

**DURHAM PLANNING BOARD  
REGULAR MEETING AGENDA  
Durham Town Offices, 6:30 p.m.  
September 7, 2022**

***NOTE: No public comment will be taken on individual applications at the meeting unless the Board schedules a formal public hearing with required notice posted. Comments on applications can be submitted in writing to the Town Planner and will be forwarded to the Planning Board and the applicants.***

1. Roll Call & Determination of a Quorum
2. Amendments to the Agenda
3. Acceptance of the Minutes of Prior Meetings (August 3, 2022)
4. Informational Exchange on Non-Agenda Items:
  - 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
  - b) Request to Table to October the Conditional Use Application of Celebration Tree Farm for Camping, Public Workshops, & Events at 125 Bowie Hill Rd Map 10, Lot 43.
6. New Business
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 (August 3, 2022)**



**Town Of Durham  
Planning Board Minutes  
Durham Town Offices, 6:30 pm  
August 3, 2022**

**1. Roll Call & Determination of a Quorum**

**In Attendance:** John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Tyler Hutchinson, Anne Torregrossa and George Thebarga (Town Planner).

**Absent:** Ron Williams and Wes Grover

**Guest(s):** Alan Plummer (Durham Code Enforcement Officer)

Deer Creek Crossing Project: Jack and Max Doughty and John Snow  
(Absent: Charles Burnham/Applicant)

Celebration Tree Farm & Wellness Center: Jonah and Elizabeth Fertig-Burd, Jeanette Huff and Thomas Prowell (sp?)

**2. Amendments to the Agenda: None**

**3. Acceptance of Minutes of Prior Meeting July 13, 2022**

Allan Purinton moves to accept the minutes from July 13, 2022, meeting as presented. Juliet Caplinger seconds, the Board approves 4-0-1. (Anne Torregrossa abstains, due to absence from prior meeting.)

**4. Informational Exchange**

**A. Town Officials – George Thebarga, Town Planner**

The Budget Committee met on Monday, August 1, 2022, to review the Warrant Articles using ARPA Funds for the upcoming Special Town Meeting, scheduled for Tuesday, August 16, 2022, at the Eureka Center at 6 pm. They recommended all 4 Articles including Article 6: GIS Tax Mapping, using \$16,000 in ARPA Funds.

**B. Residents – None**

**C. Non-Residents – None**

## 5. Continuing Business

### a) Substantive Review of Preliminary Plan Application for Proposed 13-Lot Cluster

#### Subdivision Hallowell Road (Deer Creek Crossing), Map 7, Lot 32A Note: The

Board determined that Tyler Hutchinson could vote in tonight's meeting. He reviewed the previous meeting and felt comfortable voting.

#### Town Planner Review:

- The application was deemed complete on July 13, 2022.
- The Planning Board has 60 days to approve the application for Preliminary Review and they can approve with conditions or decide to deny the application.
- Areas of concern: Survey accuracy, drainage concerns, timber harvesting violations, disclosure of encumbrances, accuracy of the wetland delineation the location of the stormwater basin, stream crossings, concerns for impacts on schools, aquifer, and continuing violations.
- Conservation Commission recommended a high intensity soil survey, and they also supported the open space connectivity.
- The Board commenced substantive review of the application on July 13, 2022.
- The Town Planner sent notices to the Road Commissioner, Fire Chief, and School Superintendent. Responses came from the Road Commissioner and Superintendent.
- The Board must make a decision to approve, approve with conditions, or deny.
- The burden of proof is on the applicant.
- The Planner has prepared draft approval conditions.
- The draft COAs ensure that the standards are addressed by the application.
- The Board should determine whether the applicant agrees with proposed conditions.
- The Board can grant preliminary approval if the majority think it meets the standards.
- The Planner will prepare findings for the Final Plan stage.
- If the Board deems the application to fail any of the standards, the Planner will prepare draft findings for denial.
- The Attorney has advised the Board not to take public comments on applications outside of posted public hearings.

## Draft Conditions of Approval

### PART A – CONDITIONS TO ADDRESS ISSUES IN SUBSTANTIVE REVIEW

#### 1. Changes to the Preliminary Plan:

- a. **A right of way shall be extended from the turnaround to the south tract boundary for future road connection.**

The applicant is willing to put a right of way off the road turnaround to the abutting property. The Board voted in favor of requiring the right of way to extend to the property line. (4-0-1)

- b. **Move the stormwater detention basin outside the Resource Protection District boundary along the stream.**

Applicant's engineer stated that if you move the stormwater basin further away from the stream, it collects less of the road run-off and then some of the road run-off goes directly into the stream without treatment.

