

**DURHAM PLANNING BOARD
REGULAR MEETING
AGENDA
February 2, 2022**

1. Call to Order/Roll Call
2. Continuing Business:
 - a) Approval of Meeting Minutes January 5, 2022
3. New Business
 - a) Draft Amendments to Land Use Ordinance
 - Resource Protection District Criteria & Standards
 - Road Standards
 - Appeals Provisions
4. Other Business:
 - a) Role and Functions of Town Planner



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

***Office of Code Enforcement
and Planning***

Tel. (207) 376-6558
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MEMO TO: Kathy Tombarelli, Town Manager

FROM: George Theborge AICP, Town Planner

DATE: October 27, 2021

RE: Follow Up to Select Board Discussion of Ordinance Amendments

Kathy,

As a follow up to last night's discussion with the Select Board, I want to communicate the direction we received for moving forward on Land Use Ordinance amendments for the April 2022 Town Meeting. Unless you heard otherwise during or after the discussion, I conclude that the Board members want us to take the following actions:

1. Move forward with preparation of draft amendments for changes to the standards for roads, private roads outside of subdivisions, and back lot driveways for presentation at the April Town Meeting per the information I provided you in my 18 October 2021 memo.
 2. Note as a future project the need to develop a Town policy on road acceptance.
 3. Reintroduce the amendments to consolidate provisions for board and staff decision appeals to the Board of Appeals that were presented at the last Town Meeting.
 4. Proceed with drafting Zoning Map and Land Use Ordinance amendments to revise the Resource Protection criteria and boundaries to match the most recent and accurate natural resource inventories provided by the State that are in the adopted 2018 Comprehensive Plan.
 5. Limit the extent of changes to the Zoning Map related to the Resource Protection District update to be presented at the April 2022 Town Meeting to those properties currently within the boundary of the existing RP District as Phase 1 of the recalibration.
 6. Hold over until 2023 the application of proposed new RP criteria to properties outside of the current RP District boundary as a Phase 2 process, and provide public participation opportunities for those landowners whose properties are not currently restricted by the existing Resource Protection zoning.
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7. Give individual property owner notice for both phases of changes to the Resource Protection criteria and Zoning Map to owners affected positively or negatively by the proposed changes.
8. Hold off on initiating a challenge of the DEP designation of farm fields as shoreland zoning areas.
9. Notify the Planning Board and Conservation Commission (and Board of Appeals?) of this proposed policy direction.

I recommend that you review this list of actions and if they are the same as your recollection, then get Chairman Nadeau to confirm or modify them. Once we have confirmation, you and I can discuss steps to move forward.

