

**DURHAM PLANNING BOARD
REGULAR MEETING AGENDA
Durham Town Offices, 6:30 p.m.
August 3, 2022**

1. Roll Call & Determination of a Quorum
2. Amendments to the Agenda
3. Acceptance of the Minutes of Prior Meetings (July 13, 2022)
4. Informational Exchange:
 - a) Town Officials
 - b) Residents
 - c) Non-Residents
5. Continuing Business
 - a) Substantive Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A
6. New Business:
 - a) Conditional Use Application of Celebration Tree Farm for Camping, Public Workshops, & Events at 125 Bowie Hill Rd Map 10, Lot 43
7. Other Business:
 - a) Planning Board Discussion of Public Outreach Process for Land Use Ordinance Amendments For 2023 Town Meeting

3. Acceptance of the Minutes of Prior Meetings (July 13, 2022)

Town Of Durham
Planning Board Minutes
Durham Town Offices, 6 pm
July 13, 2022

1. Call to Order and Establishment of Quorum

In Attendance: John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Ron Williams, Wes Grover and George Thebarga (Town Planner)

Absent: Tyler Hutchinson, Anne Torregrossa

2. Amendments to the Agenda ~ None

3. Acceptance of Minutes: Prior Meeting June 1, 2022 ~ Accepted with no changes.

4. Informational Exchange

a.) Town Officials ~ George Thebarga, Town Planner

- Mr. Thebarga met with the Conservation Commission about the Resource Protection District Revisions on May 21, 2022
- They are working on the project to correct errors within the existing Resource Protection District that are based on outdated information and inaccurate mapping.
- Adding areas outside of the existing Resource Protection District that meet the same Comprehensive Plan of the resource protection criteria will be a second, separate warrant article.
- This split has been approved by the Select Board for the next Town Meeting warrant.
- The Greater Portland Council of Governments has been contacted to possibly do a citizen survey on the Town's Website, that would be an opportunity to gain the public's input on that issue.
- The Town Planner prepared a database of all the properties that are affected by the zoning changes. Total of 480 out of 2000 parcels in town.

- 360 Property owners were sent out mailings in the last attempt (These property owners are affected by Phase 1.) 120 additional property owners are affected by Phase 2.
- The Board plans to do informational meetings after Labor Day to try to get public input.

b.) Residents ~ None

c.) Non-Residents ~ None

5. Continuing Business:

a.) Completeness Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A

- The Board issued a June 1, 2022, Letter of Incompleteness application identified 7 deficiencies in the application for Deer Creek Crossing.
- The applicant submitted an updated location map.
- The parcel corners have not been monumented.
- The applicant has not submitted any documentation of a summary judgment on the zoning violations on the property.
- Test pits for the septic systems have been submitted.
- An aerial photo overlay shows the vegetative cover.
- The location map indicates a 36-inch culvert under Hallowell Road.
- The flood plain along the brook is now indicated on the plans.

The Planning Board moved to determine that the application is complete with a requirement that the applicant has additional monumentation of the corners to be done as part of the conditions of approval.

Ron Williams moved, Alan Purinton seconded, and the Board approved 5-0.

6. New Business:

a.) Public Hearing Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A

- The public hearing notice was published and posted.

- The Town Planner summarized the 2006 adopted bylaws for public hearings.
- The Chairman of the Planning Board presides over the meeting and makes determinations of relevancy of any testimony submitted.
- That decision can be challenged through a motion of any Board member and a majority vote.
- The chairman has the authority to set reasonable time limits.
- In the bylaws, there is an opportunity for every party to rebut the testimony that is given. The applicant should be given an opportunity after public comment has been submitted to respond to that public comment with information that addresses it, either rebutting that it's not accurate or asking the board to accept it. And then a member of the public who spoke would have one opportunity to rebut that information.
- The intent of this hearing is to focus on whether the application complies with the standards of the Ordinance and the requirements and it's not to debate town growth management policies that are set at the town meeting. The Planning Board is required by law to follow the ordinance whether it agrees with it or not.

Public Comment

- Allen Irish, President of the abutting Timber Oaks Association raised concerns about the accuracy of the survey information. There is disagreement between where monuments have been set and the surveys. A survey was done in 1987.
- He would like clarification of the lot numbering system in order to address wetland issues.
- Timber Oaks is willing to work with the applicant on realigning the intersection on Hallowell Road.
- Derek Simkowitz of 23 Timber Oaks Drive stated concerns for drainage coming from the existing road onto his property. The Board should require an independent peer review of the engineering plans.
- Dave Griswold of 16 Timber Oaks Drive pointed to the requirement for the Planning Board to verify that no timber harvesting violations have occurred in the past five years.
- Heather Roy of 777 Hallowell Road reminded the Board of their responsibility to protect the Town's rural character.
- She pointed to the inconsistency of the 50-foot road buffer in the Land Use Ordinance with the comprehensive plan recommendation of 100 feet.

- During the meeting she downloaded a lien discharge for the violation, indicating that the applicant has not been conducting due diligence as they indicated they couldn't find any record.
- She pointed to the inconsistency between the tax maps indication of acreage and the applicant's survey. She thinks this needs to be peer reviewed.
- Joe Roy of Pinkham Brook Road and representing the Conservation Commission expressed concern for timber harvesting violations he observed on the site walk.
- He urged the Board to consider third-party reviews of that issue.
- He pointed to the fact that wetland delineations were done outside the growing season and should be peer reviewed.
- He said that he observed a lot of commercial equipment on the site in violation of the court order on the site walk.
- Mr. Roy argued that stormwater treatment facilities should not be allowed in Resource Protection areas.
- The Conservation Commission strongly supports the creation of open space in the subdivision that is contiguous with the open space of Timber Oaks.
- Charlie Burnham attempted to clarify the monumentation and lot numbering issues.
- He pointed to the well-recognized lack of accuracy of tax maps on acreage. They used a certified surveyor.
- He also pointed out the need to locate stormwater basins where they can treat the most runoff coming from the project road.
- Mr. Griswold said that prior surveys should take precedence over more recently conducted ones.
- The Town Planner was asked about the 100-foot buffer recommendation in the Comprehensive Plan, and he said it can't go into effect unless the Land Use Ordinance is amended.
- Heather Roy commented that the Land Use Ordinance was recently amended, and it should have been changed for consistency with the Comprehensive Plan.
- Joe Roy argued that the Board can and must consider prior forestry violations in its deliberations.

The Chairman Closed the Public Hearing.

6. New Business (cont.)

b.) Substantive Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A

- The Planning Board directed the applicant go back to the title company and get the land use violation judgment documentation clarified and resolved.
- The Board acknowledged its responsibility to apply due diligence to the review the submitted information, including verification of the total acreage in the application and safety of the proposed intersection on Hallowell Road.
- The Town Planner pointed to the discrepancies of the submitted survey plan in terms of certification by the surveyor and the fact that the surveyor noted issues with unclear boundaries of the project tract and proposed open space. Mr. Thebarge suggested that the Board look for a plan that clearly identifies disputed areas and calculations to verify that the project meets the required open space without the disputed areas being considered.
- The Town Planner then addressed the substantive issues he identified starting with the constraints on Lots 6 & 7 due to the large wetland that intrudes into them. To meet the technical requirement for 50% buildable area, the applicant added land from the open space on the far side of the wetland, which doesn't affect the building envelopes. If those envelopes are not adequate for the proposed building sites, there will be pressure to expand out into the wetland. The Board can require engineered site plans for those lots that could be approval conditions and could be amended with Board approval.
- For fire protection there must be an on-site water supply for the subdivision and the standard is 10,000 gallons base and then 2,000 gallons per house, and that can either be an underground tank/cistern or it can be a fire pond. If it's a fire pond, it must be 120,000 gallons. The ordinance (subsection c) says that the volume can be reduced with the Fire Chief's approval of residential sprinklers in all the homes.
- The applicant is proposing to get the Fire Chief's approval for a fire pond with 36,000 gallons, but no sprinklers, and if that is not acceptable, they will put a dry hydrant by the stream. If they put a dry hydrant on the stream, that needs to be verified that it has adequate water supply and that it's not going to be dry in the summer with no water.
- On the issue of timber harvesting violations, the Ordinance requires either the Department of Conservation, Agriculture and Forestry to come and verify that no violations have occurred, or a licensed harvester must provide certification and that has not been done by the applicant.
- The Town Planner will draft a set of preliminary approval conditions addressing the issues discussed up to this point for the next meeting. Those draft conditions

will include required peer reviews and the Board should give direction on what it wants to be submitted for peer review.

- The Board indicated that the peer reviews should include the engineered plans, including a traffic safety review, the wetlands delineations, and the potential forestry violations.
- The Board will continue substantive review of the application on August 3 at 6:30 pm at the Town Offices.

Juliet Caplinger moved to adjourn, John Talbot seconded, and the Board approved 5-0.

5. Continuing Business:**a. Substantive Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A****TOWN PLANNER COMMENTS:**

- The Planning Board determined that the application was complete on July 13, 2022.
- The Board has 60 days to render a decision on the application unless the applicant agrees to an extension.
- The Board conducted a public hearing on the application on July 13, 2022 and received the following input:
 - Survey Accuracy – Comments were made on the existence of conflicting surveys.
 - Drainage Concerns – A Timber Oaks resident complained of drainage problems with the existing road and argued for an independent review of the proposed drainage plan.
 - Timber Harvesting Violations – A member of the Conservation Commission testified of observed timber harvesting violations during the site walk.
 - Disclosure of All Potential Encumbrances – A lien discharge related to the Dean Smith violation court action was presented as evidence of a lack of due diligence in the title work.
 - Accuracy of Wetland Delineation – A member of the Conservation Commission pointed to the timing of the wetland delineation outside of the growing season and requested a peer review by a qualified wetland scientist.
 - Location of Stormwater Basin – A member of the Conservation Commission requested that the stormwater basin near the brook be moved out of the Resource Protection District.
 - Existing and Proposed Stream Crossing – A member of the Conservation Commission emphasized the need for careful review of removal of the existing stream crossing and installation of the new one.
 - High Intensity Soil Survey – Written comments from the Conservation Commission requested that the Board require a high intensity soil survey.
 - Open Space Creation & Network – A member of the Conservation Commission expressed support for the proposed open space.
 - Concern for Impacts on Schools – Written comments submitted after the public hearing stated the need for the Planning Board to consider school and tax impacts.
 - Concern for Impacts on Aquifer – Written comments submitted after the public hearing stated the need to consider impacts on the aquifer.
 - Concern for Continuing Zoning Violations – Written comments

submitted after the public hearing indicated a concern for continued zoning violations on the property.

- The Board commenced substantive review of the application on July 13, 2022.
- Per Section 6.6.H, the Town Planner sent a completion notice to the applicant and notified the Road Commissioner, Fire Chief, and School Superintendent of the complete application on July 18, 2022 requesting comment.
- On July 26, 2022 the Road Commissioner submitted written comments that are included in the packet.
- Under Maine law and the Durham Land Use Ordinance, the Planning Board must decide whether to approve the submitted preliminary subdivision application as meeting the Ordinance criteria and standards, to approve the application with conditions, or to deny the request.
- The burden of proof is on the applicant to demonstrate compliance with the criteria and standards.
- Based on his review of the application and the public process, the Town Planner has prepared draft preliminary subdivision approval conditions.
- The Planner's draft approval conditions track the applicable subdivision standards and provide acceptable means of mitigating impacts of the subdivision per those standards.
- The Planner's list of draft approval conditions is comprehensive to ensure that all the criteria and standards and public concerns are considered by the Board, and the Board may conclude after discussion that some are not needed and can be deleted.
- The majority of the Board can vote to accept, modify, or delete any of the draft approval conditions and can add its own approval conditions.
- After discussing whether each draft approval condition is needed and adequately addresses the applicable subdivision standard, the Board should ask the applicant whether they agree to the proposed approval condition.
- If a majority of the Board finds that with approval conditions the application can meet the subdivision criteria and standards, it can grant preliminary subdivision approval subject to those conditions.
- For the final plan application review, the Town Planner will prepare draft findings of fact documenting compliance with the criteria and standards based on the public record.
- If the Planning Board finds that even with proposed approval conditions, the applicant has failed to meet its burden of proof in meeting any of the subdivision standards, it must deny the application.
- If a majority of the Board indicates intent to deny the application, the Town Planner will prepare draft findings of fact for review and action at the September meeting.
- The Town Attorney has advised that if the Board intends to take public comment on a subdivision application, it should be done in a noticed public hearing following the procedures outlined in the Planning Board bylaws.

Deer Creek Crossing DPW Comments

Calvin Beaumier <publicworks@durhammaine.gov>

Tue 7/26/2022 3:10 PM

To: George Thebarga <townplanner@durhammaine.gov>

Cc: John Talbot <jtalbot@durhammaine.gov>

Hi George,

- I have looked over the plans of the Deer Creek Crossing subdivision application and have the following comments:
- Driveway culverts should be 15" HDPE 30 feet long with riprap armored on the inlet and outlet of each unless the Road Commissioner determines that a culvert is not needed. All culverts shall have a minimum of 12 " of cover over them.
- All lots shall require a driveway/entrance permit from the Road Commissioner
- The entrance shall require a MDOT entrance permit separate from the one that was recently issued for the newly constructed home on the abutting lot.
- Need construction details and specifications for the foundation and structure of the 5 foot arch plate stream crossing. Army Corp and or DEP permits?
- Plans are not clear to that the sight distance is 700 ft to the South. Please have plan clearly depict sight distance in both directions.
- Is MDOT ok with the culvert near Hallowell Road being outside the MDOT ROW?
- Depict a typical snow storage area/easement at the end of the road
- Would like to see the ditches added to the Typical Roadway Section detail.

That's what I have upon initial review.

Calvin Beaumier
Durham Road Commissioner
207-844-1774



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

**Office of Code Enforcement
and Planning**

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PRELIMINARY SUBDIVISION APPROVAL

Deer Creek Crossing Subdivision

(Draft Conditions of Approval)

1. Per Section 6.6.L.1., the applicant shall make the following changes to the preliminary plan as directed by the Planning Board decision:
 - a. A right of way shall be extended from the turnaround to the southwest tract boundary for future road connection.
 - b. The stormwater detention basin at station 9+00 shall be moved outside the Resource Protection District boundary along the stream. *(Per request of the Conservation Commission)*
2. Per Section 6.6.L.3., the Board considers that the engineer's construction estimates and performance guarantee for the project will include the following common improvements:
 - a. Access road construction;
 - b. Electrical service;
 - c. Stormwater management system;
 - d. Erosion and sedimentation control system; and,
 - e. Fire protection system.
3. Per Section 6.7.C.3. the applicant shall submit a certified boundary survey with the final plan application and shall mark the corners of the parcels with monuments. That survey shall clearly indicate the areas of questionable title and calculation of the area that should be deducted from the proposed open space due to questionable title. The applicant shall supply updated documentation that the proposed cluster subdivision meets open space requirements of Section 6.33.B.5.
4. Per Section 6.7.D.1, due to the presence of extensive wetlands and drainage concerns, a high intensity soil survey shall be included in the final plan application to verify subsurface drainage conditions for construction of roads, home foundations, and septic systems. *(Per request of the Conservation Commission)*
5. Per Section 6.7.D.4, due to concerns for traffic safety and conditions of roads to provide adequate vehicular access, the applicant shall submit a traffic safety analysis of the proposed Hallowell Road intersection performed by a qualified professional. The applicant shall submit said impact analysis for technical peer review.