The Board moves to defer the decision on the location of the stormwater detention basin to the peer reviewer's recommendation. (4-0-1)

#### 2. Survey Accuracy ~ Applicant shall submit a certified boundary survey with the final plan application.

The applicant indicated they will provide a survey with the required information for the next meeting.

#### 3. Need for a High Intensity Soil Survey

The Board moves to seek peer reviewer's recommendation on need for survey. (4-0-1)

#### 4. Issue of the Offset of the Intersection from Patriot Way across the road.

The Board moves to require the applicant to bring the offset to the attention of MDOT permit reviewer and ask for a safety determination. (4-0-1)

#### 5. Response to Public Comment

- a. **Survey Accuracy (addressed in #2)**

- b. **Drainage Concerns**

Independent peer review of stormwater & erosion plans to be requested.

**c. Timber Harvesting Violations**

Applicant supplied a certified harvester report.

**d. Summary Satisfaction of Judgement**

Allan Purinton motions to drop 5d, Juliet Caplinger seconds. Motion carries (4-0-1).

**e. Accuracy of Wetland Delineations**

All those in favor of including this in the peer review. (1-3-1) Vote Failed.

**f. Location of Stormwater Detention Basin (addressed in #1.b)**

**g. Sensitivity of Stream Crossings**

The Department of Environmental Protection and the Army Corps of Engineers current review of the stream crossing will satisfy the Board. (3-1-1)

**h. Impact on Schools**

Email comments received from School Superintendent. Has capacity but may impact the schools.

**i. Zoning Violations**

Review by Code Officer for violations. (4-0-1)

**6. Fire Protection**

The applicant is proposing a 120,000-gallon fire pond. The Board approves that the applicant will build a 120,000-gallon fire pond and it will be built outside the proposed right of way extending to the property line. (4-0-1)

**7. Vegetative Clearing**

Areas of site to be cleared to be shown on final plan and required buffers to be referenced in notes. (4-0-1)

**8. MDOT Permits**

The final plan shall include copies of required MDOT permits. (4-0-1)

**9. Road Connectivity**

The final plan to show a paper street to the south boundary line. (4-0-1)

**10. Peer Review of Engineering Plans**

The final plans to include engineered road design meeting Appendix 1 and will be submitted for peer review. (4-0-1)

**11. Clearing of Lots**

The final plans to show limits of clearing on the lots. (4-0-1)

**12. Notes on Clearing of Lots**

The final plans to include notes on limits of clearing on the lots and deeds to reference limits. (4-0-1)

**13. Liquidation Harvesting**

The applicant submitted a certification by a licensed forester meeting the Ordinance requirements.

**14. Grading Plans for Lots 7 & 8**

The applicant agreed to submit grading site plans for the two lots. (4-0-1)

**PART B – CONDITIONS TO ADDRESS OTHER REVIEW CRITERIA & STANDARDS**

The Board moves to approve standard draft approval conditions 15 through 25 addressing financing, State reviews and permits, peer reviews, and legal documents. (4-0-1)

**6. New Business**

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

**Notes from the Town Planner:**

- The applicants would like to expand activities at the farm and wellness center. Some of the proposed uses do not clearly fit within the list of permitted and conditional uses of Table 3.1.
- The applicants went to the Board of Appeals (July 19, 2022) for clarification on the interpretation of the Resource Protection Boundary. The Board of Appeals denied the application based on the Town Meeting vote on the Zoning Map, and they determined that the proposed uses fit within the existing allowed uses in both the Resource Protection and Rural Residential and Agricultural District.

- The previous Code Enforcement Officer issued a cease-and-desist order to prevent the rental of a converted bus on the property.
- The current Code Enforcement Officer has conducted an inspection and determined that the bus is not being rented.

The applicants propose to build a temporary structure, a 30-foot diameter yurt, which will sit above the ground on concrete footings. The facility will be used for year-round educational workshops on wellness, farming, nature environmental issues and art. Accompanied by a single campsite, a bus that has been converted into an RV, will be used under 6 months a year, to allow guests from near and far to stay on the farm and learn about organic farming and support their wellness through our educational programs.

The applicants also propose to use the Barn as a space for cultural and community events, including monthly variety shows and other occasional performances. And they would like to continue to host their annual celebration market, which provides a holiday market for over 25 craft and food vendors in November (this event is usually held on Shop Local Saturday).

