portion of the USGS topographic map of the area showing the outline of the proposed subdivision;
   3. A copy of that portion of the Androscoggin County Soil Survey covering the proposed subdivision, showing the outline of the proposed subdivision;
   4. A copy of the relevant Assessor's Map(s) showing the outline of the proposed subdivision;
   5. A map drawn to scale showing site conditions such as steep slopes, wet areas and vegetative cover in a general manner.

6. A map drawn to scale showing the proposed layout of streets, lots, buildings, other improvements, and any proposed common areas in relation to existing conditions; and,
7. A written project narrative report with general information to describe or outline the existing conditions of the site, development constraints and opportunities, and a full description of the proposed development.

D. **Site Plan Required for Cluster Subdivisions:** If the applicant intends to file a request for approval of a cluster subdivision plan under Section 6.33, a conceptual site plan meeting the requirements of Section 6.33.B.1 must be submitted at sketch plan review. The Planning Board will conduct a site walk for cluster subdivisions at pre-application stage following the requirements of Section 6.6.I.

E. **Rights not Vested:** The sketch plan meeting, the submittal or review of the sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the vested rights protections of 1 M.R.S.A. §302.

Section 6.6. PRELIMINARY PLAN APPLICATION PHASE

A. **To Be Filed Within 12 Months of Sketch Plan:** Within twelve (12) months after the pre-application sketch plan review by the Board, the applicant shall submit an application for approval of a preliminary plan at least fourteen (14) days prior to a scheduled meeting of the Board. Failure to submit an application within six (6) months of pre-application review shall require resubmission of the sketch plan to the Board. The preliminary plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board.

B. **Application Fee:** All applications for preliminary plan shall be accompanied by a nonrefundable application fee per the fee schedule adopted by the Select Board, payable by check to the Town of Durham.

C. **Technical Peer Review Escrow Account:** In addition to the application fee to cover Town administrative expenses, the applicant shall pay a refundable escrow fee per the fee schedule adopted by the Select Board, to be deposited in a special escrow account designated for that subdivision application, to be used by the Board for hiring independent consulting services to review engineering and other technical submissions associated with the application, and to ensure compliance with the subdivision regulations. Peer reviews of technical submissions are not intended to design or re-design the subdivision, but to provide the Board with expert analysis of applicant submissions as to whether they meet industry standards or whether additional information is needed to make a determination on compliance with the review criteria and performance standards. If the balance in this special account is drawn down by seventy-five (75%) percent by technical reviews, the Board shall notify the applicant, and require that the balance be brought back up to the original deposit amount. The Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by seventy-five (75%) percent of the original deposit. Any balance in the escrow account remaining after a decision on the final plan application by the Board shall be returned to the applicant. (Note to Applicants: Inability to pay application fees and/or review

escrows is indication of lack of financial capacity to complete the project per subdivision review criterion #9. Careful preparation of subdivision plans by the applicant's consulting team can minimize the need for peer technical reviews and their associated costs).

D. **Application Receipt and Town Notices:** Within three (3) days of the receipt of the Preliminary Plan application, the Board, or its designee, shall:

1. Issue a dated notice of receipt to the applicant.
2. Notify the Clerk and the Planning Board of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.

E. **Notice to Abutters:** Not earlier than thirty (30) days prior nor less than ten (10) days before the date of the Planning Board meeting where the application will be discussed, the applicant must either mail a notice of intent to file the application to all abutters of the proposed subdivision, or hand deliver and receive a signature from the abutter on such notice of intent. If the notice is to be mailed, then the notice shall be mailed by certified mail, return receipt requested. The notice shall briefly describe the proposed subdivision and the anticipated date of the Planning Board meeting where the application will be discussed.

F. **Meeting Attendance by Applicant:** The Board shall not review any preliminary plan application unless the applicant or applicant's representative attends the meeting. Should the applicant or applicant's representative fail to attend, the Board shall reschedule review of the application at its next regular meeting and the review time frames of Section 6.6.K below shall be correspondingly extended.

G. **Application Completeness Review:** Within thirty (30) days of the receipt of the preliminary plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application and the time limits for rendering a decision under Section 6.6.K below shall be suspended until the Board determines that it has a completed application.

H. **Determination of Completeness:** Upon determination that a complete application has been submitted for review, the Board shall notify the applicant in writing. The Board shall also notify the Road Commissioner, Fire Chief and Superintendent of Schools of the proposed subdivision, the location of the proposed subdivision and the number of dwelling units proposed and the length of roadways. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision. The Board shall determine whether to hold a public hearing on the preliminary plan application and whether to conduct a site walk.

I. **Site Walk:** If a site walk is scheduled, public notice meeting the requirements of 1 M.S.R.A. §§403 & 406 shall be posted and the public must be allowed to attend. The purpose of the site walk is to help Planning Board members familiarize themselves with the proposed development site location, setting, and physical characteristics. All substantive discussions of the project and testimony by members of the public must

wait until the regularly scheduled public hearing and/or meeting of the Board. At the next meeting of the Planning Board, the names of Board members who attended the site walk shall be entered into the minutes of that meeting to satisfy public meeting record requirements of 1 M.S.R.A. §403.

J. **Public Hearing:** If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. In addition, the notice of the hearing shall be posted in at least three (3) prominent places within the municipality at least seven (7) days prior to the hearing.

K. **Decision on Preliminary Plan Application:** Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of fact and reasons for any application denial. If the Board grants preliminary approval, findings of fact will be prepared and adopted as part of final plan approval.

L. **Preliminary Approval Conditions:** When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:

1. The specific changes which it will require in the final plan;
2. The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and,
3. The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.

M. **Preliminary Approval Status:** Approval of a preliminary plan shall not constitute approval of the final plan but is an initial formal determination that the subdivision as proposed is able meet the review criteria and standards, subject to appropriate approval conditions and final plan requirements. The final plan shall be submitted for approval by the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval. Prior to the approval of the final plan, the Board may require that additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received.

Section 6.7. MANDATORY SUBMISSIONS FOR PRELIMINARY PLAN

The following items shall be submitted as part of the Preliminary Plan Application, unless the applicant submits a written waiver request, and is granted a waiver from the submission requirement by the Planning Board, pursuant to Section 6.7.D or 6.35.A. Ten (10) printed copies and one (1) digital PDF of all the following materials shall be delivered to the Town

Office, at least fourteen (14) days prior to a regularly scheduled Planning Board meeting in order for the application to be placed on the Board's agenda for completeness review:

A. **Application Form:** Ten (10) printed copies and one (1) digital PDF of the application form and all accompanying information.

B. **Location Map:** The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:

   1. Existing subdivisions in the proximity of the proposed subdivision.
   2. Locations and names of existing and proposed streets.
   3. Boundaries and designations of zoning districts.
   4. An outline of the proposed subdivision and any remaining portion of the owner's property if the preliminary plan submitted covers only a portion of the owner's entire contiguous holding.

C. **Preliminary Plan:** The preliminary plan may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The preliminary plan shall be drawn to a scale of not more than one hundred feet (100') feet to the inch. Plans for subdivisions containing more than one hundred (100) acres may be drawn at a scale of not more than two hundred (200') feet to the inch, provided all necessary detail can easily be read. The application materials for preliminary plan approval shall include the following information:

   1. Proposed name of the subdivision and the name of the municipality in which it is located, plus the Assessor's Map and Lot numbers;
   2. Verification of right, title or interest in the property by deed, purchase and sales agreement, option to purchase, or some other proof of interest;
   3. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five (5) years, as required by 30-A M.R.S.A. §4401;
   4. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property;
   5. A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision;
   6. An indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a Licensed Site Evaluator or Certified Soil Scientist shall be provided. A map showing the location of all test pits dug (including those not passing a soils test) on the site with correlation to proposed lots shall be submitted;

7. An indication of the type of water supply system(s) to be used in the subdivision for domestic purposes and fire protection;
8. Well exclusion zones based on Maine Subsurface Wastewater Disposal rules and/or a hydrogeological evaluation of groundwater flows;
9. The names and addresses of the record owner, applicant, and individual or company who prepared the plan and adjoining property owners;
10. Wetland areas delineated on the survey, regardless of size;
11. Topography: Five (5') foot contours for areas to be left in a natural state and two (2') contours for areas to be altered by construction for roads, stormwater management and drainage, and building envelopes, showing elevations in relation to mean sea level.
12. Farmland in active agricultural production if five (5) or more acres and areas with prime farmland soils or soils of State-wide or local importance if five (5) or more acres;
13. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features;
14. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is in the direct watershed of a great pond, the application shall indicate which great pond;
15. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision;
16. The location and size of existing and proposed culverts and drainage ways on or adjacent to the property to be subdivided;
17. The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision;
18. The traffic entering and exiting sight distances along existing and proposed roads as calculated per Appendix 1, Section 1.4 for any new intersection created to serve the subdivision;
19. The width and location of existing and proposed streets within the subdivision;
20. The proposed lot lines with approximate dimensions and lot areas;
21. All parcels of land proposed to be dedicated to public use or common use by subdivision occupants and the conditions of such dedication;
22. The location of any open space to be preserved or common areas to be created, and a general description of proposed ownership, improvement and management;

23. The area on each lot where existing forest cover will be permitted to be removed and converted to lawn, structures or other cover and any proposed restrictions to be placed on clearing existing vegetation (proposed building envelopes);
24. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan;
25. Areas within or adjacent to the proposed subdivision which have been identified by the Maine Department of Inland Fisheries & Wildlife as significant wildlife habitat and unique natural areas identified by the Maine Natural Areas Program; and,
26. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places or have been identified in the comprehensive plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.

D. **Additional Studies that may be Required by the Board:** The following items may be required by the Planning Board due to the size of a project, particular characteristics of a development site or subdivision proposal, or issues that are raised during the preliminary plan review. If required, they will normally be placed as preliminary approval conditions:

1. High Intensity Soil Survey: A high-intensity soil survey by a registered soil scientist.
2. Hydrogeological Assessment: A hydrogeologic assessment prepared by a certified geologist, or a registered professional engineer experienced in hydrogeology, to determine adequacy of groundwater to meet domestic demands of the proposed subdivision, fire protection water supplies, and the potential for impacts on groundwater supplies of proposed groundwater withdrawals and of wastewater disposal on wells within and adjacent to the subdivision, including needed well exclusion zones within proposed lots.
3. Traffic Trip Generation: An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent available edition of the Trip Generation Manual, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.
4. Traffic Impact Analysis. For subdivisions projected to generate more than one hundred and forty (140) vehicle trips per day, a traffic impact analysis, prepared by a registered professional engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service (LOS) of the street giving access to the site and neighboring streets which may be affected, and

recommended improvements to maintain the desired level of service on the affected streets.

E. **Additional Information may be Requested:** When the need for additional information is clearly indicated by objective factual analysis and by a majority vote of the Planning Board members, the Planning Board may require additional information not listed above to determine whether the statutory review criteria of 30-A M.R.S.A. §4404 have been met.

Section 6.8. FINAL PLAN APPLICATION PHASE

A. **To Be Filed Within 6 Months of Preliminary Approval**: Within six (6) months after the approval of the preliminary plan, the applicant shall submit ten (10) copies of an application for approval of the final plan with all supporting materials, at least fourteen (14) days prior to a scheduled meeting of the Board. If the application for the final plan is not submitted within six (6) months after preliminary plan approval, the Board shall require resubmission of the preliminary plan, except as stipulated below. The final plan shall approximate the layout shown on the preliminary plan, plus any changes required by the Board.

If an applicant cannot submit the final plan within six (6) months due to delays caused by other regulatory bodies or other reasons beyond the applicant's control, the applicant may request an extension. Such a filing deadline extension request shall be filed in writing with the Board prior to the expiration of the filing period. In considering the request for an extension the Board, shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact on the proposed development have not been amended.

B. **Final Plan Application Fee & Review Escrow:** All applications for final plan approval for a major subdivision shall be accompanied by a nonrefundable application fee per the fee schedule adopted by the Select Board, payable by check to the municipality. The Planning Board may continue to require the replenishment of the escrow account for hiring independent consulting services to review the application for final plan approval, along with any supporting materials, pursuant to the procedures of Section 6.6. C.

C. **Outside Agency Approvals & Comments:** Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable:

1. Maine Department of Environmental Protection, under the Site Location of Development Act.
2. Maine Department of Environmental Protection, under the Natural Resources Protection Act or Stormwater Law.
3. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
4. Maine Department of Transportation Traffic Movement Permit, and/or Highway Entrance/Driveway Access Management Permit.

5. Review comments by the Maine Department of Inland Fisheries and Wildlife, Maine Natural Areas Program, and Maine Historic Preservation Commission.

If the Board is unsure whether a permit or license from a state or federal agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations.

D. **Street Addressing:** Written approval of any proposed street names from the Town of Durham E911Addressing Officer.

E. **Receipt of Application:** Within three (3) days of the receipt of the Final Plan application, the Board, or its designee, shall issue a dated receipt to the applicant.

F. **Completeness Review:** Within thirty (30) days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application, and the time limits for rendering a decision under Section 6.8.J below shall be suspended until the Board determines that it has a completed application.

G. **Determination of Completeness:** Upon determination that a complete application has been submitted for review, the Board shall notify the applicant in writing. The Board shall determine whether to hold a public hearing on the final plan application.

H. **Public Hearing:** If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. In addition, the notice of the hearing shall be posted in at least three (3) prominent places within the municipality at least seven (7) days prior to the hearing.

I. **Performance Guarantees:** Before the Board grants approval of the final plan, the applicant shall meet the performance guarantee requirements contained in Section 6.34.

J. **Decision on Final Plan Application:** Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in 30-A M.R.S.A., §4404 and the standards of these regulations. If the Board by majority vote finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If by majority vote the Board finds that any of the individual criteria of the statute or the performance standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

Section 6.9. MANDATORY SUBMISSIONS FOR FINAL PLAN

A. **Final Plan Format:** The final plan shall consist of one or more maps or drawings drawn to a scale of not more than one hundred (100') feet to the inch. Plans for subdivisions containing more than one hundred (100) acres may be drawn at a scale of not more than two hundred (200') feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than twenty-four inches (24"X36") by thirty-six inches in size and shall have a margin of two (2") inches outside of the border line on the left side for binding and a one (1") inch margin outside the border along the remaining sides. Space shall be reserved on the plan for endorsement by the Board. One reproducible, stable-based Mylar transparency of the recording plan to be recorded at the Registry of Deeds, and ten (10) full sized paper copies and one (1) digital PDF of all the final plan sheets and any supporting documents shall be submitted.

B. **Final Plan Mandatory Submissions:** The final plan shall include or be accompanied by the following mandatory submissions of information unless a waiver is granted under Section 6.35.A.:

1. Completed final plan application form and final plan application submissions checklist;
2. Proposed name of the subdivision and the name of the municipality in which it is located, plus the assessor's map and lot numbers;
3. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, and other essential existing physical features;
4. An indication of the type of sewage disposal to be used in the subdivision;
5. An indication of the type of water supply system(s) to be used in the subdivision;
6. Septic system locations and well exclusion zones based on requirements of the Maine Subsurface Wastewater Disposal rules and/or a hydrogeological evaluation of groundwater impacts;
7. The date the plan was prepared, north point, graphic map scale;
8. The names and addresses of the record owner, applicant, and individual or company who prepared the plan;
9. Zoning for the subdivision and the location of any zoning district boundaries affecting the subdivision;
10. The location of all required property line setbacks and buffers (contour lines should not be shown on the final plan as they obscure such building restrictions);
11. If different than those submitted with the preliminary plan, a copy of any proposed deed restrictions and covenants intended to cover all or part of the lots or dwellings in the subdivision. The covenants shall distinguish between those that are enforceable by the Town of Durham and those that are enforceable by the lot owners/association in a form approved by the Town

Attorney. Any changes to the standard format approved by the Town Attorney shall be submitted for their review and approval at the expense of the applicant;

12. The location and size of existing and proposed culverts and drainage ways on or adjacent to the property to be subdivided;
13. The location, names, and present widths of existing and proposed streets, highways, easements, buildings, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The location, bearing and length of street lines, lot lines and parcel boundary lines shall be certified by a professional land surveyor. The original reproducible plan shall be embossed with the seal of the professional land surveyor and be signed by that individual;
14. Street plans, meeting the requirements of Appendix 1 prepared by a professional engineer;
15. Engineering cost estimates (contractor estimates are not acceptable) for the construction of all required improvements including, roads, utilities, storm water management, and erosion and sedimentation controls;
16. The proposed form of performance guarantee to ensure proper and complete construction of the streets, utilities, and other improvements required by the regulations in a form approved by the Town Attorney. Any changes to the standard format approved by the Town Attorney shall be submitted for their review and approval at the expense of the applicant;
17. Unless the applicant proposes to submit a cash deposit as a performance guarantee or asks for a conditional agreement per Section 6.34.C, a letter of commitment from a lending institution indicating they have reviewed the financial status of the applicant and the costs of the proposed improvements and are prepared to issue a performance guarantee for those improvements upon project approval.
18. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the municipality of all public ways and open spaces shown on the Plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be managed and maintained shall be submitted. These may include homeowners' association by laws and condominium declarations. If proposed streets and/or open spaces or other land is to be offered to the municipality, written evidence that the Municipal Officers are satisfied with the legal sufficiency of the written offer to convey title shall be included;

19. The boundaries of any flood hazard areas and the 100-year flood elevation as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan; and,

20. The location and method of disposal for land clearing and construction debris.

21. **Erosion & Sedimentation Control Plan:** An erosion and sedimentation control plan prepared in accordance with the Maine Erosion & Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers 2016 published by the Maine Department of Environmental Protection (Appendix 2). The Board may waive submission of the erosion and sedimentation control plan only if the subdivision is not in the watershed of a great pond, and upon a finding that the proposed subdivision will not involve road construction or grading which changes drainage patterns and if impervious surfaces such as roofs and driveways are less than five (5%) percent of the area of the subdivision. Calculations establishing the impervious surfaces limitations shall be submitted with the waiver request and the maximum impervious surface for each lot shall be noted on the plan.

22. **Stormwater Management Plan:** A stormwater management plan, prepared by a registered professional engineer in accordance with the most recent edition of Stormwater Management Manual Volume III May 2016 published by the Maine Department of Environmental Protection (Appendix 3). Another methodology may be used if the applicant can demonstrate it is equally applicable to the site. The Board may waive submission of the stormwater management plan only if the subdivision is not in the watershed of a great pond, and upon a finding that the proposed subdivision will not involve road construction or grading which changes drainage patterns and if the addition of impervious surfaces such as roofs and driveways is less than five (5%) percent of the area of the subdivision. Calculations establishing the impervious surfaces limitations shall be submitted with the waiver request and the maximum impervious surface for each lot shall be noted on the plan.

23. **Phosphorus Management Plan:** If any portion of the proposed subdivision is in the direct watershed of a great pond and meets the phosphorus control criteria of Section 6.28.D, the following shall be submitted or indicated on the plan:

    a. A phosphorus impact analysis and control plan conducted using the procedures set forth in DEP Phosphorus Design Manual, Volume II of the Maine Stormwater Best Management Practices Manual, 2016 (Appendix 4). The analysis and control plan shall include all worksheets, engineering calculations, and construction specifications and diagrams for control measures, as required by the Technical Guide;

    b. A long-term maintenance plan for all phosphorus control measures;

    c. The contour lines shown on the plan shall be at an interval of no less than five feet; and,

d. Areas with sustained slopes greater than twenty-five (25%) percent covering more than one (1) acre shall be delineated.

Section 6.10. FINAL APPROVAL AND FILING

A. **Required Conformance with Previous Approvals:** No final subdivision plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved subdivision plan within the municipality.

B. **Written Findings:** Upon findings of fact and determination that all standards in 30-A M.R.S.A., §4404, and these regulations have been met, and upon voting to approve the subdivision, the Board shall sign the final plan. The Board shall specify in writing its findings of facts and reasons for any approval conditions.

C. **Plan Copies:** One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One copy of the signed plan shall be forwarded to the Code Enforcement Officer.

D. **Performance Guarantee Submittal:** The performance guarantee approved by the Planning Board shall be submitted to the Code Enforcement Officer before release of the recording Mylar.

E. **Time Limit for Recording the Plan:** Any subdivision plan not recorded in the Registry of Deeds within ninety (90) days of the date upon which the plan is approved and signed by the Board shall become null and void and require resubmittal and approval by the Planning Board. No application fees shall be required for reapproval of a final plan if submitted within six (6) months of original final plan approval.

F. **Phasing of Subdivisions:** At the time the Board grants final plan approval, it may permit the Plan to be divided into two (2) or more phases subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan. If any municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more phases subject to any conditions the Board deems necessary in order to allow the orderly planning, financing, and provision of public services to the subdivision. If the expansion, addition or purchase of the needed facilities is included in the municipality's capital improvements program, the time period of the phasing shall be no longer than the time period contained in the capital improvements program for the expansion, addition, or purchase.

G. **Changes to Final Plans after Approval:** No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the plan, unless a revised final plan is first submitted and the Board approves any modifications in accordance with Section 6.11 below. The Board shall make findings that the revised plan meets the criteria of 30-A M.R.S.A. §4404, and the standards of these regulations. If a final plan is recorded without complying with this requirement, it shall be considered null and void, and the Board

shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.

H. **Town Acceptance of Roads or Improvements:** The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

I. **Time Limit for Completion of Subdivision Improvements:** Except in the case of a phased development plan, failure to start construction of required improvements within twelve (12) months or to complete construction of the subdivision's infrastructure improvements within thirty-six (36) months of the date of approval and signing of the plan shall render the plan in violation of the regulations. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect. A notice of developer default shall be recorded stating that no development permits for unsold lots will be issued by the Town until application has been made for reapproval of the subdivision and the Planning Board grants such approval. Completion of a subdivision does not require sale of lots or construction of homes on lots.

Section 6.11. REVISIONS TO APPROVED PLANS

A. **Revision Procedure:** An applicant for a revision to a previously approved plan shall, at least fourteen (14) days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

B. **Revision Submissions:** The applicant shall submit a copy of the approved plan as well as ten (10) printed copies and one (1) digital PDF of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the review criteria of Section 6.2 and the performance standards of Section 6.14. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

C. **Scope of Review:** The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed. In the event that regulations have

changed since original approval of the subdivision, the regulations in effect at the time of application for revision shall be applied.

Section 6.12. INSPECTIONS ENFORCEMENT

A. **Notice of Start of Construction:** At least five (5) days prior to commencing construction of required improvements, the subdivider or builder shall notify the Public Works Director in writing of the time to commence construction of such improvements, so that the municipal officers can arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during construction and to assure satisfactory completion of improvements and utilities required by the Board.

B. **Corrective Actions:** If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the inspecting official shall so report in writing to the municipal officers, Board, and the subdivider and builder. The municipal officers shall take any steps necessary to assure compliance with the approved plans.

C. **Minor Changes to Address Field Conditions:** If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than one (1%), etc., the subdivider shall obtain permission from the Board to modify the plans in accordance with Section 6.11 for revisions to final plans.

D. **Close of Construction Season:** At the close of each construction season the Town shall, at the expense of the subdivider, have the site inspected by a qualified individual. By October 1 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.

E. **Surveyor Certification:** Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a professional land surveyor, stating that all monumentation shown on the plan has been installed.

F. **Street Maintenance by Subdivider:** The subdivider shall be required to maintain all improvements and provide for snow removal on streets until acceptance of the improvements by the municipality or control is placed with a lot owners' association.

Section 6.13. VIOLATIONS ENFORCEMENT

A. **Recording before Plan Approval:** No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board in accordance with these regulations.

B. **No Lot Conveyance Prior to Plan Approval:** A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.

C. **No Sale of Unapproved Lots:** A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.

D. **No Utility Service without Subdivision Approval:** No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.

E. **No Development Prior to Subdivision Approval:** Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in these regulations and recorded in the Registry of Deeds.

F. **Penalties for Violations:** Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of 30-A M.R.S.A. §4452.

Section 6.14. PERFORMANCE STANDARDS

The performance and design standards in this Sections 6.15 through 6.31 are intended to clarify and expand upon the statutory review criteria found in Section 6.2. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance and design standards and make findings that each has been met prior to the approval of a final plan. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all performance and design standards and statutory criteria for approval have been or will be met. If the applicant provides satisfactory documentation of compliance with the performance and design standards as determined by a majority vote of the Planning Board on each performance standard, then they are in compliance with the subdivision review criteria and are entitled to Planning Board approval of the subdivision. If the applicant fails to meet any of the performance standards as determined by a majority of the Planning Board, the Board must deny the subdivision application unless the applicant agrees to conditions of approval that will bring the application into compliance with the performance standards. Requirements beyond those contained in these regulations must be enacted through the procedures of Section 6.3.C.

Section 6.15. POLLUTION STANDARDS

In determining that the proposed subdivision will not result in undue water or air pollution, the Planning Board shall determine that the application meets the following performance standards:

A. **Elevation of the Land and Relation to Flood Plains:** This review criterion and performance standard shall be deemed to be met by compliance with Section 6.25 for floodplain management.

B. **Nature of Soils and Subsoils for Wastewater Disposal:** This review criterion and performance standard shall be deemed to be met by compliance with Section 6.19 for sewage disposal.

C. **Slope of the Land and Effect on Effluents:** This review criterion and performance standard shall be deemed to be met by compliance with Section 6.17 for erosion and sedimentation control and Section 6.28 for stormwater management.

D. **State and Local Health Rules:** This review criterion and performance standard shall be deemed to be met by compliance with Section 6.16 for water supply, Section 6.19 for sewage disposal, and Section 6.24 for impact on groundwater quality.

Section 6.16. SUFFICIENT WATER STANDARDS

A. **Individual Wells:** Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination. Due to the increased chance of contamination from surface water, dug wells shall be prohibited. The applicant shall prohibit dug wells by deed restrictions and a note on the plan.

B. **Lots to Accommodate Wells & Septic Systems:** Lot design shall permit placement of wells and subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

C. **Fire Protection Water Supplies:** the applicant shall provide adequate water storage facilities per the following standards:

1. **Types of Facilities:** Facilities may be fire ponds with dry hydrants, underground storage tanks, or other methods acceptable to the fire chief.

2. **Water Storage Capacity:** For underground storage tanks, a minimum storage capacity of 10,000 gallons shall be provided for a subdivision. Additional storage of 2,000 gallons per lot or principal building shall be provided. Fire ponds shall have a capacity of one hundred and twenty thousand (120,000) gallons or more.

3. **Fire Pond Design Requirements:** Where ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of two (2') feet of ice. Water intakes shall be elevated a minimum of twelve (12") off the bottom of the pond to prevent blockage by debris. A certified hydrologist shall verify that there is adequate groundwater supply and soil types to ensure a year-round supply of water for fire-fighting.

4. **Access Easement:** An easement shall be granted to the municipality granting access to dry hydrants, storage tanks, and fire ponds for access and maintenance.

5. **Design of Hydrants & Drafting Equipment:** Hydrants or other provisions for drafting water shall be provided to the specifications of the Fire Department.

Minimum pipe size connecting dry hydrants to ponds or storage cistern shall be six (6") inches. A suitable accessway to the hydrant or other water source shall be constructed.

6. **Performance Guarantee:** The cost of construction of fire protection water supplies shall be calculated as part of the subdivision improvements and included in the project performance guarantee. Prior to release of the performance guarantee, the tank(s) shall be filled by the developer.

7. **Residential Sprinkler Systems:** Upon a favorable recommendation from the Fire Chief, applicants may request a reduction in the required volume of water for fire protection required in subsection C.2 subject to approval of a requirement that all dwellings in the subdivision be protected by a residential sprinkler system meeting the requirements of NFPA 13D. Said requirement shall be noted as a condition of approval on the subdivision and included as a deed restriction.

Section 6.17. EROSION & SEDIMENTATION & IMPACT ON WATER BODIES STANDARDS

A. The proposed subdivision shall prevent soil erosion and sedimentation from entering waterbodies, wetlands, and adjacent properties.

B. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.

C. Cutting or removal of vegetation along waterbodies shall not increase water temperature or result in shoreline erosion or sedimentation.

D. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

Section 6.18. TRAFFIC CONDITIONS AND STREETS STANDARDS

A. **General Standards:** The proposed subdivision shall meet the following general transportation performance standards:

1. The subdivision roads and pedestrian systems shall provide safe and convenient circulation for vehicles, bicyclists and pedestrians on interior subdivision streets and access connections to external streets;

2. The subdivision roads shall be designed avoid traffic congestion on any street;

3. The subdivision roads shall designed for the estimated Average Annual Daily Traffic of the street, the land uses accommodated by the street, and the lot density of the street; and

4. To the maximum extent practicable, the subdivision roads shall be designed to conform to the natural topography of the proposed subdivision site to avoid large and dramatic changes in contours of the land.

B. **General Access Standards:** All subdivision accesses connecting with external streets shall meet the following standards:

1. Accesses connecting to any state or state-aid highway shall meet the minimum access permitting requirements of the Maine Department of Transportation "Highway Driveway and Entrance Rules;"
2. Accesses that are expected to carry more than one hundred (100) passenger vehicle equivalent trips in the peak hour shall meet the minimum access permitting requirements of the Maine Department of Transportation "Rules and Regulations Pertaining to Traffic Movement Permits."
3. The street giving access to the subdivision and neighboring streets and intersections which can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. No subdivision shall reduce the Level of Service (LOS) of streets or intersections neighboring the subdivision to a LOS of "D" or below, unless:
    a. The level of service of the road or intersection will be raised to D or above through transportation demand management techniques; or
    b. The applicant provides evidence that it is not possible to raise the Level of Service (LOS) of the road or intersection to LOS D or above by road or intersection improvements or by transportation demand management techniques, but improvements will be made or transportation demand management techniques will be used such that the proposed development will not increase delay at a signalized or unsignalized intersection, or otherwise worsen the operational condition of the road or intersection in the horizon year.

C. **General Internal Subdivision Street Standards:** All internal subdivision streets shall meet the following minimum standards:

1. The street or street system of the proposed subdivision shall be designed to coordinate with existing, proposed, and planned streets. Wherever a proposed development abuts unplatted land or a future development phase of the same development, street stubs shall be provided as deemed necessary by the Planning Board to provide access to abutting properties or to logically extend the street system. All street stubs shall be provided with a temporary turn around unless specifically exempted by the Planning Board. The extension of the street from that temporary turnaround shall be the responsibility of any future developer of the abutting land. Minor collector and local streets shall connect with surrounding streets to permit convenient movement of traffic between residential neighborhoods or facilitate emergency access and evacuation, but such connections shall not be permitted where the effect would be to encourage the use of such streets by substantial through traffic between minor arterial or collector roads.
2. Street Names, Signs and Lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality, and shall be subject to the approval of

the Board. No street name shall be the common given name of a person. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation.

3. During street construction, the entire right of way shall not be cleared unless clearing is necessary for utilities, drainage or other infrastructure necessities beyond the clear zone. Following street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire right of way created during the street construction process. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

D. **Specific Access and Street Design Standards:** All internal subdivision streets shall meet the minimum standards found in Appendix 1.

Section 6.19. SEWAGE DISPOSAL STANDARDS

A. **Compliance with Maine Subsurface Wastewater Rules:** The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules:

1. The site evaluator shall certify in writing that each proposed lot will contain at least one test pit which meets the requirements for a new system and contains an area large enough to accommodate a disposal area on soils which meet the Disposal Rules.
2. In no instance shall a disposal area be on a site which requires a New System Variance from the Subsurface Wastewater Disposal Rules.
3. In no instance shall a lot in a subdivision utilize an easement on another lot for its wastewater disposal area.

Section 6.20. SOLID WASTE STANDARDS

If the additional solid waste from the proposed subdivision causes the municipality to exceed its contract with a non-municipal solid waste disposal facility, the applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility which is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five (5) years.

Section 6.21. IMPACT ON NATURAL BEAUTY, AESTHETICS, HISTORIC SITES, WILDLIFE HABITAT, RARE NATURAL AREAS OR PUBLIC ACCESS TO THE SHORELINE STANDARDS

A. **Preservation of Natural Beauty and Aesthetics**

1. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.