6. Per Section 6.7.E., to address concerns raised at the public hearing and in written comments, the applicant shall provide the following additional information with the final plan as required by Planning Board to verify compliance with the subdivision standards:
 - a. Survey Accuracy – See draft approval condition #3 above.
 - b. Drainage Concerns – Engineering peer review of the stormwater and erosion control plans
 - c. Timber Harvesting Violations – Review by the Department of Forestry or certification by a licensed forester.
 - d. Disclosure of All Potential Encumbrances – Documentation of summary judgment on the land use violation complaint.
 - e. Accuracy of Wetland Delineations – Peer review by a qualified wetland scientist.
 - f. Location of Stormwater Basin – See draft approval condition #1.b above.
 - g. Sensitivity of Stream Crossings – DEP & ACOE permits for stream restoration and new stream crossing.
 - h. Concern for Impacts on Schools – Documentation of any input from School Superintendent in response to Town Planner notification.
 - i. Concern for Impacts on Aquifer – Review by the Durham Code Officer of standards applicable to portions of project in the Aquifer District boundary.
 - j. Concern for Continuing Zoning Violations – Review by the Durham Code Officer for zoning violations.
7. Per Section 6.8.A. the final plans shall be submitted within six (6) months of preliminary plan approval and shall be consistent with the preliminary plan except for changes required by the Planning Board or outside reviewing agencies (such changes will be reviewed per the subdivision review criteria & standards). Failure to submit a final plan application within six (6) months shall require resubmission & re-review of the preliminary plan. Prior to expiration of the preliminary plan approval, the applicant may request an extension accompanied by explanation of the causes for delay, documentation of progress made in fulfilling the preliminary plan approval conditions, and confirmation that the Land Use Ordinance has not been amended such that changes affect the project approval.
8. Per Section 6.16.C., the applicant shall submit design details of the proposed fire protection water supply for review and comment by the Durham Fire Department. If underground storage is provided, the volume of water storage shall be 36,000 gallons unless home sprinklers are used, and a reduced water volume is approved by the Fire Chief. If a fire pond is provided, the volume of water storage shall be 120,000 gallons unless home sprinklers are used, and a reduced water volume is approved by the Fire Chief. If the Fire Chief requests a technical peer review, the applicant shall submit the plan for said review.
9. Per Section 6.17.A & B., an erosion and sedimentation plan meeting the requirements of Appendix 2 shall be submitted with the final plans and submitted for engineering peer review.
10. Per Section 6.17.C., areas intended for vegetation clearing shall be shown on the final plan plans to support the stormwater management plan assumptions and required buffers along water bodies shown on the recording plan and referenced in the plan notes.
11. Per Section 6.18.B.1 & 2., the final plan application shall include required MDOT permits.

12. Per Section 6.18.C.1., the final plan shall show a road extension (paper street) to the adjacent southwest property line as indicated during the preliminary plan review meeting(s).
13. Per Section 6.18.C.2., the applicant shall obtain and submit with the final plan written approval for the street name and all other requirements of Article 13. by the Durham Street Addressing Officer.
14. Per Section 6.18.D.2., the final plans shall include engineered drawings of the road meeting the requirements of Appendix 1. The applicant shall submit said road plans for technical peer review.
15. Per Section 6.21.A.1 & 2., the final plan shall delineate and note the limits of tree clearing.
16. Per Section 6.21.B.1., the applicant shall seek consultation with the Maine Department of Conservation, Agriculture, and Forestry's Maine Natural Areas program for information on rare and exemplary botanical features in the project area and shall provide any response from the Department with the final plan application.
17. Per Section 6.21.B.2., the applicant shall seek consultation with the Maine Historic Preservation Commission for information on any historic or prehistoric resources in the project area and shall provide any response from the Commission with the final plan application.
18. Per Section 6.21.C., the applicant shall seek consultation with the Maine Department of Inland, Fisheries, and Wildlife for information on habitat for species appearing on the official state or federal lists of endangered or threatened species in the project area and shall provide any response from the Department with the final plan application.
19. Per Section 6.21.D., the final recording plan notes and the deeds shall include notice of the clearing restrictions for lots including areas covered by shoreland zoning or resource protection.
20. Per Section 6.23.A. and 6.34.A, the applicant shall submit an engineer's construction cost estimate to cover the full costs of all required improvements, including roads, utilities, stormwater management, fire protection water supplies, and erosion and sedimentation controls along with a letter of commitment from a lending institution referencing said engineer's cost estimates.
21. Per Section 6.28.B., the final plans shall include the DEP stormwater permit and shall be consistent with requirements of that permit.
22. Per Section 6.31.B., the applicant shall submit with the final plan a letter from the Department of Conservation, Agriculture, and Forestry or a licensed forester verifying that timber harvesting on the property was done in compliance with liquidation harvesting rules.
23. Per Section 6.32.D. the final plans shall include copies of covenants, articles of incorporation, and homeowner association bylaws using the template prepared by the Town Attorney or a version reviewed and approved by the Town Attorney at the applicant's expense.
24. Per Section 6.33.B.8, the applicant shall provide detailed grading plans for the building sites on Lots 6 and 7 which shall become part of the final subdivision approval conditions that can be amended with further subdivision review.
25. Per Section 6.34.B., the final plan application shall include the proposed form and amount of the performance guarantee needed to cover the costs of all improvements noted in COA #20 above, which can be a cash deposit or irrevocable letter of credit in a form satisfactory to the Town Attorney (template provided). Any other proposed performance guarantee must be reviewed by the Town Attorney at the applicant's expense.

6. New Business:

a. Conditional Use Application of Celebration Tree Farm for Camping, Public Workshops, & Events at 125 Bowie Hill Rd Map 10, Lot 43

TOWN PLANNER COMMENTS:

- The applicants are applying for a conditional use permit to expand activities at the Celebration Tree Farm on Bowie Hill Road.
- Some of the proposed uses do not clearly fit within the list of permitted and conditional uses of Table 3.1.
- On Tuesday, July 19, the Durham Board of Appeals heard an appeal of the applicant requesting an interpretation of the boundary of the Resource Protection District to move it from its current position on the Zoning Map on their property to the edge of the floodplain along the stream per new data provided by the State.
- In denying that appeal of the zoning district boundary, the Board of Appeals determined that the proposed uses are either permitted or allowed as conditional uses in the Rural Residential and Agricultural District and in the Resource Protection District (see attached draft findings).
- The enclosed application describes the proposed uses and addresses each of the conditional use criteria with supporting documentation.
- In 2021, the applicant applied for a conditional use permit to add 20 campsites on the rear 110 acres, and that application was denied by the Planning Board.
- The Code Officer subsequently issued a cease-and-desist order to prevent the rental of a converted bus on the property involved in this application.
- The current Code Officer has conducted an inspection and determined that the bus is not being rented.
- The current application is for a substantially different use and should be considered independently of the past application.

POTENTIAL FINDINGS OF FACT:

- *The applicants seek to develop educational, nature-based, agritourism on the Tree Farm.*
- *The applicants intend to offer the following opportunities and associated structures:*
 - *An RV for camping with a composting toilet, to be used by one party at a time*
 - *A non-residential yurt for educational programs*
 - *A wash station*
 - *A 3-bay outdoor shower*
 - *Two composting toilets*
- *The applicants have submitted plans and details for proposed structures, service*

facilities/amenities, and parking.

- *Public Health Impacts – The applicant will conduct organic land management and low impact practices and will provide sanitary facilities meeting State requirements.*
- *Traffic Safety – The operation will have on-going low traffic generation with seasonal events of limited duration with limited on-site parking (20 spaces) and parking management.*
- *Public Safety – The submissions include limits on activities and noise after 9 p.m. and prohibitions against partying, fireworks, and firearms. Provisions will be made for fire prevention. The applicants indicate that none of their activities or facilities will put an unreasonable burden on municipal services.*
- *Environmental Impacts – The submissions indicate that the nature of their organic farming business is eco-friendly and there will be no adverse impacts on Garrish Brook which runs along their property. A proper septic system will be provided along with composting toilets.*
- *Scale & Intensity of Use – The submissions indicate that the scale of the facilities and intensity of activity are within the existing character of the neighborhood that includes single family residential, agricultural, and gravel extraction. The buildings and facilities are well buffered from neighbors.*
- *Noise & Hours of Operation – Activities will occur during business hours and evening workshops ending by 9 p.m. or 10 p.m. with a few weddings per year. The campsite will have quiet hours after 9 p.m.*
- *Right, Title, or Interest – The Board of Appeals noted that there is some question as to ownership. The applicants claim to be the owners and submitted a warranty deed transferring the property from Brian & Patricia Milliken to Jonah Thayer Fertig and Elizabeth A. Armentino-Burd dated November 6, 2015 (Book 9261, Page 154).*
- *Financial & Technical Ability – The applicants have submitted a cost estimate for the project of \$47,500 and indicate that they have sufficient funding and technical ability to complete the project.*
- *Specific Performance Standards – The applicants have stated that there are no specific performance standards in the Land Use Ordinance related to their proposed uses.*
- Per Section 7.3, the Board must either:
 - 1) Approve the application if it meets the conditional use criteria;
 - 2) Impose approval conditions necessary to meet the criteria; or,
 - 3) Deny the application if it fails to meet the criteria even with approval conditions.
- Per Section 7.5, the Planning Board may by majority vote impose approval conditions that may include, but are not limited to requirements for:
 - 1) Increased property line setbacks;
 - 2) Fences and planting screens to create effective buffers;

- 3) Limits on hours of operation; and,
- 4) Locations of parking and signs.

Town of Durham Board of Appeals
Appeal of Celebration Tree Farm & Wellness Center LLC

Jonah and Elizabeth Fertig-Burd, the principals of Celebration Tree Farm & Wellness Center, LLC [“Appellants”], filed an appeal to the Town of Durham Board [“the Town”] Board of Appeals [“the Board”], on or about June 2, 2022, requesting that the Board determine that the boundary of the Resource Protection District/Resource Protection (Shoreland Zoning) District on their property be set in accordance with newer State of Maine Flood Plain Map rather than in accordance with Town of Durham’s Official Zoning Map. Following a hearing held on July 19, 2022, the Board denies the appeal.

Facts

1. The lot in question is located at 125 Bowie Hill Road in Durham, and consists of 8.3 acres. (The record is unclear as to whether the property is owned by the Tree Farm or by the Fertig-Burds. While this issue is not relevant to this Appeal, it may have bearing on proceedings before the Town of Durham Planning Board.)
2. Appellants lease an additional 110 acres from the Land in Common Community Land Trust.
3. Appellants seek to develop educational, nature-based, agri-tourism on the Tree Farm.
4. Appellants intend to offer the following opportunities and associated structures:
 - a. An RV for camping with a composting toilet, to be used by one party at a time
 - b. A non-residential yurt for educational programs
 - c. A wash station
 - d. A 3-bay outdoor shower
 - e. Two composting toilets
5. As part of their submission on appeal, Appellants included two illustrations, both of which showed the structures/amenities listed above, as well as a hot tub and a composting area.
6. The first illustration shows the structures/amenities plotted on the ground with an overlay of the Town’s existing Resource Protection District as shown on the Town’ Official Zoning Map (Exhibit A). The second illustration shows the structures/amenities in the same locations, but with two different overlays: 1) the State’s 100-year floodplain estimate and 2) a 100-ft stream buffer from Gerrish Brook (Exhibit B).
7. If the boundary of the Resource Protection District is as shown on the first illustration, several of the planned structures and amenities would be within the Resource Protection District.

Analysis

The Town’s Land Use Ordinance [“LUO”] divides the Town into two primary Districts and four overlay districts. The Districts are shown on the Town’s Official Zoning Map. See LUO, Article 2, Section 2.2, p. 2. Two of those Districts are relevant here: the Resource Protection District [“RP”] and the Resource Protection (Shoreland Zone) District [“RP(SZ)”]. The LUO does not identify the criteria that the Town used to place land into the RP; the LUO does state that the RP(SZ) includes “[all] land areas within (100’) feet, horizontal distance, of the normal high-water line of a stream shown on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey (USGS Topography Map.)” LUO, Article 2, Section 2.3(C)(5)(d), p. 4. Gerrish Brook is

one such stream. Thus, the land on Appellants' property that is within 100 feet of Gerrish Brook is within the Town's RP(SZ), while the land between 100 feet of Gerrish Brook and the overlay shown on Exhibit A is within the RP.

Appellants ask the Board to use its authority found in the LUO to set the boundary of the RP to be consistent with the overlay farthest from Gerrish Brook that is shown on Exhibit B. The Board's authority is set forth in the LUO: "Where physical . . . features existing on the ground are at variance with those shown on the Official Zoning Map . . . the Board of Appeals shall interpret the district boundaries." LUO, Article 2, Section 2.3(A)6, p. 3. *See also*, LUO, Article 17, Section 17.3(D), p. 159 ("An interpretation of Zone boundaries may be made as part of an appeal hearing.")

We decline to make the requested changes. First, because the Town's LUO has not identified what resources are being protected within the RP on Appellants' property, we cannot assume that the only resource being protected is Gerrish Brook. While the newer flood plain mapping of Gerrish Brook from by the State shown on Exhibit B may be at odds with flood plain mapping used by the Town to create the boundary of the RP as shown on Exhibit A, we cannot assume that the only resource being protected is the stream and its foodplain. This conclusion is bolstered by the fact that the Town Meeting in April 2022 rejected a new Official Zoning Map that would have made the requested changes to the boundary of the RP. We are reluctant to override the sentiment of the Town's legislative body when we cannot say for certain that the boundary fails to reflect the physical features the Town originally sought to protect.

Second, based on the facts as presented and the Board's review of the Town's Table of Land Uses, LUO, Article 3, Section 3.1, pp. 5-8, the portion of the property in question on which Appellants intend to place structures and amenities need not be removed from RP in order for Appellants to proceed before the Planning Board for a conditional use permit. Although a campground is not a permitted use in the RP or the RP(SZ), Article 3, Table 3.1(7), p. 6, a single RV to be rented to one party at a time is not a campground. A campground is defined as "[a]ny area or tract of land that is used for temporary overnight accommodation with or without shelter, by (2) two or more parties." LUO, Article 19.1(A)32, p. 172. Furthermore, the most specific provision in the Table of Land Uses that governs Appellants' intended use is the provision allowing "[s]mall non-residential facilities for educational, scientific, or nature interpretation purposes." LUO, Article 3, Table 3.1(44), p. 8. Such uses are permitted in both the RP and the RP(SZ) with a conditional use permit that must be secured from the Town of Durham Planning Board.