DRAFT AMENDMENTS PART 1 RESOURCE PROTECTION DISTRICT

ARTICLE 2: ESTABLISHMENT OF DISTRICTS

Section 2.1. ZONING MAP

Section 2.2. ZONING DISTRICTS

Section 2.3. DISTRICT BOUNDARIES

A. Division of Lots by District Boundaries

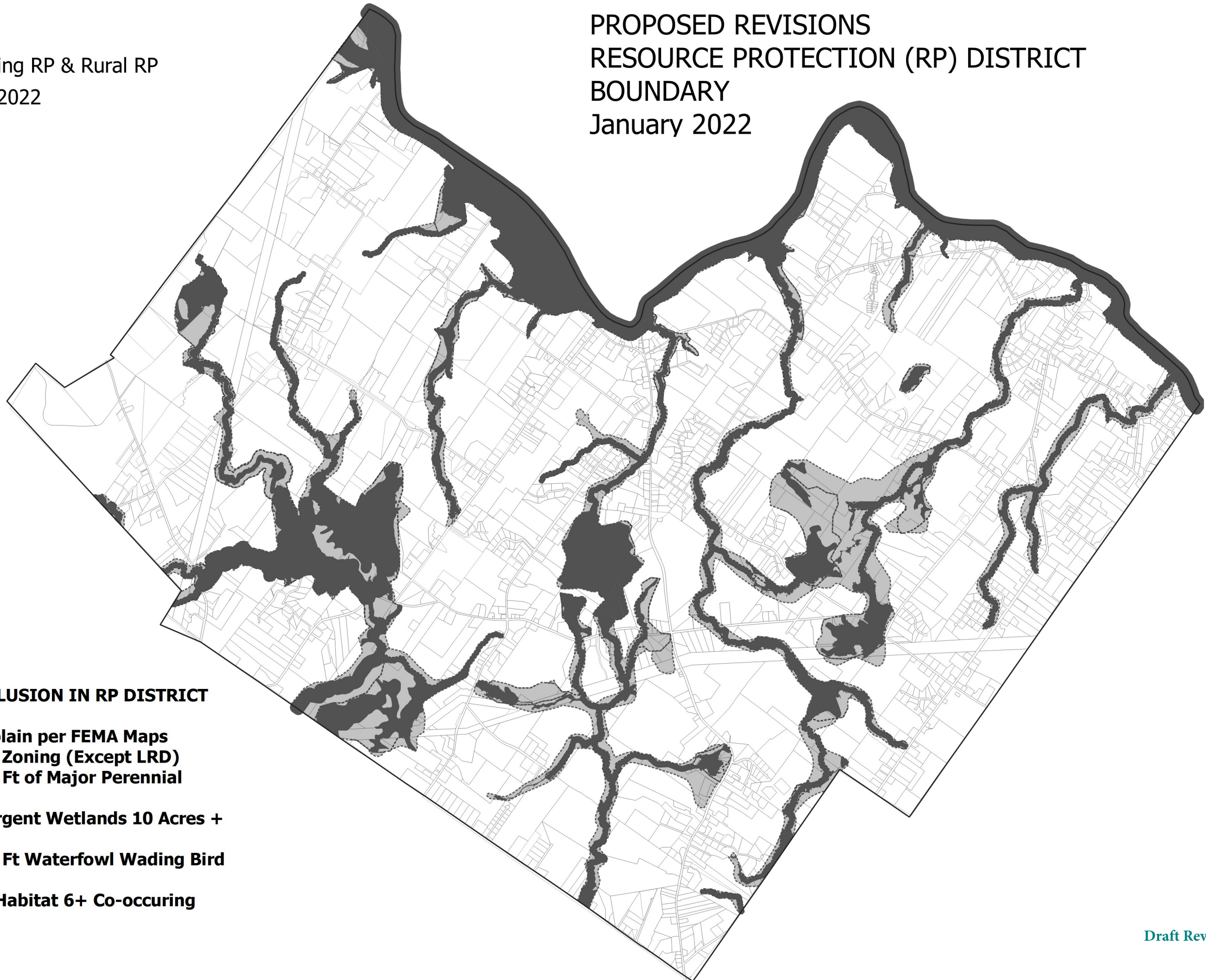
B. District Boundaries are defined as follows:

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 ~~defined~~ 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,
 - 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.

Note: The current Zoning Map boundaries of the Resource Protection District are based on outdated and inaccurate natural resource inventories and unfairly restrict land use within those boundaries. This amendment clearly spells out the specific comprehensive plan criteria for natural resources that warrant the level of protection provided in this designation. These criteria will only be applied to property within the current Resource Protection District in this Phase 1 of the recalibration process. Properties outside the current boundaries that meet the Resource Protection criteria will be evaluated in Phase 2.

PROPOSED REVISIONS
RESOURCE PROTECTION (RP) DISTRICT
BOUNDARY
January 2022

- Durham Existing RP & Rural RP
- Proposed RP 2022



CRITERIA FOR INCLUSION IN RP DISTRICT

1. 100-Year Floodplain per FEMA Maps
2. State Shoreland Zoning (Except LRD)
3. Land within 100 Ft of Major Perennial Streams
4. Forested & Emergent Wetlands 10 Acres + (per BWH Maps)
5. Land within 250 Ft Waterfowl Wading Bird Habitat
6. Beginning with Habitat 6+ Co-occurring Resources

DRAFT AMENDMENTS PART 2 ROADS

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
<i>NOTE: This change provides for Road Commissioner approval of all new driveway entrances onto all roads. Improperly installed culverts can cause drainage problems on the road and improperly placed driveways can create safety hazards.</i>					
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

ARTICLE 5: PERFORMANCE STANDARDS

Section 5.1. ACCESSORY APARTMENTS

Section 5.2. ACCESS MANAGEMENT

This section applies to new driveway and commercial entrances ~~onto Town Roads~~ except that driveways and commercial entrances approved by the Planning Board during subdivision or site plan review shall not be required to have a separate review for compliance with these standards if they are addressed during the Planning Board review.

NOTE: This amendment will avoid duplicative reviews by the Planning Board and Road Commissioner for the same improvements. Road entrances for subdivisions and commercial sites are designed by engineers. This section provides for review of new driveway entrances outside of subdivisions and commercial sites. Whether driveways are placed on Town maintained roads or private roads, they can cause drainage and safety problems if not properly installed and should be reviewed by some agency.

A. Sight Distance Criteria:

B. Geometry:

1. The entrance shall be designed such that the grade within the right-of-way does not exceed ~~ten (10%)~~ three (3%) percent.