2. A subdivision in which the land cover type at the time of application is forested, shall maintain a wooded buffer strip no less than fifty (50') feet in width along all existing roads. The buffer may be broken only for driveways and streets and shall be shown on the final plan.

B. **Retention of Open Spaces and Natural or Historic Features**

1. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
2. If any portion of the subdivision is designated a site of historic or prehistoric importance by the comprehensive plan, National Register of Historic Places, or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan. When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. The Board shall seek the advice of the Maine Historic Preservation Commission in reviewing such plans.
3. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.
4. Reserved open space land may be but is not required to be dedicated to the municipality.

C. **Protection of Significant Wildlife Habitat:** If any portion of a proposed subdivision lies within two hundred and fifty (250') feet of the areas identified and mapped by the Department of Inland Fisheries and Wildlife Beginning with Habitat Project or the comprehensive plan as habitat for species appearing on the official state or federal lists of endangered or threatened species the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports:

1. There shall be no cutting of vegetation within such areas, or within the strip of land extending at least seventy-five (75') feet from the edge or normal high-water mark of such habitat areas.
2. The applicant must consult with the Maine Department of Inland Fisheries and Wildlife and provide their written comments to the Board.
3. The Board may require a report to be submitted, prepared by a wildlife biologist, selected or approved by the Board, with demonstrated experience with the wildlife resource being impacted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe any additional appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

D. **Protection of Important Shoreland Areas**

1. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way or should be included in the open space with provisions made for continued public access.
2. Within areas subject to the state mandated shoreland zone, within a strip of land extending one hundred (100') feet inland from the normal high-water line of a great pond or any tributary to a great pond, and one hundred (100') feet from any other water body or the upland edge of a wetland covered by shoreland zoning, a buffer strip of vegetation shall be preserved. The plan notes, and deeds to any lots which include any such land, shall contain the following restrictions:
    a. Tree removal shall be limited to no more than forty (40%) percent of the volume of trees four (4") inches or more in diameter measured at four and one-half (4 ½') feet above the ground level on any lot in any ten (10) year period.
    b. There shall be no cleared opening greater than two hundred and fifty (250 sq. ft.) square feet in the forest canopy as measured from the outer limits of the tree crown.
    c. However, a footpath not to exceed ten (10') feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to a great pond, or a tributary to a great pond, the width of the foot path shall be limited to six (6') feet.
    d. In order to protect water quality and wildlife habitat adjacent to great ponds, and tributaries to great ponds, existing vegetation under three (3') feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described above.
    e. Pruning of tree branches, on the bottom third of the tree is permitted.

Section 6.22. CONFORMITY WITH LOCAL ORDINANCES AND PLANS STANDARDS

All lots, other than those found within cluster developments approved pursuant to Section 6.33, shall meet the minimum dimensional requirements for the zoning district in which they are located. The proposed subdivision shall meet all applicable criteria and design or performance standards in all articles of the Land Use Ordinance.

Section 6.23. FINANCIAL AND TECHNICAL CAPACITY STANDARDS

A. **Financial Capacity:** The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of these regulations. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of

inflation. A letter of commitment submitted in conformance with Section 6.9.B.17 shall be considered prima facie evidence of adequate financial capacity.

B. **Technical Ability:** The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision. In determining the applicant's technical ability, the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

Section 6.24. IMPACT ON GROUND WATER QUALITY OR QUANTITY STANDARDS

A. **Ground Water Quality**

1. When a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
    a. A map showing the basic soils types;
    b. The depth to the water table at representative points throughout the subdivision;
    c. Drainage conditions throughout the subdivision;
    d. Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties;
    e. An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of one thousand (1,000') feet from potential contamination sources, whichever is a shortest distance.
    f. A map showing the location of any subsurface waste disposal systems and drinking water wells within the subdivision and within two hundred (200') feet of the subdivision boundaries.
2. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
3. No subdivision shall increase any contaminant concentration in the ground water to more than the Primary or Secondary Drinking Water Standards.
4. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by onsite ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
5. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed one hundred and fifty (150%) percent of the ambient concentration.

6. Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.

B. **Ground Water Quantity**

1. Ground water withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision.
2. A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation.
3. In areas with documented limited groundwater availability, the Planning Board shall consider a requirement that a note be added to the final plan requiring that each lot be provided with a drilled well that produces an adequate supply for domestic purposes prior to sale of the lot.

Section 6.25. FLOODPLAIN MANAGEMENT STANDARDS

When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency:

A. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damages.

B. Adequate drainage shall be provided so as to reduce exposure to flood hazards.

C. The plan shall include a statement that no structures in the subdivision shall be constructed in the floodplain.

D. Any road crossings and/or driveways through flood prone areas shall be evaluated for impacts of flooding on the road in terms of emergency vehicle access and shall be designed to pass flows from a 100-year storm event without sustaining damage.

E. All development in the subdivision shall comply with the requirements and standards of Article 11 for floodplain management.

Section 6.26. IDENTIFICATION OF FRESHWATER WETLANDS, RIVERS, STREAMS, OR BROOKS STANDARDS

Freshwater wetlands within the proposed subdivision shall be identified in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, published by the United States Army Corps of Engineers. Any rivers, streams, or brooks within or abutting the proposed subdivision shall be identified on the subdivision plans.

Section 6.27. IDENTIFICATION OF FARMLAND STANDARDS

All farmland of five (5) or more acres that is in active farm production or consisting of five (5) or more acres of prime farmland soil or soil classified as unique farmland or farmland of State or local importance shall be identified on maps submitted as part of the application.

Section 6.28. STORMWATER MANAGEMENT STANDARDS

A. **Site Location of Development Permit:** For subdivisions that require a DEP review under the Site Location of Development Act (SLDA), a stormwater management plan shall be submitted which complies with the SLDA permit and the requirements of DEP Chapter 500 Stormwater Regulations.

B. **Chapter 500 Stormwater Permit**: For subdivisions that do not require a SLDA permit, but require a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500 Stormwater Regulations.

C. **Erosion & Sedimentation Control Plan**: For subdivisions outside of the watershed of a Great Pond, that neither require a SLDA permit, nor a DEP permit under the Stormwater Law, an erosion and sedimentation control plan shall be submitted meeting the recommendations and standards contained in the 2016 Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers published by the Maine Department of Environmental Protection (Appendix 2).

D. **Phosphorus Management Plan**: For subdivisions within the watershed of Runaround Pond, creating any combination of eight hundred (800 l.ft.) linear feet of new road or driveways, a stormwater management plan shall be submitted that meets the phosphorus allocation across the entire subdivision in accordance with the methodology described in the DEP Phosphorus Design Manual, Volume II of the Maine Stormwater Best Management Practices Manual, 2016 (Appendix 4) or the current edition. Applicants claiming that a subdivision shall have less than the threshold of road and driveway construction shall provide a plan showing how such limitations shall be established and enforced.

E. **Analysis for Potential Downstream Flooding**: The Planning Board may require a hydrologic analysis for any site in areas with a history of flooding or in areas with a potential for future flooding, associated with cumulative impacts of development using the "Ten (10%) Percent Rule:"

1. Hydrologic and hydraulic analysis shall be conducted for the 10-year/24-hour storm, the 25-year/24-hour storm, and the 100-year/24-hour storm extended downstream to the point where the site represents ten (10%) percent of the total drainage area;
2. If the flow rates and velocities increase by more than five (5%) percent and/or if any existing downstream structures are impacted, the designer shall design the drainage system to incorporate stormwater retention to limit flow rates and velocities.

Section 6.29. SPAGHETTI-LOTS PROHIBITED STANDARDS

If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in 38 M.R.S.A. §480-B, none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 5 to 1.

Section 6.30. IMPACT ON AJOINING MUNICIPALITIES STANDARDS

For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located as determined by the traffic impacts analysis of Section 6.18.B.

Section 6.31. COMPLIANCE WITH TIMBER HARVESTING RULES STANDARDS

The Board shall ascertain that any timber harvested on the parcel being subdivided, has been harvested in compliance with rules adopted pursuant to 12 M.R.S.A. §8869.14:

A. **Five-Year Rule:** If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that five (5) years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel.

B. **Determination by DACF or Forester:** The Planning Board may request technical assistance from the Department of Agriculture, Conservation, and Forestry to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to 32 M.S.R.A. Chapter 76.

Section 6.32. RESERVATION OR DEDICATION AND MAINTENANCE OF OPEN SPACE AND COMMON LAND, FACILITIES AND SERVICES

A. All open space common land, facilities and property shall be owned by:

   1. The owners of the lots or dwelling units by means of a lot owners' association;
   2. A land trust or organization which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or,
   3. The municipality.

B. Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land only with Planning Board review and approval.

C. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:

1. It shall not be used for future building lots; and
2. Which portions of the open space, if any, may be dedicated for acceptance by the municipality.

D. The final plan application shall include the following:

1. Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
2. Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and,
3. Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.

E. In combination, the documents referenced in subsection D. above shall provide for the following:

1. The homeowners' association shall have the responsibility of maintaining the common property or facilities.
2. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
3. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
4. The developer or subdivider shall maintain control of the common property and be responsible for its maintenance until development sufficient to support the association has taken place. The developer or subdivider shall provide or ensure that the lot owners' association has adequate funding to cover the first year of maintenance of all improvements. Such determination shall be made by the Board upon request of the lot owners' association or the developer.
5. All roads within the subdivision shall be covered by a road maintenance agreement meeting the requirements of Section 5.23.
6. The covenants shall distinguish between those that are enforceable by the Town of Durham and those that are enforceable by the lot owners/association in a form approved by the Town Attorney. Any changes to the standard format approved by the Town Attorney shall be submitted for their review and approval at the expense of the applicant.

Section 6.33. CLUSTER DEVELOPMENT ALTERNATIVE

A. **Purpose of Clustering:** The purpose of these provisions is to allow for flexibility in the design of subdivisions to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding provisions of Article 4 relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances to relieve hardship, and action of the Zoning Board of Appeals shall not be required.

B. **Standards for Cluster Developments:** Cluster developments shall meet all of the following requirements:

1. **Required Site Plan:** Each home site shall be an element of an overall plan for site development. Only developments having a total site plan for specific home sites will be considered. The application shall illustrate the placement of buildings and their relationship to open spaces, pedestrian paths, and roads. Although reduced road and utility construction costs are a benefit of clustering, of equal importance is designing a subdivision where open space serves the multiple purposes of preserving natural features of the land and providing recreational opportunities while maximizing the value and enjoyment of homes in the subdivision. Although not a requirement, applicants seeking approval of a cluster subdivision are advised to seek the services of a landscape architect in laying out the site plan before engineering plans for roads are prepared and before a surveyor lays out proposed lot lines. This site plan should be presented at the pre-application, sketch plan stage if cluster approval is desired. The Planning Board will not approve a cluster subdivision that creates open space from left over land or strips that do not positively relate to natural features of the site and do not orient home sites to take maximum advantage of those open spaces. Cluster approval is optional and should only be pursued to create true open space subdivisions.

2. **Allowable Reduction of Lot Size & Street Frontage:** The Planning Board may allow lots within cluster developments to be reduced in lot size and street frontage by up to fifty (50%) percent of the minimum required by Article 4 in return for provision of common open space, as long as the maximum number of dwelling units is not exceeded according to the calculations in Section 6.33.B.3 below.

3. **Maximum Number of Lots:** In order to determine the maximum number of lots permitted in a cluster subdivision on a tract of land, the net residential acreage as determined in Section 6.33.B.4 below shall be divided by the minimum lot size in the district, as required by Article 4. Recognizing the substantial community benefits of open space preservation, the Planning Board and these regulations acknowledge that the greater efficiency of cluster design

may result in a slight increase in the number of lots over a conventional subdivision layout. Any cluster subdivision meeting the net residential acreage, cluster design, and all other subdivision standards shall be deemed to be the functional equivalent of a conventional subdivision design in terms of neighborhood and community impact, and no further documentation shall be required to establish that equity.

4. **Net Residential Acreage:** The net residential acreage shall be calculated by taking the total area of the lot and subtracting, in order, the following:
    a. Fifteen (15%) percent of the area of the tract for roads and easements.
    b. Portions of the tract shown on the Flood Boundary and Floodway Map prepared by the Federal Emergency Management Administration for Durham.
    c. Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:
        1) Slopes greater than twenty (20%) percent;
        2) Wetland soils;
        3) Portions of the tract subject to existing easements;
        4) Portions of the tract located in the Resource Protection District; and,
        5) Portions of the tract covered by surface waters.
5. **Required Open Space:** The total area of reserved open space within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required by Article 4. However, at least fifty (50%) percent of the area of the entire parcel or tract shall be included as common open space. Common open space shall not include road rights of way. No more than fifty (50%) percent of the common open space shall consist of wetlands.
6. **Shore Frontage:** Shore frontage for each lot shall not be reduced below the minimum normally required by shoreland zoning.
7. **Shoreline Access:** Where a cluster development abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.
8. **Suitable Building Sites:** No building site in the cluster development shall be located on slopes steeper than twenty (20%), within one hundred (100') feet of any water body or fifty (50') feet of any wetland, or on soil classified as being very poorly drained.
9. **Common Open Space Management:** The common open space shall be owned and managed according to the standards of Section 6.32.

Section 6.34. PERFORMANCE GUARANTEES

A. **Construction Cost Estimate:** With submittal of the application for final plan approval, the applicant shall provide engineering cost estimates (contractor quotes are not acceptable) for the construction of all required improvements including roads, utilities, storm water management, fire protection water supplies, and erosion & sedimentation controls.

B. **General:** A performance guarantee shall be drafted such that the Town shall receive written notice at least sixty (60) days prior to their expiration. Construction which occurs such that inspection by the Town is not possible shall be grounds for default of the performance guarantee. A performance guarantee may be tendered in the form of either a cash deposit held by the Town or an irrevocable letter of credit issued by a bank or other lending agency doing business in Maine in a form satisfactory to the Town Attorney as indicated in Section 6.9.B.16. Any other performance guarantee reviewed by the Town Attorney at the applicant's expense as to form and specifically approved by the Planning Board as being substantially equivalent to a cash deposit or irrevocable letter in terms of security, ease of execution, and cost to the Town may be acceptable. The performance guarantee shall be submitted prior to release of the recording Mylar.

C. **Conditional Agreement:** A conditional agreement, if acceptable in lieu of a performance guarantee, shall be endorsed by the Planning Board on the Final Plan and shall provide that no lot or parcel of land may be conveyed, and that no permit may be issued by the Code Officer for any building on any lot in the subdivision until the completion of all required improvements unless a performance guarantee is approved by the Planning Board for all remaining work needed to complete the improvements. Under a conditional agreement, the applicant shall submit a performance guarantee meeting the requirements of Section 6.34.A.&B. to cover erosion and sedimentation controls and site stabilization prior to release of the recording Mylar.

D. **Street Construction Required Before Sale of Lots:** No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot unless a performance guarantee meeting the requirements of Section 6.34 has been posted by the subdivider and the lot has adequate access by emergency vehicles as determined by the Fire Chief in writing.

E. **Inspection Escrow Fund:** Prior to release of the recording Mylar, the applicant shall deposit with the municipal officers a check for two (2%) percent of the estimated costs of the required improvements to pay for the costs of inspection by a qualified engineer hired by the Town. If upon satisfactory completion of construction and cleanup there are inspection funds remaining, any remaining surplus shall be refunded to the subdivider or builder as appropriate.

F. **Release of Performance Guarantees:** Prior to release of any performance guarantee or portion thereof, satisfactory completion shall be determined by the Public Works Director or their designee, who shall submit written certification to the Planning Board that all improvements covered by the performance guarantee have been

constructed in conformance with the final plan and all applicable codes and ordinances. Partial drawdowns of performance guarantees are allowed.

Section 6.35. WAIVERS

A. **Waivers of Certain Submission Requirements:** Where the Board makes written findings of fact that there are special circumstances of a particular tract proposed to be subdivided, or that the application is simple and minor in nature, it may waive portions of the submission requirements, unless prohibited by these regulations or Maine statutes, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning regulations, or these subdivision regulations.

B. **Waivers of Procedural Requirements:** The Board may allow an applicant to combine the final plan and preliminary plan application steps into one procedure, upon making all of the following written findings of fact:

1. No new streets are proposed;
2. No approvals are required from the Maine Department of Environmental Protection under the Site Location of Development Act, Stormwater Law, or Natural Resources Protection Act, other than a "Permit by Rule;"
3. The Board agrees to approve a waiver from the requirements to submit a stormwater management plan and sedimentation and erosion control plan; and,
4. The application contains all other applicable submissions required for both the preliminary and final plan steps, except for those items for which a waiver of a required submission has been requested and granted by the Planning Board.

C. **Waivers of Performance Standards:** Where the Board makes written findings of fact that due to special circumstances of a particular tract proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or an alternative design is equal to or better in meeting the statutory review criteria, it may waive the design standards, subject the following criteria:

1. The applicant has provided the Planning Board with a factual basis for granting the waiver that is supported by sound engineering and/or environmental analysis (cost considerations are not justification);
2. The waiver(s) do not have the effect of nullifying the intent and purpose of the zoning regulations or these subdivision regulations;
3. The performance standards of these regulations have been substantially met and the criteria of the subdivision statute have been or will be met by the proposed subdivision; and,
4. The requested performance standard waivers are noted on the recorded subdivision plan (submission waivers and procedural waivers are not noted on the plan).

ARTICLE 7: CONDITIONAL USE

Section 7.1. PURPOSE & APPLICABILITY

A. **Establishment of New Uses:** Uses designated as conditional uses within this Ordinance in the districts in which they are so designated, are allowed only subject to the issuance of a conditional use permit by the Planning Board in compliance with this Article. Under a conditional use review, the Planning Board applies the review criteria of Section 7.4 to verify that there are no aspects of a particular development proposal or conditions on a proposed development site that create the potential for specific, significant adverse impacts on neighbors and/or the community. In the absence of such conditions as determined by compliance with each of the conditional use review criteria as determined by a majority vote of the Planning Board members, applicants for conditional use review have equal right to a development permit as any permitted use applicant.

B. **Expansion of Existing Uses:** Any use which was commenced prior to the effective date of adoption or amendment of this Ordinance and would require a conditional use permit under the terms of this Ordinance or subsequent amendment is a non-conforming use, and any expansion of such use shall require a conditional use permit. Physical expansions or increased intensity of use that affects impacts of a conditional use approved by the Planning Board also requires conditional use approval.

Section 7.2. CONDITIONAL USE REVIEW PROCESS

A. **Application:** When the owner of property or the owner's authorized agent is informed by the Code Enforcement Officer or otherwise determines that a conditional use permit is required, an application shall be filed with the Planning Board on forms provided for that purpose. The application shall provide all information required for a building permit application plus information upon which the Planning Board may make findings of fact as to each of the standards set forth in subsection 7.4. The application shall be accompanied by an application fee per the fee schedule adopted by the Select Board.

B. **Receipt of Application:** The completed conditional use application shall be submitted to the Town Office, and a receipt shall be issued to the applicant by the Town Office, at least fourteen (14) days before the Planning Board's next meeting date to be included on the Board's agenda. Any application submitted after the submission deadline will be carried over to the next available meeting.

C. **Notice to Abutters:** Not earlier than thirty (30) days nor less than ten (10) days before the date of the Planning Board meeting where the application will be discussed, the applicant must either mail a notice of intent to file the application to all abutters of the site of the proposed conditional use, or hand deliver and receive a signature from the abutter on such notice of intent. If the notice is to be mailed, then the notice shall be mailed certified, return receipt requested. The notice shall briefly describe the proposed conditional use and the anticipated date of filing the

application. The domestic return receipt of the certified mailing shall be attached as part of the original conditional use application.

D. **Distribution of Application Materials:** When the Code Enforcement Officer, determines that ten (10) printed copies and one (1) digital PDF of all material required to constitute the application have been submitted, they shall promptly notify the applicant of the time and place for such meeting, and they shall transmit to each Planning Board member a copy of the application material.

E. **Sequence with Variance:** No application for conditional use permit shall be considered complete or may be acted upon by the Planning Board until all variances which may be required for the proposed development first have been obtained from the Board of Appeals.

F. **Sequence with Site Plan Review:** For those uses requiring both conditional use permit and site plan approval, specific design review will occur during the site plan review process, which will occur after conditional use approval. The Planning Board may, however, consider the specific site design standards of Article 8 when drafting approval conditions under Section 7.5 for uses not requiring full site plan review (e.g., buffers, shielding of lighting).

G. **Time Frame for Decision:** Within sixty (60) days after the date on which the conditional use application is complete and it first appears on the Planning Board agenda, the Board shall act to approve, approve with conditions, or disapprove the conditional use application. The time limit for review may be extended by mutual agreement between the Planning Board and the applicant. During this sixty (60) day period, the Board may schedule an on-site visit.

H. **Site Walk:** If a site walk is scheduled, public notice meeting the requirements of 1 M.S.R.A. §§403 & 406 shall be posted and the public must be allowed to attend. The purpose of the site walk is to help Planning Board members familiarize themselves with the proposed development site location, setting, and physical characteristics. All substantive discussions of the project and testimony by members of the public must wait until the regularly scheduled public hearing and/or meeting of the Board. At the next meeting of the Planning Board, the names of Board members who attended the site walk shall be entered into the minutes of that meeting to satisfy public meeting record requirements of 1 M.S.R.A. §403.

I. **Written Notice of Planning Board Decision:** Within ten (10) working days of reaching its decision, the Planning Board shall send to the applicant notice in writing of its action and the reason for taking such action.

J. **Changes to Approved Conditional Use:** If an applicant wishes to make any changes to an approved conditional use permit, the applicant must meet all the requirements for a conditional use permit for that changed part of the application, i.e., the applicant will go through the entire conditional use permit process only for the section of the permit they want changed.

Section 7.3. PLANNING BOARD DECISIONS

The Planning Board shall hear and approve, approve with modifications or conditions, or deny any application for conditional use permit:

A. **Approval:** The Board may approve a conditional use permit only for a use which is specifically designated by this Ordinance as a conditional use in the district where the use will be located. If the Board by majority vote determines that the proposed use meets all the criteria set forth in subsection 7.4 and in all other respects complies with the applicable provisions of this Ordinance, the Board must approve the application.

B. **Approval with Conditions:** If the Board by majority vote determines that the proposed use can be made to comply with the criteria of subsection 7.4 only by imposition of conditions as provided in subsection 7.5, then it may approve the application with approval conditions.

C. **Denial:** If the Board by majority vote determines that the proposed use does not meet one or more of the criteria of subsection 7.4, and approval conditions that would cause the use to comply with those criteria are not possible or not acceptable to the applicant, the Board must deny the application.

Section 7.4. CONDITIONAL USE REVIEW CRITERIA

A. **Review Criteria:** Before it issues a conditional use permit, the Planning Board shall find, as a matter of fact, that the proposed use meets the following criteria:

1. **Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation;
2. **Traffic Safety Impacts:** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity;
3. **Public Safety Impacts:** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood;
4. **Environmental Impacts:** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies;
5. **Scale & Intensity of Use:** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures;
6. **Noise & Hours of Operation:** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation;
7. **Right, Title, or Interest:** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use; and,

8. **Financial & Technical Ability:** The applicant has the financial and technical ability to meet the standards of this Section and to comply with any conditions imposed by the Planning Board pursuant to subsection 7.5.

B. **Compliance with Land Use Ordinance Standards:** The proposed conditional use shall meet all applicable criteria and design or performance standards in all articles of the Land Use Ordinance.

Section 7.5. CONDITIONS OF APPROVAL

A. **Planning Board Approval Conditions:** Upon consideration of the criteria listed in subsection 7.4, the Planning Board may by majority vote attach such conditions, in addition to those required by other provisions of this Ordinance, as it finds necessary to ensure compliance with those criteria and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, requirements for:

1. Increased property line setbacks;
2. Fences and planting screens to create effective buffers between uses;
3. Limits on hours of operation; and,
4. Location of parking and signs.

B. **Design Aspects of Approval Conditions:** For projects requiring Planning Board site plan approval, the specific design of improvements required to mitigate impacts under Section 7.5.A will be determined during the site plan review process. For projects not requiring separate site plan review and approval, the Planning Board may apply the design standards of Article 8 in establishing specific approval conditions.

ARTICLE 8: SITE PLAN REVIEW

Section 8.1. PURPOSE

The site plan review provisions set forth in this ordinance are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential (and multifamily) construction designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

Section 8.2. APPLICABILITY OF SITE PLAN REVIEW

A person who has right, title, or interest in a parcel of land must obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site including grubbing or grading:

A. **New Building Construction:** The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures used for nonresidential purposes (other than agricultural buildings);

B. **Expansions of Existing Buildings:** The expansion of an existing nonresidential building or structure, including accessory buildings, that increases the total floor area (other than agricultural buildings); or,

C. **Creation or Expansion of Parking:** The construction or expansion of nonresidential parking areas and access drives involving an area of more than twenty-five hundred (2,500 sq. ft.) square feet within any three (3) year period (excluding gravel parking areas used for agricultural uses).

Section 8.3. SITE PLAN REVIEW ADMINISTRATION

This article shall be administered by the Planning Board. The Planning Board is authorized to review and act on all site plans for development requiring site plan review as defined above. In considering site plans under this provision, the Planning Board may by majority vote act to approve, disapprove, or approve the project with conditions as are authorized by these provisions.

Section 8.4. SITE PLAN REVIEW PROCESS

A. **Application & Review Fee:** When the owner of property or the owner's authorized agent is informed by the Code Enforcement Officer or otherwise determines that site plan approval is required, an application shall be filed with the Planning Board on forms provided for that purpose. The application shall be accompanied by a non-

refundable application fee per the fee schedule adopted by the Select Board. For projects involving both building construction and paved parking, the site plan review fee shall be based on the larger of the calculation of fees for building or parking square footage.

B. **Technical Peer Review Escrow Account:** In addition to the application fee to cover Town administrative expenses, the applicant shall pay a refundable escrow fee per the fee schedule adopted by the Select Board to be deposited in a special escrow account designated for that site plan review application, to be used by the Board for hiring independent consulting services to review engineering and other technical submissions associated with the application, and to ensure compliance with the site plan review regulations. Peer reviews of technical submissions are not intended to design or re-design the site plan, but to provide the Board with expert analysis of applicant submissions as to whether they meet industry standards or whether additional information is needed to make a determination on compliance with the review criteria and performance standards. If the balance in this special account is drawn down by seventy-five (75%) percent by technical reviews, the Board shall notify the applicant, and require that the balance be brought back up to the original deposit amount. The Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by seventy-five (75%) percent of the original deposit. Any balance in the escrow account remaining after a decision on the final plan application by the Board shall be returned to the applicant. (Note to Applicants: Inability to pay application fees and/or review escrows is indication of lack of financial capacity to complete the project per site plan review 8.6.J. Careful preparation of site plans by the applicant's consulting team can minimize the need for peer technical reviews and their associated costs).

C. **Receipt of Application:** The completed site plan review application shall be submitted to the Town Office, and a receipt shall be issued to the applicant by the Town Office, at least fourteen (14) days before the Planning Board's next meeting date to be included on the Board's agenda. Any application submitted after the submission deadline will be carried over to the next meeting.

D. **Notice to Abutters:** Not earlier than thirty (30) days nor less than ten (10) days before the date of the Planning Board meeting where the application will be discussed, the applicant must either mail a notice of intent to file the application to all abutters of the site of the proposed conditional use, or hand deliver and receive a signature from the abutter on such notice of intent. If the notice is to be mailed, then the notice shall be mailed certified, return receipt requested. The notice shall briefly describe the proposed conditional use and the anticipated date of filing the application. The domestic return receipt of the certified mailing shall be attached as part of the original conditional use application.

E. **Distribution of Application Materials:** When the Code Enforcement Officer, determines that ten (10) printed copies and one (1) digital PDF of all material required to constitute the application have been submitted, they shall promptly notify the applicant of the time and place for such meeting, and they shall transmit to each Planning Board member a copy of the application material.

F. **Sequence with Variance:** No application for site plan review shall be considered complete or may be acted upon by the Planning Board until all variances which may be required for the proposed development first have been obtained from the Board of Appeals.

G. **Sequence with Conditional Use Review:** For those uses requiring both conditional use permit and site plan approval, specific design review will occur during the site plan review process, which will occur after conditional use approval but may be conducted in tandem with the conditional use application at the applicant's request.

H. **Time Frame for Decision:** Within sixty (60) days after the date on which the site plan review application is complete and it first appears on the Planning Board agenda, the Board shall act to approve, approve with conditions, or disapprove the site plan application. The time limit for review may be extended by mutual agreement between the Planning Board and the applicant. During this sixty (60) day period, the Board may schedule an on-site visit.

I. **Site Walk:** If a site walk is scheduled, public notice meeting the requirements of 1 M.S.R.A. §§403 & 406 shall be posted and the public must be allowed to attend. The purpose of the site walk is to help Planning Board members familiarize themselves with the proposed development site location, setting, and physical characteristics. All substantive discussions of the project and testimony by members of the public must wait until the regularly scheduled public hearing and/or meeting of the Board. At the next meeting of the Planning Board, the names of Board members who attended the site walk shall be entered into the minutes of that meeting to satisfy public meeting record requirements of 1 M.S.R.A. §403.

J. **Written Notice of Planning Board Decision:** Within ten (10) working days of reaching its decision, the Planning Board shall send to the applicant notice in writing of its action and the reason for taking such action.

K. **Changes to Approved Site Plan:** If an applicant wishes to make any changes to an approved site plan, the applicant must meet all the requirements for a site plan approval for that changed part of the application, i.e., the applicant will go through the site plan review process only for the section of the permit they want changed.

L. **Time Limit for Completion of Site Improvements:** Failure to start substantial construction of site improvements within twelve (12) months or to complete construction of the site improvements within thirty-six (36) months of the date of approval and signing of the plan shall render the plan in violation of the regulations. Upon determining that a site plan's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect. A notice of developer default shall be recorded stating that no building or occupancy permit shall be issued until the application has been made for reapproval of the site plan in conformance with the criteria and standards in effect at the time of re-application, and the Planning Board grants such approval.

M. **Consistency with Approved Site Plan:** One copy of the approved site plan must be included with the application for the building permit for the project and all

construction activities must conform to the approved site plan, including any conditions of approval.

Section 8.5. SITE PLAN REVIEW MANDATORY SUBMISSIONS

The following items shall be submitted as part of the Site Plan Review Application, unless the applicant submits a written waiver request, and is granted a waiver from the submission requirement by the Planning Board, pursuant to Section 8.7.A. Ten (10) printed copies and one (1) digital PDF of all the following materials shall be delivered to the Town Office, at least fourteen (14) days prior to a regularly scheduled Planning Board meeting in order for the application to be placed on the Board's agenda for completeness review:

A. **Application Form:** Ten (10) printed copies and one (1) digital PDF of the application form and all accompanying information.

B. **Location Map:** The location map shall be drawn to scale at a size adequate to show the relationship of the proposed project site to the adjacent properties, and to allow the Board to locate the project site within the municipality.