Respectfully submitted on behalf of the Town of Durham Board of Appeals,

s/Barbara Schneider

Dated: _____



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

**Office of Code Enforcement
and Planning**

Tel. (207) 376-6558
Fax: (207) 353-5367

CONDITIONAL USE PERMIT APPLICATION

Please read the Conditional User Permit Application Instructions and meet with the Code Enforcement Officer before completing this Application.

PART I. PROPERTY INFORMATION

Applicant's name and address:

Owner's name and address: (if different than applicant)

Property address:

Property tax map: and lot:

Property zone(s) (list all):

Property overlay zone(s) (list all):

Current approved property use:

Is this property in a subdivision: Yes No

Is any part of this property in a flood plain: Yes No

Will there be any new structures, expansions of existing structures, or the construction or expansion of parking areas: Yes No

PART II. PROPOSED USE

Please fully describe the proposed use; including all of the following (you may attach separate or additional sheets):

- Describe the proposed use in detail
- Hours of operation
- Plans for waste disposal
- Anticipated traffic (deliveries, customers, etc.)
- Other relevant information on the proposed use

PART III. CONDITIONAL USE STANDARDS

For each standard, describe how what potential impacts your project might have, how your project meets the standard, and what documents the Planning Board should refer to that support your position.

- A. Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

Please include how you will address any sewage disposal (septic, etc.), any fumes or air emissions, any discharge or runoff that might pollute water, trash, and other potential public health impacts.

Why your project won't create any public health impacts:

Relevant documents:

B. Traffic Safety Impacts: The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

Please include how much and the type of traffic you anticipate, hours of traffic, type of traffic currently on the road, any entrance permits, entrance sight distances, hazardous intersections in the area, traffic studies, etc.

Why your project won't create any traffic safety impacts:

Relevant documents:

C. Public Safety Impacts: The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood.

Please include a description of the types of surrounding uses (residential, home businesses, commercial businesses, farms, etc.); the types of public safety problems your use might pose and how you will address them; and the types of municipal services your use will require (education, trash disposal, fire protection, law enforcement protection, etc.).

Why your project won't create public safety problems that are substantially different from the surrounding uses:

Why your project won't require a substantially greater degree of municipal services than the surrounding uses:

Relevant documents:

D. Environmental Impacts: The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.

Please identify any nearby natural resources (ponds, streams, vernal pools, etc.) and describe whether your project could have an impact on any of those resources and the steps you are taking to prevent any such impact. If you are removing any vegetation or doing any site work, describe those plans and what erosion or sedimentation control procedures you will be taking. If your project could have runoff or leaching, identify the nearby wells and resources that could be impacted and the measures you are taking to prevent any impact.

Why your project won't result in sedimentation or erosion:

Why your project won't have an adverse effect on water supplies:

Relevant documents:

E. Scale & Intensity of Use: The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures.

Please include a description of the types of surrounding uses (residential, home businesses, commercial businesses, farms, etc.), how close they will be to your project, and whether and how much those surrounding uses will be able to see your operations. Describe how your project fits in with the neighborhood and identify any screening or other steps you will take to minimize the impact on surrounding uses.

Why your project will be compatible with surrounding uses:

Relevant documents:

F. Noise & Hours of Operation: The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

Please describe your hours of operation and any noise that your use may generate. Describe the impact those hours and noise could have on surrounding uses and how your use will not be incompatible with the surrounding uses.

Why your project will be compatible with existing uses in terms of noise and hours of operation:

Relevant documents:

G. Right, Title, or Interest: The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.

Identify the type of right, title, and interest that you hold in the property (deed, purchase and sale agreement, lease, easement, etc.).

Right, title, and interest:

Relevant documents:

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

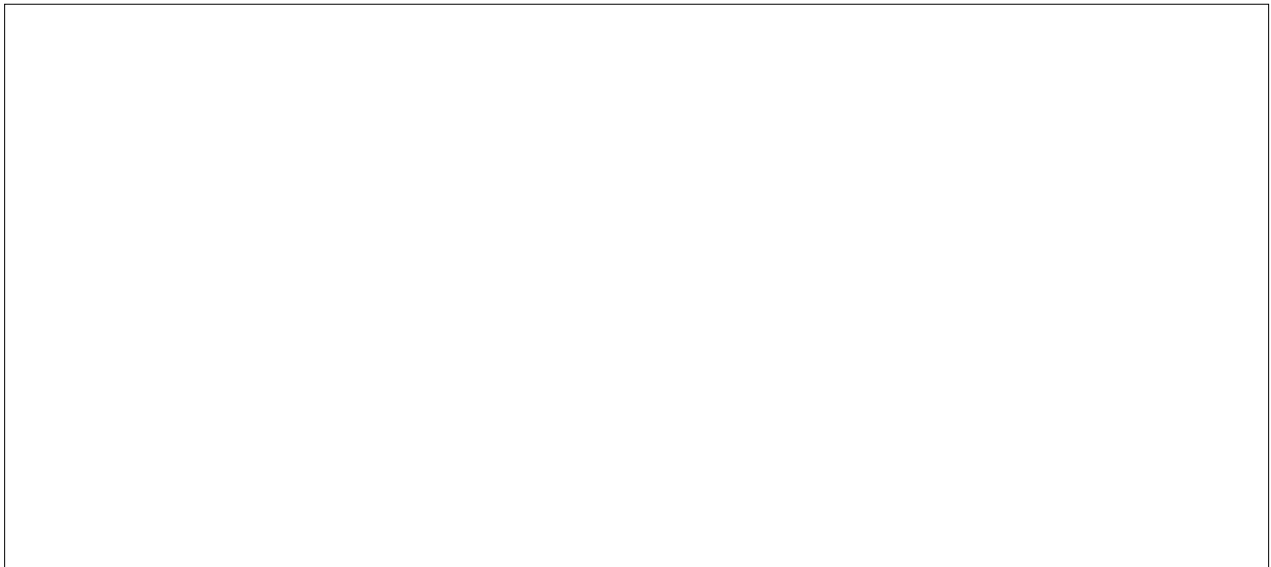
Please identify the cost of the project and any required compliance measures. Provide evidence that you have the financial capacity to meet those standards. Please also identify the experience that you have with the type of proposed use. If your project involves building construction and/or site development, what types of professional services have you or will you employ to address technical design issues like wetland mapping and storm drainage analysis? Who will be inspecting the work to ensure that it meets required regulatory performance standards and industry quality standards? The details of construction and financial & technical capacity will be reviewed during site plan approval (if required), but a general indication and discussion is needed for conditional use review and also for implementation of required conditions of approval (if any).

Estimated cost of the project and compliance:

Evidence of financial capacity:

A large, empty rectangular box with a thin black border, intended for providing evidence of financial capacity.

Evidence of technical capacity:

A large, empty rectangular box with a thin black border, intended for providing evidence of technical capacity.

Relevant documents:

A large, empty rectangular box with a thin black border, intended for listing relevant documents.

PART IV. SPECIFIC PERFORMANCE STANDARDS

Per Section 7.4.B., please identify any additional performance standards contained in the Land Use Ordinance that apply to your project and identify how you meet those standards (add additional standards/sheets as required). As an example, if your project is a campground, you need to document how you meet the specific standards of Section 5.8 as well as the general criteria for a conditional use review. If your project requires separate site plan review and approval, you can address the site plan performance standards in your site plan application.

A. Specific Standard: (Section Reference)

Performance standard:

How you meet that standard:

Relevant documents:

PART II. PROPOSED USE

Celebration Tree Farm & Wellness Center is a place for families and people to connect with nature and each other through trees, organic farming, wellness, learning, and the Arts. We are seeking a conditional use permit to expand upon our existing tree farm and wellness center to offer more year-round educational workshops, cultural events and agri-tourism while maintaining and expanding our organic tree farm and vegetable gardens and respecting the rural residential and agriculture nature of the neighborhood. Through this growth, we can support the local economy while growing a farm that cares for the environment and the community and becomes a true asset to Durham and Southern Maine.

Elizabeth Fertig-Burd and Jonah Fertig-Burd founded Celebration Tree Farm & Wellness Center (CTFWC) in 2015. They purchased the farm from Diane Ackerman, after the passing of her husband John Ackerman. John started the farm in the 1980s and practiced ecological forestry and organic agriculture. They have continued this practice and have grown the farm over the past 7 years and started up the Wellness Center to offer more educational programs to the community. In 2020, Elizabeth and Jonah converted the farm to a cooperatively owned LLC with the addition of farmer, Thomas Prohl, as an owner and recently adding wreath maker and dance teacher, Janette Hough, as a fourth worker-owner. In 2021 they launched the Community Supported Forest program, where members get a tree, wreath, discounts on our wellness programs, and year-round trail access. There are now 90 Community Supported Forest Members and they are excited for the growth and vision of Celebration Tree Farm & Wellness Center.

CTFWC's existing tree farm fits under the approved use of Agriculture in the Town of Durham Land Use Plan. The tree farm is on an adjoining 110 acre parcel that is owned by Land in Common Inc. None of the activities in this proposal are on that 110 acres so it is not included in this application. The Wellness Center with a small studio in our house has existed under the Home Based Business approved usage. This conditional use permit application proposes two additional usages that will allow our farm to grow while respecting the rural residential and agricultural nature of Bowie Hill Rd. and Durham.

Proposed Use #1: Small non-residential facility for educational, scientific, or nature interpretation purposes: CTFWC is proposing to build a small non-residential facility for educational and nature interpretation purposes. We are proposing to collaborate with local non-profits to offer affordable space to hold workshops. This facility will be a new 30' in diameter yurt (see attached plan and sketch). The yurt will allow us to hold more year-round educational workshops on farming, wellness, nature, environmental issues, conservation, and art. It will be a temporary structure that can be taken down and moved and will not have a permanent foundation but will be built upon a new deck that sits on concrete footings with no inground penetration. We will have a 10 year sealed lithium battery carbon monoxide and smoke alarms. Once approved by the Planning Board we will file electrical and building permits for this temporary structure.

We will have one campsite for the **Small non-residential facility for educational, scientific, or nature interpretation purposes**. This campsite will support our educational programs and agri-tourism. On the campsite will be the Celebration Bus, which is a bus converted into an RV and offers a more comfortable camping experience with beds. It is a temporary structure that can be moved and is under 240 sq feet. It has no running water and there are only solar electric lights and solar phone charging. We have 10 year sealed lithium battery carbon monoxide and smoke alarms on the RV and a fire extinguisher. For cooking, we have an outdoor gas grill and

burner. There will be a sink and outdoor shower that will be outside of the resource protection zone. There will be a composting toilet that will be in a movable, temporary structure next to the campsite. This will be rented out via Airbnb from April to October (for under 6 months a year) with a maximum stay of 14 days.

Neither of these facilities is visible from the road and are over 100' away from property lines and neighbors.

Land Use Plan: This intended use fits under the following approved use on the Town of Durham Land Use Plan

44. Small non-residential facilities for educational, scientific, or nature interpretation purposes: There is not a stated definition for this usage

We fit this usage because the proposed yurt would be small (30' in diameter and 706 square feet) and would not be permanent, it would be non-residential and the intended usage of this facility would be to provide space for educational programs and nature interpretation. The campsite also fits under this land use because it is small, supporting the educational nature of our farm, it is temporary structure, and provides space for temporary stays on the farm rather than being a residential facility.

A singled campsite does not fit the definition of a Campground 32. Campground "Any area or tract of land that is used for temporary overnight accommodation with or without shelter, **by (2) two or more parties**. A campground shall have sites for tents or recreational vehicles and may have cabins or yurts as permitted with state licensing. The word "campground" shall include the words "camping ground" and "tenting grounds." So to that end we are not applying for a Campground, but for one single camping site which is actually below the standard set out in this definition. The state does not require a license for a campground unless there are more than 4 or more campsites on the property so we do not require a DHHS Campground license for this proposed use.

Zoning: The campsite will be in the Resource Protection Zone and Yurt will be in the Rural Residential Agricultural zone. Small non-residential facilities for educational, scientific, or nature interpretation purposes are allowed in RP with a CU Permit. At the Appeal Board meeting on 7/19/22, we brought forth a request for variance to change the line of the resource protection zone to reflect the information provided by the State of Maine. They denied the appeal as they did not want to set a precedent that would go against the will of the voters as determined at town meeting in April 2022 but discussed that that this intended use based on the information they reviewed could be done within the resource protection zone since Small Non-residential facilities are allowed with a conditional use permit. Both parts of the proposal are over 100' from the highwater line of the Gerrish Brook and have no negative impact on the environment.

Proposed Use #2: Cultural Facility and Community Building: CTFWC is proposing to hold cultural, educational and community events in our 1800s barn including monthly community variety shows with performing and visual arts, other occasional performing and visual art shows, and our annual Celebration Market (which provides a holiday market for over 25 craft and food vendors in December). We will continue to hold our own educational workshops on farming, environmental issues, wellness, yoga, reiki, and creativity. We will make the barn and yurt available for rental to our Community Supported Forest members for family events including weddings (no more than 2-3 a year), birthday parties, baby showers, memorial services, and other family events. Most events will be small (under 30 people) with our weddings having no more than 100 people. The Barn has been in this location for over 200 years and has provided

space for agricultural and community usage. We are proposing to do some renovations on the barn including sanding floors, replacing some exterior boards, upgrading the electric wiring, roof repairs, and installing some windows. We have 10 year sealed lithium battery carbon monoxide and smoke alarms but can upgrade to hardwired alarms if required. We have attached a floor plan so that you can see the dimensions of the barn and the existing three egresses. Once approved by the Planning Board we will file electrical and building permits for these renovations.

Land Use Plan: This intended use for the Barn fits under these two approved uses on the Town of Durham Land Use Plan

11. Clubs, Lodges & Other Community Buildings: There is no stated definition of this usage.

We fit this usage because the rental of our facilities is available only to members or for community events. Like the Amvets Hall or Masonic Hall, we will hold events that are only to our members, our members can rent the facility and we will hold events that will be open to the community.

21. Institutional or Cultural Facilities: Definition: Not-for-profit facilities dedicated to a public or philanthropic purpose and intellectual endeavor, such as a library, museum, auditorium, or performing or visual arts center.

We fit this usage and definition because we will provide space for performing or visual arts. While Celebration Tree Farm & Wellness Center is an LLC, we work closely with nonprofits and will be partnering with nonprofits to host these cultural programs.