The Barn and Yurt would be available for rental for family events (including weddings, birthday parties, baby showers, memorial services, etc.) and would not be used more than 2 to 3 times a year. Most events would be small, under 30 people, with weddings having no more than 100 people.

**The Board discussed noise concern and the hours of operation for these events as well as parking issues.**

**Mr. Talbot addressed the Board and stated that a public hearing is not required for a conditional use approval. The Board decided that they would like a public hearing. (5-0)**

**A site visit is planned for the month of October (date to be determined at the next board meeting).**

## **7. Other Business**

### **Report from John Talbot, Chair**

- The Historical District Commission and the Conservation Commission are working on changes they want to do within their committees. It is their responsibility to go through the public discussion period and it is the Planning Board's responsibility to hold a public hearing.
- The goal is to hold a public hearing in late January/February of next year to be ready for the April Town Meeting.



- The Board will also be doing some workshops and/or informational meetings this fall.
- The next Planning Board meeting is scheduled for Wednesday, September 7, 2022, at 6:30 pm at the Town Offices.

## **8. Adjourn**

Juliet Caplinger motion to adjourn. Anne Torregrossa seconds. Motion carries 5-0.  
The planning board meeting adjourned at 9:32 pm.

**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.
- The Board commenced substantive review of the application on July 13, 2022 and continued deliberations at the August 3, 2022 meeting.
- The Board received written comments from the Town Engineer and School Superintendent.
- Based on his review of the application and the public review process, the Town Planner prepared draft preliminary subdivision approval conditions.
- The Board reviewed the draft conditions of approval on August 3 and voted on each individual draft approval condition.
- The changes approved by the Planning Board on August 3 are included in the revised draft in the packet.
- At the August 3 meeting, the applicant stated that a certified survey addressing the draft conditions of approval would be submitted for the September 7 meeting. The Planner has not received a survey, and draft condition of approval #4 addresses public comments and Board concerns for survey accuracy.
- 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.
- A Board member should make a motion to grant preliminary approval with the stated conditions of approval.
- If the motion fails, the Board should reconsider the conditions of preliminary plan approval or a motion to deny the application as September 7 is the deadline for Planning Board decision on the application.



**TOWN OF DURHAM**  
**630 Hallowell Road**  
**Durham, Maine 04222**

*Office of Code Enforcement  
 and Planning*

**Tel. (207) 353-2561**  
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**PRELIMINARY SUBDIVISION APPROVAL**  
**Deer Creek Crossing Subdivision**  
**(Draft Conditions of Approval)**

1. Per Section 6.6.C, the Planning Board will request technical peer review of the following submissions:
  - a. Determination of the need or lack thereof for a high intensity soil survey to confirm the wetland delineation and engineering designs;
  - b. Determination of the need or lack thereof for a traffic safety analysis of the offset in alignment of the intersections of Patriot Way and the proposed access road;
  - c. Recommendation on the optimum location of the proposed stormwater detention basin with respect to the stream and associated wetlands;
  - d. Review of the engineering designs for road construction, utilities, stormwater management, erosion & sedimentation controls, and the proposed fire pond; and,
  - e. Review of the engineer's construction cost estimates for the project infrastructure.
2. 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; and,
  - b. A fire pond meeting the requirements of Section 6.16.C shall be constructed near the road turnaround but outside of the proposed road right of way extension.
3. 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.
4. Per Section 6.7.C.3. the applicant shall submit a certified boundary survey showing all existing easements 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.

5. 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 #4 above.
  - b. Drainage Concerns – Engineering peer review of the stormwater and erosion control plans
  - c. Location of Stormwater Basin – See draft approval condition #1.c above.
  - d. Sensitivity of Stream Crossings – DEP & ACOE permits for stream restoration and new stream crossing.
  - e. Concern for Impacts on Aquifer – Review by the Durham Code Officer of standards applicable to portions of project in the Aquifer District boundary.
  - f. Concern for Continuing Zoning Violations – Review by the Durham Code Officer for zoning violations.
  
6. 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.
  
7. Per Section 6.17.A & B., an erosion and sedimentation plan meeting the requirements of Appendix 2 shall be submitted with the final plans.
  
8. 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.
  
9. Per Section 6.18.B.1 & 2., the final plan application shall include required MDOT permits. The applicant shall ask MDOT to address the safety of the intersection offset from Patriot Way.
  
10. 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.
  
11. Per Section 6.18.D.2., the final plans shall include engineered drawings of the road meeting the requirements of Appendix 1.
  
