

DURHAM PLANNING BOARD
DRAFT LAND USE ORDINANCE AMENDMENTS PUBLIC HEARING
Durham Fire Station Meeting Room, 6:30 p.m.
March 13, 2024

1. Roll Call & Determination of a Quorum
2. Amendments to the Agenda
3. Part 1 – Draft amendments to implement Comprehensive Plan recommendations for housing diversity and to comply with State law on housing density (Articles 4, 5, 16, & 19).
4. Part 2 – Draft amendments to establish submission requirements, review procedures, and performance standards for solar energy systems (Articles 3, 5, 8, & 19).
5. Part 3 – Draft amendments to codify certain fees for permitting services provided by Town in the fee schedule (Article 18).

Town of Durham Land Use Ordinance

As Adopted at Town Meeting
April 1, 2023

*Proposed Revisions
For Town Meeting
April 6, 2024*

PART 1 – DRAFT AMENDMENTS TO IMPLEMENT COMPREHENSIVE PLAN RECOMMENDATIONS FOR HOUSING DIVERSITY & TO COMPLY WITH STATE LAW ON HOUSING DENSITY (Articles 4, 5, 16, & 19)

NOTE: Proposed changes are indicated with strikethrough text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

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 Height¹ – 35 ft.
 - a. For Schools and Municipal Structures – 50 ft.
6. Maximum Coverage for impervious surfaces (including structures) – 25%
7. Minimum Lot Area Size Two-Family per Dwelling Unit – ~~440,000~~ 90,000 sq. ft. per dwelling unit (accessory apartments are exempt from lot area requirements).
8. Maximum Number of Dwelling Units per Lot - Three (3)

(NOTE: The State has mandated that additional housing units be added on all residential lots without size restrictions but allows lot sizes to be increased for those full-sized units. The 2018 Comprehensive Plan recommends consideration of allowing 3 units of housing on a lot to increase housing options but calls for design controls to minimize community impacts. To address both of these issues, the draft amendment allow up to 3 dwelling units on a lot, but if multiple dwelling units are proposed, the lot size must be increased proportionally to the current 2-acre lot size requirement for a single-family dwelling. By State law, accessory apartments are exempt from this added lot area requirement. If the proposed Ordinance changes are not adopted, landowners will be legally entitled to build a single-family home and a duplex on 2.5 acres as of July 1, 2024.)

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.

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 rural~~ character of ~~residential neighborhoods~~ the community. 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~~ An accessory apartment 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.

(NOTE: To address the State mandate for increased housing density and implement recommendations of the Comprehensive Plan, the Planning Board is proposing to allow up to 3 dwelling units on any lot where a single-family home is currently allowed. A single-family home is currently allowed to have one accessory apartment on a 2-acre lot. With the amendments, a second accessory apartment will be allowed. Per State law, the Town cannot require increased lot size for accessory units.)

(NOTE: In April of 2022, the Maine Legislature passed an affordable housing law that requires all municipalities to allow up to two additional dwelling units on any lot where a single-family home is currently allowed. The following amendments remove language that is no longer enforceable.)

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 back lot ~~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 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.
- 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.

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 16.3 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 minimum lot size, ~~lot area~~, lot frontage and shore frontage can be met. Variances relating to setback or other requirements not involving minimum lot size, ~~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*]

(Note: LD 2003 requires all Maine towns to allow multiple dwelling units on any property where a single-family dwelling can be built. The proposed amendment clarifies that the provisions for “grandfathered lots” that are smaller than 2 acres will not be permitted to have the maximum number of 3 dwelling units (a single-family and a duplex). The exemption for “lot area” will be replaced with “minimum lot size.”)

ARTICLE 19: DEFINITIONS

Section 4.1 DEFINITIONS

ACCESSORY APARTMENT: A separate, secondary dwelling unit located on a property with a single-family dwelling that is subordinate to the main dwelling in terms of size and use.

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.
- ~~e. **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.~~

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.

~~**MULTI-FAMILY DWELLING:** See Dwellings.~~

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]

SINGLE FAMILY DWELLING: See Dwellings.

(NOTE: To address family housing needs and comply with a new State law on housing density, proposed amendments to the Land Use Ordinance will allow up to three dwelling units on a lot. The definition of accessory apartment is clarified in its size and function to qualify for exemption from increased lot area that applies to larger dwelling units. With repeal of the Southwest Bend Growth District in 2019, Durham no longer allows multi-family dwellings to be housed in a single structure.)