Zoning: The Barn is in the Rural Residential Agriculture Zone. Both of these uses are allowed in RRA with a Conditional Use Permit

Waste Disposal: We will have a central wash station with water for a sink and outdoor shower at our barn. This wash station and outdoor shower will be available for use for the guests staying at the campsite. The gray water will go into a leach field. We installed a leach field last year that was designed by Bonnie Cobb of Stewart Soil and Septic and approved by the town for the drainage of our hot tub. We will expand this leach field so that it is large enough to accommodate the sink and outdoor shower. Bonnie Cobb's plans for the expansion of the leach field are attached. We will have 1 composting toilet for the event, workshop spaces and for our campsite. The waste from the composting toilet will be composted in a contained wooden box elevated from the ground.

Hours of Operation: Educational workshops will happen at different times during the day and will not happen any later than 9 pm with the majority of these workshops happening between 12-7 pm. Cultural and community events will happen primarily on weekends and most events will end before 8pm with occasional events going until 10 pm. For our campsite, guests will have 24 hour access since they will be staying overnight with quiet time from 9pm-9am. This site will operate from April to October, less than 6 months a year. Our tree farm operates the last weekend of November and the first weekends of December. Our retreat and event spaces will operate mostly Spring to Fall (for the barn) but the new yurt space will allow us to offer workshop space year-round. A list of our policies is attached to this document.

Traffic: We expect to have limited traffic for the Celebration Tree Farm and Wellness Center Services. We expect average daily traffic to be under 10 cars a day and most likely to be under 5 per day, with many days being less than that. Special events such as educational workshops or retreats will result in increases in day traffic on our property. For these events, vehicle traffic will be limited to 20 vehicles and for weddings, a shuttle will be required for additional guests. Historically, the last weekends in November and first weekends in December are our busiest

days for Christmas tree sales & cut your own operations, and results in increased day traffic. Parking staff has been, and will be, hired to whisk vehicles off of Bowie Hill Road quickly, and into our parking area. We have adequate established parking for our normal 10 car or less daily parking. Under no circumstance will vehicles be parked along Bowie Hill Road. All our parking is contained in less than 2500 sq ft and is predominantly for agricultural uses and so does not fall under Article 8.2 for Site Plan review. Please see attached parking map for more information.

Signage: We currently have a small 2' x 3' sign on the edge of the road that is illuminated by small solar lights. We do not plan to do additional signage except during our Christmas tree season we add temporary "no parking signs" on the side of the road.

Buffer from Neighbors: The Small non-residential facilities for educational, scientific, or nature interpretation purposes is over 100' away from property lines and neighbors and is not visible by any neighbors. Our barn is 80' from the road and visible from Bowie Hill Rd and is in the location where it has been for over 200 years before other neighboring properties we built.

Size of Lot: All of the proposed activities are on the 8.3 acre lot that is owned by Jonah and Elizabeth Fertig-Burd. We have ~925' of road frontage on Bowie Hill Rd.

H. Financial & Technical Ability

Evidence of Technical Ability:

Celebration Tree Farm & Wellness Center, LLC is a multi-stakeholder cooperative owned by its workers and governed by the owners. There are currently four worker owners who are also the Board and Management.

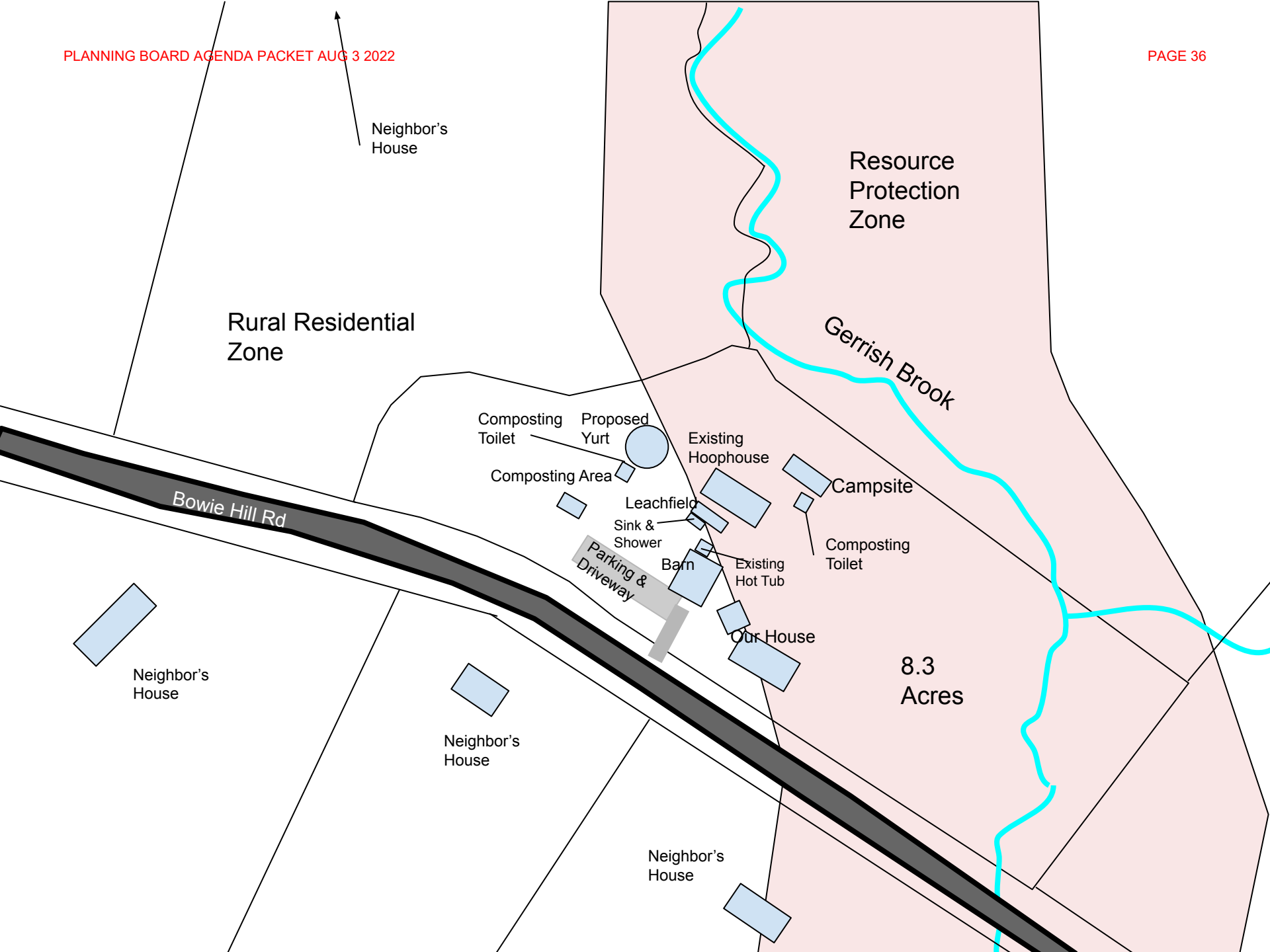
Jonah Fertig-Burd, General Manager, has 20 years of organizational development, cooperative development, hospitality and food system experience. In addition to his work with Celebration Tree Farm & Wellness Center, he oversees food system grant programs at the Elmina B. Sewall Foundation and is on the Board of Land in Common Community Land Trust, the Cooperative Fund of the Northeast and Maine Inside Out. He co-founded Local Sprouts Cooperative in Portland and managed their cultural events and workshops.

Elizabeth Fertig-Burd, Wellness Center Manager, has 20 years of experience in teaching yoga and personal training. She has taught in Southern Maine and now at Celebration Tree Wellness Center.

Tom Prohl, Farm Manager, is an organic fruit, vegetable and tree farmer, has over a decade of farm experience. He studied Sustainable Agriculture & Food Systems at the University of New Hampshire and moved to Maine in 2015 where he has been managing Organic Fruit & Vegetable production and a Farmer Training program at Wolfe's Neck Farm ever since.

Janette Hough, Tree Product Manager, has experience working and consulting in human resources, grant-writing, and programming for non-profit organizations. She has directed Apparatus Dance Theater for over 20 years, including developing and growing Aerial Dance and Aerial Yoga programs at Dixie State University, The Breakwater School, Fiddlehead Arts, and the University of Southern Maine. She honed her wreath-making, floral, and product merchandising skills through work as a floral designer for television, set design, and dignitaries with George Baker Flowers in Philadelphia.

We hire contractors for additional work and have used Steve Benedict for excavation, Bonnie Cobb for septic design, and Scott St.Michel for plumbing, and Red Star North Electric for any electrical work and will hire additional contractors to assist with construction projects. We also work with the USDA's Natural Resources Conservation Services for additional grant and technical support for land conservation.



Rural Residential Zone

Resource Protection Zone

Gerrish Brook

Bowie Hill Rd

Composting Toilet

Proposed Yurt

Existing Hoophouse

Composting Area

Campsite

Leachfield

Sink & Shower

Barn

Existing Hot Tub

Composting Toilet

Parking & Driveway

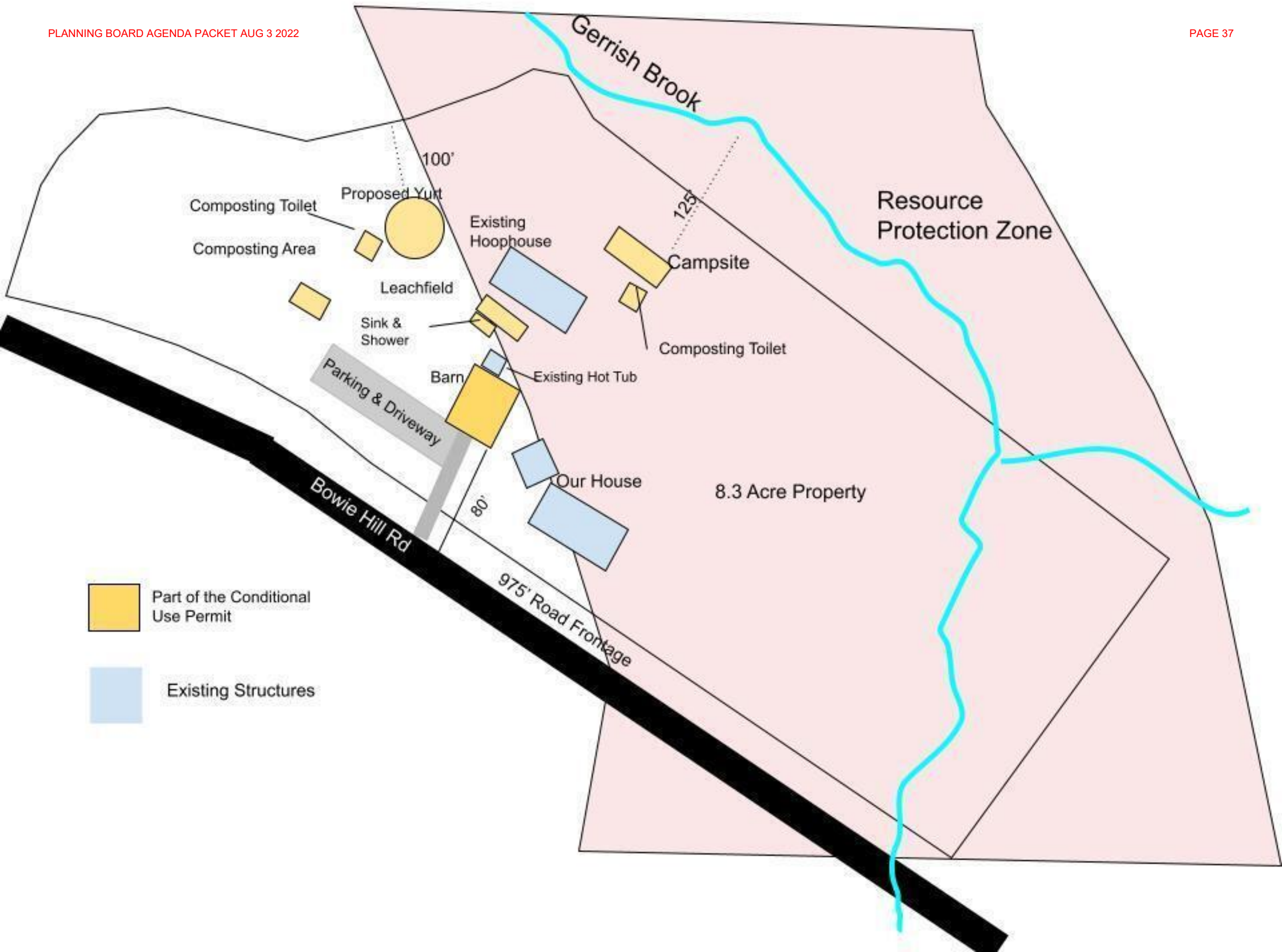
Our House

Neighbor's House

Neighbor's House

Neighbor's House

8.3 Acres



- NHDFlowline copy
- NHDFlowline
- Durham Rivers & Great Ponds
- Durham Historic Properties
- Aquifer Protection District (AP)
- Existing Resource Protection Dist
- Proposed Resource Protection (RP)
- Floodplains Clipped to Exist
- Androscoggin River Shorela
- BwH 10-A Wetlands clippe
- BwH 6+ Multiple Resources C

Advanced Digitizing



CAD tools are not enabled for the current map tool

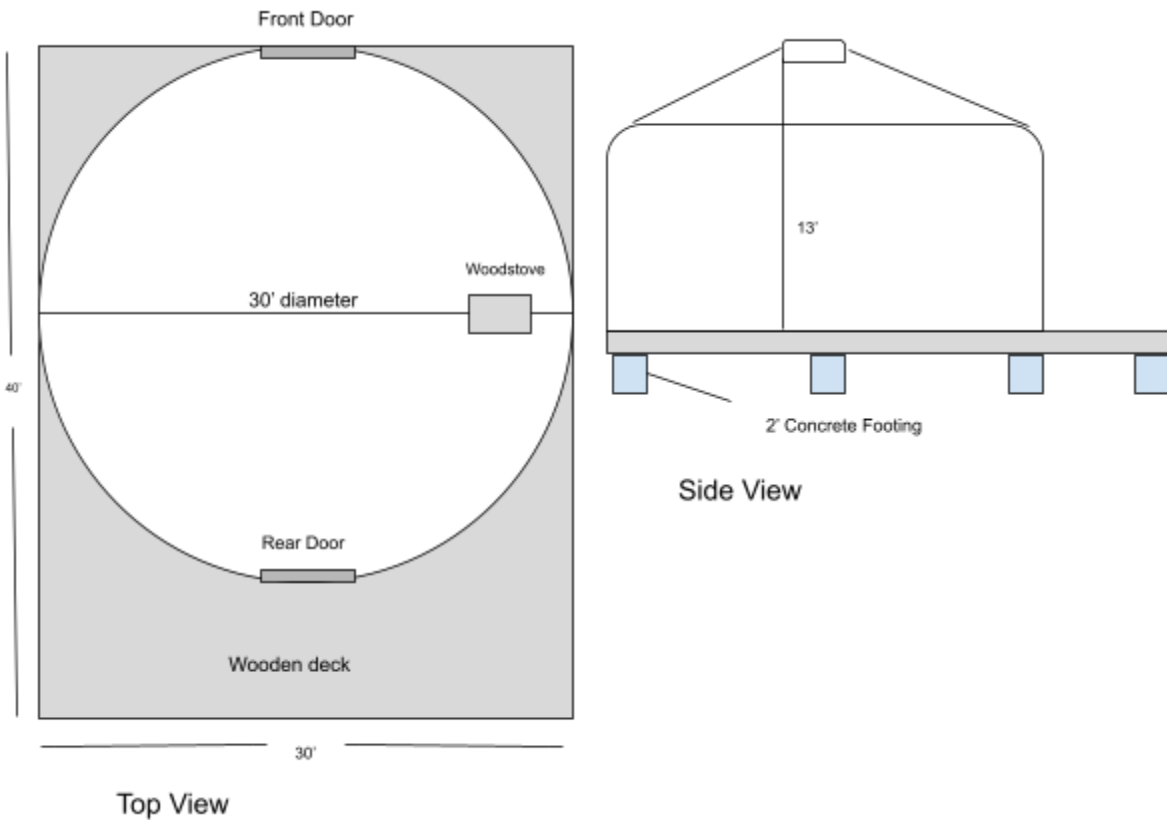
Advanced Digitizing Browser

locate (Ctrl+K)



Educational Facility

For our educational facility we will purchase a yurt that will be set-up on a deck. The deck will be built on concrete footings that will penetrate the ground. The yurt can be disassembled. The following drawings show an approximate plan for this temporary structure.