12. Per Section 6.21.A.1 & 2., the final plan shall delineate and note the limits of tree clearing.
  
13. 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.
  
14. 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.

15. 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.
16. 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.
17. 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.
18. Per Section 6.28.B., the final plans shall include the DEP stormwater permit and shall be consistent with requirements of that permit.
19. 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.
20. 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.
21. 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 #17 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.

**5. Continuing Business:**

- b. Request to Table 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 have requested that their application be tabled until the October meeting.
- The Board should consider a date and time for a rescheduled site walk.

**7. Other Business:**

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

- At the June 8 workshop, the Planning Board indicated that it wants to develop an effective public outreach on the next round of Land Use Ordinance amendments.
- 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 Conservation Commission and Historic District Commission will be addressing other Land Use Ordinance policies.
- The Planning 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 affordable housing law 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 prepared three alternative approaches to address needed compliance with the new State law:
  - Comprehensive Plan 2018 housing recommendations.
  - Minimum Steps to Comply with the Law; and,
  - Maximum Restrictions on Growth.
- Option 1 (Comp Plan) would permit up to 3 dwelling units on every property but would control design for rural character by;
  - Allowing a single family with 2 accessory dwelling units (only one currently allowed); or,
  - A duplex (allowed) with 1 accessory dwelling unit (not allowed).
  - The minimum lot size of 2 acres would allow up to 3 dwelling units (2.5 acres currently needed for duplex).
  - This option would be consistent with the comprehensive plan recommendations for housing.
  - Under this option, all landowners would be treated equally.
- Option 2 (Min Compliance) would permit:
  - Up to 3 dwelling units on properties that currently have one or two dwelling units and the new unit(s) could be added in any combination (accessory or full-size units).
  - It would limit vacant properties to a maximum of 2 units, which could again be in any combination (2 single family, 1 duplex).

- The minimum lot sizes would stay the same (2 acres for single family, 2.5 acres for duplex or 3 units).
- This option would simply add the language of the new affordable housing law to the Land Use Ordinance.
- This option partially would partially follow recommendations of the comprehensive plan.
- This option would give landowners with existing dwellings one more housing unit than owners of vacant land.
- Option 3 (Max Restriction) would also permit:
  - Up to 3 dwelling units on properties that currently have 1 or 2 dwelling units and the new unit(s) could be added in any combination (accessory or full-size units).
  - It would limit vacant properties to a maximum of 2 units.
  - It would require 2 acres of land for each dwelling unit as allowed by the new law (2 acres for 1 unit, 4 acres for 2 units, 6 acres for 3 units).
  - This option would increase lot sizes for multi-unit properties to offset the required increase in housing unit numbers.
  - This option appears to be allowed under the new affordable housing law but would seem to undermine the legislative intent.
  - This option would not be consistent with housing recommendations in the comprehensive plan.
- The Planning Board has discussed conducting a public workshop to introduce the requirements of the new affordable housing law and the need to make changes to address it at the 2023 Town Meeting.
- The Board could solicit public input on the three Options (and welcome other ideas, such as modifications to the options).
- Based on a separate new law, the Code Officer has been advised by the Town Attorney that “tiny homes” must be treated as single family dwellings or as accessory apartments.
- The optimum times for conducting a public workshop would be in mid-October before the gubernatorial election or early November after the election and before the holidays.
- The packet also contains draft amendments to reintroduce the proposed changes for back lot access.
- Landowners could do a 16-foot driveway to access a single back lot rather than a 20-foot road.
- The proposed limit of one single family dwelling on a back lot will need to be reconsidered in light of the new affordable housing law.
- These amendments would also move the provisions for multiple-lot private roads out of the back lot provisions (Sec. 5.7) to the renamed provisions for approval of private roads outside of subdivisions (Sec. 5.23).



- These proposed amendments keep all of the current standards in place for such private roads/ways, including the exception for paving of such roads. The debate over whether such roads should be gravel or paved was one of the "last minute" changes that derailed efforts to fix these broken parts of the Land Use Ordinance last time.
- As recommended by the Planning Board, authority for approval of such private ways would be assigned to the Road Commissioner and Code Officer (the Planning Board currently approves the maintenance agreement).
- Finally, the Select Board has requested that language be added to clarify that acceptance of private roads for public maintenance requires a Town Meeting vote, something that also caused confusion at the last Town Meeting.
- The Planning Board could also solicit public input on back lot access changes at the workshop.



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 8<sup>th</sup>, 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,**



## MMA Legal Services

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



## MMA Legal Services

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.