C. **Site Plan:** The site plan may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The site plan shall be drawn to a scale of not more than one hundred feet (100') feet to the inch. The application materials for site plan approval shall include the following information:

1. Proposed name of the project and the name of the municipality in which it is located, plus the Assessor's Map and Lot numbers;
2. The names and addresses of the record owner, applicant, and individual or company who prepared the plan and adjoining property owners;
3. Verification of right, title or interest in the property by deed, purchase and sales agreement, option to purchase, or some other proof of interest;
4. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments.
5. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property;
6. An indication of the type of sewage disposal to be used. When sewage disposal is to be accomplished by subsurface wastewater disposal system, test pit analyses, prepared by a Licensed Site Evaluator or Certified Soil Scientist shall be provided;
7. An indication of the type of water supply system(s) to be used for domestic purposes and fire protection;
8. Wetland areas delineated on the survey, regardless of size;

9. The location of all rivers, streams and brooks within or adjacent to the project site. If any portion of the project site is in the direct watershed of a great pond, the application shall indicate which great pond;
10. Topography: Five (5') foot contours for areas to be left in a natural state and two (2') foot contours for areas to be altered by construction for roads, stormwater management and drainage, and building envelopes, showing elevations in relation to mean sea level.
11. The zoning district in which the proposed project site is located and the location of any zoning boundaries affecting the project site;
12. The location and size of existing and proposed culverts and drainage ways on or adjacent to the property to be developed;
13. The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the project site;
14. The traffic entering and exiting sight distances along existing roads as calculated per Appendix 1, Section 1.4 for any intersection or driveway serving the project site;
15. The width and location of existing and proposed roads or drives within the project site;
16. Provisions for handling all solid wastes, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities;
17. The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site;
18. Proposed landscaping and buffering;
19. The location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the site;
20. Location, front view, materials, and dimensions of proposed signs together with the method for securing the sign;
21. Location and type of exterior lighting;
22. The location of all utilities, including fire protection systems;
23. A general description of the proposed use or activity;
24. Space must be provided on the plan drawing for the signatures of the Planning Board and date together with the following words, "Approved: Town of Durham Planning Board."
25. If any portion of the project site is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan;

26. Areas within or adjacent to the proposed project site which have been identified by the Maine Department of Inland Fisheries & Wildlife as significant wildlife habitat and unique natural areas identified by the Maine Natural Areas Program; and,

27. All areas within or adjacent to the proposed project site which are either listed on or eligible to be listed on the National Register of Historic Places or have been identified in the comprehensive plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.

28. Erosion & Sedimentation Control Plan: An erosion and sedimentation control plan prepared in accordance with the Maine Erosion & Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers 2016 (Appendix 2). The Board may waive submission of the erosion and sedimentation control plan only if the project site is not in the watershed of Runaround Pond, and upon a finding that the proposed project will not involve construction or grading which changes drainage patterns and if impervious surfaces such as roofs, parking lots, and driveways are less than five (5%) percent of the area of the lot being developed. Calculations establishing the impervious surfaces limitations shall be submitted with the waiver request and the maximum impervious surface shall be noted on the plan.

29. Stormwater Management Plan: A stormwater management plan, prepared by a registered professional engineer in accordance with the most recent edition of Stormwater Management Manual Volume III May 2016 published by the Maine Department of Environmental Protection (Appendix 3). Another methodology may be used if the applicant can demonstrate it is equally applicable to the site. The Board may waive submission of the stormwater management plan only if the project site is not in the watershed of Runaround Pond, and upon a finding that the proposed development will not involve construction or grading which changes drainage patterns and if the addition of impervious surfaces such as roofs and driveways is less than five (5%) percent of the area of the lot being developed. Calculations establishing the impervious surfaces limitations shall be submitted with the waiver request and the maximum impervious surface shall be noted on the plan.

30. Phosphorus Management Plan: If any portion of the proposed project site is in the direct watershed of Runaround Pond and creates combined impervious surfaces totaling twenty thousand (20,000 sq. ft.) square feet or more, the following shall be submitted or indicated on the plan:

    a. A phosphorus impact analysis and control plan conducted using the procedures set forth in DEP Phosphorus Design Manual, Volume II of the Maine Stormwater Best Management Practices Manual, 2016 (Appendix 4). The analysis and control plan shall include all worksheets, engineering calculations, and construction specifications and diagrams for control measures, as required by the Technical Guide;

    b. a. A long-term maintenance plan for all phosphorus control measures;

c. b. The contour lines shown on the plan shall be at an interval of no less than five (5') feet; and,

d. Areas with sustained slopes greater than twenty-five (25%) percent covering more than one (1) acre shall be delineated.

D. **Additional Studies that may be Required by the Board:** The following items may be required by the Planning Board due to the size of a project, particular characteristics of a development site or development proposal, or issues that are raised during the plan review:

1. **High Intensity Soil Survey:** A high-intensity soil survey by a registered soil scientist.

2. **Hydrogeological Assessment:** A hydrogeologic assessment prepared by a certified geologist, or a registered professional engineer experienced in hydrogeology, to determine adequacy of groundwater to meet demands of the proposed project, fire protection water supplies, and the potential for impacts on groundwater supplies of proposed groundwater withdrawals and of wastewater disposal on wells within and adjacent to the project site.

3. **Traffic Trip Generation:** An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent available edition of the Trip Generation Manual, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.

4. **Traffic Impact Analysis:** For developments projected to generate more than one hundred and forty (140) vehicle trips per day, a traffic impact analysis, prepared by a registered professional engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service (LOS) of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.

E. **Additional Information may be Requested:** When the need for additional information is clearly indicated by objective factual analysis and by a majority vote of the Planning Board members, the Planning Board may by majority vote require additional information not listed above to determine whether the site plan review criteria have been met.

Section 8.6. SITE PLAN REVIEW APPROVAL CRITERIA & DESIGN STANDARDS

The following criteria and design standards shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board by majority vote

determines that the applicant has failed to meet one or more of these criteria or standards. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met:

A. **Utilization of the Site:** The plan for the development must reflect the natural capabilities of the site to support development. Buildings and support facilities must be located in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, habitat for rare and endangered plants and animals, unique natural communities and natural areas, must be maintained and preserved to the maximum extent practical. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

B. **Adequacy of Road System:** Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development must function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project must not reduce the current level of service.

C. **Vehicular Access into the Site:** Vehicular access to and from the development must be safe and convenient and meet the following standards.

   1. **Minimum Sight Distance:** Any driveway or proposed street must be designed so as to provide the minimum safe sight distances contained in Appendix 1, Section 1.4;

   2. **Access Grade:** The grade of any proposed drive or street access on to an existing roadway must be not more than three (3%) for a minimum of two (2) car lengths, or forty (40') feet, from the edge of the existing roadway;

   3. **Corner Lots:** Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic hazards. Access from other streets may be allowed if it is safe;

   4. **Offsite Roadway Improvements:** Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets;

   5. **Avoidance of Queuing:** Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street;

   6. **Number and Location of Entrances:** The following standards must be used for driveways serving a proposed project:

a. No use which generates less than one hundred (l00) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.

b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways must not exceed sixty (60) feet.

c. Private entrances/exits must be located at least fifty (50') feet from the closest intersection as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard and construction of a new entrance closer to the intersection will not create a safety hazard as determined by an engineer with special expertise in traffic management.

d. Private accessways in or out of a development must be separated by a minimum of seventy-five (75') feet;

D. **Internal Vehicular Circulation:** The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site per the following standards:

1. **General Site Circulation Design:** All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services;

2. **Large Delivery Vehicles:** Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles;

3. **Emergency Vehicle Access:** Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

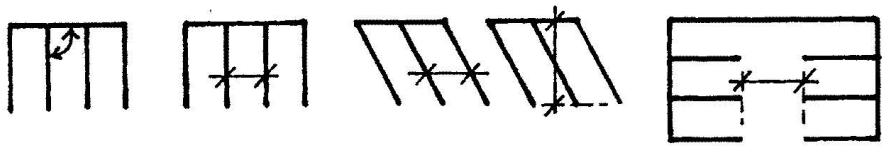
E. **Parking Lot Layout & Design:** Off-street parking must conform to the following standards:

1. **No Backing into Street:** Parking areas must be arranged so that it is not necessary for vehicles to back into the street;

2. **Parking Area Setbacks:** All parking spaces, access drives, and impervious surfaces must be located at least fifteen (15') feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within twenty-five (25') feet of

the front property line except where standards for buffer yards require a greater distance. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24') feet in width;

3. **Parking Area Stall & Aisle Dimensions:** Parking stalls and aisle layout must conform to the following standards:



Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'-0"		18'-0"	24'-0" two way
60°	8'-6"	10'-6"	18'-0"	16'-0" one way only
45°	8'-6"	12'-9"	17'-6"	12'-0" one way only
30°	8'-6"	17'-0"	17'-0"	12'-0" one way only

4. **Signage for One-Way Circulation:** In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary;

5. **No Double Stack Parking:** Parking areas for nonresidential uses must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

6. **Vehicle Overhang:** Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials;

7. **Pedestrian Circulation:** The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas.

F. **Utilities:** The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible.

G. **Lighting Design Standards:** In connection with every site plan, the applicant shall submit plans for all proposed exterior lighting. These plans shall include the location, type of light, radius of illumination, manufacturer's specification sheet and the intensity in foot-candles. The following design standards shall be followed:

1. **Maximum Height:** The maximum height of freestanding lights shall be the same as the principal building but not exceeding twenty-five (25') feet;

2. **Cone of Illumination:** All lights shall be shielded to restrict the maximum apex angle of the cone of illumination to one hundred fifty (150°) degrees.

3. **Spotlights Prohibited:** Spotlight-type fixtures attached to buildings shall be avoided.

4. **Protection of Light Poles:** Freestanding lights shall be located and protected to avoid being easily damaged by vehicles.

5. **Shielding of Lights:** Parking and display lighting shall be shielded and located and maintained so as not to create or constitute a hazard or nuisance to the traveling public or to neighbors. String lights shall not be permitted.

6. **Illumination Levels:** Illumination shall meet the following intensity in foot-candles:

   a. Parking lots: an average of one and one-half (1.5) foot-candles throughout.

   b. Intersections: three (3) foot-candles.

   c. Maximum at property lines: one (1.0) foot-candle.

7. **Auto Service Stations:** Fuel Pumps and Canopies shall meet the following special design standards:

   a. Lighting levels for canopies shall be adequate only to facilitate the activities taking place in such locations and shall not be used to attract attention to the business. Under canopy lighting shall be designed to provide an average level of illumination not to exceed twenty (20) foot-candles with a maximum foot-candle reading beneath the canopy not exceeding thirty (30) foot-candles, with a uniformity ratio of one and a quarter (1.25) (average to minimum).

   b. Light fixtures mounted on canopies shall be recessed so that the lens cover is recessed or flush with the bottom surface (ceiling) of the canopy and are shielded by the fixture or the edge of the canopy so that light is restrained to no more than eighty-five (85°) degrees from vertical.

   c. Lights shall not be mounted on the sides (fascia) or top of the canopy and the sides (fascia) shall not be illuminated except as permitted in conjunction with permitted signs.

H. **Signage:** All signs shall meet the requirements of Section 5.24.

I. **Fire Protection:** The Board must find that the water supply will sustain fire suppression requirements recommended for the proposed development consistent with the recommendations of the National Fire Protection Association for the fire loading level of the proposed development under NFPA 1142, Water Supplies for Suburban and Rural Fire Fighting.

J. **General Buffer Standards:** Buffers are fences, landscaping, berms and mounds used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Buffers may be located along property lines within required building setbacks or adjacent to site features requiring buffering. The following buffering standards apply:

1. Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires six to eight (6-8') foot evergreen trees planted in an alternate pattern, five (5') feet on center;
2. Buffers shall be considered in or for the following areas and purposes:
   a. Along property lines, to shield various uses from each other;
   b. To totally screen garbage collection areas, loading and unloading areas, electrical transformers, air conditioning units, utility service areas, outdoor storage areas, and similar functions;
   c. To screen parking areas, car lots, auto storage facilities, and other outdoor storage of motor vehicles from the public view with berms four (4) feet in height. A lower height, not less than three (3) feet, may be used as necessary to ensure that berms and/or plantings do not obstruct the visibility required for traffic safety. Additional screening shall be provided with plantings which shall be located so as not to obstruct the visibility required for traffic safety.
3. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and non-compatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.
4. Buffers shall be sufficient to shield structures and uses from the view of non-compatible abutting properties and public roadways, and to otherwise prevent any nuisances including but not limited to all loading and unloading operations, storage areas, commercial vehicle parking, waste disposal and collection areas.
5. Fencing and screening shall be durable and properly maintained at all times by the owner.
6. Fencing and screening shall be so located within the property line to allow access for maintenance on both sides without intruding upon abutting properties.
7. All buffer areas shall be maintained in a neat and sanitary condition by the owner.

K. **Historic & Archaeological Resources:** If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

L. **Financial Capacity:** The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria and the standards of these regulations. When the applicant proposes to construct the buildings as well as the site improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation. A letter of commitment submitted in conformance with Section 6.9.B.17 shall be considered prima facie evidence of adequate financial capacity.

M. **Technical Ability:** The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed project. In determining the applicant's technical ability, the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

Section 8.7. SITE PLAN REVIEW WAIVERS

A. **Waivers of Certain Submission Requirements:** Where the Board makes written findings of fact that there are special circumstances of a particular site, or that the application is simple and minor in nature, it may waive portions of the submission requirements, unless prohibited by these regulations or Maine statutes, provided the applicant has demonstrated that the criteria and performance standards of these regulations have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning regulations, or these site plan review regulations.

B. **Waivers of Performance Standards:** Where the Board makes written findings of fact that due to special circumstances of a particular site proposed to be developed, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or an alternative design is equal to or better in meeting the site plan review criteria, it may waive the design standards, subject the following criteria:

1. The applicant has provided the Planning Board with a factual basis for granting the waiver that is supported by sound engineering and/or environmental analysis (cost considerations are not justification);
2. The waiver(s) do not have the effect of nullifying the intent and purpose of the zoning regulations or these site plan review regulations;
3. The criteria of these site plan review regulations have been or will be substantially met by the proposed site plan; and,
4. The requested performance standard waivers are noted on the approved site plan.

ARTICLE 9: SHORELAND ZONING

Section 9.1. PURPOSES

The purposes of this Article are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

Section 9.2. AUTHORITY

This Article has been prepared in accordance with the provisions of M.R.S.A. 38 §§435-448.

Section 9.3. APPLICABILITY OF SHORELAND ZONING REVIEW

This Article applies to the following areas of Durham:

A. All land areas within two hundred and fifty (250') feet, horizontal distance, of the normal high-water line of Runaround Pond;

B. All land areas within two hundred and fifty (250') feet, horizontal distance, of the normal high-water line of the Androscoggin River;

C. All land areas within two hundred and fifty (250') feet, horizontal distance, of the upland edge of a nonforested wetland consisting of ten (10) or more contiguous acres; and,

D. All land areas within one hundred (100') feet, horizontal distance, of the normal high-water line of a stream as defined for shoreland zoning.

Section 9.4. EFFECTIVE DATE OF ARTICLE & ARTICLE AMENDMENTS

This Article, which was adopted at Town Meeting on December 9, 2019 and amended on November 3, 2020, and any subsequent amendments shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Article, or Article amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Article or Article amendment within forty-five (45) days of receipt of the Article or Article amendment, it shall be automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day DEP review period shall be governed by the terms of this Article or Article amendment, if the Article or Article amendment, is approved by the Commissioner.

Section 9.5. AVAILABILITY

A certified copy of this Article shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Article shall be posted.

Section 9.6. CONFLICTS WITH OTHER ARTICLES

Whenever a provision of this Article conflicts with or is inconsistent with another provision of this Article or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

Section 9.7. OVERLAY DISTRICTS & THE OFFICIAL ZONING MAP

The areas to which this Article is applicable are hereby divided into the following districts as shown on the Official Durham Zoning Map which is made a part of this Article:

A. **Shoreland Zoning Overlay Districts:**

   1. Resource Protection
   2. Limited Residential

B. **Changes to the Official Zoning Map affecting Article 9:** If amendments, in accordance with Section 9.4., are made in the district boundaries or other matter portrayed on the Official Zoning Map that affect any area subject to applicability of this Article, such changes shall be made on the Official Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

Section 9.8. LAND USE REQUIREMENTS

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

Section 9.9. ESTABLISHMENT OF DISTRICTS

A. **Resource Protection (Shoreland Zoning):** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values as indicated by the following geographical features and dimensions:

   1. All areas within two hundred and fifty (250’) feet, horizontal distance from the normal high water lines of Runaround Pond and the Androscoggin River;
   2. Areas within two hundred and fifty (250’) feet, horizontal distance, of the upland edge of non-forested wetlands of ten (10) or more acres which are rated

"moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of December 31, 2008;

3. Areas within two hundred and fifty (250') feet, horizontal distance, of the upland edge of non-forested wetlands of ten (10) or more acres that consist of two (2) or more contiguous acres with sustained slopes of twenty (20%) percent or greater;
4. Areas of two (2) or more contiguous acres within the areas subject to shoreland zoning regulations per Section 9.3. that support wetland vegetation and hydric soils, and which are not part of a non-forested wetland of ten (10) or more acres and which are not surficially connected to a water body during the period of normal high water;
5. Floodplains defined by the one hundred (100) year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils; and,
6. All land areas within one hundred (100') feet, horizontal distance, of the normal high-water line of a stream shown on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey (USGS Topography Map).

B. **Limited Residential (Shoreland Zoning):** The Limited Residential District includes areas located within two hundred and fifty (250') of a non-forested wetland of ten (10) or more acres which are not surficially connected to a water body during normal high water that do not contain the resources or development limitations of subsections A.2.,3., and 4. above that are required to be in shoreland zoning per the Mandatory Shoreland Zoning Act.

Section 9.10. LAND USES IN THE SHORELAND ZONE

All land use activities within the Shoreland Zoning Overlay District, as indicated in Table 3.1, Land Uses Allowed in Districts, shall conform with all of the applicable land use standards in Section 9.11. Any use not specifically listed in Table 3.1 is prohibited:

Section 9.11. LAND USE STANDARDS

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. **Minimum Lot Standards:** For all uses covered by shoreland zoning, the following lot standards shall apply:

1. Minimum lot size is ninety thousand (90,000 sq. ft.) square feet and the minimum shore frontage for lots that front on the Androscoggin River, Runaround Pond, and for freshwater wetlands and streams regulated by shoreland zoning is three hundred (300 ft.) feet for governmental and

institutional uses and extractive industries and gravel pits, and two hundred (200 ft.) feet for all other uses. Land that is part of the same lot that is located outside of shoreland zoning may be counted for establishing the minimum lot size, provided that a minimum of forty thousand (40,000 sq. ft.) square feet of land is located in the shoreland zone for residential uses, and that a minimum of sixty thousand (60,000 sq. ft.) square feet of land is located in the shoreland zone for all other uses.

2. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

3. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

4. The minimum lot width of any portion of any lot within one hundred (100') feet, horizontal distance, of the normal high-water line of the Androscoggin River, Runaround Pond, and for freshwater wetlands and streams regulated by shoreland zoning shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

5. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

B. **Principal and Accessory Structures**

1. All new principal and accessory structures for permitted uses shall be set back at least one hundred (100') feet, horizontal distance, from the normal high-water line of protected water bodies, tributary streams, or the upland edge of a wetland (all protected resources) included in the shoreland zone district as determined by Section 9.3. In the Resource Protection District the setback requirement shall be two hundred and fifty (250') feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

2. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

3. Principal or accessory structures and expansions of existing structures which are permitted in the shoreland zoning overlay shall not exceed thirty-five (35') feet in height.

4. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one (1') foot above the elevation of the one hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. Accessory structures may be placed in accordance with the standards of the Floodplain

Management Article that is consistent with the April 2005 or later version under the National Flood Insurance Program.

5. Non-vegetated surfaces shall not exceed twenty (20%) percent of the portion of the lot located within the shoreland zone. Non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. This limitation shall not apply to public boat launching facilities.
6. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
    a. The site has been previously altered and an effective vegetated buffer does not exist;
    b. The wall(s) is(are) at least twenty-five (25') feet, horizontal distance, from the protected resource;
    c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
    d. The total height of the wall(s), in the aggregate, is no more than twenty-four (24") inches;
    e. Retaining walls are located outside of the 100-year floodplain on rivers, streams, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
    f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
    g. A vegetated buffer area is established within twenty-five (25') feet, horizontal distance, of the protected resource when a natural buffer area does not exist. The buffer area must meet the following characteristics:
        1) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
        2) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
        3) Only native species may be used to establish the buffer area;
        4) A minimum buffer width of fifteen (15') feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland; and,

5) A footpath not to exceed the standards in Section 9.11.N.2.a. may traverse the buffer.

7. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided that:

   a. The structure is limited to a maximum of four (4') feet in width;

   b. The structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. §480-C); and,

   c. The applicant demonstrates that no reasonable access alternative exists on the property.

C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending or Located Below the Normal High-Water Line of a Water Body or Within a Wetland; and Shoreline Stabilization:

1. No more than one structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 9.11.A.1., a second structure may be allowed and may remain as long as the lot is not further divided.

2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

3. The location shall not interfere with existing developed or natural beach areas.

4. The facility shall be located so as to minimize adverse effects on fisheries.

5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.

6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending or located below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

7. New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending or located below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

9. Structures built on, over or abutting a pier, wharf, dock or other structure extending or located below the normal high-water line of a water body or within a wetland shall not exceed twenty (20') feet in height above the pier, wharf, dock or other structure.

10. The Planning Board may approve shoreline stabilization of an eroding shoreline, provided that the following requirements are met:

    a. Construction equipment must access the shoreline by barge when feasible, as determined by the Planning Board.

    b. When necessary, the removal of vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than twelve (12') feet in width. When the shoreline stabilization is complete, the construction equipment access way must be restored.

    c. Any restoration or revegetation shall occur in accordance with Section 9.11.O.

D. **Campgrounds:** Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following standards:

1. Campgrounds shall contain a minimum of five thousand (5,000 sq. ft.) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100') feet, horizontal distance, from a protected resource.

E. **Parking Areas:** Parking areas in areas covered by shoreland zoning overlay district shall meet the following standards in addition to the site plan review standards of Article 8:

1. Parking areas shall meet the protected resource setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities shall be no less than fifty (50') feet, horizontal distance, from the protected resource if the Planning Board finds that no other reasonable alternative exists further from the protected resource.

2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a protected resource and where feasible, to retain all runoff on-site.

3. In determining the appropriate size of proposed parking facilities, the following shall apply:

    a. Typical parking space: Approximately ten (10') feet wide and twenty (20') feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40') feet long.

    b. Internal travel aisles: Minimum of twenty (20') feet wide.

F. **Roads & Driveways:** The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features:

1. Roads and driveways shall be set back at least one-hundred (100') feet, horizontal distance, from a protected resource unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50') feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the protected resource. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the protected resource.

2. On slopes of greater than twenty (20%) percent the road and/or driveway setback of subsection 1. above shall be increased by ten (10') feet, horizontal distance, for each five (5%) percent increase in slope above twenty (20%) percent.

3. The setbacks of subsection 1. above do not apply to approaches to water crossings. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of subsection 1. above, except for that portion of the road or driveway necessary for direct access to the structure.

4. Existing public roads may be expanded within the legal road right of way regardless of their setback from a protected resource.

5. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the protected resource.

6. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 9.11.R.

7. Road and driveway grades shall be no greater than ten (10%) percent except for segments of less than two hundred (200') feet.

8. In order to prevent road and driveway surface drainage from directly entering protected resources, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50') feet plus two (2) times the average slope, in width between the outflow point of the ditch or culvert and the protected resource. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

9. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

    a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

Grade Spacing (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

    b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10%) percent or less.

    c. On sections having slopes greater than ten (10%) percent, ditch relief culverts shall be placed at approximately a thirty (30º) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

    d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

10. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

G. **Signs:** Notwithstanding the standards contained in Section 5.24., signs in the shoreland zone overlay district shall meet the following requirements. If there is conflict between the sign standards, the stricter standard shall apply:

1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6 sq. ft.) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

2. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12 sq. ft.) square feet in the aggregate.

3. Residential users may display a single sign not over three (3 sq. ft.) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2 sq. ft.) square feet in area.
5. Signs relating to public safety shall be allowed without restriction.
6. No sign shall extend higher than twenty (20') feet above the ground.
7. Signs may be illuminated only by shielded, non-flashing lights.

H. **Stormwater Runoff:** All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

I. **Septic Waste Disposal:** All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than one hundred (100') feet, horizontal distance, from the protected resource. A holding tank is not allowed for a first-time residential use in the shoreland zone.

J. **Mineral Exploration and Extraction:** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100 sq. ft.) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety. Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 9.11.J.3. below.
2. No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100') feet, horizontal distance, of a protected resource. Extraction operations shall not be permitted within fifty (50') feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
    a. All debris, stumps, and similar material shall be removed for disposal in an approved location or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

b. The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.

c. Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary, to complete the stabilization project.

4. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

K. **Essential Services:** Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

1. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

2. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

L. **Agricultural Uses:** In addition to the provisions of Section 5.3., the following standards shall apply to agriculture in the shoreland overlay district. In cases of conflict between provisions, the stricter standard shall apply:

1. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. §§4201-4209).

2. Manure shall not be stored or stockpiled within one hundred (100') feet, horizontal distance, of a protected resource. All manure storage areas within the shoreland zone overlay district must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000 sq. ft.) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this Article.

4. There shall be no new tilling of soil within one-hundred (100') feet, horizontal distance, of the protected resource. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

5. Newly established livestock grazing areas shall not be permitted within one hundred (100') feet, horizontal distance, of the protected resource. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that

such grazing is conducted in accordance with a Conservation Plan that has been filed with the Planning Board.

M. **Timber Harvesting:** Repealed.

N. **Clearing or Removal of Vegetation for Activities other than Timber Harvesting:** The following standards shall apply to the cutting or removal of vegetation within the shoreland zone overlay district:

1. In the Resource Protection District surrounding Runaround Pond, there shall be no cutting of vegetation within the protected resource buffer extending one hundred (100') feet, horizontal distance, inland from the normal high water line, except to remove hazard trees in accordance with Section 9.11.P.1. Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

2. Except in areas as described in subsection 1. above, within a buffer extending one-hundred (100') feet, horizontal distance, from a protected resource, vegetation shall be preserved as follows:

   a. There shall be no cleared opening greater than two hundred and fifty (250 sq. ft.) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6') feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer is not created.

   b. Selective cutting of trees within the protected resource buffer is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this subsection, a "well-distributed stand of trees" shall be defined as maintaining a rating score of twenty-four (24) or more in each 25-foot by 50-foot rectangular (1250 sq. ft.) area as determined by the following rating system:

Diameter of Tree at 4.5 feet above ground level (inches)	Points
2 < 4 in.	1
4 < 8 in.	2
8 < 12 in.	4
12 in. or greater	8

   c. The following shall govern in applying this point system:

      1) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

2) Each successive plot must be adjacent to, but not overlap a previous plot;

3) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

4) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;

5) Where conditions permit, no more than fifty percent (50%) of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than twelve (12") inches in diameter.

d. For the purposes of this subsection, "other natural vegetation" is defined as retaining existing vegetation under three (3') feet in height and other ground cover and retaining at least five (5) saplings less than two (2") inches in diameter DBH for each 25-foot by 50-foot rectangle area. If five (5) saplings do not exist, no woody stems less than two (2") inches in diameter can be removed until five (5) saplings have been recruited into the plot.

e. Notwithstanding the above provisions, no more than forty (40%) of the total volume of trees four (4") inches or more in diameter DBH may be removed in any ten (10) year period.

f. In order to protect water quality and wildlife habitat, existing vegetation under three (3') feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide a single footpath not to exceed six (6') feet in width as measured between tree trunks and/or shrub stems for accessing the shoreline provided that a cleared line of sight to the water through the buffer is not created.

g. Pruning of tree branches, on the bottom third (1/3) of the tree is allowed.

h. In order to maintain the vegetation in the protected resource buffer, removal of storm-damaged, hazard or dead trees and any required replanting shall occur in accordance with Section 9.11.Q.

i. In order to maintain the vegetation in the protected resource buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the protected resource buffer, must comply with the requirements of subsection N..2. above.

j. At distances greater than one hundred (100') feet, horizontal distance, from a protected resource, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40%) percent of the volume of trees four (4") inches or more in diameter DBH. Tree removal in conjunction with the development of permitted uses shall be

included in the forty (40%) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

k. In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, twenty-five (25%) of the lot area within the shoreland zone or ten thousand (10,000 sq. ft.) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of the lot within the shoreland zone, including the protected resource buffer area.

l. Legally existing nonconforming cleared openings may be maintained, in accordance with the exemptions allowed in subsection O. below. If these areas, fields or other cleared openings have reverted back to primarily woody vegetation, as a result of not maintaining them in accordance with subsection O., then the provisions of this subsection N. shall apply.

O. **Exemptions to Clearing or Removal of Vegetation for Activities other than Timber Harvesting:** The following activities are exempt from the standards for clearing or removal of vegetation set forth in subsection N. above, provided that all other applicable requirements of this Article are complied with, and the removal of vegetation is limited to that which is necessary:

1. The clearing or removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the standards of subsection N. above, such as but not limited to cleared openings in the canopy or fields. If any of these areas revert back to primarily woody vegetation, due to a lack of removal of vegetation every two (2) years, the requirements of subsection N. shall apply.

2. The clearing or removal of vegetation from the location of allowed structures or allowed uses, when the protected resource setback requirements of Section 9.11.B are not applicable.

3. The clearing or removal of vegetation from the location of public swimming areas associated with allowed public recreational facilities.

4. The clearing or removal of vegetation associated with allowed agricultural uses, provided that all requirements of Section 9.11.L. are complied with, and that best management practices are utilized.

5. The clearing or removal of vegetation associated with brownfields or voluntary response action program projects pursuant to 38 M.R.S.A section 343-E, provided that the clearing or removal of vegetation is necessary for remediation activities to clean up contamination.

6. The clearing or removal of non-native invasive vegetation, provided that the following requirements are met:

a. If clearing or removal of vegetation occurs via wheeled or tracked motorized equipment, then the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25') feet, horizontal distance,

from the protected resource, except that the wheeled or tracked motorized equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

b. The clearing or removal of vegetation within twenty-five (25') feet, horizontal distance, from the protected resource occurs via hand tools; and,

c. If the clearing or removal of non-native invasive vegetation results in a standard of Section 9.11. N. being exceeded, then the area shall be revegetated in accordance with Section 9.11.Q. to achieve compliance with the applicable standard(s) of Section 9.11. N.

7. The clearing or removal of vegetation associated with emergency response activities conducted by the Maine Department of Environmental Protection, the U.S. Environmental Protection Agency, and their agents.

P. **Hazard Trees, Dead Trees, and Storm-Damaged Trees:** Hazard trees, dead trees, and storm-damaged trees may be removed without a permit after consultation with the Code Enforcement Officer, provided the following requirements are met:

1. **Hazard Trees:** Hazard trees may be removed subject to the following standards:

a. Within the protected resource buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250 sq. ft.) square feet, the opening shall be replaced with native tree species, unless there is new tree growth already present near to where the hazard tree was removed. New tree growth is considered to be at least two (2") inches in diameter DBH. If new growth is not present, then replacement trees shall consist of native species, be at least four (4) feet in height and be no less than two (2") inches DBH. Stumps shall not be removed.

b. Outside the protected resource buffer, if the removal of hazard trees results in more than forty (40%) percent of the volume of trees, four (4") inches or more in diameter DBH being removed in any ten (10) year period; or results in cleared openings of more than twenty-five (25%) percent of the lot area within the shoreland zone overlay district or more than ten thousand (10,000 sq. ft.) square feet, whichever is greater; then replacement with native tree species is required, unless there is new tree growth already present near to where the hazard tree was removed. New tree growth is considered to be at least two (2") inches in diameter DBH. If new growth is not present, then replacement trees shall consist of native species and be no less than two (2") inches in diameter DBH.

c. The code enforcement officer may require the applicant to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone overlay district.

d. The code enforcement officer may require more than a one-for-one replacement for removed hazard trees that exceeded eight (8") inches diameter DBH.

2. **Dead Trees:** Dead trees may be removed subject to the following standards:
    a. The trees are dead from natural causes. Dead trees are those that contain no foliage during the growing season.
    b. The removal of dead trees does not result in the creation of new lawn areas or other permanently cleared areas.
    c. Stumps shall not be removed.
3. **Storm-Damaged Trees:** Storm-damaged trees may be removed subject to the following standards:
    a. Within the protected resource buffer, if the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250 sq. ft.) square feet, the following shall be required:
        1) The area shall be required to naturally revegetate. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings shall be required at a density of one seedling/sapling per every eighty (80 sq. ft.) square feet of open canopy.
        2) The removal of storm-damaged trees does not result in the creation of new lawn areas or other permanently cleared areas.
        3) Stumps shall not be removed.
        4) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree.
    b. Outside the protected resource buffer, if the removal of storm-damaged trees results in more than forty (40%) percent of the volume of trees, four (4") inches or more diameter DBH, being removed in any ten (10) year period; or results in cleared openings of more than twenty-five (25%) percent of the lot area within the shoreland zone overlay district or more than ten thousand (10,000 sq. ft.) square feet, whichever is greater; then the area shall be required to naturally revegetate. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings shall be required on a one-for-one (1:1) basis.