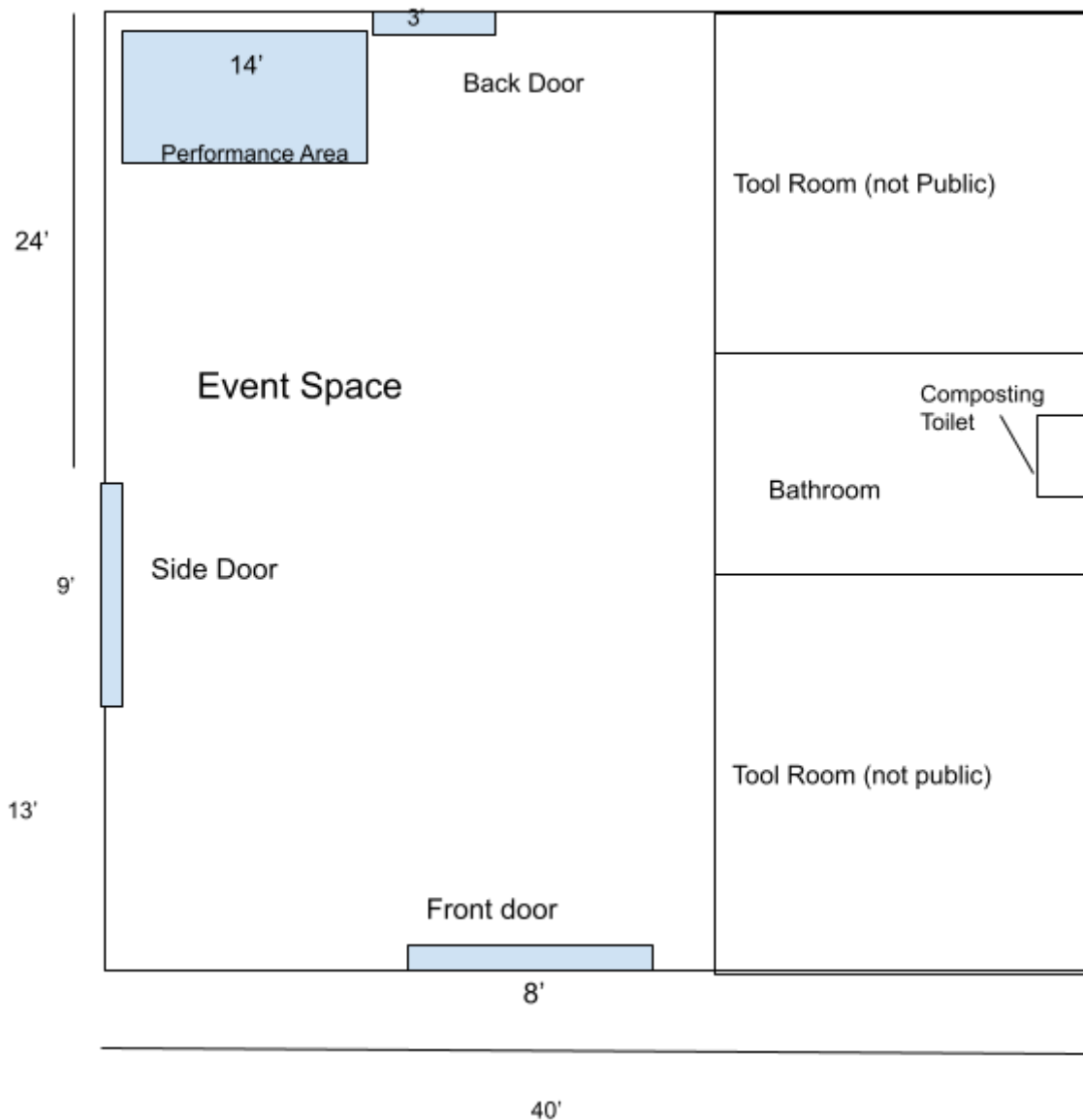


This is an image of a constructed yurt on above ground concrete footings. This is just used for illustration purposes as our Yurt would look different.



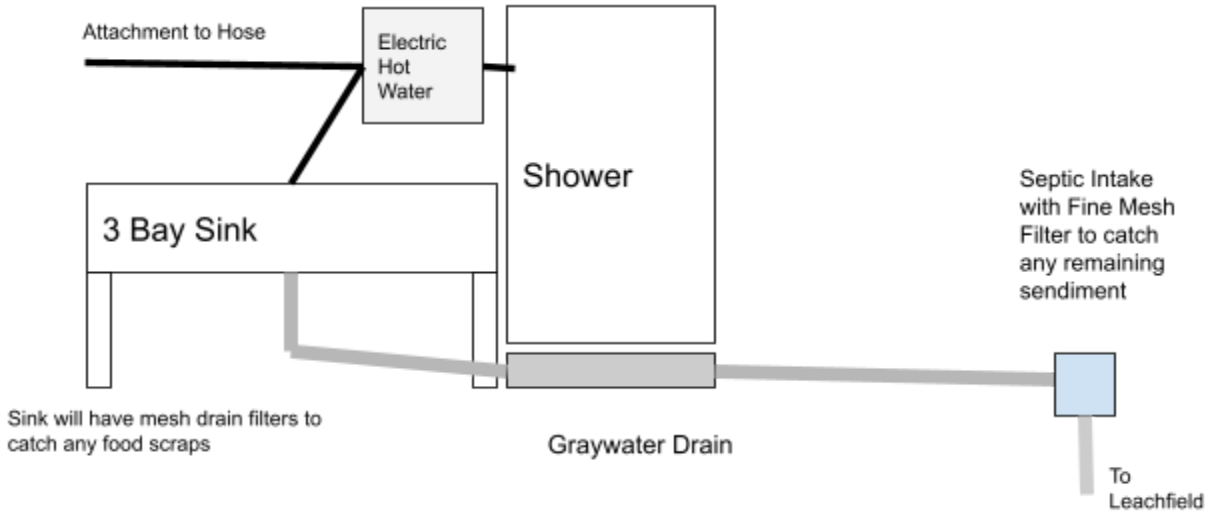
Cultural Facility and Community Building

We are proposing to use our 1800s barn for cultural and community events. The drawing below shows the floor plan for the barn. There are 3 egresses including a large front door (8' width) and side door (9' width) and a back door (3' width).



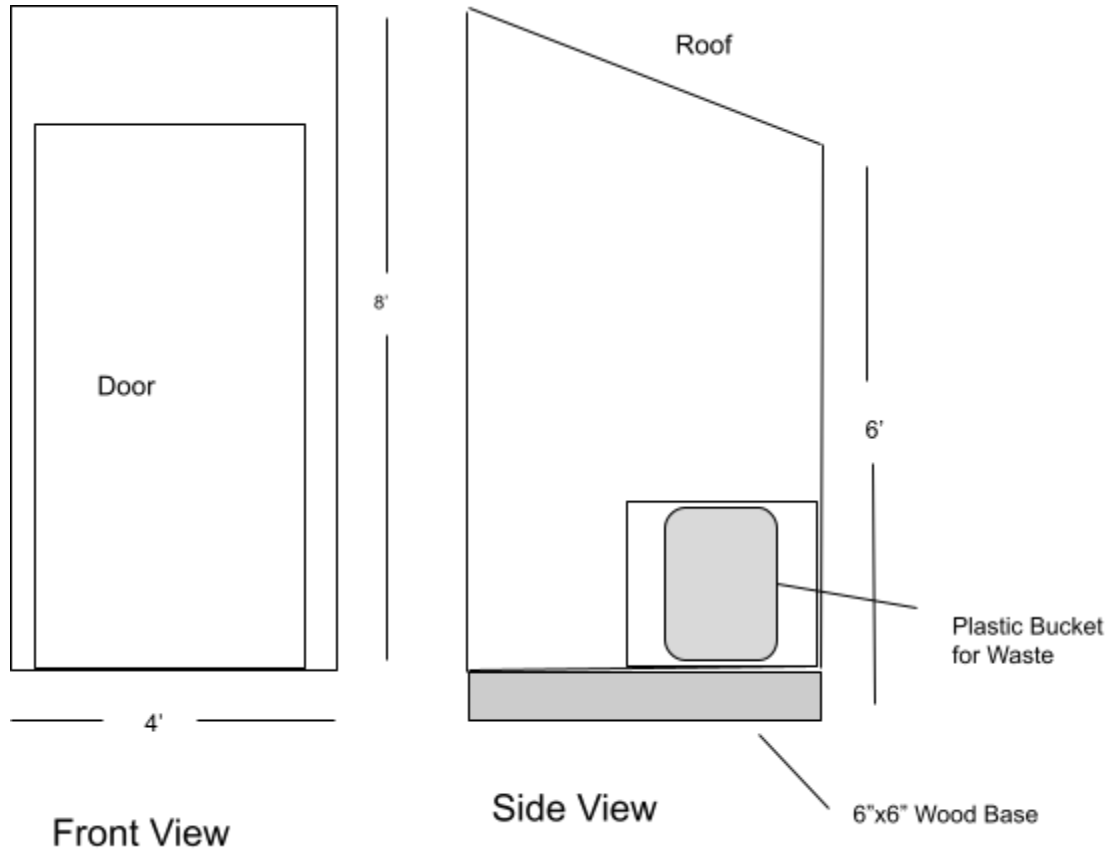
Outdoor Sink & Shower

We will build a simple sink and outdoor shower. They will be connected to an outdoor spigot faucet and then the graywater will be connected to the septic intake that goes to the leach field as designed by Bonnie Cobb. Only biodegradable soaps will be allowed in the sink and shower.



Composting Outhouses

We will construct three composting outhouses based on these dimensions. They will have a 4x4 footprint and will be free standing structures that can be moved with a tractor with forks. Human waste will go into a 5 gallon plastic bucket. After usage, the waste will be covered with wood shavings. When the bucket is full it will be emptied into a enclosed 4x4x4' composting container that is elevated off the ground and it will be composted for at least two years with temperatures monitored to ensure proper composting and then it will be used to fertilize trees in the forest (not our Christmas trees or fruit tress)



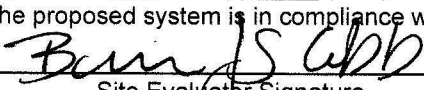
SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Department of Human Services
Division of Health Engineering, 11 SHS
(207) 287-2070 Fax: (207) 287-4172

| PROPERTY LOCATION | | >> CAUTION: LPI APPROVAL REQUIRED << | |
|--|---|---|------------------------|
| City, Town, or Plantation | Durham | Town/City _____ | Permit # _____ |
| Street or Road | 125 Bowie Hill Road | Date Permit Issued ___/___/___ | Fee: \$ _____ |
| Subdivision, Lot # | | | Double Fee Charged [] |
| OWNER/APPLICANT INFORMATION | | Local Plumbing Inspector Signature _____ | |
| Name (last, first, MI) | Fertig-Burd, Jonah | [Owner [Town [State | |
| | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Applicant | The Subsurface Wastewater Disposal System shall not be installed until a Permit is issued by the Local Plumbing Inspector. The Permit shall authorize the owner or installer to install the disposal system in accordance with this application and the Maine Subsurface Wastewater Disposal Rules. | |
| Mailing Address of Owner/Applicant | 125 Bowie Hill Road Durham, ME 04222 | Municipal Tax Map # _____ Lot # _____ | |
| Daytime Tel. # | (207) 615-9970 | | |
| OWNER OR APPLICANT STATEMENT I state and acknowledge that the information submitted is correct to the best of my knowledge and understand that any falsification is reason for the Department and/or Local Plumbing Inspector to deny a Permit. | | CAUTION: INSPECTION REQUIRED I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules Application. _____ (1st) date approved | |
| Signature of Owner or Applicant _____ Date _____ | | Local Plumbing Inspector Signature _____ (2nd) date approved _____ | |