**Town of Durham
Land Use Ordinance**

As Adopted at Town Meeting
April 1, 2023

*Proposed Revisions
For Town Meeting
April 6, 2024*

***PART 2 – DRAFT AMENDMENTS TO
ENACT STANDARDS FOR SOLAR
ENERGY SYSTEMS
(Articles 3, 5, 8, & 19)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

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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

SPR – Planning Board site plan approval required

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

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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. <u>Solar Energy Systems</u>					
a. <u>Medium-scale</u>	<u>CER & SPR</u>	<u>No</u>	<u>CER & SPR</u>	<u>No</u>	<u>No</u>
b. <u>Large-scale</u>	<u>CU & SPR</u>	<u>No</u>	<u>CU & SPR</u>	<u>No</u>	<u>No</u>
45. Small non-residential facilities for educational, scientific, or nature interpretation purposes	Yes	CU	Yes	CU	CER
46. Structures accessory to allowed uses	Yes	No	Yes	CU	CER
47. Surveying and resource analysis	Yes	Yes	Yes	Yes	Yes
48. Timber Harvesting	Yes	Yes	Yes	Yes	Yes
49. Two-family Dwelling	Yes	No	Yes	No	CER
50. Wildlife management practices	Yes	Yes	Yes	Yes	Yes

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ARTICLE 5: PERFORMANCE STANDARDS

(NOTE: The current Land Use Ordinance allows solar energy systems of all types and sizes to be installed under the general provision for “commercial services not otherwise listed.” The Planning Board can apply general criteria, such as traffic impacts and noise generation, under the requirements for a conditional use permit. These general criteria do not adequately address the specific potential impacts of this new technology and land use. Similarly, the site plan review standards for review of commercial buildings and parking areas are also inadequate to effectively manage the coming proliferation of “solar farms.” The proposed submission requirements, performance standards, and decommissioning program were taken from model ordinances and tailored to address the comprehensive plan goals for preserving Durham’s rural character and mitigating the impacts of commercial development on surrounding residential properties.

Section 5.25. SOLAR ENERGY SYSTEMS

- A. **Applicability:** To facilitate development of renewable and non-polluting energy but minimize potential adverse effects to the scenic and natural resources of the Town and to support the goals of the Comprehensive Plan to maintain the Town’s rural quality, solar energy systems are subject to the following review process and the performance standards of this article:
1. Roof mounted, building integrated, and small-scale ground mounted systems with a total surface area of up to eight thousand (8000 sq. ft.) square feet are considered accessory uses and are exempt from the requirements of this article.
 2. Medium-scale, ground-mounted systems with a total surface area of between eight thousand (8000 sq. ft.) square feet and twenty thousand (20,000 sq. ft.) are subject to site plan review.
 3. Large-scale, ground-mounted systems with a total surface area of more than twenty thousand (20,000 sq. ft.) square feet are subject to conditional use and site plan reviews.
- B. **Submission Requirements:** In addition to the submission requirements for conditional use and/or site plan review, applications for approval of medium-scale and large-scale solar energy systems shall provide the following submissions in ten (10) printed copies and one (1) digital PDF:
1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information regarding the final system installer shall be submitted prior to the issuance of building permit.
 2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
 3. Nameplate Capacity of the Solar Energy System (as expressed in KW or MW).

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4. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should include applicable setback and other area standards.
5. A preliminary equipment specification sheet that documents all proposed solar panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
6. An operation and maintenance plan describing the regular maintenance of the facility and the scope of regular inspections and the frequency and method of vegetation management;
7. Solar system specifications including the manufacturer, model, and facility size as well as weight load and wind load of structures and equipment;
8. Certification that the site plan layout, design, and installation conform and comply with all applicable industry standards and standards of the latest edition of the National Fire Protection Association (NFPA1&101) and the latest edition of the National Electrical Code (NEC);
9. Certification that the project complies with the utility notification requirements contained in Maine law and accompanying regulations through the Maine Public Utility Commission, unless the applicant intends and so states on the application, that the system will not be connected to the electrical grid;
10. An Emergency Services plan acceptable to the Fire Chief to accommodate the Town's emergency vehicles and equipment, including but not limited to means of ingress and egress in the event of fire or other emergency;
11. A visual impact assessment prepared by a registered landscape architect addressing potential view impacts on public roads and neighboring properties with proposed buffering treatments meeting the requirements of Section C.7;
12. A vegetation management plan indicating that vegetation growth will be maintained under and around the installation at levels needed to reduce the risk of ignition from the electrical system while minimizing mowing to the extent practicable. Native, pollinator-friendly seed mixtures shall be used. Broadcast application of herbicides and pesticides is prohibited with the exception of the use of directed treatments of herbicides to target invasive species without the use of broadcasting, if deemed necessary by the Planning Board (or their designee). The vegetation management plan shall address short and long-term maintenance of any visual buffers required in Section C.7;
13. A decommissioning plan identifying the party currently responsible for decommissioning, a timeline and process for decommissioning the system, and an engineer's estimate for the cost of decommissioning, including all costs for removal and disposal of solar panels, structures, cabling, electrical