NOTE: Driveway entrances need a relatively level surface to prevent vehicles from sliding onto the roadway or gunning up onto it in winter conditions. Excessive slopes on entrances also creates potential for severe erosion problems on the roadway. The three percent slope only applies within the road right of way and typically extends about a car length from the edge of pavement.

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 to create required road frontage for one single back lot ~~family dwelling~~ if the following conditions are met:
1. The right-of-way must be deeded in fee or by easement 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, t~~ The land over which the back lot access is created by deed or by easement 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 sixteen (16') ~~twenty (20')~~ feet wide with twelve (12") inches of aggregate subbase, six (6") inches of aggregate base, and appropriate drainage as shown in Appendix 1, Section 1.3, Figure 3 of this Ordinance, however no shoulders or pavement are required. A turn around adequate to serve public safety vehicles shall be constructed at the end of the back lot driveway. Prior to the issuance of a building permit for any structure on the back lot, written approval of the Fire Chief shall be required verifying that the driveway has been constructed to provide adequate access by emergency vehicles.

NOTE: The proposed amendments clarify and simplify the requirements for creating a single back lot. A driveway will be allowed to serve the single back lot, rather than a road. The driveway will require review by the Fire Chief to ensure that it is accessible by public safety vehicles. The provisions for multiple lot private roads will be combined with Section 5.23.

~~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.~~
- ~~2. A maintenance agreement as described in Section 5.22 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 5.23. ROADS

The Planning Board may approve the use of a fifty (50) foot private way to provide frontage and access to multiple individual lots of land in accordance with the following provisions:

- A. A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signature of the Planning Board Chairman. The plan shall delineate the proposed private way and each of the lots to be served by the private way.
- B. A street plan, cross section, drainage plan, and an erosion and sedimentation control plan prepared by a professional engineer shall be submitted for each private way.
- C. The plan shall bear notes that the Town of Durham will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the Durham Planning Board.
- D. A maintenance agreement meeting the requirements of Appendix 1, Section 1.5 shall be required by the Planning Board and recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.
- E. The construction of private ways shall meet the construction standards for minor local roads found in Appendix 1 and the erosion and sedimentation control standards of Appendix 2.
- F. The plan shall be recorded in the Androscoggin County Registry of Deeds within ninety (90) days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void and a new review shall be required.
- G. Prior to the issuance of any building permit for any lot to be served by the private way, a street sign meeting the requirements of Section 13.5.B. shall be installed at the private way intersection.

NOTE: Section 5.23 is intended to provide a mechanism for the creation of private roads outside of subdivisions. The only requirement currently in the Ordinance is a maintenance agreement, which must be approved by the Planning Board. The proposed revisions apply the performance standards that would be required for the same road built in a subdivision, except that a stormwater plan is not required and there is no review of lots that are exempt from subdivision review. The requirements for private maintenance agreements will be the same as those for minor local roads in subdivisions.

- ~~A. The Town shall not accept as a Town Road any private road or way that is not built to public road standards.~~
- ~~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 6.31. RESERVATION OR DEDICATION AND MAINTENANCE OF OPEN SPACE AND COMMON LAND, FACILITIES AND SERVICES

- 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 Appendix 1, Section 1.6 5-23.

NOTE: The requirements for maintenance agreements on all new private roads will be consolidated in the Road Standards Appendix.

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 8.6 SITE PLAN REVIEW APPROVAL CRITERIA & DESIGN STANDARDS

E. **Parking Requirements:** The following specific requirements shall apply to uses in all districts except as noted:

1. To match actual demand for parking with supply the Planning Board shall determine the number of off-street parking spaces required. The table below provides the minimum number of parking spaces required for the uses listed. Parking for uses not listed shall be determined by the Planning Board based on information submitted by the applicant. For purposes of this section the term independently accessible shall mean that each parking space shall be accessible for use without need for the removal of any other vehicle from any other approved parking space on the site.

a. <u>Business and professional office</u>	<u>1 space for every 500 square feet of gross leasable area, exclusive of common and bulk storage areas.</u>
b. <u>Day Care Center</u>	<u>1 per full-time employee plus 1 space for every four persons attending the day care center at any one time.</u>
c. <u>Health Institution (bed facilities only)</u>	<u>1 space for every 3 beds and 1 for each employee based on the highest expected average employee occupancy.</u>
d. <u>Motel, bed and breakfast, hotel</u>	<u>1 space per sleeping room</u>
e. <u>Place of worship, enclosed place of assembly</u>	<u>1 space for every 5 seats of assemblage</u>
f. <u>Restaurant, indoor seating only</u>	<u>1 space for every 3 seats</u>
g. <u>Retail and service establishment</u>	<u>1 space for every 500 square feet of gross floor area or permanent outdoor retail display area.</u>
h. <u>School</u>	<u>5 spaces per room used for purpose of instruction.</u>
i. <u>Warehousing, wholesaling, manufacturing</u>	<u>1 space for every 1,000 square feet of gross leasable area</u>

Note: Parking requirements for non-residential sites are being moved from the roads appendix and expanded to include the amounts of parking required for different uses. The existing subsection E and all subsequent subsections will be renumbered.