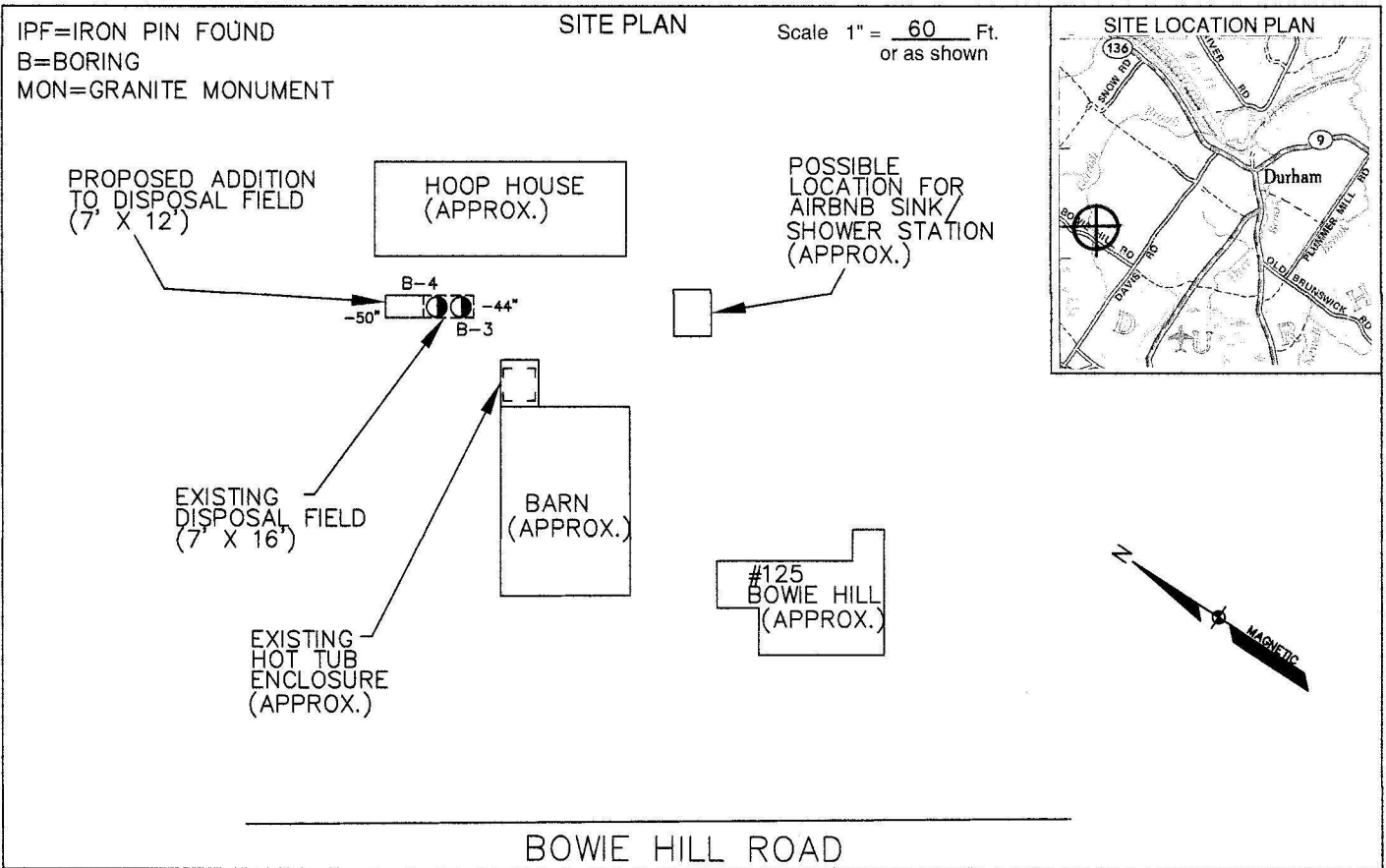
| PERMIT INFORMATION | | | |
|--|---|--|--|
| TYPE OF APPLICATION <input type="checkbox"/> 1. First Time System <input type="checkbox"/> 2. Replacement System Type replaced: _____ Year installed: _____ <input checked="" type="checkbox"/> 3. Expanded System <input type="checkbox"/> a. <25% Expansion (minor) <input checked="" type="checkbox"/> b. ≥ 25% Expansion (major) <input type="checkbox"/> 4. Experimental System <input type="checkbox"/> 5. Seasonal Conversion | THIS APPLICATION REQUIRES <input checked="" type="checkbox"/> 1. No Rule Variance <input type="checkbox"/> 2. First Time System Variance <input type="checkbox"/> a. Local Plumbing Inspector Approval <input type="checkbox"/> b. State & Local Plumbing Inspector Approval <input type="checkbox"/> 3. Replacement System Variance <input type="checkbox"/> a. Local Plumbing Inspector Approval <input type="checkbox"/> b. State & Local Plumbing Inspector Approval <input type="checkbox"/> 4. Minimum Lot Size Variance <input type="checkbox"/> 5. Seasonal Conversion Permit | DISPOSAL SYSTEM COMPONENTS <input type="checkbox"/> 1. Complete Non-engineered System <input checked="" type="checkbox"/> 2. Primitive System (graywater & alt. toilet) AirBNB/tiny home Graywater <input type="checkbox"/> 3. Alternative Toilet, specify: _____ <input type="checkbox"/> 4. Non-engineered Treatment Tank (only) <input type="checkbox"/> 5. Holding Tank, _____ gallons <input type="checkbox"/> 6. Non-engineered Disposal Field (only) <input type="checkbox"/> 7. Separated Laundry System <input type="checkbox"/> 8. Complete Engineered System (2000 gpd or more) <input type="checkbox"/> 9. Engineered Treatment Tank (only) <input type="checkbox"/> 10. Engineered Disposal Field (only) <input type="checkbox"/> 11. Pre-treatment, specify: _____ <input type="checkbox"/> 12. Miscellaneous Components | |
| SIZE OF PROPERTY 118± <input type="checkbox"/> SQ. FT. <input checked="" type="checkbox"/> ACRES | DISPOSAL SYSTEM TO SERVE <input type="checkbox"/> 1. Single Family Dwelling Unit, No. of Bedrooms: _____ <input type="checkbox"/> 2. Multiple Family Dwelling, No. of Units: _____ <input checked="" type="checkbox"/> 3. Other: AirBNB (tiny home) graywater disposal (sink & shower) (specify) _____ Current Use <input type="checkbox"/> Seasonal <input type="checkbox"/> Year Round <input checked="" type="checkbox"/> Undeveloped | TYPE OF WATER SUPPLY <input checked="" type="checkbox"/> 1. Drilled Well <input type="checkbox"/> 2. Dug Well <input type="checkbox"/> 3. Private <input type="checkbox"/> 4. Public <input type="checkbox"/> 5. Other | |
| SHORELAND ZONING <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | |

| DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3) | | | |
|--|--|---|---|
| TREATMENT TANK <input type="checkbox"/> 1. Concrete <input type="checkbox"/> a. Regular <input type="checkbox"/> b. Low Profile <input type="checkbox"/> 2. Plastic Use Existing <input checked="" type="checkbox"/> 3. Other: pump str. basin w/effluent filter CAPACITY: _____ GAL. | DISPOSAL FIELD TYPE & SIZE <input type="checkbox"/> 1. Stone Bed <input type="checkbox"/> 2. Stone Trench <input checked="" type="checkbox"/> 3. Proprietary Device <input checked="" type="checkbox"/> a. cluster array <input type="checkbox"/> c. Linear <input checked="" type="checkbox"/> b. regular load <input type="checkbox"/> d. H-20 load <input type="checkbox"/> 4. Other: Eljen In-Drains addition of SIZE: 288 _____ sq. ft. <input type="checkbox"/> lin. ft. (adding to exist. 384 sqft system) | GARBAGE DISPOSAL UNIT <input checked="" type="checkbox"/> 1. No <input type="checkbox"/> 2. Yes <input type="checkbox"/> 3. Maybe If Yes or Maybe, specify one below: <input type="checkbox"/> a. multi-compartment tank <input type="checkbox"/> b. _____ tanks in series <input type="checkbox"/> c. increase in tank capacity <input type="checkbox"/> d. Filter on Tank Outlet | DESIGN FLOW 126 gallons per day BASED ON: <input checked="" type="checkbox"/> 1. Table 4A (dwelling unit(s)) <input type="checkbox"/> 2. Table 4C (other facilities) SHOW CALCULATIONS for other facilities Graywater system (up to 3-fixtures) w/composting toilet <input type="checkbox"/> 3. Section 4G (meter readings) ATTACH WATER METER DATA LATITUDE AND LONGITUDE at center of disposal area Lat. 43 d 58 m 16 s Lon. 70 d 09 m 35 s if g.p.s, state margin of error: _____ |
| SOIL DATA & DESIGN CLASS PROFILE CONDITION DESIGN 5 / B at Observation Hole # B-3/B-4 Depth >48" of Most Limiting Soil Factor | DISPOSAL FIELD SIZING <input checked="" type="checkbox"/> 2. Medium---2.6 sq. ft. / gpd <input type="checkbox"/> 3. Medium---Large 3.3 sq. ft. / gpd <input type="checkbox"/> 4. Large---4.1 sq. ft. / gpd <input type="checkbox"/> 5. Extra Large---5.0 sq. ft. / gpd | EFFLUENT/EJECTOR PUMP <input checked="" type="checkbox"/> 1. Not Required <input type="checkbox"/> 2. May Be Required <input type="checkbox"/> 3. Required Specify only for engineered systems: DOSE: _____ gallons | |

| SITE EVALUATOR STATEMENT | | |
|---|------------------|--------------------|
| I certify that on 3/23/2021 (date) I completed a site evaluation on this property and state that the data reported are accurate and that the proposed system is in compliance with the State of Maine Subsurface Wastewater Disposal Rules (10-144A CMR 241). | | |
|  Site Evaluator Signature | 368 SE # | 2/11/2022 Date |
| Bonnie J. Cobb | (207) 899-8397 | b.cobb@comcast.net |
| Site Evaluator Name Printed | Telephone Number | E-mail Address |

Note: Changes to or deviations from the design should be confirmed with the Site Evaluator. HHE-200 Rev. 02/2011

| | | |
|--|---|---|
| SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION | | Maine Department of Human Services Division of Health Engineering, 11 SHS (207) 287-2070 FAX (207) 287-4172 |
| Town, City, Plantation Durham | Street, Road, Subdivision 125 Bowie Hill Road | Owner or Applicant Name Jonah Fertig-Burd |



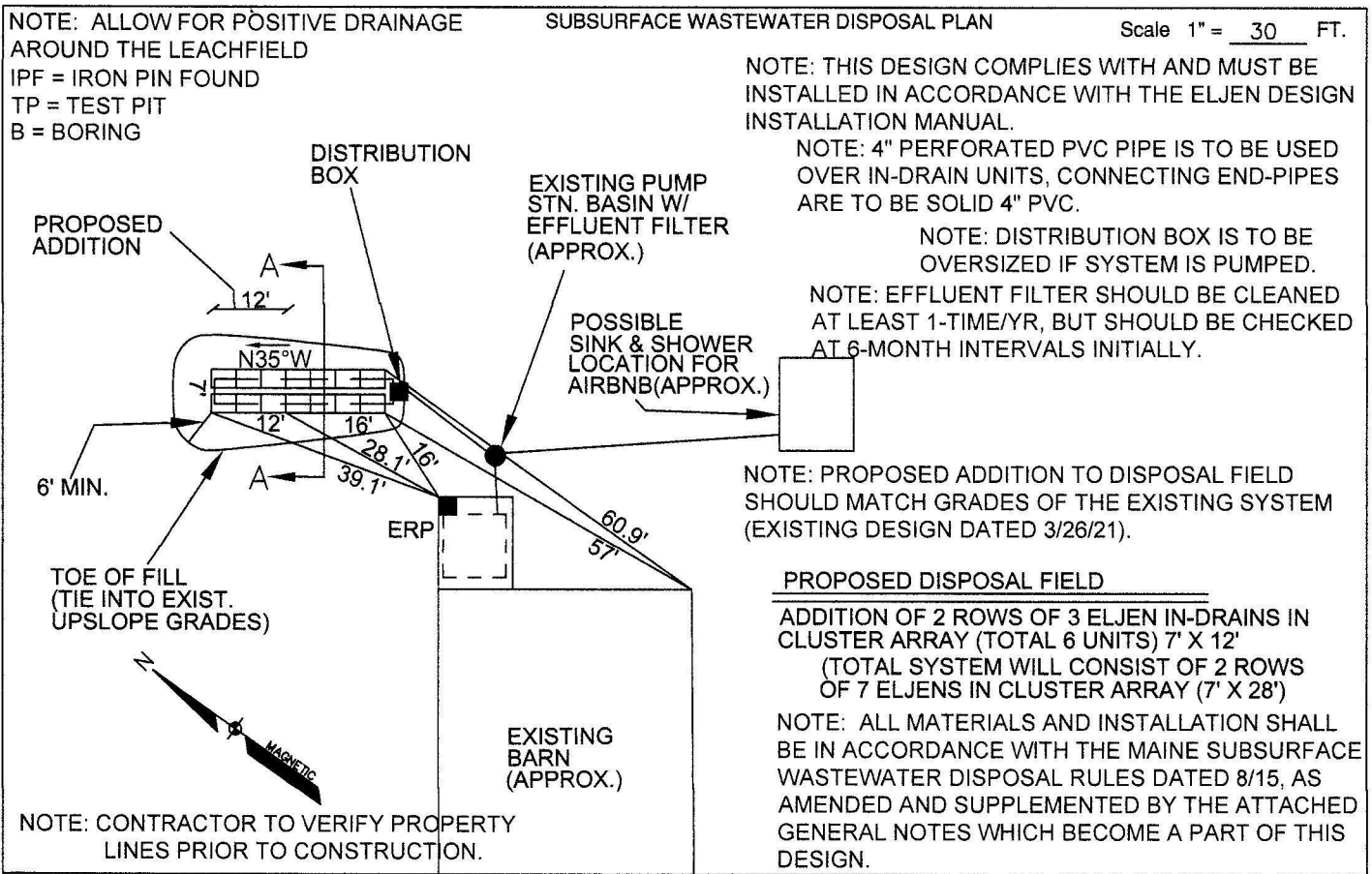
| SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|------------------------------------|---|---------------------------------------|-----------------------|---------|-------|--|-------------------|--|----------------------|----------------------------------|-------------------------|--|-----------------|---|--|--|-----------------|--|--|------------------|----------------------------|---------------------------------------|---------------------------|--|--|--|--|--|--|----------------------------------|---------|-------------|-------|------------------------------------|-------------|--|--|--|--------------|--|--|--|--------------|--|--|--|--------------|--|--|--|--------------|--|--|--|
| Observation Hole <u>B-3/B-4</u> <input type="checkbox"/> Test pit <input checked="" type="checkbox"/> Boring 0-1 " Depth of Organic Horizon Above Mineral Soil | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Observation Hole _____ <input type="checkbox"/> Test pit <input type="checkbox"/> Boring _____ " Depth of Organic Horizon Above Mineral Soil | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Texture</th> <th style="width: 15%;">Consistency</th> <th style="width: 15%;">Color</th> <th style="width: 15%;">Mottling</th> </tr> <tr> <td>0-10" FINE SANDY LOAM</td> <td>FRIABLE</td> <td>BROWN</td> <td>NONE OBSERVED</td> </tr> <tr> <td>10-20" LOAMY SAND</td> <td></td> <td>DARK YELLOWISH BROWN</td> <td></td> </tr> <tr> <td>20-30" MEDIUM-FINE SAND</td> <td></td> <td>YELLOWISH BROWN</td> <td></td> </tr> <tr> <td>30-40" MEDIUM-FINE SAND</td> <td></td> <td>YELLOWISH BROWN</td> <td></td> </tr> <tr> <td>40-50" MEDIUM-FINE SAND</td> <td></td> <td>LIGHT OLIVE BROWN</td> <td></td> </tr> <tr> <td colspan="4">LIMIT OF EXCAVATION = 48"</td> </tr> </table> | Texture | Consistency | Color | Mottling | 0-10" FINE SANDY LOAM | FRIABLE | BROWN | NONE OBSERVED | 10-20" LOAMY SAND | | DARK YELLOWISH BROWN | | 20-30" MEDIUM-FINE SAND | | YELLOWISH BROWN | | 30-40" MEDIUM-FINE SAND | | YELLOWISH BROWN | | 40-50" MEDIUM-FINE SAND | | LIGHT OLIVE BROWN | | LIMIT OF EXCAVATION = 48" | | | | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Texture</th> <th style="width: 15%;">Consistency</th> <th style="width: 15%;">Color</th> <th style="width: 15%;">Mottling</th> </tr> <tr> <td>0-10" _____</td> <td></td> <td></td> <td></td> </tr> <tr> <td>10-20" _____</td> <td></td> <td></td> <td></td> </tr> <tr> <td>20-30" _____</td> <td></td> <td></td> <td></td> </tr> <tr> <td>30-40" _____</td> <td></td> <td></td> <td></td> </tr> <tr> <td>40-50" _____</td> <td></td> <td></td> <td></td> </tr> </table> | | | | Texture | Consistency | Color | Mottling | 0-10" _____ | | | | 10-20" _____ | | | | 20-30" _____ | | | | 30-40" _____ | | | | 40-50" _____ | | | |
| Texture | Consistency | Color | Mottling | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 0-10" FINE SANDY LOAM | FRIABLE | BROWN | NONE OBSERVED | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10-20" LOAMY SAND | | DARK YELLOWISH BROWN | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 20-30" MEDIUM-FINE SAND | | YELLOWISH BROWN | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30-40" MEDIUM-FINE SAND | | YELLOWISH BROWN | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 40-50" MEDIUM-FINE SAND | | LIGHT OLIVE BROWN | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LIMIT OF EXCAVATION = 48" | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Texture | Consistency | Color | Mottling | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 0-10" _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10-20" _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 20-30" _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30-40" _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 40-50" _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Soil Classification <u>5</u> <u>B</u></td> <td>Slope <u>0-3</u> %</td> <td>Limiting Factor <u>>48</u> "</td> <td><input type="checkbox"/> Ground Water</td> </tr> <tr> <td>Profile Condition</td> <td></td> <td></td> <td><input type="checkbox"/> Restrictive Layer</td> </tr> <tr> <td></td> <td></td> <td></td> <td><input type="checkbox"/> Bedrock</td> </tr> <tr> <td></td> <td></td> <td></td> <td><input checked="" type="checkbox"/> Pit Depth</td> </tr> </table> | Soil Classification <u>5</u> <u>B</u> | Slope <u>0-3</u> % | Limiting Factor <u>>48</u> " | <input type="checkbox"/> Ground Water | Profile Condition | | | <input type="checkbox"/> Restrictive Layer | | | | <input type="checkbox"/> Bedrock | | | | <input checked="" type="checkbox"/> Pit Depth | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Soil Classification ____ Profile _____ Condition</td> <td>Slope _____ %</td> <td>Limiting Factor _____ "</td> <td><input type="checkbox"/> Ground Water</td> </tr> <tr> <td></td> <td></td> <td></td> <td><input type="checkbox"/> Restrictive Layer</td> </tr> <tr> <td></td> <td></td> <td></td> <td><input type="checkbox"/> Bedrock</td> </tr> <tr> <td></td> <td></td> <td></td> <td><input type="checkbox"/> Pit Depth</td> </tr> </table> | | | | Soil Classification ____ Profile _____ Condition | Slope _____ % | Limiting Factor _____ " | <input type="checkbox"/> Ground Water | | | | <input type="checkbox"/> Restrictive Layer | | | | <input type="checkbox"/> Bedrock | | | | <input type="checkbox"/> Pit Depth | | | | | | | | | | | | | | | | | | | | |
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| Profile Condition | | | <input type="checkbox"/> Restrictive Layer | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | <input type="checkbox"/> Bedrock | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | <input checked="" type="checkbox"/> Pit Depth | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| | | | <input type="checkbox"/> Restrictive Layer | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | <input type="checkbox"/> Bedrock | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | <input type="checkbox"/> Pit Depth | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Jonah Fertig-Burd
Site Evaluator Signature