### **Maine Municipal Association Legal Services**

**1-800-452-8786**

**[legal@memun.org](mailto:legal@memun.org)**

**[www.memun.org](http://www.memun.org)**

# Housing

**Comprehensive Plan Goal: To encourage and promote affordable, decent housing opportunities which are consistent with the other goals of this plan.**

**Summary of Issues:**

- ◆ Between 2000 to 2015, the housing stock in Durham increased by 34%, or 422 units. Over that time period, the annual rate of new housing starts was just under 30 per year.
- ◆ Over the past 5 years, the rate of new housing construction has dropped to about half that amount or 12 units per year.
- ◆ Regional demographic projections indicate the number of new housing starts in Durham could decline by half again over the next 20 years.
- ◆ Just under 90% of Durham’s 1700 homes are single family dwellings. There also approximately 100 mobile homes and a hundred duplexes.
- ◆ The vast majority of homes in Durham are owner-occupied and there is very limited rental housing available.
- ◆ Unlike many communities in southern Maine, Durham has not seen dramatic increases in median home prices in recent years, and homes are still relatively affordable.
- ◆ The lack of available rentals and the aging population do create a need for more rental housing and accessory units.

HOUSING POLICIES	HOUSING STRATEGIES	RESPONSIBLE	TIMEFRAME
1. To maintain the quality, energy efficiency, and affordability of the existing housing stock.	1.1 Seek grants to assist homeowners in improving the energy efficiency of existing homes.	GPCOG Community Concepts	Mid-Term
	1.2 Allow accessory apartments in single family dwellings as a permitted use subject to specific design standards that encourage owner occupancy and require neighborhood compatibility.	Planning Board Town Planner	Short-Term

HOUSING POLICIES	HOUSING STRATEGIES	RESPONSIBLE	TIMEFRAME
	1.3 Provide more flexible standards for home occupations that typically fit well with neighborhood character while increasing performance standards for home occupations involving high traffic, product storage, and noise generation.	Planning Board Town Planner	Mid-Term
2. To allow a greater diversity of housing options.	2.1 With elimination of the Southwest Bend Growth District, consider allowing 3-unit and 4-unit multifamily housing in addition to duplexes in the Rural Residential District with design standards to make them compatible with typical Durham housing (e.g., duplex with accessory apartment, farmhouse-style 4-plex).	Planning Board Town Planner	Mid-Term
	2.2 Explore options for allowing “tiny homes” as accessory dwelling units or as starter homes.	Planning Board Town Planner	Mid-Term
3. To support efforts to develop affordable workforce housing.	3.1 Amend the Land Use Ordinance to allow duplexes on a standard 2-acre lot unless there is an objective basis for requiring a larger lot, such as requirements for on-site wastewater disposal or aquifer protection.	Planning Board Town Planner	Short-Term
	3.2 To reduce road construction and housing construction costs while preserving rural character, allow cluster lot development that reduces lot size and road frontage by up to 50% provided that an effective 100-foot vegetated buffer is maintained or installed along existing external roadways and abutting residential yards.	Planning Board Town Planner	Short-Term
4. To support development of housing for the elderly and disabled.	4.1 Investigate the feasibility, and community interest in creating local community housing for senior residents.	Board of Selectmen GPCOG	Long-Term
	4.2 Allow accessory apartments in single family dwellings as a permitted use subject to specific design standards that encourage owner occupancy and require neighborhood compatibility.	Planning Board Town Planner	Short-Term



**Fwd: [MAP Listserv] New Affordable Housing Law Lot Size Requirements**

George Thebargé <geotheb1@gmail.com>

Wed 8/10/2022 8:06 AM

To: George Thebargé <townplanner@durhammaine.gov>

Sent from my iPhone

Begin forwarded message:

**From:** Eli Rubin <erubin@kennebunkportme.gov>

**Date:** August 9, 2022 at 3:57:31 PM EDT

**To:** George Thebargé <geotheb1@gmail.com>, maine-association-planners@googlegroups.com

**Subject: Re: [MAP Listserv] New Affordable Housing Law Lot Size Requirements**

Hi George,

I agree this is one of the most unclear and impactful parts of the bill. Though the LPC helped improve it from the original version, I was still pretty frustrated by the final result. Such is the legislative process I am told.

Your first interpretation matches the legislative intent and is also the understanding of the reps from the Governor's office and DECD that we have been working with. (Some guidance documents from DECD will be published sometime this summer). Further comments from the AGs office will hopefully be released at a later date.