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components, roads, fencing, and any other associated facilities above ground or below grade, and site restoration to its original condition including grading, loaming, and seeding. The decommissioning plan shall include a description of any agreement (e.g., lease) with all landowners regarding decommissioning and include a deadline for completion;

14. Prior to the issuance of any construction permits, the owner/operator shall submit a financial guarantee in the form of a performance bond, surety bond, irrevocable letter of credit or other form of financial assurance acceptable to the Town Attorney, to provide assurance that the facility will be properly removed and remediated upon abandonment or termination of production:
 - a. The amount of the financial guarantee shall be based on the engineer's cost estimate and shall account for anticipated increases in decommissioning costs over the life of the system;
 - b. If the term of any performance bond or letter of credit is not for the full operational life of the system, the bond or letter of credit shall be automatically renewable for successive terms to account for the full operational life of the system; and,
 - c. If a bond or letter of credit is provided as a financial guarantee, the Town of Durham shall be listed as a co-beneficiary, and the Town Manager shall be listed as the designated point of contact on behalf of the Town.
 - d. Every five years subsequent to the initial effective date of the surety, the owner shall submit an updated engineer's estimate and surety to the Code Officer for review and approval. The financial guarantee shall be adjusted according to the updated estimate. The Town may hire, at the applicant's expense, a qualified professional to review the engineer's estimate.
15. A public outreach plan, including how the applicant will inform abutters and the community.

C. **Performance Standards: All medium-scale and large-scale solar energy systems shall meet the following standards:**

1. All solar equipment shall be placed at least one hundred (100 ft) feet from any property line;
2. No topsoil shall be removed from the site for the installation of the system except as necessary to comply with site plan review standards. Limit clearing of existing vegetation to the extent necessary for functionality of the project;
3. Invasive plant species surveys are required to be conducted and submitted to the Code Officer prior to and after construction, with a five-year minimum invasive species mitigation plan to be implemented and paid for by the developer if construction activities are found to increase the prevalence of invasive plant species on-site;

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4. Solar panel components shall have a UL listing and shall be designed with an anti-reflective coating. Individual arrays/solar panels shall be designed and installed in order to prevent glare toward buildings on adjacent properties and nearby vehicular traffic;
5. The solar project site shall be enclosed with tension-mesh solar farm fencing or equivalent not less than eight (8 ft) feet in height with a ground clearance of six (6 in) inches and be secured with gates. Fencing shall be installed on the interior of the buffer required in subsection 7 below;
6. Solar panels should not exceed a maximum height of fifteen (15 ft) feet from the finished ground elevation at maximum tilt. Exceptions to this height limitation may be appropriate where complete and adequate screening from view is provided or sudden changes in topography would preclude a consistent height of adjacent solar panel arrays;
7. A vegetated buffer shall be required around the solar energy system consisting of a landscaped strip at least fifty (50 ft) feet wide measured from each boundary line of the solar project site around the entire perimeter except for any parts of the perimeter that have an equivalent existing natural buffer. The solar project site shall be landscaped and maintained with a buffer of plant materials that are mature enough to effectively screen the view to eight (8 ft) feet above ground level of the solar panels from adjacent properties all year round. Non-invasive plant species, pollinator-friendly and wildlife-friendly native plants, shrubs and trees shall be used.
8. When a buffer is not required based on the results of a view analysis, buffer requirements may be reduced or eliminated, especially when the adjoining property is subject to an active agricultural use and the reduction or elimination is approved by the Planning Board.
9. All newly installed utilities, including but not limited to electric or fiber lines, serving the solar energy system site shall be placed underground unless overhead service is required for utility connections as confirmed by the utility service.
10. Lighting shall be consistent with local, state, and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be shielded from interference with abutting properties. Lighting of the solar energy system shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
11. To control noise, all noise generating equipment must be at least four hundred (400 ft) feet from any residence, with a 400-foot radius indicated from the noise generating equipment shown on the site plan;
12. A "KNOX-BOX" approved by the Fire Chief, shall be provided and installed by the operator to be used to allow emergency service personnel continuous access. All means of shutting down the solar energy system shall be clearly marked. The owner, or operator, shall identify a responsible person for public