Q. **Revegetation Requirements:** When revegetation is required to address the removal of non-native invasive species of vegetation, to address removal of vegetation in conjunction with protected resource stabilization, in response to violations of the standards set forth in Section 9.11. N., or as a mechanism to allow for development that may otherwise not be permissible due to the standards of Section 9.11. N., then revegetation shall comply with the following requirements:

1. The applicant must submit a revegetation plan, prepared with and signed by a qualified professional that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be

removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.

2. Revegetation must occur along the same segment of the protected resource and in the same area where vegetation was removed and must occur at a density comparable to the pre-existing vegetation. If this is not feasible due to protected resource stabilization, then revegetation must occur along the same segment of protected resource and as close as possible to the area where vegetation was removed.
3. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
4. Revegetation activities must meet the following requirements for trees and saplings:
    a. All trees and saplings removed must be replaced with native noninvasive species;
    b. Replacement vegetation must consist of saplings at a minimum;
    c. If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
    d. No one species shall make up fifty (50%) percent or more of the number of trees and saplings planted;
    e. If revegetation is required for protected resource stabilization, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the protected resource and structures; and,
    f. A survival rate of at least eighty (80%) percent of planted trees/saplings is required for a minimum of five (5) years.
5. Revegetation activities must meet the following requirements for all woody vegetation and for other vegetation under three (3') feet in height:
    a. Woody vegetation and vegetation under three (3') feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
    b. If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted.
    c. No one species shall make up fifty (50%) percent or more of the number of planted woody vegetation plants; and,
    d. Survival of planted woody vegetation and vegetation under three (3') feet in height must be sufficient to remain in compliance with the standards contained in Section 9.11. Q. for a minimum of five (5) years.

6. Revegetation activities must meet the following requirements for ground vegetation and ground cover:
    a. All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
    b. Where necessary due to a lack of sufficient ground cover, the area must be supplemented with leaf mulch and/or bark mulch at a minimum of four (4") inches deep to prevent erosion and provide for effective infiltration of stormwater; and,
    c. Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this Ordinance for a minimum of five (5) years.

R. **Erosion and Sedimentation Control:** In addition to the standards of Section 5.11., the following erosion and sedimentation control standards shall apply to all activities conducted in the shoreland overlay district. Where there is any conflict between provisions, the stricter standard shall apply:

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
    a. Mulching and revegetation of disturbed soil.
    b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
    c. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
    a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500 sq. ft.) square feet and shall be maintained until a catch of vegetation is established.

b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater and shall be stabilized with vegetation or lined with riprap.

6. When an excavation contractor will perform an activity that requires or results in more than one (1 c.y.) cubic yard of soil disturbance, compliance with the following shall be required:

a. A person certified in erosion control practices by the Maine Department of Environmental Protection shall be responsible for management of erosion and sedimentation control practices at the site. This person shall be present at the site each day these activities occur for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until installation of erosion and sedimentation control measures that will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion.

b. Include on the required plan or permit application, the name and certification number of the person who will oversee activities causing or resulting in soil disturbance.

S. **Soils Analysis:** All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal and construction in the shoreland zoning overlay district shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

T. **Water Quality:** No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the protected resource.

U. **Archaeological Sites:** Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

Section 9.12. NONCONFORMANCE

A. **Purpose:** It is the intent of this Article to promote land use conformities in the shoreland zone, except that nonconforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in this Section 9.12. Except as otherwise provided in this Article, a nonconforming shoreland zone condition shall not be permitted to become more nonconforming.

B. **Transfer of Ownership:** Shoreland nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Article.

C. **Repair & Maintenance:** This Article allows, without a permit, the normal upkeep and maintenance of shoreland nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

D. **Expansions of Nonconforming Shoreland Structures:** All new structures must meet the setback from protected resources requirements contained in Section 9.11.B. A nonconforming shoreland structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with the subsections of this subsection D:

1. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream or upland edge of a wetland (protected resource) than the principal structure is prohibited, even if the expansion will not increase nonconformity with the protected resource setback requirement.

2. Expansion of any portion of a principal structure within twenty-five (25') feet of a protected resource is prohibited, even if the expansion will not increase nonconformity with the protected resource setback requirement.

   Notwithstanding the paragraph above, if a non-conforming principal structure is located entirely within twenty-five (25') feet of a protected resource, that structure may be expanded provided that it meets the following limitations and all applicable standards of this Article:

a. The maximum total footprint of the principal structure may not be expanded to a size greater than eight hundred (800 sq. ft.) square feet or thirty (30%) percent larger than the footprint that existed on January 1, 1989, whichever is greater.

b. The maximum height of the principal structure may not be made greater than fifteen (15') feet or the height of the existing structure, whichever is greater.

3. All other legally existing nonconforming principal and accessory structures that are more than twenty-five (25') feet from protected resource but do not meet the required protected resource setback requirements may be expanded or altered as follows, as long as all other applicable standards of this Article are met, and does not increase the nonconformity of the existing structure, and meets the following limitations:

a. For existing nonconforming structures located less than (75') feet from the protected resource, the maximum combined total footprint of all structures may be expanded to a size no greater than one thousand (1,000 sq. ft.) square feet or thirty (30%) percent of the footprint that existed on January 1, 1989, whichever is greater, and the maximum height of any structural expansion may be up to twenty (20') feet or the height of the existing structure, whichever is greater.

b. For existing nonconforming structures located less than one hundred (100') feet from the protected resource, the maximum combined total footprint of all structures may be expanded to a size no greater than fifteen hundred (1,500 sq. ft.) square feet or thirty (30%) percent larger than the footprint that existed on January 1, 1989, whichever is greater and the maximum height of any structural expansion may be up to twenty-five (25') feet or the height of the existing structure, whichever is greater.

c. Portions of structures within the setback distances covered in subsections a. and b. above shall meet the limitations of those subsections for the portions within them.

d. For existing nonconforming structures located within the Resource Protection District, in addition to the limitations of subsections a., b., and c., above, those portions of the structure located beyond one hundred (100') feet from the protected resource may be expanded to a maximum combined total footprint for all structures located within the Resource Protection District that is no greater than fifteen hundred (1,500 sq. ft.) square feet or thirty (30%) percent larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structural expansion may be up to twenty-five (25') feet or the height of the existing structure, whichever is greater.

4. Any approved plan for expansion of a nonconforming structure under Section 9.12.D. must be recorded by the applicant in the registry of deeds of the county in which the property is located within ninety (90) days of approval. The recorded plan must include the existing and proposed footprint of structures on the property, the existing and proposed height of structures on the property, the shoreland zone boundary and evidence of approval by the municipal permitting authority.

E. **Placement of Foundations under Existing Nonconforming Structures:** Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the protected resource setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 9.12.F. below.

F. **Relocation of Existing Nonconforming Structures:** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming with regards to moving closer to the protected resource than the setback of the existing structure:

1. In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

2. When it is necessary to remove vegetation within the protected resource setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

    a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3’) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than fifty (50%) of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

    b. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be

reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

c. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

d. The Planning Board may also require replanting in accordance with Section 9.12. Q.

G. **Reconstruction or Replacement (Greater than 50%):** Any nonconforming structure which is located less than the required setback from a protected resource and which is removed, or damaged or destroyed, regardless of the cause, by more than fifty (50%) percent of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal subject to the following standards:

1. Such reconstruction or replacement is in compliance with the protected resource setback requirement to the greatest practical extent as determined by the Planning Board in accordance Section 9.12 F. above. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity by moving closer to a waterbody or protected resource.

2. If the reconstructed or replacement structure is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to 9.12.D. above, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

3. In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 9.12.F., the physical condition and type of foundation present, if any.

4. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 9.12.F.2. above.

H. **Reconstruction or Replacement (Less than 50%):** Any nonconforming structure which is located less than the required setback from a protected resource and which is removed by fifty (50%) percent or less of the market value, or damaged or destroyed by fifty (50%) or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one (1) year of such damage, destruction, or removal.

I. **Change of Use of a Nonconforming Structure:** The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the protected resource, or on the subject or adjacent properties and resources than the existing use. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses.

J. **Expansion of a Nonconforming Use:** Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 9.12.D. above.

K. **Discontinuance of a Nonconforming Use:** A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one (1) year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

L. **Change of a Nonconforming Use:** An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 9.12.I. above.

M. **Nonconforming Vacant Lots:** A nonconforming lot of record as of the effective date of this Article or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Article except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

N. **Nonconforming Contiguous Built Lots in Common Ownership:** If two (2) or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Article, if all or part of the lots do not meet the dimensional requirements of this Article, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. §§4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

O. **Nonconforming Contiguous Vacant Lots in Common Ownership:** If two (2) or more contiguous lots or parcels are in single or joint ownership of record at the time

of or since adoption or amendment of this Article, if any of these lots do not individually meet the dimensional requirements of this Article or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

Section 9.13. ADMINISTRATION

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. **Administering Bodies and Agents:** The following authorities are established for the purpose of administering and enforcing the provisions of this Article:

1. **Code Enforcement Officer**. The Code Enforcement Officer of the Town of Durham.
2. **Board of Appeals**. The Durham Board of Appeals.
3. **Planning Board**. The Durham Planning Board.

B. **Permits Required:** After the effective date of this Article no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Article shall have a copy of the permit on site while the work authorized by the permit is performed.

C. **Activities for which a Permit is not Required:** The following activities do not require a permit provided that all standards of this Article are met:

1. **Existing Culvert Replacement:** A permit is not required for the replacement of an existing road culvert as long as:
   a. The replacement culvert is not more than twenty-five (25%) longer than the culvert being replaced;
   b. The replacement culvert is not longer than seventy-five (75') feet; and,
   c. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
2. **Archaeological Exploration:** A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

D. **Other Permits:** Any permit required by this Article shall be in addition to any other permit required by other law or ordinance.

E. **Permit Application:** The following requirements shall apply to all permits applied required for activities conducted in the shoreland zoning overlay district:

1. **Site Plan:** Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 9.10.
2. **Owner Authorization:** All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. **Receipt for Applications:** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. **Plumbing Permit:** A valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Code Enforcement Officer, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

F. **Procedure for Administering Permits:** Within thirty-five (35) days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 9.10., shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a completed application. If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

G. **Criteria for the Issuance of a Shoreland Zoning Permit:** After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use will meet all of the following criteria. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to waters;

6. Will protect archaeological and historic resources as designated in the comprehensive plan; and,

7. Is in conformance with the provisions of Section 9.11., Land Use Standards.

H. **Expiration of Permits:** Permits shall expire one (1) year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one (1) year of the issuance of the permit, the applicant shall have one (1) additional year to complete the project, at which time the permit shall expire.

I. **Installation of Public Utility Service:** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Article has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

J. **Enforcement:** Any violation of this Ordinance shall be deemed to be a nuisance and shall be enforced according to the following provisions:

1. **Code Enforcement Officer:** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article.

   a. **Inspections & Investigations:** The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Article.

   b. **Notice of Violation:** If the Code Enforcement Officer shall find that any provision of this Article is being violated, he or she 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 or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

   c. **Records:** The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

2. **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 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 Article in the name of the municipality. The municipal officers, or their authorized agent, are hereby

authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

3. **Fines.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Article shall be penalized in accordance with 30-A, M.R.S.A. §4452.

ARTICLE 10: AQUIFER PROTECTION

Section 10.1. PURPOSE

A. **Purpose of the Aquifer Protection Overlay District** is to protect the quality and quantity of groundwater resources within the Town of Durham by regulating activities and land use practices, and thereby preserve groundwater resources for present and future use by the Town and its residents. In particular, the Town wishes to:

1. Encourage conservation of land as open space, or for recreational use over Sand and Gravel Aquifers as highly compatible with the preservation of groundwater quality and quantity.
2. Prohibit the handling of hazardous or leachable materials over Sand and Gravel Aquifers, because these materials may readily degrade water quality as the result of improper handling or accident.
3. Minimize the maintenance and refueling of heavy equipment over Sand and Gravel Aquifers, because the fluids used in such maintenance may degrade groundwater quality, if dumped or spilled.
4. Prevent land uses which disturb soil leading to increased erosion during periods of high groundwater, as loss of topsoil increases an aquifer's susceptibility to contamination.

Section 10.2. DISTRICT REQUIREMENTS

A. **Minimum Lot Size:** The minimum lot size for all land uses which utilize on-site wastewater disposal within the Aquifer Protection Zone, except mobile homes in a mobile home park, shall be three (3) acres. This is the acreage at which subsurface waste disposal systems are unlikely to degrade groundwater quality to within fifty (50) of the Maine Maximum Contaminant Level (10-144A CMR 231 Rev. 8/83) for nitrate. This Maximum contaminant Level is 10 milligrams per liter (mg/L).

B. **Increased Lot Size for Larger Homes:** Single family residences which are larger than three (3) bedrooms must be located on a lot whose size is determined by:

$$\text{lot size (Sq. ft.)} = \frac{\#\text{ persons} \times 9.1\ (1\ \text{lbs. N-No/person/year}) \times 192{,}221.0}{12(\text{inch/year}) \times (5\ \text{mg/l-1 mg/l})}$$

C. **Lot Coverage:** No more than fifty (50%) percent of that portion of the lot within the Groundwater Protection District shall be striped of existing vegetation without replacement with similar vegetation, and no more than ten (10%) percent of the total lot area shall be rendered impervious, except that for municipal lots, no more than twenty (20%) percent of the total lot area shall be rendered impervious.

D. **Mobile Homes in a Mobile Home Park:** Mobile homes in mobile home park may be located on lots smaller than three (3) acres only when the lot size proposed by the applicant does not pose an unreasonable threat to quality of the under laying aquifer, as determined by the Planning Board. In determining whether or not a proposed mobile home lot poses an unreasonable threat to the quality of the aquifer, the

Planning Board shall require the applicant to provide a thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers which could be affected by the proposed development under normal circumstances or in the event of unforeseen circumstances including the failure of the subsurface water disposal system. The assessment shall include a description of the ground water flow rates, directions of ground water flow in both horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released by the proposed development and may flow toward surface water or aquifer.

E. **Agriculture:**

1. Use of "limited or restricted" pesticides, as defined by the Maine Pesticides Control Board (1987) is prohibited.
2. Spray irrigation of wastewater is prohibited. Spreading of sludge is limited to that quantity removed from the on-site septic tank, and must be conducted in compliance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land (Maine Soil and Water Conservation Commission, 1972).
3. The weight of manure spread must not exceed that recommended for appropriate soil type under the Maine Guidelines for Manure and Manure Sludge Disposal on Land (Maine Soil and Water Conservation Commission, 1972).
4. All manure piles stored for more than a nine-month period must be located on an impermeable surface and covered to prevent leachate from the pile from degrading groundwater quality.
5. Application rate of commercial, inorganic nitrogen fertilizers must not exceed the available nitrogen loading specified in the Maine Guidelines for Manure and Manure Sludge Disposal on Land (Maine Soil and water Conservation Commission, 1972) for the soil type on a particular lot.
6. Maintenance and emergency repair of farm machinery must be conducted so as to prevent drainage or disposal of oil, fuel or solvents onto the ground.
7. Areas such as feeds troughs, where livestock congregate, and manure is likely to accumulate, must be located on an impervious surface or manure must be cleared at least quarterly, except when the ground is frozen.

F. **Timber Harvesting:**

1. Use of skidders and other heavy equipment is prohibited March 15 to April 30 (mud season) each year, as this is typically the period when the ground is saturated.
2. Regular maintenance of vehicles and heavy equipment is not permitted at the harvest site within the Groundwater Protection District. However, emergency maintenance and emergency repair may be conducted at the harvest site if conducted so as to prevent drainage or disposal of oil, fuel solvents onto the ground.

G. **Existing Sand and Gravel Extraction:**

1. Extraction of sand and gravel within two feet of the seasonal high-water table is prohibited. Groundwater may not be artificially lowered to allow for ore extraction.
2. Refueling or maintenance of mobile equipment, including vehicles, and heavy equipment is not permitted within the pit in the Groundwater Protection District. Gravel sorting equipment which must be set up within the pit on a long-term basis may be maintained in place, provided that maintenance and refueling are conducted so as to prevent drainage or disposal of oil, fuel or solvents onto the ground. Emergency repair of mobile equipment within the pit must be conducted so as to prevent drainage or disposal of oil, fuel or solvents onto the ground.
3. The pit shall not be used to dump or store any substance other than sand and gravel.

H. **Petroleum Storage (greater than 55-gallon capacity):** In the Groundwater Protection Overlay District, larger petroleum storage tanks shall comply with NFPA Std. #30. All permanent petroleum storage tanks shall be above ground or indoor and shall have secondary containment system of an impermeable diked area which is large enough to contain the contents of the tank plus fifteen (15%) percent. A tank located in a basement with impervious floors and walls used to store fuel to heat the building shall be considered to be in conformance**.**

I. **Portable Tanks (less than or equal to 55-gallon capacity):** Tanks shall be placed on an impermeable surface which measures no less than five (5') feet by five (5') feet. Portable tanks must also be isolated from vehicular traffic by warning posts or barriers, to prevent the tanks from being ruptured by motor vehicle traffic. No more than two portable tanks are permitted on a single 5 by 5 pad.

ARTICLE 11: FLOODPLAIN MANAGEMENT

Section 11.1. PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Durham, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Durham, Maine has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Article.

It is the intent of the Town of Durham, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Durham has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352 and 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Durham having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Article establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Durham, Maine.

The areas of special flood hazard, Zones A and AE, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Durham, Maine, Androscoggin County," dated May 4, 1988 with accompanying "Flood Insurance Rate Map" dated May 4, 1988, which are hereby adopted by reference and declared to be a part of this Article.

Section 11.2. PERMIT REQUIRED

Before any construction or other development (as defined in Article 18), including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 11.1, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Durham, Maine.

Section 11.3. APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

A. The name, address and phone number of the applicant, owner, and contractor;

B. An address and a map indicating the location of the construction site;

C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;

D. A statement of the intended use of the structure and/or development;

E. A statement of the cost of the development including all materials and labor;

F. A statement as to the type of sewage system proposed;

G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.2 apply only to new construction and substantial improvements.]

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:

1. base flood at the proposed site of all new or substantially improved structures, which is determined:

a. in Zone AE from data contained in the "Flood Insurance Study - Town of Durham, Maine," as described in Section 11.1.; or,

b. in Zone A:

1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Section 11.6.K. and 11.8.D.;

2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,

3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.

2. highest and lowest grades at the site adjacent to the walls of the proposed building;

3. lowest floor, including basement; and whether or not such structures contain a basement; and,

4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Section 11.6.;

J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;

K. The following certifications as required in Section 11.4 by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form 81-65, 08/99, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Section 11.3.H.; Section 11.6.G.; and other applicable standards in Section 11.6.;
2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 11.6.L.2.a.;
3. a certified statement that bridges will meet the standards of Section 11.6.M.;
4. a certified statement that containment walls will meet the standards of Section 11.6.N.;

L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,

M. A statement of construction plans describing in detail how each applicable development standard in Section 11.6. will be met.

Section 11.4. APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee per the fee schedule adopted by the Select Board shall be paid to the Town Treasurer and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

Section 11.5. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Section 11.6. (Development Standards) have been, or will be met;

B. Utilize, in the review of all Flood Hazard Development Permit applications:

1. the base flood data contained in the "Flood Insurance Study - Town of Durham, Maine," as described in Section 11.1.;
2. in special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical

sources, including information obtained pursuant to Section 11.3.H.1.b.; Section 11.4.K.; and Section 11.8.D., in order to administer Section 11.6. of this Article; and,

3. when the community establishes a base flood elevation in a Zone A by methods outlined in Section 11.3.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.

C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 11.1 of this Article;

D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;

E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;

F. If the application satisfies the requirements of this Article, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:

1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction , “as built”, for verifying compliance with the elevation requirements of Section 11.6., paragraphs F., G., or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Section 11.6.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,

3. 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Section 11.6.J., mining, dredging, filling, grading, paving, excavation, drilling operations,

storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Section 11.9. of this Article, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Sections 11.3., 11.6., and 11.7. of this Article.

Section 11.6. DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. **All Development**: All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. **Water Supply**: All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. **Sanitary Sewage Systems**: All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. **On Site Waste Disposal Systems**: On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. **Watercourse Carrying Capacity**: All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. **Residential**: New construction or substantial improvement of any residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.

2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 11.3.H.1.b.; Section 11.5.B; or Section 11.8.D.

G. **Non Residential**: New construction or substantial improvement of any non-residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:

   a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

   b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,

   c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 11.3.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 11.3.H.1.b.; Section 11.5.B.; or Section 11.8.D., or

   a. together with attendant utility and sanitary facilities meet the floodproofing standards of Section 11.6.G.1.

H. **Manufactured Homes**: New or substantially improved manufactured homes located within:

1. Zone AE shall:

   a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;

   b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,

   c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

      1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,

2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

3) all components of the anchoring system described in Section 11.6.H.1.c.1) & 2) above shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

a. be elevated on a permanent foundation, as described in Section 11.6.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Section 11.3.H.1.b.; Section 11.5.B.; or Section 11.8.D.; and

b. meet the anchoring requirements of Section 11.6.H.1.c.

I. **Recreational Vehicles:** Recreational Vehicles located within:

1. Zone AE shall either:

a. be on the site for fewer than 180 consecutive days,

b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,

c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section 11.6.H.1.

J. **Accessory Structures:** Accessory Structures, as defined in Article 18, located within Zones AE and A, shall be exempt from the elevation criteria required in Section 11.6.F. & G. above, if all other requirements of Section 11.6 and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than $3000;

2. have unfinished interiors and not be used for human habitation;

3. have hydraulic openings, as specified in Section 11.6.L.2., in at least two different walls of the accessory structure;

4. be located outside the floodway;

5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,

6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. **Floodways:**

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones AE, and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Section 11.6.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
   a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
   b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/ January 1995, as amended).
3. In Zones AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. **Enclosed Areas Below the Lowest Floor:** New construction or substantial improvement of any structure in Zones AE and A that meets the development standards of Section 11.6., including the elevation requirements of Section 11.6., paragraphs F., G., or H. and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article 18;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
   a. be engineered and certified by a registered professional engineer or architect; or,
   b. meet or exceed the following minimum criteria:
      1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,

3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,
4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. **Bridges**: New construction or substantial improvement of any bridge in Zones AE and A shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
2. a registered professional engineer shall certify that:
   a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Section 11.6.K.; and
   b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment Walls**: New construction or substantial improvement of any containment wall located within:

1. Zones AE and A shall:
   a. have the containment wall elevated to at least one foot above the base flood elevation;
   b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
   c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 11.3.K.

O. **Wharves, Piers and Docks**: New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and A, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and

2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

Section 11.7. CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Section 11.6., paragraphs F., G., or H.

B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.

C. Within ten (10) working days, the Code Enforcement Officer shall:

1. review the Elevation Certificate and the applicant's written notification; and,
2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

Section 11.8. REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five (5) or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

A. All such proposals are consistent with the need to minimize flood damage.

B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.

C. Adequate drainage is provided so as to reduce exposure to flood hazards.

D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.

E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Section 11.6. of this Article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any

other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

Section 11.9. APPEALS AND VARIANCES

The Board of Appeals may grant a variance from the requirements of this Article consistent with state law and the following criteria:

A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

B. Variances shall be granted only upon:

1. a showing of good and sufficient cause; and,
2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
   a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
   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; and,
   c. that the granting of a 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.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.

D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

1. other criteria of Section 11.9. and Section 11.6.K. are met; and,
2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

1. the development meets the criteria of Section 11.9., paragraphs A. through D. above; and,
2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

F. Any applicant who meets the criteria of Section 11.9., paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as $25 per $100 of insurance coverage;
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance

with State laws within forty-five days from the date of any decision of the Board of Appeals.

Section 11.10. ENFORCEMENT AND PENALTIES

A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.

B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.

C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;

1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

Section 11.11. VALIDITY AND SEVERABILITY

If any section or provision of this Article is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Article.

Section 11.12. ABROGATION

This Article repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

ARTICLE 12: HISTORIC DISTRICTS

Section 12.1. PURPOSE

This Article is adopted in accordance with the Comprehensive Plan of the Town of Durham adopted at Town meeting March 2002 and pursuant to the legislative authority vested in the Town by virtue of 30-A M.R.S.A. Sections 3001 through 3007, 4301, and 4351 through 4359, and the acts amendatory thereto, for the purpose of preserving, protecting, and enhancing buildings and places or areas within the Town which possess particular historical or cultural attributes and for the economic welfare of the residents and visitors to the town. To achieve these purposes, it is intended that Historic Districts and related regulations shall be used:

A. To prevent inappropriate alterations of buildings of historic or architectural value.

B. To prevent the demolition or removal of designated sites or landmarks and significant historic structures within designated districts whenever a reasonable alternative exists or can be identified.

C. To preserve the essential character of designated districts by protecting relationships of groups of buildings and structures.

D. To assure that new Construction in Historic Districts is compatible with the historic character of the district so as to protect property and tax valuations.

Section 12.2. HISTORIC DISTRICT COMMISSION

A. **Establishment; membership; terms; bylaws; expenditures:**

1. An Historic District Commission, whose members shall be appointed by the Town Selectmen, is hereby established.

2. The Commission shall consist of five (5) members and four (4) alternate members, who shall be residents of the Town. Appointments shall be made on the basis of demonstrated interest, ability, experience and desire to promote historic preservation in the Town, State or Nation, within the meaning of Section 12.1 of this Article. As far as possible, the membership should include professionals in the disciplines of architecture, history, architectural history, planning, archaeology, urban design or other related fields; a builder and at least two (2) owners of property within the Historic District.

3. Three (3) members of the Commission shall be initially appointed to serve terms of three (3) years; two (2) shall initially be appointed to serve two (2) years; All appointments thereafter made shall be for terms of three (3) years, except in those instances in which the appointment is made to fill a vacancy in an unexpired term, in which case the appointment shall be for the remainder of the unexpired term.

4. Advisory members. The Town Selectmen may appoint persons to serve in an advisory or consulting capacity on a temporary basis at the Board of Selectmen's pleasure.

5. The Commission shall elect a Chairman, Vice Chairman, and Secretary annually from among its membership.
6. The Commission shall adopt bylaws or additional operating procedures consistent with the intent of this Article and of the state enabling legislation and the ordinances of the Town. Said bylaws shall be submitted to the Town Selectmen for review and comment but do not require their approval. In the case of any conflict between such by bylaws and this Article, this Article shall prevail.
7. The Commission may expend funds for the purposes of historic preservation in the Town, in accordance with the annual town budget. Such expenditures may include salaries or other compensation for clerical and technical assistance or consultants if approved in the town budget. The Commission may, with the approval of the Town Selectmen, accept grants, donations or gifts of services and may hold or expend the same as approved by the Selectmen.

B. **Commission Duties:** The Commission shall have the following duties which shall be exercised in accordance with this Article and applicable provisions of the Maine Revised Statutes Annotated.

1. Make recommendations to the Selectmen for establishing Historic Districts according to procedures listed in Section 12.3 of this Article. All such Districts must be approved by the annual Town meeting.
2. Review all proposed additions, reconstruction, alteration, construction or demolition of any Contributing Resource located within a designated Historic District and issue a certificate of appropriateness in accordance with the procedures outlined in Section 12.4.
3. Review all proposed National Register nominations for properties within the town's borders.
4. Serve in an advisory role to Town government officials regarding local historical and cultural resources and act as a liaison between local government and those persons and organizations concerned with historic preservation.
5. Conduct or initiate a continuing survey of local historic and cultural resources, in accordance with Maine Historic Preservation Commission guidelines.
6. Work to provide continuing education on historic preservation issues to local citizens.
7. Accept, administer and enforce any easements or restrictive covenants granted to the Town to protect Historic interests in the Town.

Section 12.3. ESTABLISHMENT OF DISTRICTS

A. **Qualifications:** To be eligible for designation as an Historic District an area shall possess one (1) or more of the following characteristics:

1. Buildings, structures, or sites importantly associated with significant historic personages and/or historic events.

2. Buildings, structures, structural remains and sites which illustrate examples of historical architectural styles valuable for study of a period or method of construction or a single notable structure representing the work of a master builder, designer or architect.

3. Structures, buildings and sites which contribute to the visual continuity of the Historic District.

4. Those sites, buildings, structures or areas on or eligible for inclusion on the National Register of Historic Places.

B. **Effect on other regulations; applicability:**

1. Uses permitted; no changes required. This Article does not alter the existing land use regulations in the Town Land Use or Subdivision or other applicable ordinances, which continue to apply to the land and buildings located within any Historic District. However, exterior alterations to the buildings and structures, including walls, fences, steps of any Contributing Resource within the district shall require a certificate of appropriateness as described in Section 2.4.

2. Passage of this Article shall not require any existing or future owner or renter of property to make any exterior changes to his building(s). The provisions of this Article shall apply only to new exterior alterations proposed by the owner or renter of property with the exception for basic maintenance. The basic maintenance requirement as stated in Section 12.6. of this Article shall apply to owners of structures within any Historic District.

C. **Designation of districts; expansion of districts**: Designation of Historic Districts may be accomplished by amending the designation of in Section 2.2. and 2.3 of Article 2.

D. **Designation of additional Historic Districts may be initiated as follows:** By certification of the Commission to the Selectmen that the proposed Historic District qualifies for such nomination, and by vote of a majority of at least ten (10%) percent of the registered voters in the town at the annual (but not special) town meeting.

E. **Consent**: A new or expanded Historic District may be designated only with written consent of the majority of the property owners within the proposed district or expansion as the case may be.

F. **Recommendation**: The Historic District Commission will formulate recommendations after researching proposed historic districts to determine if the district meets the criteria in this Article and if consent has been obtained in accordance with subsection E. above. The Commission shall make written recommendations regarding designation to the Selectmen. The Selectmen shall also seek written recommendations from the Planning Board.

G. **Application**: To initiate the designation of an Historic District a written application containing the information required by these following Subsections shall be completed and directed to the chair of the Commission. A copy shall also be filed with the Town Clerk.

1. **Designation of districts**: Applications for the designation of Historic Districts shall include the following:
   a. A concise statement of the physical elements that justify expansion of an existing district, an explanation detailing how the expansion is consistent with the character of the district and a description of building types and architectural styles and periods represented;
   b. A concise statement of how the expansion of an existing district meets the review criteria of Section 12.3.A.;
   c. A justification of the expanded boundaries of the district;
   d. A definition of the types of structures that do not contribute to the significance of the district and an estimate of the percentage of noncontributing structures; and,
   e. A map showing all structures in the district with the identification of contributing structures.
2. **Expansion of an existing district**: Applications for the expansion of existing Historic Districts shall include the following:
   a. A concise statement of the physical elements that justify expansion of an existing district, an explanation detailing how the expansion is consistent with the character of the district and a description of building types and architectural styles and periods represented;
   b. A concise statement of how the expansion of an existing district meets the review criteria of Section 12.3.A.;
   c. A justification of the expanded boundaries of the district;
   d. A definition of the types of structures, buildings, and sites that do not contribute to the significance of the district and an estimate of the percentage of noncontributing ones in the Historic District's. proposed expansion area, and
   e. A map showing all structures in the proposed expansion area with the identification of contributing structures.

Section 12.4. CERTIFICATES OF APPROPRIATENESS

A. **Certificate of Appropriateness:** A certificate of appropriateness issued by the Commission shall be required for any of the following:

1. Any change in exterior appearance of any building or structure in the Historic District by construction, addition, reconstruction, alteration or demolition. This shall include any change, except maintenance as addressed in Section 12.6. hereof, in siding materials, roofing materials, door and window sash and integral decorative elements, such as, but not limited to, cornices, brackets, window architraves, doorway pediments, railing, balusters, columns, cupolas and cresting and roof decorations.