APPENDIX 1: STREET STANDARDS

Section 1.1. ROAD CLASSIFICATION AND CONSTRUCTION

- A. **Road Classifications:** Street classification shall be based on the street's ultimate purpose or use as determined by the Planning Board after considering the location of the proposed street and the number and the nature of the uses to be served by the proposed street, both within and outside the proposed subdivision and any anticipated traffic resulting from interconnection with other streets. Dwelling unit figures are provided as an aid to the Planning Board:
1. Arterial – Durham's arterials are Route 9, Route 125, and Route 136. These major streets serve to carry high volumes of traffic into, through, and out of the Town.
 2. Collector – A street whose principal function is to carry traffic between minor, local, sub-collector, and arterial streets, but that may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, more than one hundred (100) dwelling units and is designed to be used, or is used to carry, more than one thousand (1000) trips per day.
 3. Subcollector – A street whose principal function is to provide access to abutting properties, but is also designed to be used or is used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least twenty-six (26) but not more than one hundred (100) dwelling units, and is expected to, or does handle, between two hundred and sixty (260) and one thousand (1000) trips per day.
 4. Local – A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten (10) but no more than twenty-five (25) dwelling units, and is expected to, or does handle, between one hundred (100) and two hundred and fifty (250) trips per day.
 5. Minor Local – A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine (9) dwelling units, and is expected to, or does handle, up to ninety-nine (99) trips per day.
 6. Street classifications for multifamily residential or non-residential uses are determined by trip generation figures for various uses indicated in the most current edition of the Institute of Traffic Engineers' Transportation and Traffic Engineering Handbook (Hornburger, Keefer, & McGrath, eds., Prentice-Hall, Inc., Englewood Cliffs, N.J.).
 7. In determining the classification of streets where a loop configuration is formed, the classification should be based on an analysis of routes and destinations on individual road segments rather than the full street length.
- B. Road right-of-way shall be a minimum of fifty (50') feet wide for minor local and local roads, and sixty (60') wide for subcollector roads. Road dimensions, geometry,

and materials shall conform to the requirements shown in Section 1.2 ~~and~~ 1.3, and 1.4, Figures 1 through 6.

- C. All ~~public and private~~ newly constructed streets and roads ~~in the subdivision~~ shall be paved to Town standards. Pavement width shall be a minimum of twenty-four (24') feet for subcollector roads, twenty-two (22') feet for all public local roads, and twenty (20') feet for all private minor local roads. The road must be complete up to and along the entire frontage of the lot, less except for paving, prior to the issuance of the first building permit in the subdivision a building permit for a structure or residence on such lots. Issuance of said building permit shall require written confirmation from the Fire Chief that the road is accessible by public safety vehicles.
- D. ~~Private-s~~Streets serving no more than three (3) dwelling units may be left unpaved so long as they meet the base and subbase standards for gravel, and other applicable requirements listed below. In the event of the road being extended beyond the first three (3) dwelling units, the road shall be paved over its entire length, including the first section serving the first (3) three dwelling units.
- E. The standards for gravel 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-four (24') feet for subcollector roads, twenty-two (22') feet for public local roads and twenty (20') feet for private minor local roads.
- F. **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.
- G. **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.
- H. **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.
- I. **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.
- J. **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.