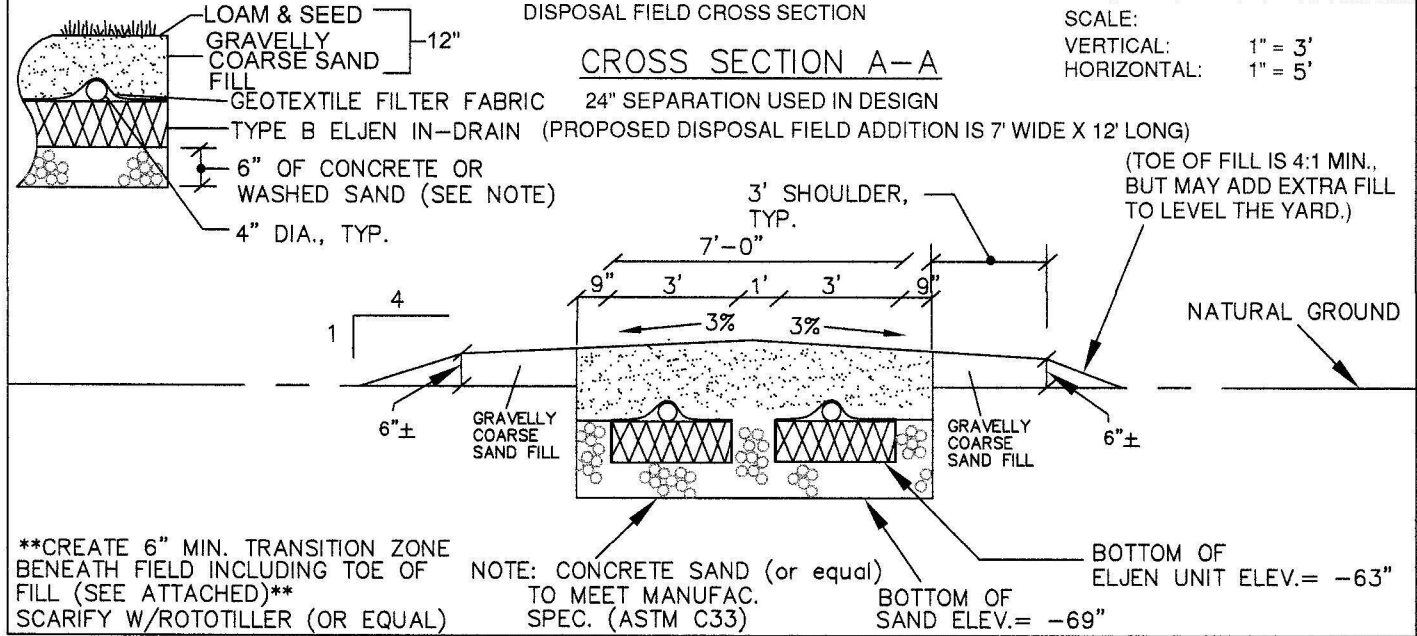
368
SE #

2/11/2022
Date

| | | |
|--|---|---|
| SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION | | Maine Department of Human Services Division of Health Engineering, 10 SHS (207) 287-5672 FAX (207) 287-3165 |
| Town, City, Plantation Durham | Street, Road, Subdivision 125 Bowie Hill Road | Owner or Applicant Name Jonah Fertig-Burd |



| | | | | | |
|------------------------------|-----|--|------|----------------------------------|----------------------------------|
| BACKFILL REQUIREMENTS | | CONSTRUCTION ELEVATIONS | | ELEVATION REFERENCE POINT | |
| Depth of Fill (Upslope) | 6"± | Finished Grade Elevation | -44" | Location & Description | Nail up |
| Depth of Fill (Downslope) | 6"± | Top of Proprietary Device (Eljen In-Drain) | -56" | | 31" in cnr of hot tub enclosure. |
| | | Bottom of Eljen In-Drain | -63" | Reference Elevation | 0" |
| | | Bottom of Specified Sand | -69" | | |



Benjamin G. B. Cebh

Site Evaluator Signature

368 SE #

2/11/2022 Date

Page 3 of 3
HHE-200 Rev. 02/2011

GENERAL NOTES
(ATTACHMENT TO HHE-200 FORM)
<1,000 gpd Septic System

1. The nature of the site evaluation profession is one of interpretation of soil and site conditions. We, in the field, attempt to provide both a satisfactory service to our client and to comply with the rules by which we are bound – The Maine Subsurface Wastewater Disposal Rules.
2. This design is based on representative test pits/borings; however, upon excavation, variations in soils between test pits/borings may require changes to this design.
3. Property information is supplied by the owner, applicant or representative. Such information presented herein shall be verified as correct by the owner or applicant prior to application and construction.
4. All work shall be done in accordance with the Maine Subsurface Wastewater Disposal Rules dated 8/15, as amended.
5. All work should be preformed under dry conditions only (for disposal field area).
6. No vehicular or equipment traffic (other than rototiller) is to be allowed on the disposal area. Disposal field shall be constructed from outside the corner stakes located in the field. The downslope area is also to be protected in the same manner to prevent compaction.
7. Backfill, if required, is to be gravelly coarse sand to coarse sand texture and to be free of foreign debris. If backfill is coarser than original soil, then a **transition horizon** is to be created: 4” of backfill must be mixed with the original soil with a rototiller (or equal).
8. No neighboring wells are apparent (unless so indicated) within 100’ of the disposal area. Owner or applicant shall verify this prior to signing the application.
9. The disposal field stone shall be **clean, uniform** in size, and free of fines, dust, ashes, or clay. It shall confirm to one of the sizes listed in Section 11, Table 11B of the Maine Subsurface Wastewater Rules (3/4 inch or 1 ½ inches).
10. Minimum separation distances required (unless reduced by variance or special circumstance):
 - a. Wells with water usage of 2000 or more gpd or public water supply wells:
 - a. Disposal fields: 300’
 - b. Septic tanks and Holding Tanks: 150’
 - b. Any well <2000 gpd to disposal area: 100’
 - c. Any well <2000 gpd to septic tank: 50’
 - d. Septic tank or disposal area to lake, river, stream or brook:
 - a. Major watercourse: 100’
 - b. Minor watercourse: 50’
 - e. House to septic tank: 8’
 - f. House to disposal area:
 - a. Full foundation: 20’
 - b. Slab foundation: 15’
 - For all other separation distances, use separations for less than 1,000 gpd per the Maine Subsurface Disposal Rules Table 7B (1ST-time system) or Table 8A (replacement system).
11. Location of septic system near a wetland may require a separate permit. As such, the owner, prior to the construction of the septic system, shall hire a professional to evaluate proximity of adjacent wetlands and prepare necessary permit applications.
12. Garbage disposals are not recommended, and if installed, are done so at the owner’s risk. The additional waste load requires increased maintenance frequency and larger septic tanks. Additionally, they increase the potential for failure.
13. Pump stations, when required, shall be installed watertight to prevent infiltration of ground and/or surface water.
14. Force mains and pressure lines shall be flushed of any foreign material and pumps shall be checked for proper on/off cycle before being put into service.
15. For mains, pump stations, and/or gravity piping subject to freezing shall be installed below the frost line or adequately insulated.

Celebration Tree Farm & Wellness Center Policies

The following policies guide our membership at Celebration Tree Farm & Wellness Center. Anyone violating our policies will be asked to resolve the violation. Repeated violations (or violations of certain policies) could be grounds to have your membership revoked and refunded and to be asked to leave.

Respect for Neighbors and your fellow members: We are in a residential neighborhood and we are creating a supportive community and family environment on our land. We ask that you respect our neighbors and your fellow Community Supported Forest Members by following these policies.

Quiet Time: Our quiet time is 9pm-9am. Amplified music is not allowed after this time and we ask that all of our members be quiet to respect one another and our neighbors. While we like celebrating, we do not allow loud and drunken parties at CTFWC.

No firearms, weapons or fireworks.

No sexist, racist, homophobic, transphobic actions or language: We are creating a safe and welcoming space for everyone.

Dogs: We allow dogs at the Celebration Tree Farm & Wellness Center. They can be off leash if they are under voice control. Loud and aggressive dogs are not allowed. All dogs must be good with other dogs.

Respect for the land: We ask that all our members respect the land and tread lightly upon it. We seek to help regrow a forest ecosystem that is diverse and biologically healthy.

Campfires must be attended at all times & have a bucket of water next to them.

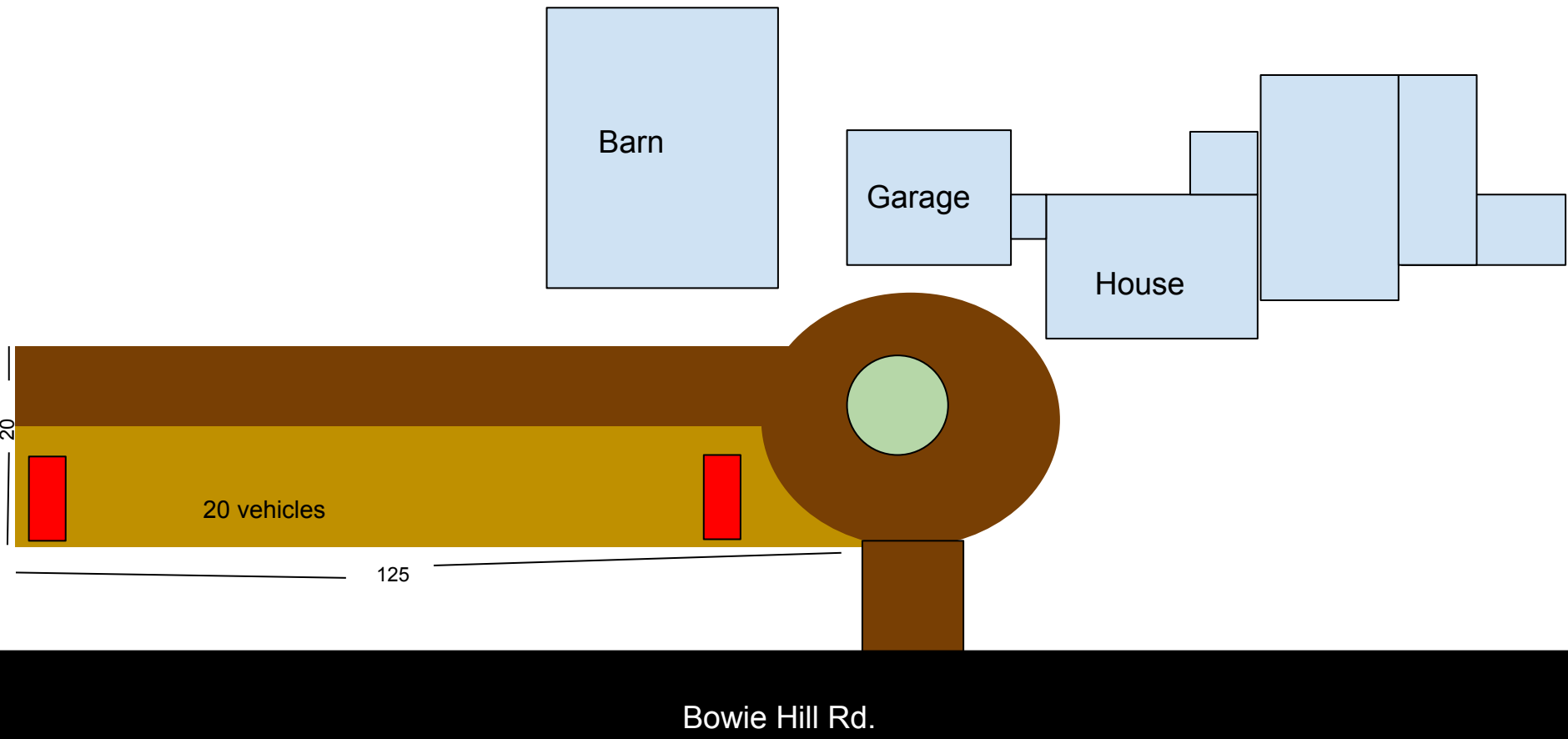
Campfires can only be in designated fire circles. At different points of the year, we may prohibit campfires due to high fire danger or severe drought conditions.