2. Removal of any building in the Historic District.
3. An affirmative vote of at least three (3) regular members of the Commission shall be required to issue a certificate of appropriateness

B. **Building Permits**: In the Historic District, the Code Enforcement Officer shall not issue a building permit for any Contributing Resource for the purpose of construction, alteration or demolition until a certificate of appropriateness has been issued by the Commission.

C. **Exemptions**: Any property which meets the definition of Non-Contributing Resource may be exempt from a Certificate of Appropriateness if:

1. They are not associated with events that have made a significant contribution to the broad pattern of our history; or
2. They are not associated with the lives of significant persons in our past; or
3. They do not embody the distinctive characteristics of a type, period, or method of construction, or that do not represent the work of a master or that does not possess high artistic values or that does not represent a significant and distinguished entity whose components may lack individual distinction; or
4. They have not yielded or may not be likely to yield information important in history or pre-history.

It shall be the duty of the Code Enforcement Officer to determine if an applicant has satisfied the four criteria listed above and meets the definition of Non-Contributing Resource.

D. **Application Procedure:** Applications for a certificate of appropriateness may be obtained from the Code Enforcement Officer. Completed applications shall be submitted to the Code Enforcement Officer, who shall promptly transmit them to the Commission for consideration. When the Commission acts on the application, it shall be returned to the Code Enforcement Officer. The application shall state the location, use and the nature of the matter for which such certificate is sought and shall contain at least the following information or documentation unless any items are waived by the Commission:

1. The applicant's name, address and interest in the property, such as owner or lessor. The application and all exhibits shall be dated at the time of submission to the Code Enforcement Office
2. The owner's name and address, if different from the applicant's
3. The address or location of the property.
4. The present use and zoning classification of the property.
5. A brief description of the construction, reconstruction, remodeling, alteration, maintenance, demolition or moving, requiring the issuance of a certificate of appropriateness.
6. A drawing or drawings indicating the design, texture, color (example: shingles) and the location of any proposed alteration or new construction for which the

certificate is required. As used herein, "drawings" shall mean plans and exterior elevations drawn to scale, with sufficient detail to show, as far as they relate to exterior appearances, the architectural design of the buildings, including materials and textures, including samples of any brick, shingles or siding proposed to be used. Drawings shall be clear and drawn to scale.

7. Photographs (snapshots) of the buildings involved and of immediately adjacent buildings.
8. A site plan indicating any proposed changes involving walls, walks, access to buildings, signs and outdoor light fixtures, including all exterior equipment and appurtenances located on the roof, in the walls and on the ground.
9. A description of the project which shall include a statement as to why the structure or building to be demolished does not contribute to the district, site or landmark.

E. **Administrative procedures:**

1. **Notice to owner:** Within fifteen (15) days after the filing of an application for a certificate of appropriateness, the Commission shall inform the following persons by mail of the application and meeting date: the applicant, owners of abutting property, the Durham Historical Society and the Commission's consultants and professional advisors, if any. For purposes of this notice, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person to receive notices shall not necessitate another bearing or invalidate any action by the Commission.
2. **Notice to Commission:** The Code Enforcement Officer will promptly advise the Historic District Commission of all activities which he/she is or becomes aware of that come within the areas of responsibility assigned to the Commission by the Article.
3. **Hearing**: At the request of the applicant or any other person receiving notice under Section E.1 above or where the Commission deems it necessary, a public hearing or hearings on the application shall be conducted by the Commission. Written comments from interested persons shall be accepted in the event that a hearing is not held
4. **Action**: The Commission shall determine whether the proposed construction, reconstruction, alteration, moving or demolition is appropriate or inappropriate within thirty (30) days of the public hearing or within forty-five (45) days of the receipt of the completed application, whichever comes first. If the Commission determines the proposal is appropriate, it shall immediately approve a certificate of appropriateness and return it to the Code Enforcement Officer for issuing of the necessary permits. If the Commission determines that a certificate of appropriateness should not be issued, it shall advise the applicant, in writing, through the Code Enforcement Officer, of any changes which would secure the approval of the Commission and withhold denial for thirty (30) days, in order that the applicant may adopt such proposed changes. The Code Enforcement officer shall notify the applicant of the decision and furnish him a copy of the

reasons and the recommendations, if any, as appearing in the records of the Commission.

5. **Amendment**: An amendment to this Article may be adopted by:
    a. An annual town meeting in the manner normally required for changes in ordinances.
    b. the Town Selectmen shall hold a public hearing on the proposed amendment as required for any proposed ordinance to be placed on the Town Meeting Warrant. The Planning Board and the Historic District Commission shall report its recommendation regarding the proposed amendment at the public hearing.

Section 12.5. STANDARDS OF EVALUATION

The standards and requirements contained in this section, and the Secretary of the Interior's Standards for Rehabilitation (1990 Edition) shall be used in review of applications for certificates of appropriateness. Exterior design considerations and structural factors related to maintaining historic structures in good condition shall be the Commission's primary areas of focus.

A. **Construction Reconstruction, alterations and maintenance:** The exterior of a Contributing Resource located in an Historic District, or any part thereof, or any appurtenance related to such structures, including but not limited to walls, fences, light fixtures, steps, paving and signs, shall not be reconstructed, altered or maintained, and no certificate of appropriateness shall be issued for such actions, unless they will preserve or enhance its historical and architectural character.

B. **Construction of new buildings and structures in Historic District:** The construction of a new building or structure within an Historic District shall be generally of such design, form, proportion, mass, configuration, building material, texture, color and location on a lot as will be compatible with other buildings in the Historic District and with streets and open spaces to which it is visually related and in keeping with the area.

C. **Visual compatibility factors for any Contributing Resource including but not limited to new construction, repair, rehabilitation and additions within Historic Districts:** All construction shall be visually related generally in terms of the following factors:
    1. **Height:** The height of proposed buildings shall be compatible with adjacent buildings.
    2. **Proportion of building's front façade:** The relationship of the width of the building to the height of the front elevation shall be visually compatible with buildings, structures and open spaces where it is visually related.
    3. **Proportion of openings within the façade:** The relationship of the width of the windows to the height of windows and doors in a building shall be visually compatible with that of windows and doors of buildings to which the building is visually related. The window proportions (height versus width) shall be visually

compatible with those of other windows in the same building and in other adjacent historic buildings of the same period. In the case of large plate glass display windows on a ground floor, the large surface of glass can be divided into a number of smaller panes consistent with shop front windows of the historical period which the building represents or, in the case of now buildings, compatible with the window size of adjacent historic buildings, where appropriate. Also, the ratio of window area to solid wall shall be similar to those on surrounding facades. Rhythms which carry throughout the block should be incorporated into new facades. Window pane sizes and proportions should be contemporary with the building

4. **Rhythm of solids to voids in front facades:** The relationship of solids to voids in the front facade of a building shall be visually compatible with that of the buildings to which it is visually related.
5. **Rhythm of spacing of buildings on streets:** The relationship of the building to the open space between it and adjoining buildings shall be visually compatible with that prevailing in the area to which it is visually related.
6. **Rhythm of entrance and/or porch projection:** The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible with that of buildings to which it. is visually related.
7. **Relationship of materials and textures:** The relationship of the materials and textures of the facade of a building shall be visually compatible with that of the predominant materials used in the buildings to which it is visually related. New construction shall utilize materials and textures which are visually compatible with adjacent facades. If there is a predominant material in the immediate area, it shall be used. Many different materials on a single structure or closely related group of structures can lead to visual confusion and a chaotic appearance. Alterations and new buildings should not stand out against the others, if the harmony of a traditional New England village streetscape is to be maintained. Alterations to an existing building shall simulate as closely as possible the color and texture of that building. This is especially important in brickwork. Mortar color and thickness of joint shall match those of the original building.
8. **Roof shapes:** The roof shape of a building shall be visually compatible with that of the buildings to which it is visually related. The roof pitch employed on new buildings shall be similar to those found on adjacent buildings. If a gable-type roof, it's orientation to the street shall be the same as in neighboring buildings. Roofing materials shall be consistent with that of adjacent structures in color, type, material or a compatible substitute which is historically accurate.
9. **Scale of building:** The size of the building, the building mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with those characteristics of buildings and spaces to which it is visually related.
10. **Directional expression of front elevation:** A building shall be visually compatible with the building, squares and places to which it is visually related

in its directional character, whether this shall be vertical character, horizontal character or non-directional character.

11. **Details:** All existing architectural details shall be maintained to the fullest extent practicable. When removal is unavoidable, replacement with similar features shall be encouraged. Although exact replication is often not possible or economically feasible, a simpler feature made of traditional materials can be appropriate. Poor or cheap imitations made of synthetic material shall be avoided, especially when not in scale or in the same architectural tradition. Details may include cornices; frames and moldings around windows, doors and building comers; lintels; arches; wrought iron work; chimneys, etc.

12. **Signs:** All new or replacement signs located within the Historic District shall be made from wood or metal, and all new sign illumination shall be from shielded external sources directed onto the sign to avoid glare. Signs which are attached to or parallel with the facade shall be located only between the top of the ground floor windows and the bottom of the second floor windows to maintain an orderly appearance, adding strength to the appearance of the district as a whole.

D. **Standards for construction, renovations, alterations and repairs of Contributing Resource appurtenances thereof:** In addition to the criteria set forth in subsection C. above, the Commission shall also use the standards listed below in the evaluation of an application for a certificate of appropriateness for all construction, renovations, alterations and repairs of Contributing Resource appurtenances thereof:

1. Every reasonable effort shall be made to provide a compatible use which will require minimum alteration to the structure and its environment.
2. Rehabilitation work shall not destroy the distinguishing qualities nor character of the structure and its environment. The removal or alteration of any historic material or architectural features should be held to a minimum.
3. Deteriorated architectural features which are deemed to be historically appropriate should be repaired rather than replaced, wherever possible. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on physical or pictorial evidence rather than on conjectural designs or the availability of different architectural features from other buildings.
4. Distinctive stylistic features or examples of skilled craftsmanship which characterize historic structures and often predate the mass production of building materials shall be treated with sensitivity.
5. Changes which may have taken place in the course of time are evidence of the history and development of the structure and its environment, and these changes shall be recognized and respected.
6. All structures shall be recognized as products of their own time. Alterations to create an earlier appearance shall be discouraged.

7. Contemporary design for additions to existing structures shall be encouraged if such design is compatible with the size, scale, material and character of the neighborhood, structures or its environment.
8. Wherever possible, new additions or alterations to structures shall be done in such a manner that if they were to be removed in the future the essential form and integrity of the original structure would be unimpaired.

E. **Exceptional circumstances:**

1. The Commission way issue a certificate of appropriateness where the standards otherwise set forth in this section are not met but where the Commission determines that failure to issue the certificate would result in undue hardship to the owner of the property. Before the Commission may issue a certificate under this subsection, the records must show the following:
    a. The property cannot yield a reasonable economic return or the owner cannot make any reasonable use of the property;
    b. The plight of the owner is due to exceptional or unique circumstances and not to the general applicability of this chapter; and
    c. The conditions or circumstances which constitute the hardship were not caused or created by the enactment of any Historic District by which the property became subject to this Article.
2. For purposes of subsection E.1.a., "reasonable economic return" shall not be construed to mean a “maximum reasonable use" and shall not be construed to mean the highest and best use.

F. **Demolition approval criteria:** Any property owner wishing to demolish or move any building within the Historic District shall first apply to the Commission for a determination of whether the building is historic or contributes in some way to the integrity of the Historic District. If the Commission determines the building is not Historic or does not so contribute no certificate of appropriateness will be required for such action.

1. Any building or structure in an Historic District, or any appurtenance thereto, shall not be demolished or moved and a certificate of appropriateness shall not be approved until either:
    a. Such building or structure has been identified by the Commission as incompatible with the Historic District in which it is located; or,
    b. The property owner can demonstrate that it is incapable of earning an economic return on its value in its present location as appraised by a qualified real estate appraiser.
2. If such a demonstration can be made, issuance of a certificate for movement or demolition shall be delayed for a period of sixty (60) days. Such time period shall commence when an application for certificate and the statement of sale, as outlined below, have been filed with the Commission.

3. Prominent Notices, with the words "To be Demolished or Moved" legible from a passing automobile, shall be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street indicating that the building is proposed to be demolished or moved and referring to this Article. In addition, notice shall be published in a newspaper of general local circulation at least three times prior to demolition, the final notice of which shall be not less than fifteen (15) days prior to the date of the permit, and the first notice of which shall be published no more than fifteen (15) days after the application for a permit to demolish or move is filed. Prior to the issuance of such certificate for removal, the owners shall stipulate that the proper notices as required have been posted, that the property was properly offered for sale as provided in subsection 4. below, that there have been no bona fide offers made and that no contract for sale has been executed with interested parties.

4. The owner shall, for the period of time set forth and at a price reasonably related to its fair market value, make a bona fide offer to sell such building or structure and the land pertaining thereto to any person, firm, corporation, government or agency thereof or political subdivision or agency thereof which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto. Prior to making such offer to sell, an owner shall first file a statement with the Commission identifying the property, the offering price and the date the offer to sell shall begin. The time period set forth in this Subsection shall not commence until such statement has been filed.

5. The purpose of this subsection F. is to further the purposes of this chapter by preserving historic buildings which are important to the education, culture, traditions and the economic value of the Town and to afford the Town, interested persons, historical societies or organizations the opportunity to acquire or to arrange for the preservation of such buildings.

6. During the sixty (60) day period set forth in subsection 2. above the Commission shall hold a public hearing to determine if there are alternatives to demolition such as moving the building within or without the Historic District or buying out the owner.

7. The Commission shall make a photographic survey of the building(s) to be demolished or removed and to examine alternative ways to meet the owner's needs, (such as by replacing interior walls and floors or demolishing everything except the street-front façade). The owner or applicant for a demolition proposal shall be required to meet with the Commission to discuss any such alterations.

Section 12.6. MAINTENANCE

A. **Ordinary maintenance permitted:** Nothing in this Article shall be interpreted to prevent the ordinary maintenance or repair of any exterior feature of any building or structure in the Historic District which does not involve a change in the design, material or appearance.

B. **Safety:** Nothing in this chapter shall prevent the construction, reconstruction, alteration, restoration or demolition of any feature which the Code Enforcement Officer shall certify is required by the public safety because of an unsafe or dangerous condition, but any such action shall be taken to the maximum extent possible with the requirements of this Article.

C. **Essential maintenance required:** Owners of buildings within the Historic District considered a Contributing resource shall not permit their properties to fall into a state of disrepair which may result in deterioration of any exterior architectural feature so as to produce, in the judgment of the Commission, a detrimental effect upon the character of the Historic District or the structure in question or which could lead to a claim that demolition is necessary for public safety. This basic maintenance requirement applies to exterior walls and other vertical supports, roof and other horizontal members, exterior chimneys and waterproofing of exterior walls, roofs and foundations, including broken windows and doors. The Commission shall work with public and private parties to assist any owner in finding the resources necessary to prevent such state of disrepair.

Section 12.7. ADMINISTRATION

A. **Interpretation:** Interpretation of what may not be clear in this Article shall be according to the intent of the Article and the Comprehensive Plan.

B. **Conflicts with Other Ordinances:** This Article shall not repeal, annul or in any way impair or remove the necessity of compliance with any other ordinance, law, regulation or bylaw. Where this Article imposes a higher and/or stricter standard, the provisions of this Article shall prevail.

C. **Severability:** If any section, subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

D. **Violations:** Penalties for violations of this chapter shall be imposed in accordance with 30-A M.R.S.A. § 4452. A person violating any provision of this Article shall be guilty of a civil violation and shall be punished by a fine of not less than one hundred ($100) dollars but not to exceed the statutory maximum for such violation. Each day that a violation continues shall be deemed a separate offense. All penalties collected hereto shall inure to the Town and shall be used for the purposes of this Article after paying any costs of enforcement.

E. **Additional remedies:** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article. If the Code Enforcement Officer finds that any provision of this Article is being violated, he shall notify, in writing, the person responsible for such violations, and shall send a copy of such notice to the Chairman of the Commission, indicating the nature of the violation and ordering the action necessary to correct it. He shall take any action authorized by this Article or statute to ensure compliance with or to prevent violation of its provisions.

ARTICLE 13: ADDRESSING

Section 13.1. PURPOSE

The purpose of this Article is to enhance the easy and rapid location of properties by law enforcement, fire, rescue, and emergency medical services personnel in the Town of Durham.

Section 13.2. AUTHORITY

This Article is adopted pursuant to and consistent with the Municipal home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

Section 13.3. ESTABLISHMENT OF DISTRICTS

This ordinance shall be administered by the addressing authority. The "addressing authority" is the Codes Official (Code Enforcement Officer) of the Town of Durham. The addressing authority is authorized to and shall assign road names in consultation with the Selectmen and assign numbers to all properties, both on existing and proposed roads, in accordance with the criteria in Sections 13.4 and 13.5. The addressing authority shall also be responsible for maintaining the following official records of this Article:

A. **Road Maps:** Maps of the Town of Durham for official use showing road names and numbers.

B. **Address List:** An alphabetical and numerical list of all street addresses as identified by current assessment records and/or approved subdivision plans, showing the assigned numbers.

C. **Road List:** An alphabetical list of all roads with property owners listed in order of their assigned numbers.

Section 13.4. NAMING SYSTEM

All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned by the Town of Durham shall not constitute or imply acceptance of the road as a public way. The following criteria shall govern the naming system:

A. No two (2) roads shall be given the same name (e.g., no Pine Road and Pine Lane).

B. No two (2) roads should have similar-sounding names (e.g., Beech Street and Peach Street).

C. Each road shall have the same name throughout its entire length.

Section 13.5. STREET SIGNS

A. **Town Street Signs:**

1. Street signs that name a town road that have been approved by the E- 911 Officer shall be purchased and installed by the Road Commissioner or his designee.
2. Replacement signs shall be purchased and installed by the Town.
3. All signs shall be uniform in color and lettering an conform to the latest version of the State of Maine: Department of Transportation: Manual on Uniform Traffic Control Devices. All road signs shall be reflective so as to be visible at night.

B. **Private Road Signs:**

1. Street signs that name private roads and ways that have been approved by the E-911 Officer shall be purchased and installed by the Road Commissioner or his designee and billed to the owner, developer, or road association.
2. Private road signs shall be installed within the right of way of the private road outside of the traveled way. The Road Commissioner or his designee shall obtain written permission from the property owner before installing signs on private property.
3. Signs for private roads shall be uniform in color and lettering an conform to the latest version of the State of Maine: Department of Transportation: Manual on Uniform Traffic Control Devices. All private road signs shall be reflective so as to be visible at night.

C. **Inventory:** An inventory of all road signs shall be made by the Town in October of each year. One copy of the inventory shall be kept on file by the Road Commissioner and another in the Town Office. Developers of new subdivisions shall be responsible for the cost of installing all necessary signage for the development as part of the approval process. Such signs shall be erected and maintained in accordance with the E-911 Ordinance.

Section 13.6. NUMBERING SYSTEM

Numbers shall be assigned every fifty (50') feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by number origin. The following criteria shall govern the numbering system:

A. All number origins shall begin from the designated center of Durham or that end of the road closest to the designated center. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.

B. The number assigned to each structure shall be that of the numbered interval falling closest to the primary driveway entrance of the property.

C. Every structure with more than one principle use or occupancy shall have a separate number for each used or occupancy. (i.e. duplexes will have two separate numbers; apartments will have one road number with an apartment letter, such as 235 Maple Street, Apt. B).

Section 13.7. COMPLIANCE

All owners of structures shall, by the date stipulated in Section 13.8, display and maintain in a conspicuous place on said structure, the assigned numbers in the following manner:

A. **Number on the Structure or Residence:** Where the residence or structure is within fifty (50') feet of the edge of the road right of way, and is readily visible, the assigned number shall be displayed on the front of the residence or structure near the front door or entry.

B. **Number at the Street Edge:** Where the residence or structure is over fifty (50') feet or more from the edge of the road right of way or is within fifty (50') feet and is not readily visible, the assigned number shall be displayed on a post, fence, wall, the mail box, or on some structure at the edge of the road right of way next to the walk or access drive to the residence or structure. When a number is displayed on a post, fence, wall, or mailbox that is perpendicular to the road, the number shall be made visible from both directions of the road.

C. **Size and Color of Number:** Numbers shall be displayed in a color and size approved for use by the addressing authority and shall be located to be visible from the road. Numbers shall be in Arabic numerals and shall not be displayed in a word format. Numbers shall be a minimum four (4") inches in height and shall be of a contrasting color to their background and reflective.

Section 13.8. NEW CONSTRUCTION AND SUBDIVISIONS

All new construction and subdivisions shall be named and numbered in accordance with the provisions of this ordinance and as follows:

A. **New Construction:** Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to obtain an assigned number from the addressing authority. This shall be done prior to the issuance of a certificate of occupancy by the building inspector.

B. **New Subdivisions:** Any prospective subdivider shall show a proposed road name on the pre-application submission to the Planning Board. Approval by the Planning Board, after consultation with the addressing authority, shall constitute the assignment of road names. On the final plan showing proposed roads, the applicant shall mark on the plan, dots, in the center of the streets every fifty (50') feet to aid in the assignment of numbers to structures falling within the subdivision, adjacent to the subdivision road, or to structures subsequently constructed.

Section 13.9. EFFECTIVE DATE

This Article shall become effective as of July 1, 1997. It shall be the duty of the addressing authority to notify by mail each property owner and the Post Office of a new address within seven (7) days of its assignment. It shall be the duty of each property owner to comply with this Article, including the posting of new property numbers within sixty (60) days following notification. On new structures, numbering will be installed before the structure is first used or occupied.

Section 13.10. ENFORCEMENT

Any person or persons, firm or corporation, being the owner or having control of any building or part thereof, which violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine of not less than five dollars ($5.00) or more than twenty-five dollars ($25.00). Each and every day that the aforesaid violation continues shall be a separate offense and punishable as such. Whenever the addressing authority, code enforcement officer, or building inspector is satisfied that any provision hereof has been violated, and the civil proceedings will lie, he shall apply to the municipal officers for the purpose of instituting such civil proceeding. Any such proceeding shall be brought in the name of the Town of Durham and may include therein application for injunctive relief.

Section 13.11. VALIDITY AND APPLICATION

Should any provision or section of this Article be declared by the courts to be invalid, such declaration shall have no effect on the remaining portions or sections of this Article, said remaining portions or sections shall remain in full force and effect.

ARTICLE 14: EXTRACTIVE INDUSTRIES & GRAVEL PITS

Section 14.1. PURPOSE

This Article is adopted in accordance with the Comprehensive Plan of the Town of Durham adopted at Town meeting March 2002. The purpose of this Article is to regulate both new and existing sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials from excavated areas hereinafter collectively referred to as "borrow pits." These regulations are intended to protect the quality and quantity of ground and surface waters, control erosion, provide for the reclamation and rehabilitation of new and existing borrow pits for future uses compatible with the surrounding neighborhood, and to minimize any adverse impact of such borrow pit operations on adjacent and nearby properties, and to ensure the safety of town citizens.

Section 14.2. APPLICATION

This Article shall apply to all borrow pit operations in existence on the effective date of this Article as well as new operations. It is not the intent of this Article to regulate borrow pits that are regulated by the State of Maine, except for Sections 14.6.B., C., D., and I. To qualify as an existing borrow pit operation, the borrow pit must be a lawful use under the Land Use Ordinance of 2004, must have been in operation at some time over the five (5) years immediately preceding the Town Meeting of 2004, and must have been in full compliance with all Town ordinances during all such times of operation.

Section 14.3. EXEMPTIONS

Excavations undertaken preliminary to an approved on-site construction project, is part of normal farm operations or is moved to a contiguous site in the same ownership.

Section 14.4. FEES AND INVENTORY

Following acceptance this ordinance by the municipality at its regularly scheduled Town Meeting, and no later than December 31st of the same year, the Selectmen shall make an inventory of all small borrow pits in the Town of Durham. The information required in Section 14.5.A. through E. shall be required for the registration of all small borrow pits inventoried. The Selectmen shall have a fee per the adopted fee schedule charged for each such small borrow pit inventoried by April 1st of the year following the acceptance of this ordinance. An additional annual fee per the adopted fee schedule shall be payable by April 1st of each succeeding year in which the small borrow pit is active. Any small borrow pit not registered, or which fails to qualify to be registered by the end of the year this ordinance is accepted shall be deemed closed and may not continue or resume operation except that; upon written application to the Planning Board demonstrating good cause and an inability to meet the initial registration deadline, the Planning Board may extend the period of registration for up to one year from the effective date of this ordinance. An additional onetime fee per the

adopted fee schedule shall be charged for such late registration. Once a small borrow pit has been considered closed, the owner will be required to obtain a new Conditional Use Permit from the Planning Board in order to reopen the small borrow pit.

Section 14.5. ALL SMALL BORROW PITS TO BE REGISTERED WITH THE TOWN OF DURHAM

The following information shall be required for registration of a small borrow pit:

A. **Name, Address and Telephone Number:** The name, mailing address and telephone number of the owner and, if different from the owner, the operator.

B. **Map and Site Plan:** At a scale of not less than 1 inch = 100 feet with the following information:

1. Boundaries of the subject property.
2. Existing wells, rivers, brooks, streams, freshwater wetland, and a depth of groundwater as determined by test borings, wells or pits.
3. Topography of the property at a contour interval no greater ten (10) feet.
4. Existing site features such as fields, wooded areas, structures, roads and driveways.
5. Residences and wells within five hundred (500) feet of the subject property.
6. Existing and proposed excavation areas including acreage, phasing, depth of excavation, and final grades.
7. Location and size of product and topsoil stockpiles:
8. Areas to be used for the processing of excavated materials.
9. Proposed buildings and structures and types and locations where equipment, materials or fuels are to be stored.
10. Locations of proposed access and any roads to be constructed within the site and sight distances of intersection of the access with a public road.
11. Method of controlling access to the site.
12. Improvements for the control of drainage, sedimentation and erosion.

C. **Information on Abutters:** The names and addresses of abutting property owners.

D. **Signed Statement:** A statement, signed and dated by the owner or operator, certifying that the small borrow pit will be operated in compliance with this article and any fee required by the Town of Durham has been paid.

E. **Fees:** A Registration Fee per the fee schedule adopted by the Selectmen shall be collected by the Treasurer for each small borrow pit registered together with the information describing such pit as proscribed in this section.

Section 14.6. PERFORMANCE STANDARDS

A. Any entity or person intending to create or operate a small borrow pit under this Article must comply with Article 7 with regard to obtaining a Conditional Use Permit.

B. Operation of any borrow pit under this ordinance must comply with all standards set forth in the Land Use Ordinance, Solid Waste Ordinance and any other Town Ordinance that may apply.

C. The following setbacks must be maintained for any borrow pit between the excavation and a water supply in existence prior to the excavation:

1. Well drilled into saturated bedrock	100 feet
2. Dug well or point driven well	200 feet
3. Public water supply serving fewer than 500 persons	300 feet

D. No person shall open or excavate, for sale or any other purpose, any borrow pit of gravel fill, or any other material within two hundred (200') feet of any public road or within one hundred (100') feet of the property boundary, except for the excavation of a building or a pond.

E. Performance standards for buffer strips shall be the same as those established in 38 M.R.S.A. §§490-D (4), 490-(6A), and 490-D (7) for small borrow pits.

F. Erosion control standards for small borrow pits shall be as described in 38 M.R.S.A. §490-M.

G. Excavation for small borrow pits shall not extend below an elevation of five (5') feet from the seasonal high-water table as established by competent, technical data.

H. The average slope of any cut bank measured from the top of the slope to the toe of the slope shall not exceed a horizontal to vertical ratio of 2.5:1; provided, that any small borrow pit in lawful operation at the effective date of this ordinance whose slopes exceed this requirement may maintain, but not increase, such nonconforming slopes; provided, further, that for an expanded borrow pit area or new borrow pit area which exceeds five (5) acres in size, the slope for such areas may not exceed 3:1.

I. Hours of operation for all borrow pits shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday and 7:00 a.m. to 5:00 p.m. Saturday with processing of materials to begin at 8:00 am. There shall be no Sunday operations in any borrow pit, exempting the Road Commissioner in performance his duties, or whoever has the responsibility of removing snow in the winter and spreading sand on public or private roads or ways shall be exempt from this requirement while acting in the course of their duties.

Section 14.7. INSPECTIONS

The regulator may, during permitted regular hours of operation (Section 14.6.I) periodically inspect a site without prior notification and may examine relevant records of the owner or operator including Conditional Use Permit and may take samples and perform tests necessary

to determine compliance with the provisions of this ordinance. Upon the initial inspection of small borrow pits currently in existence following approval of this Article; the Code Enforcement Officer shall be authorized to require any signage or fencing needed to ensure public safety. On any new small borrow pits covered under this ordinance; such requirements shall be set by the Planning Board prior to issuing a Conditional Use Permit. Any blasting licenses in effect may be renewed by the Code Enforcement Officer during the annual inspection. Should there be a complaint regarding compliance with this ordinance, the complaint or concern should be directed to the Town Office. The Town Administrator will log such complaint or concern and then forward to the Regulator for investigation. Results of such investigation will be shared with the complainant and then be made part of the public record at the Town Office.

Section 14.8. CLOSING OF PITS

When any small borrow pit reaches the limitation established in Section 14.6.C. and D. of this Article, or when the saleable material has been exhausted as determined by the Code Enforcement Officer, or when the small borrow pit has not been active for a period of twelve (12) months (i.e., active shall mean the annual registration and payment of the fee), the small borrow pit shall be deemed closed and the banks or edge shall be sloped to (1') foot vertical rise for each two and one half (2.5') feet horizontal cut or less and set out to suitable vegetation (trees grasses and shrubs) that result in a permanent ninety (90%) percent groundcover. Further, this planting must result in a permanent stand or a stand that is capable of regeneration and succession, sufficient to ensure seventy-five (75%) percent survival rate.

Section 14.9. VIOLATIONS ENFORCEMENT

This Article shall be enforced by the Regulator as defined in Article 19. Violations prosecuted in accordance with 30-A M.R.S.A. §4452, as amended.

Section 14.10. VARIANCES

A request for variance may be filed with the Board of Appeals in the manner described in Section 17.6. The Board of Appeals may grant a variance if it finds that the applicant would otherwise suffer undue hardship as defined in Section 17.3.B.

ARTICLE 15: MOBILE HOME PARKS

Section 15.1. PURPOSE

In their interpretation and application, the provisions of this Article and the provisions incorporated herein shall be held to be the minimum requirements adopted for the protection of the public health, safety and welfare. To protect the public, among other purposes, such provisions are intended to provide for permanently wholesome community environment, adequate municipal and private services, and safe streets.

Section 15.2. SCOPE AND APPLICATION

This Article shall not impose or interfere with private restrictions placed upon property by deed, covenant or other private agreement, or with restrictive covenants running with the land to which the Town of Durham is a party. Where this Article imposes a greater restriction upon land use than is imposed or required by existing provisions of law, ordinance contract or deed, the provisions of this Article shall control. The provisions of this Article shall not apply to occupied mobile homes lawfully existing within the Town of Durham nor shall it invalidate building permits issued by the Town prior to enactment of this Article, nor shall it apply to the replacement of lawfully existing mobile homes.

Section 15.3. GENERAL REQUIREMENTS

A. **Mobile homes located in Mobile Home Parks:**

1. Any mobile home located in a mobile home park in the Town of Durham shall be safe and sanitary and fit for human occupancy or inhabitation.
2. No person shall maintain and/or occupy a mobile home as defined in Section 19.121 of this Ordinance except in a duly licensed mobile home park.

B. **Mobile homes located outside mobile home parks:**

1. Mobile homes located outside mobile home parks shall be defined and treated as single family dwellings and shall comply with this ordinance and all other ordinances of the Town of Durham.
2. In addition to complying with this ordinance and all other ordinances of the Town, such mobile homes shall comply with the following criteria:
   a. They shall have a minimum width of fourteen (14’) feet.
   b. They shall have a pitched roof with a minimum pitch of three (3”0 inches in height for every twelve (12”) inches of horizontal movement.
   c. They shall have exterior siding that is residential in appearance.
   d. They shall be placed on a permanent foundation in compliance with the Building Code of the Town of Durham.