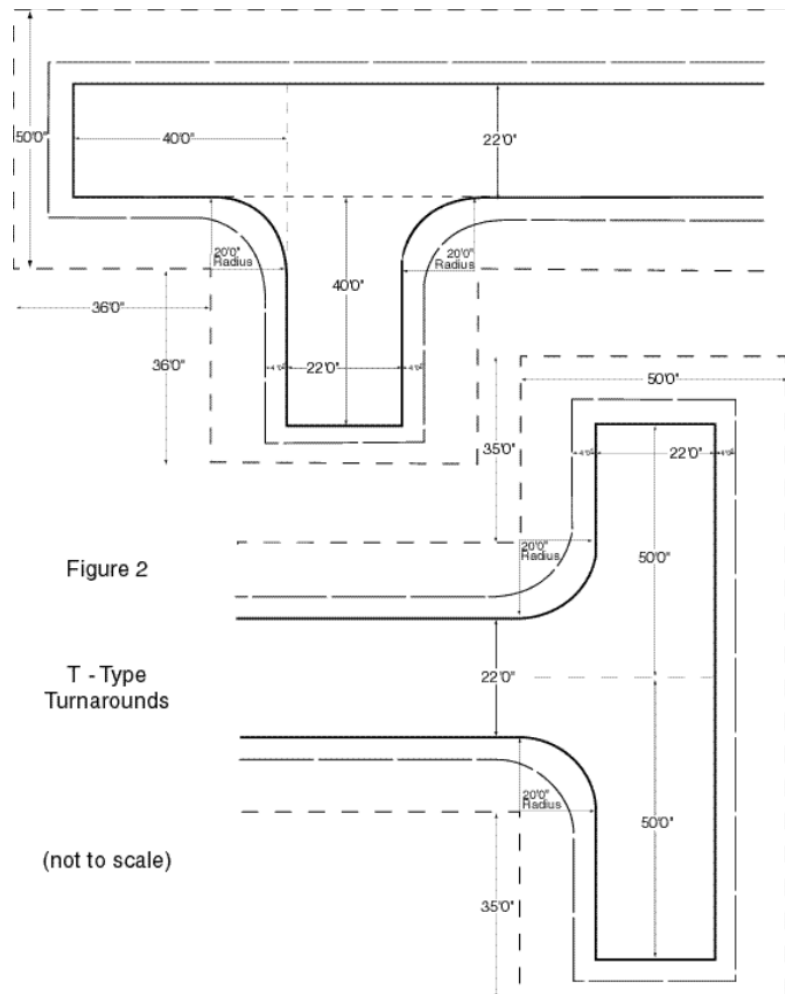
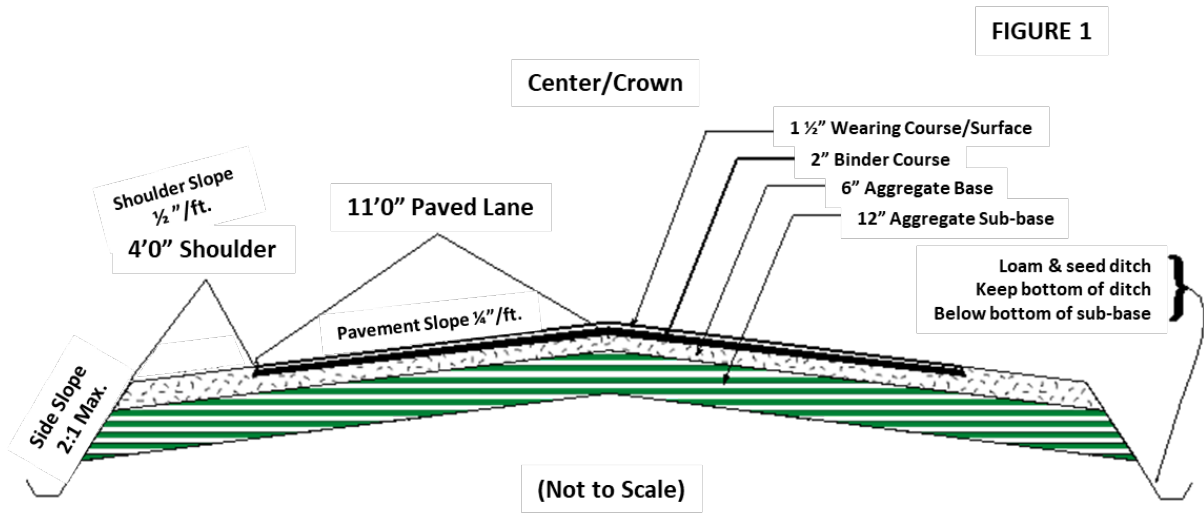
~~**Parking for Commercial Subdivisions:** At least one on-site parking space shall be provided for each employee or other person anticipated to be at the site of the proposed use at any one time. (i.e. six (6) employees and an average of three (3) customers per hour, equals nine (9) required spaces). 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.~~