Pack-in, pack-out, except compost: We require that all trash and recycling be packed out with you. The only exception to that is your food scraps. We will accept those for use in our compost and to be fed to our chickens.

Leave a better trace: We ask that our members leave the land better than when they found it.

Wastewater: Waste water must be disposed of in our sink. Only biodegradable soaps are permitted.

Showering: We have an outdoor shower. Only biodegradable soaps are allowed.



To Durham Code Enforcement and Planning Board

RE: Celebration Tree Farm & Wellness Center Conditional Use Permit Application August 3rd Meeting

I have received hand delivered notice of the Planning Board Meeting on August 3rd and information about Celebration Tree Farm & Wellness Center's Proposal

| Name | Signature | Street Address | Date |
|-----------------|------------------------|--------------------|---------|
| Kathleen Fulmer | <i>Kathleen Fulmer</i> | 144 Bowie Hill Rd. | 7/20/22 |
| Melanne Voisine | <i>Melanne Voisine</i> | 137 Bowie Hill Rd | 7/20/22 |
| Mah J Lizotte | <i>Mah J Lizotte</i> | 149 Bowie Hill Rd | 7/20/22 |

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| Certified Mail Fee | \$4.00 | 0605 05 |
| Extra Services & Fees (check box, add fee as appropriate) | \$7.75 | |
| <input type="checkbox"/> Return Receipt (hardcopy) | \$0.00 | |
| <input type="checkbox"/> Return Receipt (electronic) | \$0.00 | |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$0.00 | |
| <input type="checkbox"/> Adult Signature Required | \$0.00 | |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00 | |
| Postage | \$0.60 | |
| Total Postage and Fees | \$7.85 | |

Sent To **COPP PROPERTIES**
 Street and Apt. No., or PO Box No. **190 PINKHAM BROOK RD**
 City, State, ZIP+4® **DURHAM, NE 04227**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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| Certified Mail Fee | \$4.00 | 0605 05 |
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| <input type="checkbox"/> Return Receipt (hardcopy) | \$0.00 | |
| <input type="checkbox"/> Return Receipt (electronic) | \$0.00 | |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$0.00 | |
| <input type="checkbox"/> Adult Signature Required | \$0.00 | |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00 | |
| Postage | \$0.60 | |
| Total Postage and Fees | \$7.85 | |

Sent To **PAUL & WENDY GALLAGHER**
 Street and Apt. No., or PO Box No. **13 LEGRAW RD**
 City, State, ZIP+4® **GRAY, ME 04039**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7. Other Business:**a. Planning Board Discussion of Public Outreach Process for Land Use Ordinance Amendments For 2023 Town Meeting**

- As indicated in Planner comments on the outcomes of the June 8 workshop, the Board at that meeting indicated that it wants to develop an effective public outreach on the next round of Land Use Ordinance amendments.
- Board members mentioned putting an item on the next meeting agenda to discuss this.
- The Conservation Commission and Historic District Commission will be discussing public outreach efforts for their proposed Land Use Ordinance revisions.
- The Planning Board decided to focus its efforts on addressing the new State law requiring greater allowance of multiple dwelling units on individual lots.
- The Board also indicated a desire to address an allowance for single back lots to be accessed by a driveway rather than a roadway.
- The Town Planner contacted Maine Municipal legal services for guidance on how to address the new requirements.
- The attached memo from MMA outlines their recommendations for municipal responses to the law's requirements.
- The parts applicable to Durham are highlighted.
- The Town Planner has drafted a set of amendments intended to bring the Town into compliance with the new State law and has requested a review by the Town Attorney.

Compliance with New Affordable Housing Law

George Theborge <townplanner@durhammaine.gov>

Tue 7/12/2022 12:01 PM

To: Jack Conway (JConway@lcwlaw.com) <jconway@lcwlaw.com>

Cc: Alan Plummer <aplummer@durhammaine.gov>; John Talbot <jtalbot@durhammaine.gov>

 4 attachments (631 KB)

Draft LUO Revisions 2023 Art 4.doc; Draft LUO Revisions 2023 Art 5.doc; MMA Affordable Housing Law Brief Summary_ 6-22-22 addl_edit.pdf; PL 2022 Ch.672 LD 2003.pdf;

Jack,

As you probably are aware, Durham will need to respond to P.L. 2021, c.672 by next July, which means we need to have Land Use Ordinance amendments prepared and adopted at the April 2023 Town Meeting. I am working with the Planning Board to draft amendments in preparation for a public participation process this fall.

I am sending you a memo prepared by MMA Legal Services offering initial guidance to communities on steps needed for compliance.

I am also sending my initial draft of amendments to Article 4 that I think would comply with the new requirements. Please give your opinion on whether the draft amendments would comply and any suggestions you may have. If you would like to discuss it, I can call you.

George

George Theborge AICP
Durham Town Planner
630 Hallowell Rd
Durham, ME 04222
townplanner@durhammaine.gov
207-353-2561



MMA Legal Services

New Affordable Housing Law; Summary for Municipalities

MMA Legal Services

June 22, 2022

On April 27, 2022, Governor Mills signed new affordable housing legislation into law. ([P.L. 2021, c. 672](#), entitled, *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*).

The law (Chapter 672) aims to increase affordable housing in Maine by:

- (1) establishing state-wide and regional housing production goals and the municipal role in achieving those goals;
- (2) imposing density and other requirements for affordable housing developments that preempt inconsistent municipal regulations;
- (3) requiring municipalities to allow up to two, three, or four dwelling units on each lot where housing is allowed, depending on the location of the lot and whether it contains an existing dwelling unit; and
- (4) requiring municipalities to allow an accessory dwelling unit (ADU) on the same lot as a single-family dwelling unit in any area where housing is permitted and to comply with certain requirements pertaining to ADUs.

The requirements of the law are briefly summarized below. **This summary is not intended to be a complete analysis of the law and its requirements.** MMA Legal Services is currently analyzing the provisions in the new law and anticipates releasing more comprehensive guidance in the upcoming months based on guidance to be issued by the state.

Chapter 672 does not go into effect until August 8, 2022, and municipalities are not required to comply with many provisions in the law until July 1, 2023.

State-wide and Regional Housing Production Goals

Chapter 672 requires the state Department of Economic and Community Development (DECD) to establish state-wide and regional “housing production goals” aimed at increasing the availability of affordable housing in the state. 5 M.R.S. § 13056(9). The DECD must establish measurable standards and benchmarks of success to achieve those housing production goals. The DECD is required to consider information submitted by municipalities concerning current or prospective housing developments and permits issued for the construction of housing when establishing housing production goals. Municipalities that have this information readily available are encouraged to submit it to the DECD, as it may help DECD establish realistic housing production goals for your region.

The law requires municipalities to ensure that local ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act and the Maine



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Human Rights Act. 30-A M.R.S. § 4364-C. Municipalities may also establish and enforce short-term rental regulations to achieve the state housing production goals. At this time, it is not clear what specific actions a municipality must take to “affirmatively further” these laws beyond reviewing local ordinances and regulations to ensure that they do not discriminate against a protected class of individuals. Further guidance may be issued by the DECD regulations establishing state-wide housing production goals.

This portion of the law will go into effect August 8, 2022.

Density Bonus for Affordable Housing Developments (30-A M.R.S. § 4364)

Chapter 672 overrides local density requirements for new affordable housing developments. Specifically, any municipality that has adopted residential “density requirements,” must allow a “density bonus” for any “affordable housing development” approved on or after July 1, 2023. Municipalities must also comply with additional requirements listed in the law. 30-A M.R.S. § 4364. Note that the law does not define local “density requirement” for purposes of § 4364; DECD regulations may provide further guidance on how to implement this requirement.

To be eligible for a “density bonus,” the development must (1) meet the definition of “affordable housing” in 30-A M.R.S. § 4364, (2) must be located in any area where multifamily dwellings are allowed, and (3) must be located in a “designated growth area” (as defined by the law) or be served by a public, special district or other centrally managed water system and a public, special district, or other comparable sewer system. The development must also meet several requirements listed in § 4364 and the state subsurface wastewater disposal system minimum lot size requirements (12 M.R.S. Ch. 423-A).

If eligible, an affordable housing development must be granted a “density bonus,” or a dwelling unit density of at least 2.5 times the base density that is otherwise allowed by municipal ordinance in that location.

This section applies to affordable housing developments approved on or after July 1, 2023.

Dwelling Units Allowed; Dwelling Unit Density Bonus (30-A M.R.S. § 4364-A)

Chapter 672 overrides local dwelling unit restrictions beginning July 1, 2023. This section has requirements both for lots that do not already contain a dwelling unit and for lots that contain an existing dwelling unit. Note that the law does not define “dwelling unit” for purposes of § 4364-A; regulations issued by the DECD may clarify applicable requirements.

Lots without a dwelling unit. A municipality must allow structures with up to 2 dwelling units per lot, on any lot located in an area where dwelling units are allowed, provided that the lot does not contain an existing dwelling unit and meets the state subsurface wastewater



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disposal system minimum lot size requirements. However, if the lot is located in a designated growth area or connected to public water and sewer, a municipality is required to allow structures with up to 4 dwelling units per lot. 30-A M.R.S. § 4364-A(1).

Lots with an existing dwelling unit. On lots with an existing dwelling unit, a municipality must allow the addition of up to 2 dwelling units per lot. The additional units may consist of one additional dwelling unit attached to an existing structure or one additional detached dwelling unit, or one of each.

Municipalities must ensure that local land use ordinances and regulations meet the additional requirements stated in § 4364-A with respect to dwelling units allowed under § 4364-A, including dimensional and setback requirements and parking requirements.

Compliance with this portion of the law is required by July 1, 2023.

Accessory Dwelling Units Density Bonus (30-A M.R.S. § 4364-B)

Chapter 672 also overrides local accessory dwelling unit (ADU) restrictions. Effective July 1, 2023, municipalities must allow one ADU to be constructed on the same lot as a single-family dwelling unit in any area of the municipality where housing is permitted, unless prohibited by the state subsurface wastewater disposal system minimum lot size statute. 30-A M.R.S. § 4364-B. Note that the law does not define “accessory dwelling unit” or “single-family dwelling unit” for purposes of § 4364-B; regulations issued by the DECD may clarify applicable requirements.

An eligible ADU must be constructed (1) within an existing dwelling unit on the lot; (2) attached to or sharing a wall with a single-family dwelling unit; or (3) as a new structure on a lot for the primary purpose of creating an ADU.

Municipal land use ordinances and regulations must conform with additional requirements in the law with respect to ADUs, including dimensional and setback requirements for ADUs, parking requirements, and exemptions from density requirements and rate of growth calculations.

Municipalities must comply with this portion of the law by July 1, 2023.

What should municipal officials do now?

As noted above, the law takes effect August 8, 2022, but municipalities are not required to comply with most of the new requirements until July 1, 2023.

Now: Because statutory provisions requiring state-wide and regional housing production goals take effect August 8th, municipalities should focus on compliance with these sections first. At this time, we suggest that:

- Municipalities review land use regulations for consistency with the federal Fair Housing Act and Maine Human Rights Act prohibitions on housing discrimination based on race,



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color, religion, national origin, ancestry, sex, sexual orientation or gender identity, disability, familial status, receipt of a permanent protection order, or receipt of public assistance.

- Municipalities should also consider evaluating local land use regulations to determine how they affirmatively further affordable housing in the municipality. For example, an existing municipal comprehensive plan may address affordable housing and the municipality may have adopted ordinance provisions implementing the plan's affordable housing goals. In municipalities without a comprehensive plan or extensive land use regulations, the municipality might determine that the lack of land use regulations on multi-family housing, lot size, etc., allows for unlimited affordable housing development options throughout the municipality.
- Municipalities should document any actions they take to review ordinances (i.e., recording minutes of a workshop dedicated to ordinance review, or making express written findings of an official, board, or committee) in the event that the law is later determined to require municipalities to demonstrate they took steps to "ensure that local ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act and the Maine Human Rights Act" as required by 30-A M.R.S. § 4364-C.

Longer term: Over the course of the next year, each municipality will need to review its ordinances and regulations to ensure that those ordinances or regulations will comply with the affordable housing density requirements, dwelling unit requirements, and accessory dwelling unit requirements contained in Chapter 672 by July 1, 2023. At this time, we suggest that municipalities:

- Identify whether local charters, ordinances, or regulations may need to be amended to comply with Chapter 672, identify the process for amending those documents, and estimate the time required to accomplish any necessary amendments.
- Determine which municipal officials will oversee drafting any necessary amendments, and ensure that the official, board, or committee has the required authority and funding to accomplish this task. Consider working with a professional who is knowledgeable in land use planning when developing ordinance language appropriate for your municipality.
- Consult the municipality's attorney for review of any proposed ordinance amendments.

Funding: Note that the Maine Legislature created the Housing Opportunity Program and Housing Opportunity Fund in separate legislation (PL 2021, c. 635) this spring. Through this



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Program and Fund, the DECD is required to provide technical and financial assistance to support communities implementing zoning and land use related policies necessary to support increased housing development, including model ordinance development. We anticipate compiling information on financial and technical resources available to municipalities as these resources become available.

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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 Size Two-Family Dwelling – 110,000 sq. ft.~~ Maximum Number of Dwelling Units per Lot – 3 units (1 single family with 2 accessory apartments or 1 two-family dwelling with 1 accessory apartment), subject to subdivision requirements.

B. Resource Protection District

1. Minimum Lot Size – 90,000 sq. ft.
2. Minimum Road Frontage – 300 ft.
3. Minimum Setbacks

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.

- a. Front Lot Line – 100 ft.
- b. Side Lot Line – 100 ft.
- c. Rear Lot Line – 100 ft.
4. Maximum Structure Height² – 20 ft.
5. Maximum Coverage for impervious surfaces (including structures) – 5%

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

ARTICLE 5: PERFORMANCE STANDARDS

Section 5.1. ACCESSORY APARTMENTS

The purpose of the provisions concerning accessory apartments is to provide a diversity of housing for town residents while protecting the ~~single-family~~ 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.~~ 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.