C. This Article does not apply to travel trailers and camping trailers not designed or used for year-round occupancy.

D. This Article does not apply to mobile homes used as construction office or storage space for a period not to exceed one (1) year.

E. Title to all lots in a mobile home park shall remain in the owner of the mobile home park for as long as any part of the original properly is operated as a mobile home park.

F. Notwithstanding the definition in 19.121, within a mobile home park, no person shall locate a conventional or modular home.

Section 15.4. LICENSE REQUIRED

No person, firm, corporation or other legal entity shall establish, conduct, maintain or operate a mobile home park without first obtaining a license issued annually by the Building Inspector.

A. The Building Inspector, upon written application of any person, may authorize the Town Clerk to issue or renew mobile home park licenses to any such person upon compliance with the provisions of this ordinance. The license fee shall be per the fee schedule adopted by the Select Board, payable to the Town of Durham, renewable annually on the first day of January. The applicant shall file with the application proof of ownership of the premises or a lease or written permission from the owner.

B. Initial applications shall be accompanied by a set of plans drawn by a registered land surveyor, to a scale of not more than 100 feet to the inch showing the following information:

   1. Name and address of applicant.
   2. The area and dimensions of the tract of land.
   3. The number, location, size and shape of all mobile home lots.
   4. The location of any existing or proposed buildings.
   5. Names of abutting property owners.
   6. The location, name and width of streets and walkways.
   7. The location of water, sewer, gas and other utilities and sewage disposal facilities.
   8. The results of soil prepared by a certified soil scientist or licensed soil evaluator.

C. Application for a license to operate a new mobile home park or to expand an existing one shall require the approval of park design by the Planning Board. The Board shall determine adequacy of the design with respect to arrangement of lots, streets, street names, and other facilities to assure conditions favorable to the health safety and convenience. In any case in which the Board finds that the plans presented do not contain all of the features required by this ordinance or where the Board, in the exercise of its discretion, requires amendments to the plans as presented , it may treat the original plan as preliminary plans and require the applicant to present final plans incorporating the changes specified.

D. Renewal applications shall be accompanied by plans, drawn to scale, showing any proposed extensions or alterations. Which extensions and alterations shall be made to conform to the provisions of this Article before such renewal license shall be granted. The making of extensions or alterations without approval as herein provided shall be cause for immediate revocation of the mobile home park license.

Section 15.5. SPECIAL PROVISIONS

A. **Standards:** Notwithstanding other provisions of this ordinance relating to space, bulk and use, the Planning Board in reviewing plans for proposed mobile home parks, may modify said provisions related to space, bulk and use to permit innovative approaches to environmental design in accordance with the following standards:

1. The purpose and intent of this Article shall be upheld.
2. Compliance with all State and Local codes and ordinances
3. There shall be no approval of any proposed mobile home park which exceeds the net residential density set forth in this Article.
4. Each building and mobile home stand shall be an element of an overall plan for sight development.
5. Where possible, mobile home stands shall be oriented with respect to scenic vistas, natural landscape features, topography and natural drainage areas.
6. Development proposals shall include a landscape program to illustrate the proposed treatment of space, roads, paths, service and parking areas. Screening devices shall not impair pedestrian and vehicular safety.
7. Utilities shall be installed underground where practical. All transformer boxes, substations and meters shall be located and designed as not to be unsightly or hazardous to the public.
8. The applicant shall be required to execute a bond in the amount of ten (10%) percent of cost of land included in the mobile home park purposed by the applicant to secure faithful compliance with this Article prior to the issuance of the license by the Building Inspector. Such bond shall be filed with the municipal treasurer.

Section 15.6. DEVELOPMENT REQUIREMENTS

Mobile home parks shall conform to the following minimum requirements unless otherwise modified in accordance with the special provisions set forth in Section 15.5 of this Article:

A. Mobile home parks shall be located on a well-drained site properly graded to insure proper drainage and freedom from stagnant pools of water. The site shall not be exposed to unpredictable sudden flooding, subsidence or erosion.

B. The area of the mobile home park shall be a contiguous parcel of land having a minimum area of twenty (20) acres.

C. All mobile homes shall be located at least one hundred (100') feet from all mobile home park boundary lines.

D. A minimum of five (5) mobile home lots shall be completed as required by this ordinance before occupancy of the mobile home park shall be permitted.

E. **Lot Size Requirements:** Each individual mobile home lot shall be not less than forty thousand (40,000 sq. ft.) square feet in the area and shall not be less than two hundred (200') feet wide.

F. **Street, Walks and Parking:**

1. All mobile home parks shall be provided with a safe and convenient vehicular access from abutting public streets or road to each mobile home lot. Such access shall have a fifty (50') foot right-of-way and a roadbed at least twenty-two (22') feet wide. All streets shall be well drained, paved, maintained in good condition, and at night adequately lighted.
2. Street pavement widths shall not be less than thirty-six (36') feet where parking is permitted on both sides of a street. Where parking is permitted on one side of the street the minimum pavement width shall be twenty-eight (28') feet. Where on street parking is prohibited the minimum pavement width shall be twenty (20') feet.
3. Dead end streets shall be limited to the length of one thousand (1,000') feet. and at the closed end shall be provides with a turnaround having a minimum radius of fifty (50') feet.
4. Off-street parking in all mobile home parks shall be furnished.
5. Mobile home stands shall provide an adequate foundation for the placement of a mobile home. Stand foundations shall be of such construction as to prevent heaving, shifting or settling due to frost action.
6. All individual mobile homes shall be equipped with skirting or other type enclosure.

G. Subdivision Regulations: Every mobile home park shall also comply with the subdivision review criteria set forth in Section 6.2 of this ordinance.

Section 15.7. UTILITIES

A. Water Supply:

1. An accessible, adequate, safe, and potable supply of water shall be provided in each mobile home park subject to approval by the plumbing inspector and State Department of Human Services, Division of Environmental and Community Health.
2. The water supply shall be capable of delivering a minimum of one hundred and fifty (150 gal.) gallons per day per mobile home.

3. Every well or suction line of the water supply systems shall be located and constructed in such a manner that neither underground nor surface contamination will reach the water supply from any source.
4. The water supply system shall be connected by pipes to all mobile homes, buildings, and other facilities requiring water.
5. All water piping, fixtures and other equipment shall be constructed and maintained in accordance with the State of Maine Law, the State Plumbing Code and local regulations and shall be of a type and in locations approved by the Plumbing Inspector.

B. **Sewage Disposal:**

Sewage disposal systems shall comply with all State of Maine Law, the State Plumbing Code and local ordinances.

C. **Electrical Distribution System:**

1. Every mobile home park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenance which shall be installed and maintained in accordance with all applicable State of Maine Law and local codes and regulations governing such systems. All facilities shall be approved by the Electrical Inspector.
2. Wherever soil conditions permit and it is practical, all electric distribution facilities shall be located underground.

D. **Refuse Disposal:**

1. The storage collection, and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution.
2. All refuse shall be stored in fly-tight, watertight, rodent-proof containers, which shall be located no more than one hundred and fifty (150') feet away from any mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.
3. Refuse collection stands shall be provided for refuse containers. Such stands shall be so designed as to prevent containers from being tipped.

E. **Fuel Supply and Storage:**

1. Natural gas and liquified petroleum systems shall comply with all applicable codes and regulations. Installations of systems shall be subject to inspection and approval of the building inspector.
2. All fuel oil supply systems shall be constructed and installed underground in each mobile home lot in accordance with all applicable codes and regulations. Installation of the system shall be subject to inspection and approval of the Building Inspector.

Section 15.8. MISCELLANEOUS REQUIREMENTS

A request for variance may be filed with the Board of Appeals in the manner described in Section 17.6. The Board of Appeals may grant a variance if it finds that the applicant would otherwise suffer undue hardship as defined in Section 17.3.B.

A. **Responsibilities of the Licensee:**

1. The licensee shall operate the park in compliance with this Article, and it shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in clean and sanitary condition.
2. The licensee shall notify park occupants of all applicable provisions of this ordinance and inform them of their duties and responsibilities thereunder.
3. A mobile home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home stand and connected to water, sewerage, and electrical utilities. The licensee shall be responsible for the proper placement of each mobile home on a mobile home stand and for the connection of all utility connections. The licenses shall also be responsible for the disconnection of all utilities prior to departure of a mobile home.
4. The licensee shall maintain a register containing the names of all park occupants. Such register shall be available to any civil authority inspecting the park.
5. The licensee shall be responsible for notifying the Assessor of the arrival or impending departure of any occupied mobile home or change of ownership that occurs within the park.
6. No park shall permit the entrance of a mobile home having an evaporating type of heating or cooking facilities without the approval of the Building Inspector.

B. **Responsibilities of Park Occupants:**

The park occupant shall comply with all applicable requirements of this section and shall maintain his mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.

Section 15.9. ENFORCEMENT

The Board of Appeals may grant an appeal if it determines that the Planning Board erred in its interpretation or application of the terms of this Article.

A. **Inspections:** The Building Inspector shall make regular inspections of any mobile home park pursuant to a written schedule which shall provide for inspections only during reasonable hours and only after 48-hour notice. A copy of such schedule shall be filed in the municipal clerk's office and the office of the mobile home park attendant.

B. **Violation Procedure:** If after any inspection the building inspector has any knowledge or has reason to believe that a violation of any provision of this Article or any provision incorporated herein exists, the Building Inspector shall issue a written

order requiring a showing of compliance within thirty (30) days of issuance. Such order shall contain a description of the violation or suspected violation and shall be directed to and served on the alleged offender and the owner of the mobile home park. Service shall be by mail or personal. If compliance is not shown within the thirty (30) days, the Building Inspector shall notify the municipal officers for the purpose of taking court action.

C. **Violations:** Any condition existing in violation of any provisions of this Article or any provision incorporated herein is a nuisance.

Section 15.10. PENALTY

Any person found in violation of any provision of this Article or any provision incorporated herein shall be fined not more than one hundred ($100) dollars plus costs. Each day that a violation continues shall be deemed a separate offense.

ARTICLE 16: NONCONFORMING USES

Section 16.1. PURPOSE

The purpose of this Article is to regulate nonconforming lots, uses, and structures as defined in this Ordinance such that they can be developed, maintained, or changed to other less non-conforming or to conforming uses.

Section 16.2. GENERAL

A. **Transfer of Ownership:** Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

B. **Repair and Maintenance:** This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

Section 16.3. NONCONFORMING LOTS

A. **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot frontage and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals. [*Note: The Town recognizes March 6, 1976 as the effective date of the establishment of legally nonconforming lots*]

B. **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. §§4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

C. **Functional Divisions:** If two or more principal structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

D. **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or

more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

Section 16.4. NONCONFORMING USES

A. **Non-Residential Expansions:** Expansions of non-residential, nonconforming uses are prohibited.

B. **Residential Expansions:** A residential non-conforming use may be expanded by up to thirty (30%) percent of the area which it occupied at the time it became nonconforming, upon issuance of a Conditional Use Permit. The Board of Appeals may approve an expansion of a non -conforming use of more than thirty (30%) percent of the area which it occupied at the time it became nonconforming, if:

1. The use will conform to all other requirements of this Ordinance;
2. The expansion will not have an adverse impact on the groundwater. The Board shall consider any of the following as evidence that this condition is met:
   a. Written evidence that the sewage disposal system for the property complies with the current requirement of the Maine State Plumbing Code and is sized to accommodate the proposed expansion: or,
   b. Written evidence from a licensed soils evaluator that a subsurface sewage disposal system meeting the requirements the Maine State Plumbing Code and sized to meet the expanded use can be installed on the parcel; and,
   c. Written documentation from a groundwater hydrologist demonstrating that the proposed sewage disposal and water supply system will not affect the quality of quantity of groundwater supplies of abutting property owners.

C. **Resumption Prohibited:** A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one (1) year extension to that time period.

D. **Change of Use:** Subject to approval by the Board of Appeals, a lawful nonconforming use may be changed to another nonconforming use that is deemed less objectionable and detrimental than the existing lawful nonconforming use per the following criteria:

1. A change in use is one that results in an activity that is different in nature and purpose from the original use; results in a difference in the quality, character, degree, and kind of activity and is different in kind in its effect on the neighborhood.
2. Less objectionable and detrimental means that the new proposed nonconforming use will have a lesser effect on the neighborhood and on the property on which the use occurs, is less noticeable than the current use, is closer in nature to the uses allowed in the zoning district, or represents a decline in the volume and intensity of the use.

3. The Board of Appeals will review any application for change in nonconforming use in accordance with the following standards:
   a. The hours of operation are decreased or not increased.
   b. Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased or not increased.
   c. Hazardous traffic conditions are minimized or not increased, and the amount of traffic is decreased or not increased.
   d. The appearance of the property from public ways and abutting properties is improved and the value of adjacent properties will not be adversely affected.
   e. Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of its design or operation will not be created.

Section 16.5. NONCONFORMING STRUCTURES

A. **Expansions**: A non-conforming building may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not create an increase the linear nonconformity of a structure and is in accordance with subparagraphs 1. and 2. below.

1. A non-conforming building shall not be added to or enlarged unless such addition or enlargement does not increase the linear extent of the nonconformance of the building or a variance is obtained from the Board of Appeals.
2. Whenever a new, enlarged or replacement foundation is constructed under a non-conforming building, the building and new foundation must be placed such that the setback requirements are met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in subsection B. Relocation, below. The construction or enlargement of a foundation under an existing dwelling shall not be considered an expansion provided that:
   a. The completed foundation does not extend beyond the exterior dimensions of the structure.
   b. The completed foundation does not cause the structure to be elevated by more than three (3’) additional feet, as measured from the original ground level to the bottom of the first floor sill.
   c. The addition of an open patio with no structure elevated more than three (3”) inches above ground level shall not constitute the expansion of a non-conforming structure. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a nonconforming structure. But the addition of a deck does constitute the expansion of a non-conforming structure and the deck shall meet all the dimensional requirements of this Ordinance.

B. **Relocation**: A non-conforming building may be relocated within the boundaries of the parcel on which the building is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a building be relocated in a manner that causes the building to be more nonconforming:

   a. In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

C. **Reconstruction or Replacement:** Any nonconforming building, or a building containing a nonconforming use, which is hereafter damaged or destroyed by fire, flood, lighting, wind, structural failure or other accidental cause, may be restored or reconstructed in conformity with its original dimensions and used as before, within three (3) years of the date of such damage or destruction; provided, however, that such reconstruction and use shall not be more nonconforming than the prior nonconforming building or use. Nothing in this section shall prevent that demolition of the remains of any building so damage destroyed.

ARTICLE 17: BOARD OF APPEALS

Section 17.1. APPOINTMENT AND COMPOSITION

A. The municipal officers shall appoint members of the Board of Appeals in accordance with the requirements of 30-A M.R.S.A. §2691.

B. The Board shall consist of five (5) members serving staggered terms of five (5) years, appointed by the Board of Selectmen. The Board of Selectmen shall appoint two (2) nonvoting associate members to serve in the absence of regular members. The Chairman of the Board of Appeals shall designate which associate member shall serve in the stead of the absent member for voting purposes.

C. When there is a permanent vacancy of a full or associate member, the Secretary of the Board of Appeals shall immediately notify the Town Clerk. The municipal officers shall within sixty (60) days appoint a person to fill the unexpired term.

D. The Board shall elect annually a chairman and secretary from its membership. In the absence of the Chairperson, the Board shall elect an Acting Chairperson as necessary.

E. The Chairperson shall perform all the duties required by law, this Ordinance, or rules adopted by the Board. The Chairperson shall preside at all meetings of the Board and rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committee found necessary to carry out the business of the Board.

F. The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each question. The Secretary shall also arrange proper and legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a Secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determination of the Board, and shall prepare a complete record of each hearing including: dates(s), time(s), place(s)of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusion; the decisions of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.

G. The Acting Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability, or disqualification.

Section 17.2. CONFLICT OF INTEREST

A. Any question of whether a particular issue involves a "conflict of interest'' sufficient to disqualify a member form voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

B. The term “conflict of interest'’ shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person’s immediate family (parents, spouse, grandparents, children, grandchildren, e.g.) or employer or the employer of any member of the person's immediate family.

Section 17.3. POWERS AND DUTIES

The powers and duties of the Board of Appeals shall be as follows:

A. **Administrative Appeals:** To hear and decide appeals by an aggrieved party as set forth below. The hearing on the appeal shall be considered a public hearing and subject to the public hearing notice requirements of Section 17.7. below. The burden of proof shall be on the Appellant to demonstrate that the decision maker whose decision is being appealed erred. The Board shall not conduct a de novo review but shall act in a purely appellate capacity and shall limit its review to the record evidence that was before the decision maker and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain or reverse the action of the decision maker, or remand for further information or proceedings. The Board of Appeals may reverse the action being appealed only upon a finding that said action was clearly contrary to applicable provisions of the Ordinance or that the record evidence compels a different conclusion.

   1. **Code Enforcement Officer:** The Board of Appeals may hear and decide appeals where it has been alleged that there is an error in any action or failure to act made by the Code Enforcement Officer or in any other matter involving the Code Enforcement Officer in the administration or enforcement of this Ordinance. Except that, with respect to Article 9, only final decisions by the Code Enforcement Officer granting or denying a permit shall be subject to appeal.

   2. **Planning Board:** The Board of Appeals may hear and decide appeals from any final decision of the Planning Board.

   3. **Road Commissioner:** The Board of Appeals may hear and decide appeals where it has been alleged that there is an error in any action or failure to act made by the Road Commissioner in the administration of this Ordinance.

   4. **Historic District Commission:** The Board of Appeals may hear and decide appeals from any final decision of the Historic District Commission.

B. **Variances Appeals:** To authorize variances, within the limitations set forth in this Ordinance.

   1. **Dimensional Variance:** The Board of Appeals shall not grant a variance from dimensional requirements unless it finds that:

      a. The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the nonconformity and from which relief is sought; and,

b. The strict application of the terms of this Ordinance to the petitioner and the petitioner' s property would cause undue hardship. The term "undue hardship" as used in this subsection means:

1) The land in question cannot yield a reasonable return unless a variance is granted; and,

2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,

3) The granting of a variance will not alter the essential character of the locality; and,

4) The hardship is not the result of action taken by the applicant or a prior owner.

2. **Disability Variance:** A disability variance may be granted pursuant to the following:

a. The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.

b. The Board may impose conditions on the disability variance granted pursuant to this subsection, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

c. The board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than two (2) times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board:

1) The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

2) For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in 29-A, M.R.S.A., §101.42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to 29-A M.R.S.A., §521 and owned by the person with the permanent disability.

3) The board may impose conditions on the variance granted pursuant to this subsection.

d. For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under 5 M.R.S.A., §4553-A.

3. Variances shall not be granted for establishment of any uses otherwise prohibited by this ordinance, except as provided for in Section 16.4.D. for change of nonconforming use.

4. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this ordinance to the greatest extent possible, and in doing so may impose such conditions on the variances as it deems necessary.

C. **Ordinance Interpretation:** The Board may interpret the provisions of any Town Ordinance which are called into question. An interpretation may be made as part of an appeal or may be at the request of the Board of Selectmen, Planning Board, Code Enforcement Officer, local Plumbing Inspector or Road Commissioner.

D. **District Boundary Lines Interpretation:** An interpretation of Zone boundaries may be made as part of an appeal hearing or made at the request of the Board of Selectmen, Planning Board, or Code Enforcement Officer.

E. **Limitations:** The Board of Appeals may not hear appeals for requests for tax abatements or poverty abatements

Section 17.4. MEETINGS

A. The annual organization meeting of the Board of Appeals shall be the first regular meeting of each fiscal year.

B. The regular meeting of the Board shall be pursuant to a schedule adopted by the Board. The Chairperson shall call a meeting of the Board in response to a written request for an appeal or variance by any aggrieved party or property owner, or an interpretation request by a town official as provided for above. Such a meeting shall be held within thirty (30) days of receipt of a written application and the applicant and abutters and town officials shall have at least seven (7) days' notice of the meeting date.

C. Special meetings of the Board may be called by the Chairperson. At least forty-eight (48) hours written notice of the time, place, and business of the meeting shall be given to each member of the Board of Appeals, Selectmen, Town Manager, Planning Board, and Code Enforcement Officer or Local Plumbing Inspector.

D. All meetings of the Board of Appeals shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for consultation between the Boards and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a disadvantage.

Section 17.5. VOTING

A. A quorum shall consist of four (4) members of the Board. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the Chairperson to call a special meeting for a subsequent date. If a member has a conflict of interest, that member shall not be counted by the Board in establishing the quorum for such matter.

B. Decisions on any matter before the Board shall require the affirmative vote of a majority of the membership at the meeting or hearing but not less than three (3) affirmative votes.

C. If the Board has associate members, the Chairperson shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from any portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.

D. No member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon.

Section 17.6. APPLICATION PROCEDURE

A. Any person aggrieved by an action that comes under the jurisdiction of the Board must file such application for appeal, in writing on forms provided by the Town within thirty (30) days of the granting or denial of a permit or application. The applicant shall file this appeal with the Board Secretary at the Town Office, setting forth the ground for the appeal. Upon receiving the application for appeal, the Board Secretary shall notify the Chairperson of the Board.

B. Any person requesting a variance that comes under the jurisdiction of the Board of Appeals must file an application for a variance, in writing on forms provided by the Town. The application must be filed with the Board Secretary, who, upon receiving the application shall notify the Chairperson of the Board.

C. The burden of proof shall be on the applicant.

D. The applicant shall submit eight (8) copies of all application materials.

Section 17.7. HEARINGS

A. The Board of Appeals shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a completed application for an administrative appeal or variance. The thirty (30) day requirement may be extended by mutual agreement between the Board and the applicant.

B. The Board of Appeals shall cause notice of the date, time, and place of such hearing, the location of the building or lot referenced in the appeal, and the general nature of the question involved, to be given to the applicant, and to be published in a newspaper of general circulation in the municipality at least seven (7) dates prior to the hearing . The Board shall also cause notice of the hearing to be given to the owners of abutting property, owners of the property referenced in the appeal (if no the

applicants), the Selectmen, the Planning Board, the Code Enforcement Officer, and the Plumbing Inspector (if relevant) at least ten (10) days prior to the date of the hearing.

C. The Board of Appeals is authorized to adopt "Rules of Conduct and Procedures for Conducting Public Hearings."

Section 17.8. DECISIONS

A. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing on the appeal or request. If the Board fails to make a decision within thirty (30) days, and the time is not extended by mutual written consent, the appeal or request is deemed denied.

B. The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the materials issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.

C. Notice of any decision shall be sent by certified mail or hand delivered to the applicant, his or her representative or agent, the Planning Board, and Code Enforcement Officer, the Selectmen within seven (7) days of the decision.

D. Decisions of the Board shall be filed in the office of the Town Clerk and shall be made a public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

Section 17.9. RECONSIDERATIONS

A. The Board may reconsider any decision made under this Article within 45 days of its prior decision, of its own accord, or upon the request of an aggrieved party. A request to the Board to reconsider must be filed within ten (10) days of the decision to be reconsidered. A reconsideration vote and the action taken on that reconsideration must be completed within forty-five (45) days of the date of the vote on the original decision.

B. Reconsideration should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or,

2. The Board misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction.

Section 17.10. APPEAL TO SUPERIOR COURT

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of the vote on any decision of the Board of Appeals.

ARTICLE 18: ADMINISTRATION, ENFORCEMENT, & PENALTIES

Section 18.1. ADMINISTERING AGENCIES

A. **Code Enforcement Officer:** Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO) shall administer and enforce this Ordinance. No permit application shall be approved by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties:

1. Applications and fees. Review and act upon applications as set forth in this Ordinance. Collect any fees due. Refer/process all applications as required.
2. CEO Permit approvals. Act upon permit applications that are under the jurisdiction of the CEO as set forth in this Ordinance.
3. Board of Appeals applications. Refer requests for variances and appeals to the Board of Appeals.
4. Inspections. Inspect sites where permit applications have been approved to ensure compliance with local Ordinances.
5. Complaints and violations. Investigate complaints and reported violations.
6. Reports and records. Keep written inspection reports and thorough records.
7. Process and review the applications, which are under the jurisdiction of the Planning Board, as set forth in this Ordinance.
8. Process and review the applications, which are under the jurisdiction of the Board of Appeals, as set forth in this Ordinance.
9. Violation notices. Issue violation notices.
10. Enforcement. Carry out enforcement procedures as outlined in Section 18.3 below and as required by State Statute and State Rules.
11. Consent agreements. Process or act on consent agreements involving violations of this Ordinance.
12. Court. Appear and represent the Town in court when necessary.
13. Permit revocations. Revoke any permit after notice if it was issued in error or if it was based on erroneous information.
14. Interpretation. May request an advisory opinion from the Board of Appeals when there is a question concerning the interpretation of this Ordinance.

B. **Local Plumbing Inspector:** The Local Plumbing Inspector shall have the following duties:

1. Applications and fees. Act upon all Subsurface Wastewater Disposal System Applications and Plumbing Applications. Collect any fees due.

2. Inspections. Inspect sites where permit applications have been approved to ensure compliance with State Rules and Codes.
3. Violation notices. Issue violation notices.

C. **Planning Board**: The Planning Board shall be responsible for reviewing and acting upon applications as set forth in this Ordinance.

D. **Board of Appeals**: The Board of Appeals shall have the authority and responsibilities as set forth in Article 17.

E. **Road Commissioner**: The Road Commissioner shall be responsible for reviewing and acting upon applications as set forth in this Ordinance

F. **Select Board**: The Select Board shall be responsible for reviewing and acting upon State required licenses as set forth in this Ordinance

Section 18.2. PERMITS REQUIRED

A. **Building Permit:** No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the Building Inspector. No change of use or resumption of a non-conforming use may occur without a permit issued by the Building Inspector. No other activity which may be referenced elsewhere in this Ordinance as requiring a permit shall commence without a permit issued by the Building Inspector. No permit shall be issued except in conformity with the provisions of this Ordinance and the provisions of other applicable state and local codes, and after the necessary approvals have been secured from local officials. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located.

B. **Certificate of Occupancy:**

1. A certificate of occupancy shall be required and obtained from the Code Enforcement Officer prior to the occupancy or use of any building, structure or any portion thereof for which a building permit was obtained.
2. Occupancy or use without the required certificate shall be deemed to be a violation of this Code and subject to enforcement action as provided in Section 18.5 of this Ordinance.
3. The purpose of the certificate of occupancy is to ensure compliance with this Ordinance and that the building, structure or any portion thereof was constructed as was permitted.

C. **Installation of Public Utility Service:** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

D. **Driveway & Entrance Permit:** No driveway, entrance or approach within the limits of the right of way for any Town of Durham public road or approved private road may be constructed, reconstructed except in accordance with a Driveway and Entrance Permit issued by the Town of Durham upon application.

Section 18.3. PERMIT APPLICATION REVIEW PROCEDURE

A. **Code Enforcement Officer:** The procedure for administering a permit shall be as follows, unless specified elsewhere in this Ordinance:

1. **Submission of Permit Application:**

   a. **Determination of complete application:** Within ten (10) days of the date of receiving a written application the Code Enforcement Officer shall review the application for completeness. If the application is incomplete the Code Enforcement Officer shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six (6) months shall be deemed an abandonment of the application.

   b. **Action on complete application:** Within ten (10) working days of the date of receipt of a complete application the Code Enforcement Officer shall examine such application to determine whether or not the proposed building, structure or use would be in compliance with this Ordinance, and act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the Ordinance.

2. **Applicant Responsibility:**

   a. **Burden of proof:** The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance.

   b. **Posting:** Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.

   c. **Expiration of Approval:** Unless otherwise permitted herein, the work authorized by a permit must be commenced within twelve (12) months of the date of issuance and must be completed within twenty-four (24) months after the date of commencement. Completed shall include finished foundation, installed exterior doors as specified below, finished exterior roofing, windows installed, and finish grading executed. A permit shall be renewed by the Code Enforcement Officer for an additional twenty-four (24) month increment if:

      1) The applicant intends to finish the activity within such period; and,

      2) The applicant explains in detail why the activity was not completed within the original permit time limit.

3. **Permit Approval:**

a. An application for a permit shall not be approved prior to the applicant receiving their driveway/entrance permit, if one is required, from the Maine Department of Transportation for access onto a State roadway.

b. An application for a permit shall not be approved prior to the applicant receiving their Natural Resources Protection Act permit from Maine Department of Environmental Protection, if one is required.

c. An application for a permit shall not be approved prior to the applicant receiving their Conditional Use/Site Plan Review permit, if one is required.

d. An application for a permit shall not be approved if the property or the proposed project is not in compliance with the following State of Maine 's Statutes:

1) Junkyards & Automobile Graveyards Statute; or,

2) Dangerous Building Statute.

B. **Local Plumbing Inspector:** The procedure for administering a permit shall be as required per the Subsurface Wastewater Disposal Rules and the Maine State Internal Plumbing Code.

C. **Road Commissioner:** The procedure for administering a permit shall be as follows:

1. **Submission of Permit Application:**

a. **Determination of complete application**: Within thirty (30) days of the date of receiving a written application the Road Commissioner shall review the application for completeness. If the application is incomplete the Road Commissioner shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six (6) months shall be deemed an abandonment of the application.

b. **Action on complete application:** Within seven (7) working days of the date of receipt of a complete application the Road Commissioner or his/her designee shall examine the application and complete a site inspection to determine whether or not the proposed entrance is compliance with this Ordinance and act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the Ordinance.

2. **Applicant Responsibility:**

a. **Burden of proof:** The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance.

b. **Posting:** Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.

3. **Expiration of Approval:** If construction is not completed within one (1) year from the date the approval is granted, the approval becomes invalid. The Road

Commissioner or his/her designee shall renew the approval within 30 days after the expiration of the approval upon payment of a fee as specified in this Ordinance. Otherwise the permit becomes invalid and the application process must begin anew.

D. **Planning Board:** The procedure for administering a permit shall be as specified in Articles 6, 7, and 8 of this Ordinance, according to the type of permit being requested.

E. **Board of Appeals:** The procedure for administering a permit shall be as specified in Article 17 of this Ordinance.

F. **Select Board:** The procedure for administering a license shall be as follows:

1. **Submission of Permit Application:**

   a. **Determination of complete application**: Within thirty (30) days of the date of receiving a written application the Select Board or their designee shall review the application for completeness. If the application is incomplete the Select Board or his/her designee shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six (6) months shall be deemed an abandonment of the application.

   b. **Action on complete application:** Within forty-five (45) working days of the date of receipt of a complete application the Select Board or their designee shall act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the Ordinance.

2. **Submission Requirements:**

   a. **Burden of Proof**: The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance and any applicable State laws and rules.

   b. Prior to issuance of the municipal license the applicant shall present either a permit from the Maine Department of Environmental Protection (DEP) or a letter from DEP stating that a permit is not required.

Section 18.4. PERMIT APPLICATION SUBMISSION REQUIREMENTS

Submission requirements may be waived if that information is not required to determine compliance with applicable standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

A. **Written application**: Every applicant for a permit shall submit a written application on a form provided by the municipality. The following items, when appropriate, shall be included with the application:

   1. A scaled site plan showing:

a. The shape, size and location of the lot to be built upon and structure(s) to be erected, altered or removed.

b. Any structure(s) already on the lot.

c. Depth of front yards of structure(s) and adjoining lots.

2. Statement of intended use.

3. Documentation that the applicant has right, title or interest in the property.

4. Any other information needed by the Code Enforcement Officer, Planning Board, or the Board of Appeals to determine compliance with the provisions of this Ordinance and /or any other information required by this Ordinance.

5. Signature. All applications shall be signed by the owner of the property or the owner' s legal agent, certifying that the information on it is complete and accurate. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.

6. Application to be dated. All applications shall be dated, and the date and time of its receipt shall be noted upon each application.