K. 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 LOCAL ROAD

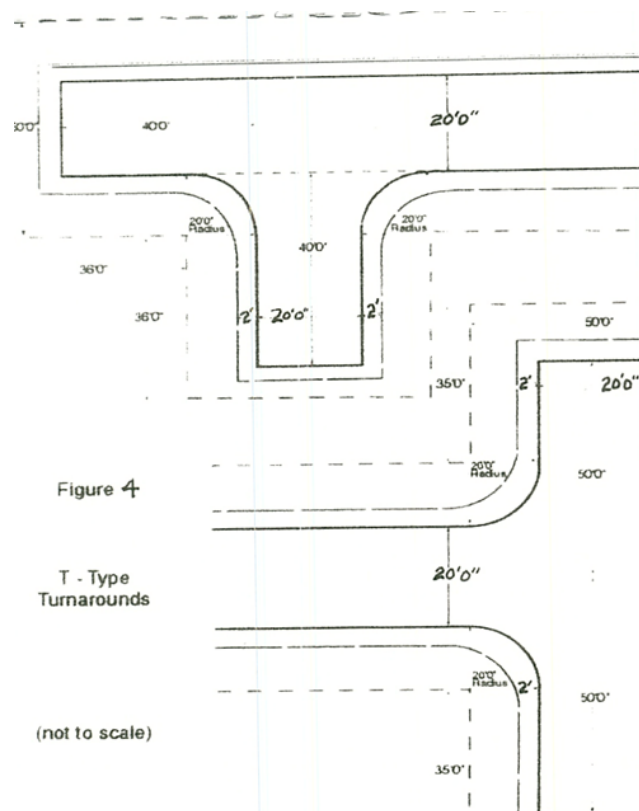
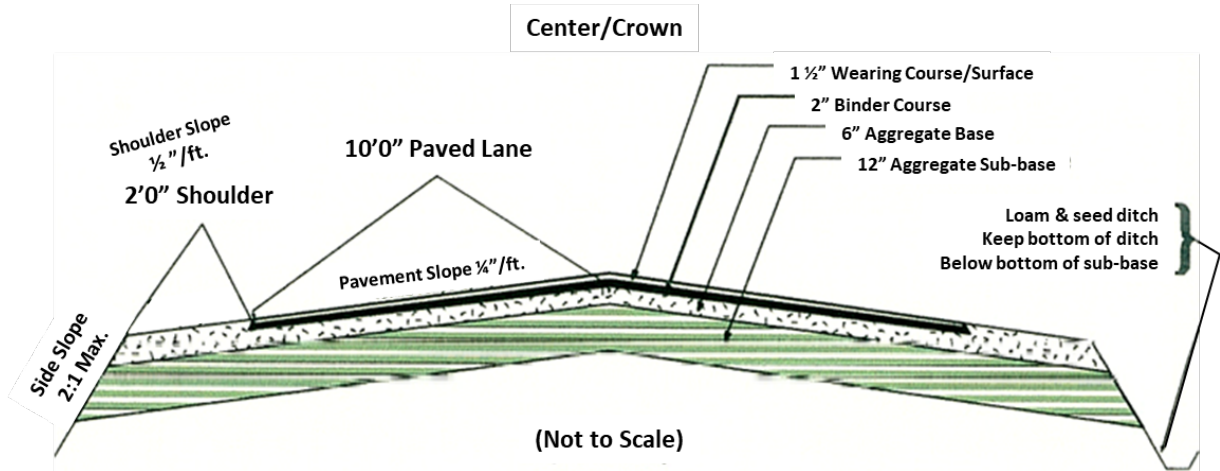
Road geometry requirements shall conform to the recommendations outlined in ("GDHS") Figure 1, Typical Road Cross Section 1984 published by American Association of State Highway and Transportation Officials (1984) ("AASHTO"), excepted that in no case shall grades be greater than eight (8%) percent, curve radii be less than one hundred (100') feet, or vertical sight distance be less than two hundred (200') feet.