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- inquiries and emergency contact throughout the life of the installation and contact information shall be posted on fencing at all entrances.
13. A clearly visible warning sign shall be placed at the base of all pad-mounted transformers and substations and on the fence surrounding the solar energy system informing individuals of potential voltage hazards.
 14. Solar energy systems shall be properly maintained, including but not limited to, painting, structural repairs, and integrity of security measures. Facilities shall be kept free from all hazards including, but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety or general welfare. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road(s);
 15. Any substantial modifications to a solar energy system made after issuance of the required Town permit(s) shall require review and approval by the Planning Board. The Code Enforcement Officer may approve minor modifications that do not materially impact any of the approval or performance standards set forth in this Ordinance.
 16. Any change of ownership or management of the solar energy system shall be reported to the Code Officer within ninety (90) days of such change with written acknowledgement that the new ownership/management is required to comply with all prior permits and approvals;
 17. The Code Officer shall be notified in writing at least one hundred eighty (180) days in advance of any intent to repower the facility. Such notification shall include full details for any proposed changes to the site and may require new permits, inspections, and site plan review;
 18. Failure of the owner/operator to notify the Code Officer and/or to maintain any submitted performance guarantee, through nonpayment of premiums or otherwise, shall be evidence of a breach of the approval which, if not remedied within thirty (30) days shall require the project owner to notify the Maine Public Utilities Commission (MPUC), and any fiscally connected party, that they are in breach of their Town approval. Production from the solar energy system shall be suspended beginning on the 30th day following expiration or termination of a performance bond or letter of credit and until the Town certifies that the guarantee has been properly reestablished; and,
 19. Failure of the owner/operator to properly and fully decommission the solar energy system within one year of the last date of production shall entitle the Town to access any provided financial guarantee and to enter the property and conduct all decommissioning activities necessary. The deadline for decommissioning may be extended for no more than a one-year period, if the owner/operator provides information to the Code Enforcement Officer certifying that the cease in production is temporary and will be resumed within that year.

Section 5.25. (Renumber all following subsections in Article 5)

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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 and small-scale solar energy systems);
- 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).
- D. **Solar Energy Systems:** The construction or expansion of a medium or large-scale energy system.

(NOTE: The proposed amendment will establish the requirement for site plan review of commercial “solar farms” that do not typically involve the construction or buildings or parking areas.

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.

(Note: The proposed definitions will be added to clarify the distinctions between different types of solar energy systems and equipment to enable differential treatment of certain aspects of this new technology and land use.)

179. **SOLAR ENERGY SYSTEM:** Solar energy system means a complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems, these may be ground-mounted, dual-use, roof-mounted and building-integrated systems.
180. **SOLAR ENERGY SYSTEM, ABANDONMENT:** Abandonment means the date at which any part of a solar energy generating system has been out of service for a continuous period of twelve (12) months.
181. **SOLAR ENERGY SYSTEM, GROUND-MOUNTED:** Ground-mounted solar energy generating system means a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.
182. **SOLAR ENERGY SYSTEM, ROOF-MOUNTED OR BUILDING INTEGRATED:** Roof mounted and building integrated solar energy generating systems means a solar energy system in which solar panels are mounted on top of the roof of a structure either as a flush-mounted system or as modules fixed to frames which can be tilted. The definition also includes a solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

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183. **SOLAR ENERGY SYSTEM, SURFACE AREA:** Surface area means the total total surface area of all solar energy panels.

Section 19.1. (Renumber all following subsections in Article 19)

**Town of Durham
Land Use Ordinance**

As Adopted at Town Meeting
April 1, 2023

*Proposed Revisions
For Town Meeting
April 6, 2024*

***PART 3 – DRAFT AMENDMENTS TO
CODIFY CERTAIN FEES FOR
INCLUSION IN THE FEE SCHEDULE
(Article 18)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

18.4 PERMIT APPLICATION SUBMISSION REQUIREMENTS**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~~ periodically by the Select Board based on analysis of Town processing costs and comparison with fees in similar communities. The following are fees for services rendered in the administration of this Land Use Ordinance:
 - a. Building
 - b. Electrical
 - c. Plumbing
 - d. Demolition
 - e. Reinspection
 - f. Occupancy
 - g. After the Fact Permits
 - h. Conditional Use
 - i. Subdivision Sketch Plan
 - j. Preliminary Subdivision
 - k. Final Subdivision
 - l. Amended Subdivision Approval
 - m. Site Plan Review
 - n. Amended Site Plan Approval
 - o. Peer Review Escrows for Subdivision & Site Plan Reviews
 - p. Shoreland Zoning
 - q. Solar Energy Systems
 - r. Flood Management
 - s. Appeals
 - t. Graveyard or Junkyard Annual License
 - u. Automobile Recycling Business
 - v. Gravel Pit Annual Registration
 - w. Mobile Home Park Annual License
 - x. Entrance/Driveway
 - y. E-911 Addressing

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z. Private Street Sign

3. The Select Board shall establish fees for all permits where permit fees have not been specified within this Ordinance but the Town performs services required for its administration.

(Note: In 2022, voters approved moving specific fees from the text of the Land Use Ordinance to a fee schedule that can be updated by the Select Board on a regular basis and kept current with service costs. The Land Use Ordinance does not refer to required fees in all articles, and the Town Attorney has advised that all fees on the fee schedule should be referenced in the Land Use Ordinance per the prior amendment language. The Select Board requested that a general provision be added to authorize enactment of new fees without amendment of the Land Use Ordinance when Town services are required by the Ordinance.)