B. **Fees:**

1. No permit shall be issued until the application fee(s) are paid. Application fees shall not be nonrefundable, unless noted elsewhere in this Ordinance. Checks are to be made payable to the Town of Durham.

2. All permit fees shall be established in a fee schedule adopted annually by the Select Board based on analysis of Town processing costs and comparison with fees in similar communities.

Section 18.5. ENFORCEMENT

A. **Violations:** If the Code Enforcement Officer finds that any provisions of this Ordinance has been violated, he shall notify by certified mail the property owner and such other person as may be responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct. The Town Attorney or Code Enforcement Officer with approval from the Board of Selectmen, shall institute, in the name of the Town, any and all action, legal and equitable, that may be appropriate or necessary for the enforcement of the provisions of this Ordinance. Any person, firm or corporation owning or having control of any building or premises or part thereof who violates any provisions of this Ordinance, or fails to take the required corrective measures, shall be subject to the provisions of 30-A MRSA, §4452 as the same shall be amended from time to time. Each day such violation exists shall constitute a separate offense.

B. **Consent agreements:** The Board of Selectmen, or its authorized agent, may enter into a consent agreement to eliminate violations and to collect civil penalties. Only the Board of Selectmen may enter into a consent agreement that would allow an illegal structure or use to continue.

ARTICLE 19: DEFINITIONS

Section 19.1. DEFINITIONS

A. **Construction of Language:** All words not defined herein shall carry their customary and usual dictionary meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural. The word "shall'' is used to indicate the mandatory and the word "may" is used to indicate the permissive. The words "occupied" or "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied." Obvious typographical errors may be disregarded in interpretation of this Ordinance. Definitions followed by [brackets] indicate that the words have specific reference to individual articles and do not generally apply to all articles.

1. **ABUTTING PROPERTY:** Any lot that is physically contiguous with the lot in question even if only at a point, and any lot that is located directly across a public or private street or way from the lot in question. "Directly across" shall mean at least touched by a straight extension of the side property lines across said street or way.
2. **ACCESSORY APARTMENT:** A separate, secondary dwelling unit located on a property with a single-family dwelling.
3. **ACCESSORY BUILDING OR STRUCTURE:** A building or structure customarily incidental and subordinate to a principal building allowed in the district in which it is located and located on the same lot with such principal building. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.
4. **ACCESSORY USES:** Uses customarily incidental and subordinate to a principal use allowed in the district in which it is located and located on the same lot with such principal use. Accessory uses, when aggregated, shall not subordinate the principal use of the lot.
5. **ADJACENT GRADE:** The natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [Article 11, Floodplain Regulations]
6. **ADMINISTRATIVE APPEAL:** An appeal to the Board of Appeals from a determination made by the Code Enforcement Officer, Road Commissioner, or Planning Board in their administration of this Ordinance or any other ordinance or code over which they have jurisdiction.
7. **AGGRIEVED PARTY:** Any person who can demonstrate that he or she will suffer a particularized injury by issuance or non-issuance of the license/permit approval in question. A particularized injury is one that directly operates against a party's property, pecuniary or personal rights. An injury suffered by all of the citizens of the Town in an equal and proportionate manner is not a particularized injury.

8. **AGRICULTURE:** The cultivation of the soil, production of crops, including crops in commercial greenhouses, and the raising of livestock, including animal husbandry.
9. **AGRICULTURAL LAND MANAGEMENT PRACTICES:** Procedures utilized in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.
10. **AGRICULTURAL USES:** The production, keeping or maintenance for sale or lease, of plants, and/or animals, including but not limited to forages and sod crops, dairy animals and dairy products, poultry and poultry products, livestock, and livestock products, fruits and vegetables and ornamental and greenhouse products. Agriculture does not include forest management, timber harvesting activities and food processing operations.
11. **ALTERED**: Includes the words "rebuilt", "reconstructed", "rehabilitated", "restored", and "demolished" or any other change to the exterior facade of a structure. [Article 12, Historic Districts]
12. **APPLICANT:** The person applying for a permit or approval under this Ordinance.
13. **AQUIFER:** A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.
14. **AQUIFER RECHARGE AREA:** A primary or secondary recharge area composed of porous material or rock sufficiently fractured.
15. **ARCHEOLOGICAL SITE:** A parcel of land where physical remains of past human life and activities exist. To qualify, the site must relate to historic or prehistoric activities which predate 1780 A.D.
16. **ARCHITECTURAL ELEVATIONS:** An architectural drawing of the flat view of one side of a building.
17. **AREA OF SPECIAL FLOOD HAZARD:** The land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 11.1 of this Ordinance. [Article 11, Floodplain Regulations]
18. **AUTHORIZED AGENT:** An individual or a firm having written authorization to act on behalf of an applicant or aggrieved party. The authorization shall be signed by the property owner(s).
19. **AUTOMOBILE GRAVEYARD:** As defined in 30-A M.R.S.A. §3752.
20. **AUTOMOBILE RECYCLING BUSINESS:** As defined in 30-A M.R.S.A §3752.
21. **BACK LOT:** A lot does not have frontage on a private or public road.
22. **BASAL AREA:** The area of cross-section of a tree stem at four and one-half (4.5’) feet above ground level and inclusive of bark. [Article 9, Shoreland Zoning]

23. **BASE FLOOD:** The flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood. [Article 11, Floodplain Regulations]

24. **BASEMENT:** Any area of the building having its floor subgrade (below ground level) on all sides. Includes any portion of a structure with a floor-to-ceiling height of six (6') feet or more and having more than fifty (50%) percent of its volume below the existing ground level. [Article 9, Shoreland Zoning & Article 11, Floodplain Regulations]

25. **BED AND BREAKFAST ESTABLISHMENT:** A commercial building that accommodates, for a fee, travelers and other transient guests who are staying for a limited duration and having sleeping rooms. A bed and breakfast establishment may include the serving of breakfast to house guests but shall not serve other meals or have dining facilities open to the public. For purposes of this Ordinance, bed and breakfast establishments shall be considered as home occupations if they provide no more than four units for rent, and as hotels or motels if they provide more than six (6) units for rent. Bed and breakfast establishments that provide five or six (6) units for rent may be considered as home occupations if, based upon the evidence submitted by the applicant, the Planning Board finds that:

    a. the sewage disposal system for the property complies with the current requirements of the Maine State Plumbing Code and is sized to accommodate the proposed intensity of use; and

    b. the water supply for the property will not adversely affect the quality or quantity of groundwater supplies of abutting property owners, and shall otherwise be considered as hotels or motels.

26. **BOAT LAUNCHING FACILITY:** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers. [Article 9, Shoreland Zoning]

27. **BORROW PIT:** New and existing sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials from excavated areas hereinafter collectively referred to as "borrow pits." [Article 14, Extractive Industries]

28. **BUFFER STRIP:** An area of land that is covered by vegetation capable of regeneration and succession, whether retained as undisturbed vegetation or re-established following disturbance of the site. A buffer strip runs along the border between the development activity and the adjacent piece of land or body of water and serves to protect that area from new or adverse effects or preserves some existing quality or use in the area of development.

29. **BUILDING ENVELOPE:** The minimum contiguous area on which all structures and development (such as homes, garages, driveways and disposal system) shall be located. The Building Envelope shall not include any area in

the Resource Protection District, wetlands, or any area with slope greater than twenty (20%) percent.

30. **BUILDING:** Any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, or chattel. Each portion of a structure, separated from other portions by a fire wall, shall be considered a separate Building.

31. **BUSINESS SERVICE:** A service exemplified by the types of services listed under U. S. Standard Industrial Classification Code 50 through 69, including but not limited to: advertising, credit reporting and collection, mailing and reproduction services, services to building, personnel supply services, computer data processing services, management and public relations, and the business offices of corporations or firms.

32. **CAMPGROUND:** Any area or tract of land that is used for temporary overnight accommodation with or without shelter, by (2) two or more parties. A campground shall have sites for tents or recreational vehicles and may have cabins or yurts as permitted with state licensing. The word "campground" shall include the words "camping ground" and "tenting grounds."

33. **CANOPY:** – The more or less continuous cover formed by tree crowns in a wooded area. [Article 9, Shoreland Zoning]

34. **CERTIFICATE OF COMPLIANCE:** A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance. [Article 11, Floodplain Regulations]

35. **CHANGE OF USE:** A change in the type of occupancy/use of a building, structure, or a portion thereof, and /or the land, such that the basic type of use or scope is changed.

36. **CODE ENFORCEMENT OFFICER:** The official responsible for enforcing this Ordinance and for performing other duties set forth herein, by State statute, and by other ordinances. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Plumbing Inspector, and the like where applicable.

37. **COMMERCIAL USE:** Connected with the buying or selling of goods or services or provision of facilities for a fee. Within the shoreland zone, a commercial use is the use of lands, buildings, or structures, other than a "home-based business," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental or residential buildings and/or dwelling units.

38. **COMMISSION:** The Commission acting as the Historic District Commission established in Section 12.2. [Article 12, Historic Districts]

39. **COMPLETE APPLICATION:** An application shall be considered complete upon submission of the required fee and all information required by this Ordinance as determined by the Code Enforcement Officer, a vote of the

Planning Board, or by a vote of the Planning Board to waive the submission of required information.

40. **COMPREHENSIVE PLAN:** The Comprehensive Plan of the Town of Durham.

41. **CONDITIONAL USE:** A use that generally would be appropriate in the zoning district for which it is proposed after review and with certain restrictions and controls to meet the intentions and purposes of this Ordinance. Conditional uses are permitted only after review and approval by the Planning Board.

42. **CONSTRUCTED or CONSTRUCTION:** Includes the words "built", "erected", "enlarged", "installed", "moved", "reconstructed", "rehabilitated", "restored", and "altered." [Article 12, Historic Districts]

43. **CONTRIBUTING RESOURCE:** A building, site, structure or object adding to the historic significance of a property. [Article 12, Historic Districts]

44. **CULTURAL FACILITIES:** Not-for-profit facilities dedicated to a public or philanthropic purpose and intellectual endeavor, such as a library, museum, auditorium, or performing of visual arts center.

45. **DAY CARE, HOME:** Anyone who provides, on a regular basis and for consideration, care and protection for three to twelve unrelated persons for any part of a day out of their primary residence and is required to be licensed by the State. Any facility, the chief purpose of which is to provide education, shall not be considered to be Home Day Care. A Home Day Care shall be considered a Home-Based Business.

46. **DAY CARE CENTER:** Anyone who provides, on a regular basis and for consideration, care and protection for thirteen or more unrelated persons for any part of the day and is required to be licensed by the State. Any facility, the chief purpose of which is to provide education, shall not be considered to be a Day Care Center.

47. **DEMOLITION:** The razing of any structure or building or any exterior architectural feature therof. [Article 12, Historic Districts]

48. **DEVELOPMENT:** Any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

49. **DIAMETER at BREAST HEIGHT (DBH):** The diameter of a standing tree measured four and one-half (4.5’) feet from ground level. [Article 9, Shoreland Zoning]

50. **DIMENSIONAL REQUIREMENTS:** Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

51. **DISABILITY:** Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

52. **DISPOSAL:** "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or to be emitted into the air, or discharged into any waters, including ground waters.

53. **DOMICILE HOME STAND:** That part of each individual mobile home lot which has been reserved for the mobile home. [Article 15, Mobile Home Parks]

54. **DRIVEWAY:** A vehicular access way serving no more than two dwelling units on a single lot. All other vehicular access ways shall be considered roads.

55. **DRIVEWAY:** A vehicular access-way less than five hundred (500') feet in length serving two single-family dwellings or one two-family dwelling, or less. [Article 9, Shoreland Zoning]

56. **DWELLING:** Any building or structure or any portion thereof designed or used for residential purposes.

    a. **Single-Family Dwelling:** A Structure containing only one Dwelling Unit for occupation by not more than one family. The terms shall include modular homes and mobile homes as defined herein.

    b. **Two-Family Dwelling:** A single Structure containing two Dwelling Units on one parcel of land, such building being designed for residential use and occupancy two families living independently of each other.

    c. **Multi-Family Dwelling:** A single Structure containing three to six Dwelling Units, where each Dwelling Unit is designed for residential house and occupancy by a family living independently of families in the other Dwelling Units.

57. **DWELLING UNIT:** A room or group of rooms, used primarily as living quarters for one Family, and that includes provisions for living, sleeping, cooking, and eating. The term shall not include hotel or motel rooms or suites, rooming house rooms, or similar accommodations.

58. **ELEVATED BUILDING:** - A building without a basement that is built in the case of a building in Zones AE or A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of Zones AE or A, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with

hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Section 11.6.L. [Article 11, Floodplain Regulations]

59. **ELEVATION CERTIFICATE:** An official form (FEMA Form 81-31, 07/00, as amended) that:

    a. Is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,

    b. Is required for purchasing flood insurance. [Article 11, Floodplain Regulations]

60. **EMERGENCY OPERATIONS:** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury. [Article 9, Shoreland Zoning]

61. **ESSENTIAL SERVICES:** Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services. [Article 9, Shoreland Zoning]

62. **EXCAVATION CONTRACTOR**: An individual or firm that either is engaged in a business that causes the disturbance of one or more cubic yards of soil, or is in a business in which the disturbance of one or more cubic yards of soil results from an activity that the individual or firm is retained to perform. Disturbance includes: grading, filling, and removal. A person or firm engaged in agriculture or timber harvesting activities is not considered an excavation contractor as long as best management practices for erosion and sedimentation control are used. Municipal, state and federal employees engaged in projects associated with that employment are not considered excavation contractors. [Article 9, Shoreland Zoning]

63. **EXPANSION OF A STRUCTURE:** An increase in the footprint or height of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses. [Article 9, Shoreland Zoning]

64. **EXPANSION OF USE:** The addition of one or more months to a use's operating season; or the use of more footprint or ground area devoted to a particular use. [Article 9, Shoreland Zoning]

65. **EXTERIOR ARCHITECTURAL FEATURE:** The architectural style and general arrangement of the exterior of a building or structure, including but not limited to the kind, color and texture of the building materials; the type and style of all roofs, windows, doors, lights, dormers, gable cornices, porches,

decorative trim, etc.; and the location and treatment of any vehicular access or parking space. [Article 12, Historic Districts]

66. **FAMILY:** One or more persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, hotel, or other transient visitor quarters. A family shall not exceed five persons not related by blood or marriage.

67. **FINANCIAL SERVICE:** A service exemplified by the types of services listed under the U.S. Standard Industrial Classification Code 61, including banking, other credit agencies, security and commodity brokers and services and insurance, real estate, and investment offices.

68. **FLOOD OR FLOODING:**

    a. A general and temporary condition of partial or complete inundation of normally dry land areas from:

        1) The overflow of inland or tidal waters.

        2) The unusual and rapid accumulation or runoff of surface waters from any source.

    b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition. [Article 11, Floodplain Regulations]

69. **FLOOD ELEVATION STUDY:** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations. [Article 11, Floodplain Regulations]

70. **FLOOD INSURANCE RATE MAP (FIRM):** An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. [Article 11, Floodplain Regulations]

71. **FLOOD INSURANCE STUDY:** See Flood Elevation Study. [Article 11, Floodplain Regulations]

72. **FLOODPLAIN OR FLOOD-PRONE AREA:** Any land area susceptible to being inundated by water from any source (see flooding). [Article 11, Floodplain Regulations]

73. **FLOODPLAIN MANAGEMENT:** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations. [Article 11, Floodplain Regulations]

74. **FLOODPLAIN MANAGEMENT REGULATIONS:** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction. [Article 11, Floodplain Regulations]

75. **FLOODPROOFING:** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents. [Article 11, Floodplain Regulations]

76. **FLOODWAY:** See Regulatory Floodway. [Article 9, Shoreland Zoning & Article 11, Floodplain Regulations]

77. **FLOODWAY ENCROACHMENT LINES:** The lines marking the limits of floodways on federal, state, and local floodplain maps. [Article 11, Floodplain Regulations]

78. **FLOOR AREA:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

79. **FOOTPRINT:** Exterior outline of the buildings. The entire area of ground covered by the structure(s) on a lot. All dimensions shall be measured between exterior faces of walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks and cantilevered or similar overhanging extensions.

80. **FORESTED WETLAND:** A freshwater wetland dominated by woody vegetation that is approximately twenty (20') feet or taller. [Article 9, Shoreland Zoning]

81. **FOUNDATION:** The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material. [Article 9, Shoreland Zoning]

82. **FREEBOARD:** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions. [Article 11, Floodplain Regulations]

83. **FRESHWATER WETLANDS:** Freshwater swamps, marshes, bogs, and similar areas, other than forested wetlands that are:

    a. Of ten (10) or more contiguous acres, or less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river stream, or brook, such that, in a natural state, the combined surface area is in excess of ten (10) acres; and,

b. Inundated or saturated by surface or groundwater at a frequency and for duration sufficient to support, and which under normal circumstances do support, a prevalence wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

84. **FUNCTIONALLY WATER-DEPENDENT USES:** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, waters and that cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to waters. Recreational boat storage buildings are not considered to be a functional water-dependent use. [Article 9, Shoreland Zoning & Article 11, Floodplain Regulations]

85. **GREAT POND:** Any inland body of water that, in a natural state, has a surface area in excess of ten (10) acres and any inland body of water artificially formed or increased that has a surface area in excess of thirty (30) acres except, for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held in the name of a single owner. (The only Great Pond in Durham is Runaround Pond)

86. **GROUND COVER:** Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor. [Article 9, Shoreland Zoning]

87. **GROUND FLOOR ELEVATIONS:** The elevation of a building's ground floor above sea level.

88. **GROUNDWATER EXTRACTION:** The process of extracting two thousand (2,000 gal.) gallons per day or more of water from any groundwater source, either temporarily or permanently, regardless of whether the water is used for irrigation, industry, recreation, flood control or treatment to produce drinking water.

89. **HAZARDOUS MATERIAL OR WASTE:** Any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form that, because of its quantity, concentration, or physical chemical or infections characteristics, may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitation illness, or

b. Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

These wastes include, but are not limited to, those that are toxic, corrosive, ignitable, or reactive. Characterization of these categories is follows:

a. **TOXICITY:** Toxicity includes several factors, including unnatural genetic activity (including cogenic, mutagenic and teratogenic activity), potential for bioaccumulation in tissue, or acute chronic toxicity to various organisms, including humans.

b. **CORROSIVITY:** Corrosive waste is considered hazardous if it is aqueous and has a pH less than or equal to 3 or greater than or equal to 12, or if it corrodes steel (SAE 1020) at a rate greater than 0.250" per year at a temperature of 130 degrees Fahrenheit.

c. **IGNITABILITY:** An ignitable waste is considered hazardous if it is liquid and has a flash point less than 60 degrees centigrade (140 degrees Fahrenheit); is not a liquid and is liable to cause fires through friction, absorption of moisture, spontaneous chemical changes, or retained heat from manufacturing processes; when ignited, burns so vigorously and persistently so as to create a hazard during management; or is an ignitable compressed gas.

d. **REACTIVITY:** A reactive waste is considered hazardous if it is normally unstable and readily undergoes violent chemical change without denoting; reacts violently with water, forms potential explosive mixtures with water or generates toxic gases, vapors or fumes when mixed with water; or is a cyanide or sulfide-bearing waste that can generate toxic gases, vapors, or fumes when exposed to mild acidic or basic conditions.

In determining whether a material constitutes a Hazardous Waste, the Board will be guided by any finding or regulation made by the United States Environmental Protection Agency or Maine Department of Environmental Protection that such material is hazardous. The burden will then be upon the party claiming the material not to be hazardous to show that the material fails to meet the above definition.

90. **HAZARD TREE:** A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes, hurricane-force winds, tornados, microbursts, or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking

areas, structures, campsites, and any other developed area where people frequently gather and linger. [Article 9, Shoreland Zoning]

91. **HEIGHT OF BUILDING/HEIGHT OF STRUCTURE:** Vertical measurement from the highest point of the finished grade on the foundation to the highest point of the Building or Structure, excluding incidental protrusions such as chimneys and antennae. Within the shoreland zone , the height of a building or structure shall mean the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

92. **HIGH INTENSITY SOIL SURVEY:** A map prepared by a Certified Soil Scientist, identifying the soil types down to one eighth (1/8) acre or less at a scale equivalent to the subdivision plan submitted. The map shall show the location of all test pits used to identify the soils and shall be accompanied by a log of each sample point identifying the textural classification and the depth to a limiting factor such as seasonal high-water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

93. **HISTORIC OR ARCHAEOLOGICAL RESOURCES:** Areas identified by a governmental agency, such as the Maine Historic Preservation Commission, as having significant value as an historic or archaeological resource, and any areas identified in the municipality' s comprehensive plan.

94. **HISTORIC STRUCTURE:** Any Structure that is:

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

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

    c. Individually listed on a state inventory of historic places in states with the Maine Historic Preservation Commission; or,

    d. Individually identified by the Town's Comprehensive Plan.

95. **HISTORIC DISTRICT:** A geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objectives united by past events or aesthetically by plan or physical development and designated in the Town Land Use Ordinance. The Southwest Bend Historical Overlay District as established in the Town Land Use Ordinance is a Historic District. [Article 12, Historic Districts]

96. **HOME-BASED BUSINESS:** A business use performed or conducted within a dwelling or accessory structure by the residents thereof, that:

    a. Is accessory to the residential use, and;

    b. Does not change the character of the dwelling.

97. **HOTEL OR MOTEL:** A commercial building or group of buildings built primarily to accommodate, for a fee, travelers and other transient guests, who are staying for a limited duration, with sleeping and associated rooms. A hotel or motel may include suites or rooms, cooking and similar facilities within the rooms to accommodate guests, restaurant facilities where food is prepared and meals served to its guests and other customers and associated facilities for the convenience and servicing of guests. A hotel or motel room or suite of rooms, as distinguished from a dwelling unit, shall contain less than a total of six hundred (600 sq. ft.) square feet of living area, provided that the area may be larger if, based on the evidence presented, the Planning board finds that the facilities will function or is functioning as a hotel or motel and not as a residential dwelling unit.

98. **IMPERVIOUS SURFACE:** Includes buildings, concrete, asphalt, and all other similar surfaces that shed water so as to prevent absorption into the ground at the point where the water first hits the ground.

99. **IMPROVEMENT:** Any place, structure, building, fixture, object, landscape, or topographical feature, which in whole or part constitutes an exterior betterment, adornment or enhancement or any real property. [Article 12, Historic Districts]

100. **INCREASE IN NONCONFORMITY OF A STRUCTURE:** Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in non-vegetated surfaces, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures. [Article 9, Shoreland Zoning]

101. **INDUSTRIAL USE:** Connected with the assembling, fabrication, finishing, manufacturing, packaging or processing of goods or the extraction of minerals.

102. **INSTITUTIONAL USE:** A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or

operated building, structure or land used for public purposes. [Article 9, Shoreland Zoning]

103. **JUNKYARD:** As defined in 30-A M.R.S.A. §3752.

104. **LEACHABLE MATERIAL:** Liquid or solid materials which are cable of releasing harmful chemicals to groundwater. This does not include sanitary wastewater.

105. **LICENSED FORESTER:** A forester licensed under 32 M.R.S.A. Chapter 76. [Article 9, Shoreland Zoning]

106. **LIGHT INDUSTRIAL USES:** Industrial activity involving the manufacturing, packaging, assembly or distribution of finished products from previously prepared material, including by way of example only and not limited to, the following: Bakeries, bottling, printing and publishing, pharmacies, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen surfaces, tool and die shops, and the packaging of foods. Light industrial uses do not include the processing of raw materials or salvaging operations.

107. **LIQUIDATION HARVESTING:** For the purposes of Article 6, "liquidation harvesting" has the same meaning as in 12 M.R.S.A. §8868.6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

108. **LOCALLY ESTABLISHED DATUM:** For purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used. [Article 11, Floodplain Regulations]

109. **LOT:** A contiguous parcel of land in a single or joint ownership described on a deed, plot plan, or similar legal document. This term shall also include a “parcel” or “plot.”

110. **LOT AREA:** The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots. [Article 9, Shoreland Zoning]

111. **LOT WIDTH:** The width of any lot shall be measured wholly within the lot, at the required setback depth, along a line parallel to the front lot line. Lots located on a curved road shall be measured wholly within the lot at the required setback depth, along a line parallel to a straight line connecting the intersections of the front line with the side lot lines.

112. **LOWEST FLOOR:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is

not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Section 11.6.L. of this ordinance. [Article 11, Floodplain Regulations]

113. **MANUFACTURED HOME:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. [Article 11, Floodplain Regulations]

114. **MANUFACTURED HOME PARK OR SUBDIVISION:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. [Article 11, Floodplain Regulations]

115. **MARKET VALUE:** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels. [Article 9, Shoreland Zoning & Article 11, Floodplain Regulations]

116. **MATERIAL:** A substance or substances out of which a building or structure is constructed. [Article 12, Historic Districts]

117. **MEAN SEA LEVEL:** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced. [Article 11, Floodplain Regulations]

118. **MINERAL EXPLORATION:** Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition. [Article 9, Shoreland Zoning]

119. **MINERAL EXTRACTION:** Any extraction of mineral deposits, including gravel, other than mineral exploration solely to determine location, extent, and the composition of deposits.

120. **MINERAL EXTRACTION:** Any operation within any twelve (12) month period which removes more than one hundred (100 yd^3) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site. [Article 9, Shoreland Zoning]

121. **MINIMUM LOT WIDTH:** The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines. [Article 9, Shoreland Zoning]

122. **MINOR DEVELOPMENT:** All development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than fifty (50%) of the market value of the

structure. It also includes, but is not limited to: accessory structures as provided for in Section 11.6.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers. [Article 11, Floodplain Regulations]

123. **MOBILE HOME (INSIDE A MOBILE HOME PARK):** (1) Those units constructed after June 15, 1976, commonly called "never mobile homes", which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, which, in the traveling mode, are fourteen (14') body feet or more in width and are seven hundred and fifty (750 sq. ft.) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this paragraph, except the size requirements and with respect to which manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq; and, (2) Those units commonly called 'modular homes', which the manufacturer certifies are constructed in compliance with the State's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning, or electrical systems contained therein. (3) A vehicular portable structure built on a chassis of which wheels are an intrinsic part designed to be used with or without a permanent foundation as a residence for one of more persons that does not meet either of the definitions contained in sub-paragraphs (1) and (2) above. [Article 15, Mobile Home Parks]

124. **MOBILE HOME~~S~~ (OUTSIDE OF MOBILE HOME PARKS):** Factory-fabricated structures which are built on permanent chassis and are used as dwelling units when connected to the required utilities. For the purposes of this Ordinance, mobile homes are considered to be single-family dwellings if they are occupied by one family only. Mobile homes must conform to this Ordinance and to Article 15.

125. **MOBILE HOME LOT:** That parcel of a mobile home park that provides facilities for long term occupancy of a mobile home and designed for the exclusive use of its occupants. [Article 15, Mobile Home Parks]

126. **MOBILE HOME PARK:** A contiguous parcel of land that has a minimum of twenty (20) acres but no more than one hundred (100) acres and is plotted for

the development of a minimum of twenty (20) mobile home lots. [Article 15, Mobile Home Parks]

127. **MODULAR HOMES:** Factory-built dwellings which are constructed with floor joists and not upon a permanent chassis. For the purposes of this Ordinance, multi-sectional modular homes and single-wide modular homes are considered to be single-family dwellings if they are occupied by only one family.

128. **MULTI-FAMILY DWELLING:** See Dwellings.

129. **NATIONAL GEODETIC VERTICAL DATUM (NGVD):** The national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)". [Article 11, Floodplain Regulations]

130. **NATIVE:** Indigenous to the local forests. [Article 9, Shoreland Zoning]

131. **NEW CONSTRUCTION:** Structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures. [Article 11, Floodplain Regulations]

132. **NON-CONFORMING CONDITION:** A nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect. [Article 9, Shoreland Zoning]

133. **NON-CONFORMING LOT:** A single lot of record, which, at the effective date of this Ordinance, does not meet the minimum lot area, minimum lot area per dwelling unit, or minimum frontage or width requirements of the district in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

134. **NON-CONFORMING STRUCTURE:** A structure that does not meet the minimum setback, maximum lot coverage, or footprint, or maximum height standards of the district in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

135. **NON-CONFORMING USE:** A use of buildings, structures, land, or premises that is not permitted in the district which it is located, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

136. **NON-CONTRIBUTING RESOURCE:** A building, site, structure or object that does not add to the historic significance of a property. [Article 12, Historic Districts]

137. **NON-INTENSIVE RECREATION:** Outdoor recreational uses that involve minimal structural development or alteration of the terrain but which, if properly designed, neither cause nor subject to serious damage from flooding or soil erosion. Example of non-intensive recreational uses include, but are not

limited to, tennis courts, playing fields, pools, outdoor ice-skating rinks, and boat docks. Such uses do not include the use of any mechanized vehicle.

138. **NON-NATIVE INVASIVE SPECIES OF VEGETATION:** Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems. [Article 9, Shoreland Zoning]

139. **NORMAL HIGH-WATER LINE:** That line on the shores and banks of streams and ponds which is discernible because of the different character of the soil or the vegetation due to the influence of surface water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial. Aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pickerelweed, cat tail, wide rice, rushes, marsh grasses. Terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, cedars, sarsaparilla, pines, oaks, ashes, elms, spruces, birches, beeches, larches, and maples. In places where the shore or bank is of such character that the normal high water line cannot be easily determined (as in the case of rock slides, ledges, rapidly eroding or slumping banks), the normal high water line shall be estimated from places where it can be determined by the above method. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. [Article 9, Shoreland Zoning]

140. **NURSING OR CONVALESCENT HOME:** A facility in which nursing care and medical services are performed under the general direction of persons licensed to practice medicine in the State of Maine for the accommodation of convalescent or other persons who are not in need of hospital care, but who do require on a 24-hour basis, nursing care and related medical services.

141. **ONE HUNDRED-YEAR FLOOD:** See Base Flood. [Article 11, Floodplain Regulations]

142. **OPEN SPACE USE:** A use not involving a structure, earth-moving activity, or the removal or destruction of vegetation over, spawning grounds, or fish, aquatic life, bird and other wildlife habitat, or the operation of motor vehicles on land so to create marks upon the earth such as by all-terrain vehicles.

143. **OUTLET STREAM:** Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland. [Article 9, Shoreland Zoning]

144. **PERSON:** An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

145. **PERSONAL SERVICES:** A service exemplified by the types of services listed under the U.S. Standard Industrial Classification Code 62, including but not limited to the following: laundry and cleaning services, photograph studios, shoe repair shops, and funeral homes.

146. **PETROLEUM STORAGE TANK:** Any vessel which is used to store in excess of fifty-five (55 gal.) gallons of petroleum product shall, for the purposes of this Ordinance, be considered permanent; those used to store less than or equal to fifty-five (55 gal.) gallons of petroleum product shall be considered portable. Tanks used to store liquid propane fuel are excluded from this definition.

147. **PIERS, DOCKS, WHARVES, BRIDGES AND OTHER STRUCTURES AND USES EXTENDING OR LOCATED BELOW THE NORMAL HIGH-WATER LINE OR WITHIN A WETLAND:**

    a. Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

    b. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months. [Article 9, Shoreland Zoning]

148. **PREMISES:** One or more parcels of land which are in the same ownership and are contiguous.

149. **PRIMITIVE RECREATION:** Recreational uses that do not require buildings or structures or significant alteration of the terrain, such as hunting, fishing, hiking, primitive camping, snowmobiling, cross-country ski trails, and parks of primarily underdeveloped, natural character. Such used do not include use of all-terrain vehicles (either 3 or 4 wheel), motorize bikes or other motorized vehicles on wheels.

150. **PRINCIPAL STRUCTURE:** "Principal structure'' means any building or structure in which the main use of the premises takes place.