Section 1.3. TYPICAL ROAD SECTION & TURNAROUND DESIGNS - PRIVATE MINOR LOCAL ROAD

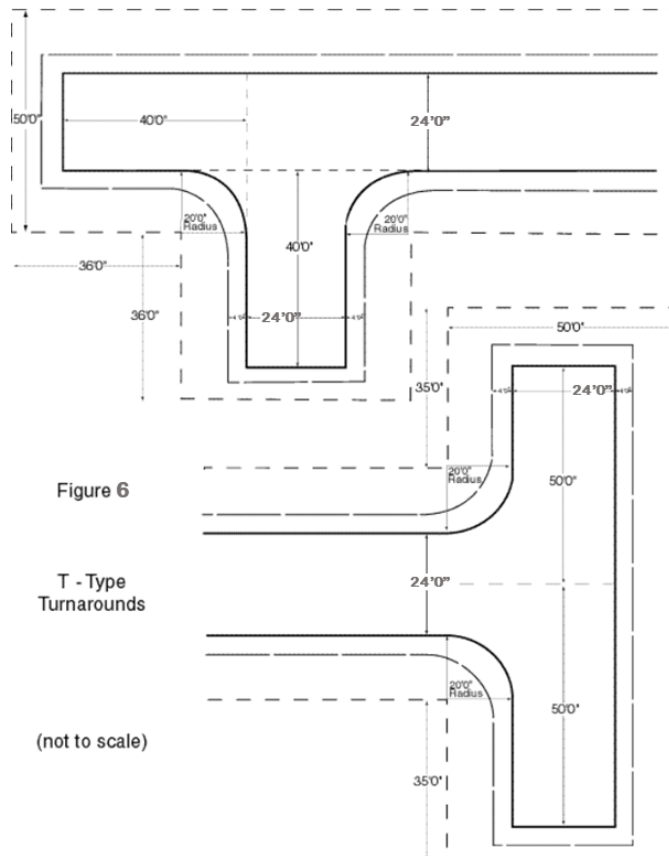
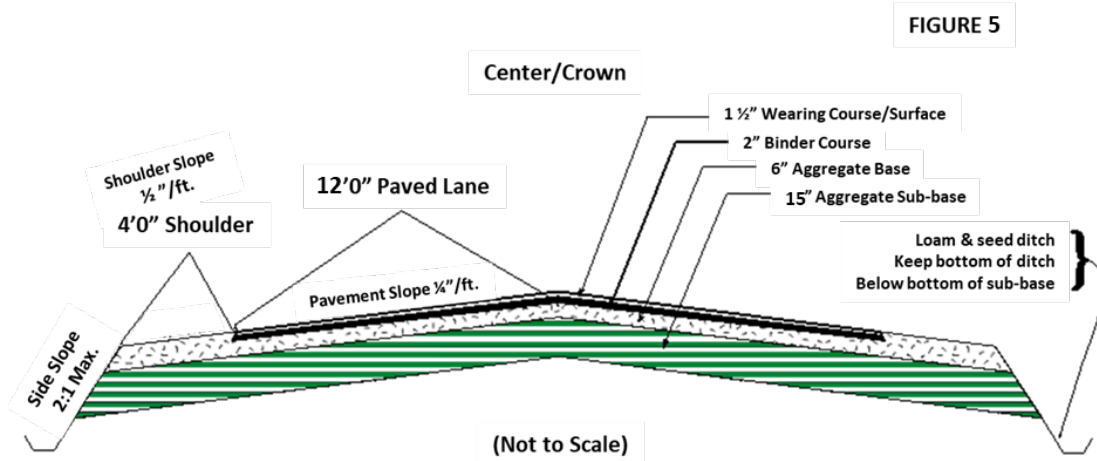
Road geometry requirements shall conform to the recommendations outlined in ("GDHS") Figure 3, Typical Road Cross Section 1984 published by American Association of State Highway and Transportation Officials (1984) ("AASHTO"), excepted that in no case shall grades be greater than eight (8%) percent, curve radii be less than one hundred (100') feet, or vertical sight distance be less than two hundred (200') feet.

FIGURE 3



Section 1.4. TYPICAL ROAD SECTION & TURNAROUND DESIGNS - SUBCOLLECTOR 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.



Section 1.5. 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 1.6. 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 road 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 road 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 road 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 road 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 proposed changes or amendments to the maintenance agreement. All changes to the maintenance agreement, other than changing or adding parties to the agreement, are subject to review and approval by the Planning Board.
 5. A requirement that the maintenance agreement be referenced in all deeds to any lots served by the private road way.
 6. If the private road way subject to the maintenance agreement is an extension of an existing private road way which served lots created prior to March 6, 2004, a statement that the applicant for private road 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 Enforcement Officer Planning Department a notarized affidavit confirming the Declarant's compliance with this paragraph. All parties with lots served by the extension of the private road must be subject to the maintenance agreement for that extension.
 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 by Planning Board, 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

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2021

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.

DRAFT AMENDMENTS PART 3 APPEALS

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).

~~Section 6.36. — APPEALS~~

~~The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning Board, and to the parties’ arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or, if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.~~

- 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.

~~Section 7.6. APPEALS OF CONDITIONAL USE DECISIONS~~

~~The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning Board, and to the parties' arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or, if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board on a conditional use permit only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.~~

- N. **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.

Section 8.8. APPEALS

~~The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning Board, and to the parties' arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or, if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board on a site plan application~~

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021

~~only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.~~

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. **Appeals of Shoreland Zoning Permit Decisions:** The Board of Appeals may hear and decide appeals from any final decision of the Code Enforcement Officer or Planning Board by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Code Officer or Planning Board, and to the parties' arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Code Officer or Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Code Officer or Planning Board or, if the record is not sufficient or further information needs to be provided, to remand the matter back to the Code Officer or Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Code Officer or Planning Board on a shoreland zoning permit only upon a finding that the decision was clearly contrary to the applicable provisions of the Article or that the record evidence compels a contrary conclusion.~~

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

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 of the Town of Durham may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Article.~~

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,

reasons and the recommendations, if any, as appearing in the records of the Commission.

~~5. **Appeals jurisdiction:** The Zoning Board of Appeals established in accordance with Title 30 A.M.R.S.A., Sections 2691 and 4353 may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Historic District Commission or from the Code Enforcement Officer in the administration of this Article.~~

6. **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.

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021

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.

~~Section 14.11. APPEALS~~

~~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.~~

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021

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. APPEAL~~

~~Any person aggrieved by an order or decision of any officer or board under this Article may appeal to the Board of Appeal. The Board of Appeals may grant appeals and issue variances from the strict application of the Mobile Home Park requirements in the same manner as are set forth in Article 17.~~

Section 15.11. 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.

- 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 where it is alleged that there is an error in any requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer, Planning Board, Road Commissioner or Plumbing Inspector in the administration of this Ordinance; and where it is alleged that there is an error in any requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance 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 by an aggrieved party where it has been alleged that there is an error in any interpretation, determination, requirement or decision 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. The burden of proof shall be on the Appellant to demonstrate that the Code Enforcement Officer 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 Code Enforcement Officer and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Code Enforcement Officer. The Board of Appeals may reverse the Code Enforcement Officer's action 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.~~
 2. **Planning Board:** ~~The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning~~

~~Board, and to the parties arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or, if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.~~

3. **Road Commissioner:** ~~The Board of Appeals may hear and decide appeals by an aggrieved party where it has been alleged that there is an error in any interpretation, determination, requirement or decision action or failure to act made by the Road Commissioner in the administration of this Ordinance. The burden of proof shall be on the Appellant to demonstrate that the Road Commissioner 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 Road Commissioner and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Road Commissioner. The Board of Appeals may reverse the Road Commissioner's action only upon a finding that said action was clearly contrary to applicable provisions of this Ordinance or that the record evidence compels a different conclusion.~~
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.

- h. Commercial, industrial structures and additions to commercial and industrial structures, >2,400 sq. ft. of floor area - \$0.30 per square foot of floor area
 - i. Structural alterations - \$50.00
 - j. Outdoor pools with filtering systems - \$25.00
 - k. Satellite dish - \$5.00
 - l. Demolition of structures - no fee
 - m. Municipal or public education structures - no fee
 - n. Re-inspection due to failure - \$50.00
 - o. 2nd re-inspection due to failure - \$ 100.00
- 3. Local Plumbing Inspector. Application fees for a permit from the Local Plumbing Inspector shall be as required by the State of Maine.
 - 4. Planning Board. Application fees for a permit from the Planning Board shall be as specified in the Ordinance.
 - 5. Board of Appeals. Application fees for a permit from the Board of Appeals shall be seventy (\$70) dollars, plus any and all advertising costs.
 - 6. Select Board. License fees shall be as follows, plus any and all advertising costs:
 - a. Graveyard or Junkyard License - sixty (\$60) dollars for each license.
 - b. Automobile Recycling Business -\$300 for a five-year license.
 - 7. After-the-fact permit - Double Permit Fee, Minimum \$100.00

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.
- C. ~~**Appeals:** Appeals from enforcement determinations of the Code Enforcement Office shall be taken to the Board of Appeals.~~

**TOWN OF DURHAM
PLANNING BOARD
MEETING MINUTES
January 5, 2022**

1. Call to Order

2. Roll Call

Planning Board members present: Juliet Caplinger, Vice Chair; Wesley Grover; Allan Purinton; Ron Williams; John Talbot (Alternate); and Tyler Hutchison (Alternate).

Absent: Anne Torregrossa, Chair

3. Continuing Business:

a) Brickyard Hill Subdivision - Tabled

b) Stone X Gravel Pit, Conditional Use Permit: **Approved**

4. Other Business:

The Planning Board Approves minutes from: 7-7-21; 8-4-21; 9-1-21; 10-6-21; 11-3-21; and 12-1-21.

5. Adjourn