151. **PRINCIPAL USE:** A use other than one which is wholly incidental or accessory to another use on the same lot. [Article 9, Shoreland Zoning]

152. **PROTECTED RESOURCE:** Water bodies, tributary streams, or the upland edge of a wetland protected by mandatory shoreland zoning and from which structures must ~~be~~ meet established setbacks. [Article 9, Shoreland Zoning]

153. **PUBLIC FACILITY:** Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity. [Article 9, Shoreland Zoning]

154. **RECENT FLOODPLAIN SOILS:** The following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa

Alluvial	Cornish	Charles	
Podunk	Rumney	Saco	
Suncook	Sunday	Winooski	[Article 9, Shoreland Zoning]

155. **RECREATIONAL FACILITY:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities. [Article 9, Shoreland Zoning]

156. **RECREATIONAL VEHICLE (RV):** Any of the following:

    a. **TRAVEL RV:** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vocational uses, permanently identified travel RV by the manufacturer of the RV.

    b. **PICK UP COACH:** A structure designed to be mounted on a truck chassis for the use as a temporary dwelling for travel, recreation, and vacation.

    c. **MOTOR HOME:** A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

    d. **CAMPING TRAILER:** A canvas, folding structure, mounted on wheels and designed for travel, recreation and vacation use.

    e. **DEPENDENT RV:** An RV which is dependent upon a service building for toilet and lavatory facilities.

    f. **SELF-CONTAINED RV**: An RV which can operate independent of connections to sewer, water, and electric systems. It may contain water-flushed toilet, lavatory, shower, and kitchen sink, all of which are connected to water storage and gray water and sewage holding tanks located within the RV.

    In order to be considered as a Recreational Vehicle and not as a structure subject to this Ordinance, <u>or</u> the building code and federal manufactured housing standard, the unit must:

    a. Remain with its tires on the ground;

    b. Possess a current registration sticker or papers from any State Division of Motor Vehicles; and,

    c. Be used for human habitation for not more than six (6) months in any twelve (12) -month period.

157. **REGULATOR:** For those small borrow pits of five (5) acres or less located wholly within the Town of Durham, the municipality, in the person of the Code Enforcement Officer. For all other excavations, "regulator" shall mean the Department of Environmental Protection. [Article 14, Extractive Industries]

158. **REGULATORY FLOODWAY:**

a. The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and

b. When not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain. [Article 9, Shoreland Zoning & Article 11 Floodplain Regulations]

159. **RESIDENTIAL DWELLING UNIT:** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. [Article 9, Shoreland Zoning]

160. **RIPRAP:** Rocks, irregularly shaped, and at least six (6") inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less. [Article 9, Shoreland Zoning]

161. **RIVER:** A free-flowing body of water including its associated flood plain wetlands from the point at which it provides drainage for a watershed of twenty-five (25 sq. mi.) square miles to its mouth; the Androscoggin River**.**

162. **RIVERINE:** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. [Article 11, Floodplain Regulations]

163. **ROAD:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined. [Article 9, Shoreland Zoning]

164. **ROAD FRONTAGE:** The linear distance between the sidelines of a lot, measured along the lot that borders upon whatever right-of-way serves as legal access to the lot. For the purposes of this ordinance, the following ways shall constitute legal access to a lot along which frontage may be measured.

a. A way accepted by, or established as belonging to, the Town of Durham, Androscoggin County, or the State of Maine, provided access is not specifically prohibited thereon.

b. An existing private way over which the owner of the lot has an established right of way.

165. **SAPLING:** A tree species that is less than two (2") inches in diameter at four and one half (4.5') feet above ground level. [Article 9, Shoreland Zoning]

166. **SEEDLING:** A young tree species that is less than four and one half (4.5') feet in height above ground level. [Article 9, Shoreland Zoning]

167. **SERVICE DROP:** Any utility line extension which does not cross or run beneath any portion of a water body provided that:

    a. In the case of electric service:

        1) The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and

        2) The total length of the extension is less than one thousand (1,000') feet.

    b. In the case of telephone service:

        3) The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or

        4) The extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000') feet in length. [Article 9, Shoreland Zoning]

168. **SETBACK, FRONT:** The distance between the street right-of-way or easement line, extending the width of the frontage and the nearest part of any principal or accessory structure.

169. **SETBACK, NORMAL HIGH-WATER LINE:** The horizontal distance from the normal high-water line of any perennial stream, river, great pond, or the upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area. [Article 9, Shoreland Zoning]

170. **SETBACK, REAR:** The distance between the rear line of the lot, extending the full width of the lot, and the nearest part of any principal or accessory structure.

171. **SETBACK, SIDE:** The distance between the side property line and the nearest part of any principal or accessory structure. Any lot line not a rear lot line or a front line shall be deemed a side lot line.

172. **SHORE FRONTAGE:** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline. [Article 9, Shoreland Zoning]

173. **SHORELAND ZONE:** The land area located within two hundred and fifty (250') feet, horizontal distance, of the normal high-water line of any great pond or river; within two hundred and fifty (250') feet of the upland edge of a non-forested freshwater wetland ten (10) acres or larger; or within one hundred (100') feet, horizontal distance, of the normal high-water line of a stream. [Article 9, Shoreland Zoning]

174. **SHORELINE:** The normal high-water line, or upland edge of a freshwater wetland. [Article 9, Shoreland Zoning]

175. **SINGLE FAMILY DWELLING:** See Dwellings.

176. **SIGN:** Structure, device, letter, banner, symbol, or other representation, which is used as, or is in the nature of, an advertisement, announcement, or direction; which is erected, assembled, affixed, or painted out of doors and which is visible from a public way. For purposes of this Ordinance, "visible from a public way" means capable of being seen without visual aid by a person of normal acuity, from a way designated for vehicular use and maintained with public funds.

177. **SLUDGE:** Any solid, semi -solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or wet process air pollution control facility or any other such waste having similar characteristics and effect, but does not include industrial discharges that are point sources, subject to permits under Section 402 of the Federal Water Pollution Act, as amended.

178. **SMALL BORROW PIT:** A borrow pit that has an unreclaimed area including the working borrow pit larger than one quarter (1/4) acre and less than five (5) acres and natural internal drainage in all areas. [Article 14, Extractive Industries]

179. **SOLID WASTE:** Useless, unwanted, or discolored solid material with insufficient liquid content to be free-flowing, including by way of example and not by limitation to rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural waste.

180. **SPECIAL FLOOD HAZARD AREA:** See Area of Special Flood Hazard. [Article 11, Floodplain Regulations]

181. **SPECIAL WASTE:** Any non-hazardous waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, which may disrupt or impair effective waste management or threaten the public health, human safety, or the environment and requires special handling, transportation, and disposal procedures. Special waste includes, but is not limited to:

    a. Oil, wood, coal, and multi-fuel boiler and incinerator ash:

    b. Industrial and industrial-process waste;

    c. Debris and residual from non-hazardous chemical spills and clean - up of those spills;

    d. Contaminated soils and dredge spoils;

    e. Asbestos and asbestos-containing waste;

    f. Sandblast grit and non-liquid paint waste;

    g. Medical and other biological waste not identified under title 38 M.RS.A. §1319-O.1.A(4);

    h. High and low pH waste;

i. Spent filter media and residue; and,

j. Other waste designated by the Board of Environmental Protection of the State of Maine, by rule.

182. **START OF CONSTRUCTION:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building. [Article 11, Floodplain Regulations]

183. **STORM-DAMAGED TREE:** A tree that has been uprooted, blown down, is lying on the ground, or remains standing, and is damaged beyond the point of recovery as a result of a storm event. [Article 9, Shoreland Zoning]

184. **STREAM:** Means a channel between defined banks. A channel is created by the action of surface water and has two (2) or more of the following characteristics: [Applies to all streams not regulated by Article 9, Shoreland Zoning]

a. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map.

b. It contains or is known to contain flowing water continuously for a period of at least six (6 mo.) months of the year in most years.

c. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

d. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

e. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Stream or brook does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

185. **STREAM [Shoreland Zoning]:** A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey, on the website of the United States Geological Survey or the national map, to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream. [Article 9, Shoreland Zoning]

186. **STREET:** Any vehicular right-of-way that is (1) an existing Town, state or county road: (2) shown upon a subdivision plat approved by the Planning Board; (3) accepted or laid out and taken through action of the Town; (4) a private right-of-way approved by the Town; (5) a street shown on a subdivision plan in which the Town has reserved rights under the provisions of 23 M.R.S.A. §3032; or (6) a privately owned road, that is not intended to be dedicated as a public street.

187. STREET CLASSIFICATION:

a. **Arterial Street:** A major thoroughfare, which serves as a major traffic way for travel through the municipality and between municipalities.

b. **Collector Street:** A street with average daily traffic of 1,500 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

c. **Cul-de-sac or Dead Head:** A street with only one outlet and having the other end for the reversal of traffic movement

d. **Industrial or Commercial Street:** Streets servicing industrial or commercial uses.

e. **Minor Residential Street:** A street servicing only residential properties and which has an average daily traffic of less than 1,500 vehicles per day.

f. **Private Right-of-Way:** A privately owned street, that is not intended to be dedicated as a public street.

188. **STRUCTURE:** Anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, excluding driveways, walkways, patios, and other paved surfaces, and fences, and stone or brick walls used for area separation and not as part of a building.

189. **STRUCTURE, FLOODPLAIN:** For floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure. [Article 11, Floodplain Regulations]

190. **STRUCTURE, HISTORIC DISTRICT:** A combination of materials other than a building, including but not limited to walls, fences, walks, parking lots or driveways. [Article 12, Historic District]

191. **STRUCTURE, SHORELAND ZONING:** Whether temporary or permanent: anything located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind; anything built, constructed or erected on or in the ground. The term structure includes structures such as decks, patios, and satellite dishes. Structure does not include fences, poles, wiring, guy wires, guy anchors and other aerial equipment normally associated with service drops, subsurface waste water disposal systems as defined in 30-A, M.R.S.A. §4201.5, geothermal heat exchange wells as defined in 32 M.R.S.A. §4700-E.3-C, and wells or water wells as defined in 32 M.R.S.A. §4700-E.8. [Article 9, Shoreland Zoning]

192. **STRUCTURES ACCESSORY OR ESSENTIAL TO ALLOWED RECREATIONAL USES:** Structures incidental to, and/or necessary for, the operation of an allowed primitive or non-intensive recreational use.

193. **SUBDIVIDER:** An individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity, or agent thereof, that undertakes the activities governed by this Ordinance. The term "subdivider" is intended to include the term "developer" and "builder."

194. **SUBDIVISION:** The division of a tract or parcel of land into three (3) or more lots within any five (5) year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a five (5) year period, the construction or placement of three (3) or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three (3) or more dwelling units within a five (5) year period.

    a. In determining whether a tract or parcel of land is divided into three (3) or more lots, the first dividing of the tract or parcel is considered to create the first two (2) lots and the next dividing of either of these first two (2) lots, by whomever accomplished, is considered to create a third (3rd) lot, unless:

        1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least five (5) years immediately preceding the 2nd division; or

        2) The division of the tract or parcel is otherwise exempt under this Ordinance.

    b. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this Ordinance, do not become subject to this Ordinance by the subsequent dividing of that tract

or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

c. A lot of forty (40) or more acres shall not be counted as a lot.

d. The following divisions do not result in lots that must be counted:

1) A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.

2) A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.

3) A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.

4) A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of five (5) years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance. If the real estate exempt under this paragraph is transferred within five (5) years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. " Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph cannot be given for consideration that is more than one-half (1/2) the assessed value of the real estate.

5) A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.

6) A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance. If the real estate exempt under this paragraph is transferred within five (5) years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

e. The division of a tract or parcel of land into three (3) or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

f. In determining the number of dwelling units in a structure, the provisions of this Ordinance regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

g. Notwithstanding the provisions of this Ordinance, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

h. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs d.1. through d.6 above, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.

195. **SUBSTANTIAL DAMAGE:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50%) percent of the market value of the structure before the damage occurred. [Article 11, Floodplain Regulations]

196. **SUBSTANTIAL IMPROVEMENT:** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

[Article 12 Historic Districts]

197. **SUBSTANTIAL COMPLETION OF CONSTRUCTION:** Completion of ninety (90%) percent of a permitted structure or use measured as a percentage of estimated total cost. In the case of a subdivision, completion does not require development of individual lots, but only applies to the project infrastructure.

198. **SUBSTANTIAL START OF CONSTRUCTION:** Completion of thirty (30%) percent of a permitted structure or use measured as a percentage of estimated total cost.

199. **SUBSURFACE SEWAGE DISPOSAL SYSTEM:** Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or

apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

200. **SUSTAINED SLOPE:** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area. [Article 9, Shoreland Zoning]

201. **TIMBER HARVESTING:** The cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 9.11.N., Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

202. **TOWN:** The municipality of Durham, Maine.

203. **TRACT OR PARCEL OF LAND:** All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

204. **TRADEMAN'S SHOP:** The shop of a self-employed craftsman or person in a skilled trade where goods are crafted and offered for sale, or services are rendered.

205. **TRANSMISSIVITY:** The product of saturated thickness and hydraulic conductivity of an aquifer, the hydraulic conductivity of an aquifer being defined as the quotient of the groundwater Darcy velocity divided by the hydraulic gradient.

206. **TREE:** A woody perennial plant that has a well-defined trunk(s) at least two (2”) inches in diameter at four and one half (4.5’) feet above the ground, that has a more or less definite crown and that reaches a height of at least ten (10’) feet at maturity. [Article 9, Shoreland Zoning]

207. **TRIBUTARY STREAM, SHORELAND ZONING:** A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. [Article 9, Shoreland Zoning]

208. **UPLAND EDGE OF A WETLAND:** The boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are approximately twenty (20') feet tall or taller. [Article 9, Shoreland Zoning]

209. **UTILITY STRUCTURES:** Buildings which house or service utility services, including structures such as radio towers, transmitting stations, and satellite dishes serving more than a residential use on a single lot. Satellite dishes servicing a residential use on a single lot shall be considered accessory to such use.

210. **VARIANCE:** A grant or permission by the Board of Appeals to relax the space and bulk standards of this Ordinance. Any such grant shall strictly comply with the standards and procedures of Article 17 of this Ordinance. A variance is not authorized for establishment or expansion of a use otherwise prohibited.

211. **VEGETATION:** All live trees, shrubs, and other plants including without limitation, trees both over and under four (4") inches in diameter, measured at four and one-half (4 ½') feet above ground level. [Article 9, Shoreland Zoning]

212. **VIOLATION:** Means the failure of a structure or development to comply with the requirements of this Ordinance or any other activity or use that does not comply with this Ordinance.

213. **VOLUME OF A STRUCTURE:** The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof. [Article 9, Shoreland Zoning]

214. **WATER BODY:** Any great pond, river or stream. [Article 9, Shoreland Zoning]

215. **WATER CROSSING:** - Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. [Article 9, Shoreland Zoning]

216. **WETLAND:** A freshwater wetland. [Article 9, Shoreland Zoning]

217. **WOODY VEGETATION:** Live trees or woody, non-herbaceous shrubs. [Article 9, Shoreland Zoning]

APPENDIX 1: STREET STANDARDS

Section 1.1. ROAD CONSTRUCTION

A. Road right-of-way shall be a minimum of fifty (50') feet wide. Road dimensions, geometry, and materials shall conform to the requirements shown in Section 1.2 and 1.3, Figures 1 through 4.

B. All public and private streets and roads in the subdivision shall be paved to Town standards. Pavement width shall be a minimum of twenty-two (22') feet for all public roads, and twenty (20') feet for all private roads. The road must be complete, less paving prior to the issuance of the first building permit in the subdivision.

C. Private streets serving no more than three (3) dwelling units many be left unpaved so long as they meet the base and subbase standards for gravel, and other applicable requirements listed below. These are as follows:

1. **Aggregate Base:** Base material shall be screened or crushed gravel of hard durable particle, free from vegetable matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a two-inch (2") square mesh sieve shall meet the following requirements:

Sieve Designation	% By Weight Passing Square Mesh Sieves
2-inch	100%
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-30%
No. 200	0-7%

*Aggregate for the base shall contain no particles of rock exceeding four (4") inches in any dimension.

2. **Aggregate Subbase:** Aggregate subbase shall be sand or gravel of hard durable particles free from vegetable matter, lumps or balls of clay or other deleterious matter. The gradation of the part that passes a six-inch (6") square mesh sieve shall meet the following grading requirements:

Sieve Designation	% By Weight Passing Square Mesh Sieves
6-inch	100%
1/4 inch	25-70%
No. 40	0-30%
No. 200	0-7%

*Aggregate subbase shall contain no particles of rock exceeding (8”) eight inches in any dimension.

3. **Surface Leveling Material:** If required shall conform to the gradation requirements of Aggregate Base above but shall not contain particles of rock which will not pass the 3/4" sieve.
4. **Bituminous Pavement:** Pavement shall be constructed of two courses of bituminous. Pavement shall be MDOT “Superpave” as specified in Section 401 conforming to the latest revisions of the Maine Department of Transportation "Standard Specifications For Highways and Bridges":
   a. Compacted Binder Course – 2" Grading 19.5mm Superpave
   b. Compacted Surface Course – 1 1/2" Grading 12.5mm or 9.5mm Superpave
   c. Pavement width shall be a minimum of twenty-two (22’) feet for public roads and twenty (20’) feet for private roads.

D. **Culverts: CULVERTS.** Culverts shall be zinc coated corrugated metal pipe, or other pipe approved by the Planning Board. Culverts shall be sized and located as determined by drainage calculation, but in no case shall be smaller than twelve (12") in diameter.

E. **Signs:** Signs required by the Board such as "SPEED LIMIT", "STOP", "CURVE", etc. shall be constructed and located so as to conform with the "Manual on Uniform Traffic Control Devices for Street and Highways", published by the United States Department of Transportation, 2001 or most recent revision.

F. **Sidewalks:** Sidewalks if proposed shall be a minimum of five (5') feet in width and shall be constructed of two (2) one-inch (1") thick courses of bituminous pavement over a minimum eight-inch (8") thick gravel base. Base shall conform to the requirement listed for roadway aggregate base stated in paragraph C.1 above.

G. **Curbs:** Curbs, if proposed shall as a minimum be designed in accordance with Maine Department of Transportation standard details for bituminous curb and shall be constructed as outlined in Maine Department of Transportation Standard Specifications, Section 609.04.

H. **Construction requirements**: Gravel base shall be compacted over the full width and length of road bed including shoulders to a minimum of ninety-five (95%) percent of proctor density in accordance with American Society for Testing Materials Standard, ASTM D1556 and D1557. Bituminous pavement shall be compacted to a minimum of 92% of the theoretical maximum density as established in accordance with AASHTO Test T209, ASTM D2950 and ASTM D2726. No bituminous paving shall be placed between November 15 and April 15 or when the temperature is below thirty-five (35°) degrees or when the gravel base is frozen. Bituminous placed after September 15 shall also be rolled with a pneumatic tire roller in addition to steel rollers. The Road Commissioner and the Code Enforcement Officer shall be notified when road construction is to begin, at the completion of the gravel base, and when paving is to begin. The finished surface of the pavement shall be smooth and tightly

compacted with no loose or poorly embedded stone evident. A sixteen-foot (16') straight-edge or string line when placed parallel to the centerline of the pavement and a ten-foot (10') straightedge or string line when placed transverse to the centerline shall not show a variation exceeding one-quarter (1/4") inch.

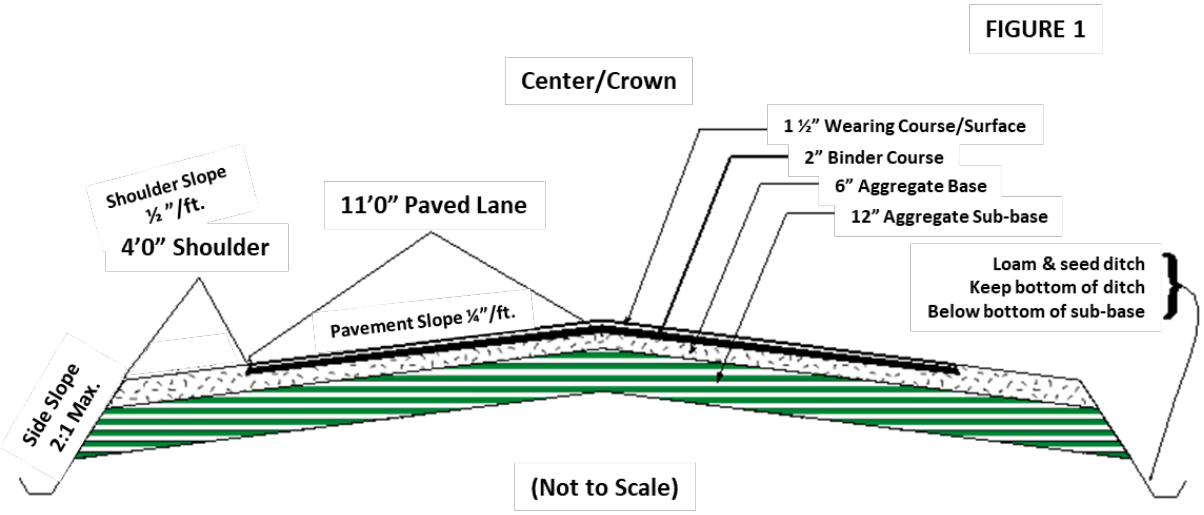
I. **Parking for Commercial Subdivisions:** At least one on-site parking space shall be provided for each employee or other person anticipated to be at the site of the proposed use at any one time. (i.e. six (6) employees and an average of three (3) customers per hour, equals nine (9) required spaces). Parking lots of over ten (10) spaces shall be completely screened from view of public streets or other public land by a vegetative buffer consistent with the general performance standards of the Land Use Ordinance.

J. Provisions shall be made for vehicular access to the development and circulation upon the lot in such a manner as to safeguard against hazards to traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. More specifically, access and circulation shall also conform to the following standards and the design criteria below:

1. The street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use.
2. Where necessary to safeguard against hazards to traffic and pedestrians and/or avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.
3. Access ways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street.

Section 1.2. TYPICAL ROAD SECTION & TURNAROUND DESIGNS - PUBLIC ROAD

Road geometry requirements shall conform to the recommendations outlined in ("GDHS") Figure 1, Typical Road Cross Section 1984 published by American Association of State Highway and Transportation Officials (1984) ("AASHTO"), excepted that in no case shall grades be greater than eight (8%) percent, curve radii be less than one hundred (100') feet, or vertical sight distance be less than two hundred (200') feet.



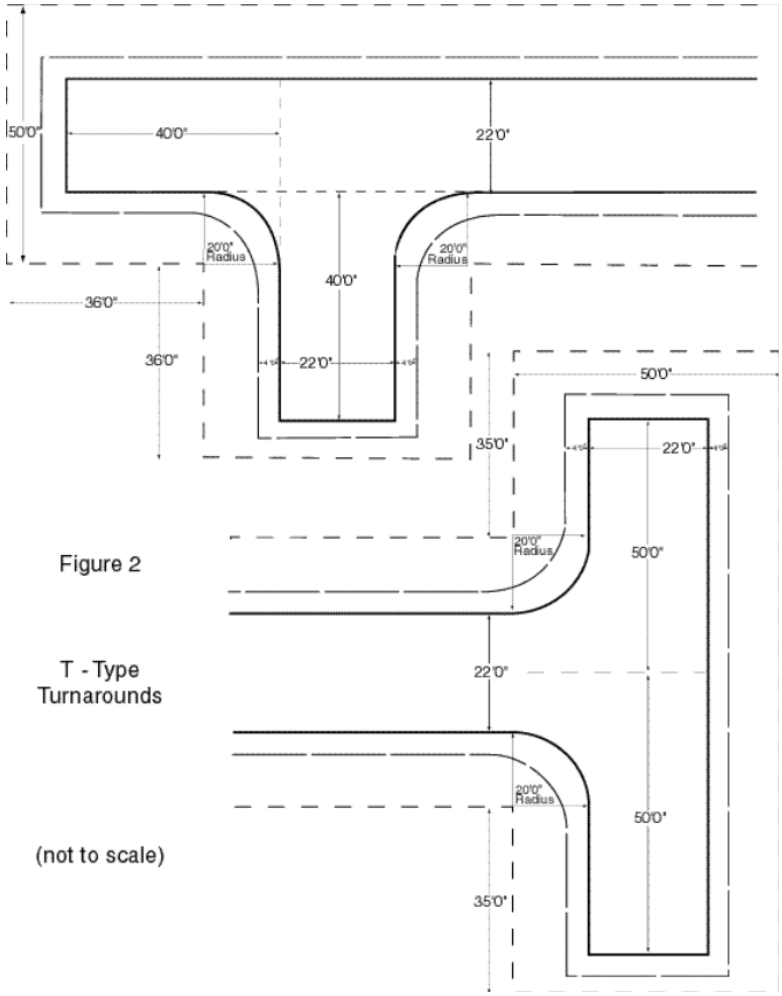


Figure 2

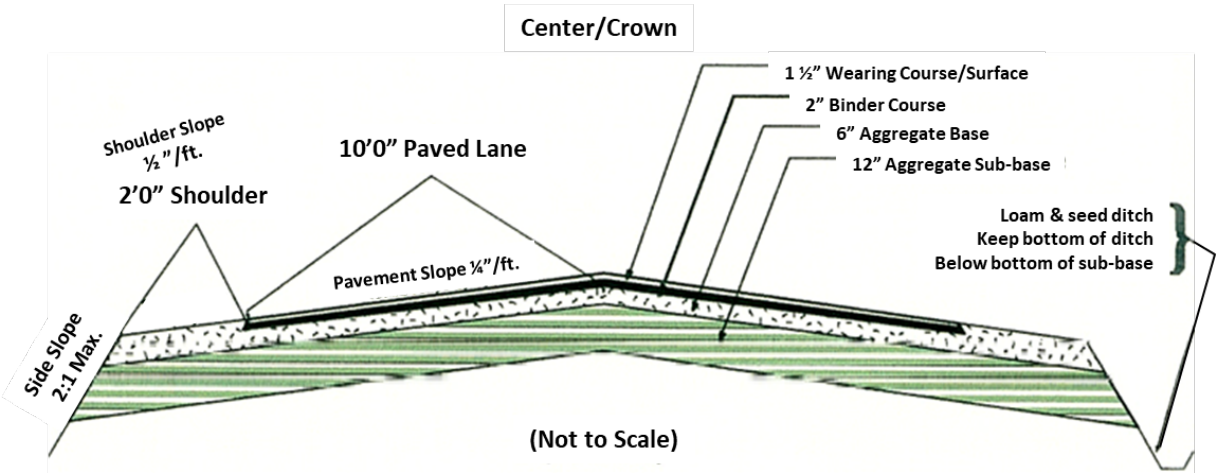
T - Type Turnarounds

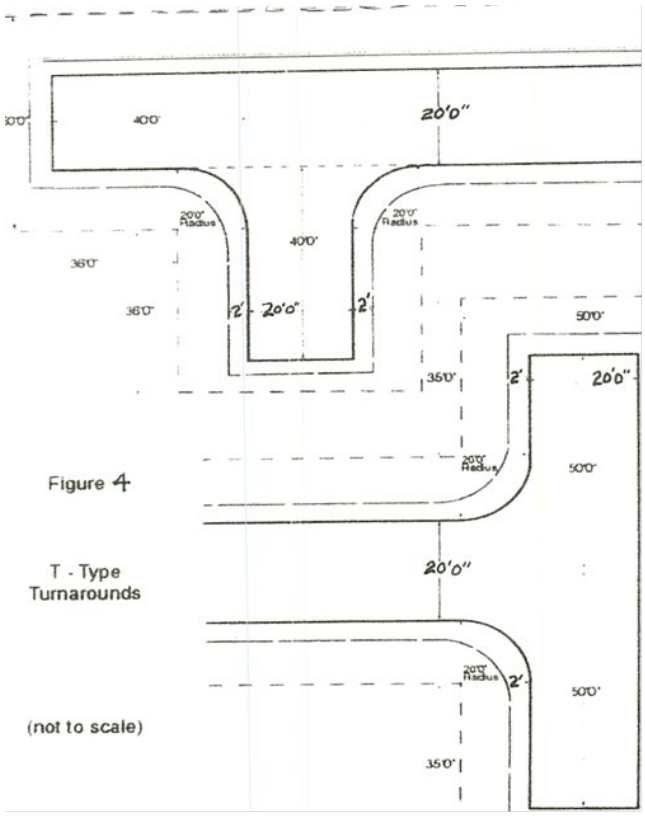
(not to scale)

Section 1.3. TYPICAL ROAD SECTION & TURNAROUND DESIGNS - PRIVATE ROAD

Road geometry requirements shall conform to the recommendations outlined in ("GDHS") Figure 3, Typical Road Cross Section 1984 published by American Association of State Highway and Transportation Officials (1984) ("AASHTO"), excepted that in no case shall grades be greater than eight (8%) percent, curve radii be less than one hundred (100') feet, or vertical sight distance be less than two hundred (200') feet.

FIGURE 3





Section 1.4. SAFE ENTRANCE SIGHT DISTANCES

A. **Sight Distances:** Driveways shall be designed in profile and grading and located to provide the required sight distance measured in each direction. Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit driveway with the front of the vehicle a minimum of ten (10') feet behind the curb line or edge of shoulder, with the height of the eye three and one half (3 ½') feet, to the top of an object four and one-half (4 ½') feet above the pavement. The required sight distances are listed below for various posted speed limits:

Posted Speed (MPH)	Sight Distance (Feet)
20	155
25	200
30	250
35	305
40	360
45 & higher	425

The minimum allowable sight distances listed above for all accesses, may require up to fifty (50%) percent greater sight distances when at least thirty (30%) percent of the traffic using the driveway will be larger vehicles

B. All commercial entrances regardless of traffic volume may be required by the Planning Board to be paved with bituminous concrete pavement within thirty (30') feet of the street right-of-way if anticipated traffic volume requires an assured smooth surface to facilitate exit and entry without risk of sudden stop due to rutting.

C. No development shall increase the volume capacity ratio of any street above 0.8 nor reduce the street's Level of Service to "D" or below as determined by using the capacity analysis procedures set forth in the 1985 Highway Capacity Manual, Special Report 290 as published by the Transportation Research Board.

Section 1.5. ROAD MAINTENANCE

In determining whether this standard has been met, the Board must find that the maintenance agreement for any private road meets the following criteria:

A. The maintenance agreement or escrow agreement executed by the owners of the lots containing the dwelling units or structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such dwelling units or structures are located with respect to the maintenance, repair and snow plowing of such road or way. The applicant shall prepare and submit for approval of the Planning Board a maintenance agreement which shall specify the rights and responsibilities of the owners of the lots

on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair and plowing.

B. The maintenance agreement shall also include and the Planning Board will consider in granting approval the following factors:

1. A detailed statement of how the ownership interests in the private way will be structured (i.e., whether ownership will be single or joint, whether lot owners will own the fee or have easements, etc.).
2. A statement that in the event any of the lots shown on the plan are divided or in the event any remaining land of the declarant is subsequently divided into lots which are served by the private way, then such resulting lot or lots shall become subject to the maintenance agreement and to any modifications to the maintenance agreement advisable to adjust the duties and responsibilities equitably among the owners of all the lots served by the private way.
3. An acknowledgment by the declarant and any other persons signing the maintenance agreement that the Town of Durham is not responsible for the construction, maintenance, repair or plowing of the private way.
4. A statement that the duties and obligations imposed by the maintenance agreement run with the land and shall be transferred to donees, purchasers or other transferees of any portion of the real estate subject to the maintenance agreement and that, upon such transfer, the Planning Board shall be notified in writing and provided with a copy of any changes or amendments to the maintenance agreement.
5. A requirement that the maintenance agreement be referenced in all deeds to any lots served by the private way.
6. If the private way subject to the maintenance agreement is an extension of an existing private way which served lots created prior to March 6, 2004, a statement that the applicant for private way approval has contacted the owners of such lots, has offered them the opportunity to make their properties subject to the maintenance agreement and that they have either accepted or declined that offer; and that the Declarant has submitted to the Planning Department a notarized affidavit confirming the Declarant's compliance with this paragraph.
7. An agreement which permits the other signatories of the maintenance agreement to place a lien on the property of any signatory who has not paid the share of expenses allocated to them in the amount of the unpaid assessment for costs for the private way.