With that understating, Durham could increase the lot size as you have described, presumably as would have always been possible. The bill's authors wanted to prohibit municipalities from having dimensional standards that were exclusionary by effect to get around the new law. For example, by having a higher *per unit* standard for the second or third unit than for the first. Having a cumulative increase in dimensional standards would be fine so long as the *per unit* standard is not more. In Durham's case, its actually already less. This is the same in Kennebunkport and I would imagine many other places as well.

I have used the same interpretation in drafting the Kennebunkport ordinance amendments.

Hope that's useful, happy to chat more if it's helpful. Perhaps a fall Zoom workshop would be neat if enough people are interested. Thoughts?

Eli Rubin  
Community Planner  
Town of Kennebunkport  
207-967-1614

Eli Rubin  
Community Planner  
Town of Kennebunkport  
207-967-1614

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**From:** maine-association-planners@googlegroups.com <maine-association-planners@googlegroups.com> on behalf of George Thebarghe <geotheb1@gmail.com>  
**Sent:** Tuesday, August 9, 2022 10:47 AM  
**To:** maine-association-planners@googlegroups.com <maine-association-planners@googlegroups.com>  
**Subject:** [MAP Listserv] New Affordable Housing Law Lot Size Requirements

I am working on draft amendments to the Durham Land Use Ordinance to bring the town into compliance with 30-A 4364-A that goes into effect next July. Our Town Meeting is in April and the Planning Board wants to do a public outreach process early this fall and hold formal public hearings this coming winter.

Durham currently allows duplexes in all districts but requires 2.5 acres for a duplex where only 2 acres is required for a single family home. It allows one accessory apartment for single family homes with size restrictions but not increased lot size.

Subsection 3 reads as follows:

**3. General requirements.** *A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed under this section that are greater than dimensional requirements or setback requirements for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.*

I did not participate in the legislative process and am wondering if there was an explanation of what this language is intended to produce or prevent.

One interpretation would indicate that Durham's 2.5 acre minimum lot for a duplex is okay because the .5 acre added area "is not greater than the first unit." Under this interpretation, Durham could increase the lot size for duplexes to four acres, since the same area is required for each unit, which would seem to defeat the purpose of the law to increase housing availability. And following this line of reasoning, the town could require 6 acres for three units if two are added to a lot with an existing dwelling.

An alternative interpretation would conclude that adding any area requirements for the second (or third units) is not permissible since the resultant lot area would be "greater than the first unit." This would seem to be consistent with the legislative goal of increasing housing availability but it would potentially contradict the allowance for municipalities to "establish requirements for a lot area per dwelling unit."

I looked for guidance from MMA legal staff, but they referred me to the Town Attorney.

Is anyone else at MAP working on this?

George Thebarg AICP  
Durham

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To view this discussion on the web visit [https://groups.google.com/d/msgid/maine-association-planners/CAFAAxgTqU-6\\_utJJhhFU%3DOASstZCm5Or%2BExg%3DuG%2BCz\\_B7Z1kZ0w%40mail.gmail.com](https://groups.google.com/d/msgid/maine-association-planners/CAFAAxgTqU-6_utJJhhFU%3DOASstZCm5Or%2BExg%3DuG%2BCz_B7Z1kZ0w%40mail.gmail.com).

**OPTION 1 - AFFORDABLE HOUSING LAW RESPOSE:  
COMPREHENSIVE PLAN 2018 HOUSING GOALS**

**ARTICLE 4: SPATIAL STANDARDS IN ZONING DISTRICTS**

**Section 4.1 DISTRICT REQUIREMENTS**

A. Rural Residential & Agricultural District

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

**OPTION 2 - AFFORDABLE HOUSING LAW:  
MINIMUM COMPLIANCE WITH STATE MANDATE**

**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.
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3. Minimum Road Frontage – 300 ft.
4. Minimum Setbacks
  - a. Front Lot Line Residential – 50 ft.
  - b. Front Lot Line Non-residential – 100 ft.
  - c. Side Lot Line Residential – 20 ft.
  - d. Side Lot Line Non-residential – 100 ft.
  - e. Rear Lot Line Residential – 20 ft.
  - f. Rear Lot Line Non-residential – 100 ft.
5. Maximum Structure Height – 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.
8. Maximum Number of Dwelling Units per Lot:
  - a. Lots with an Existing Dwelling on April 1, 2023 - Two additional dwelling units for a maximum of three units (subject to subdivision requirements).
  - b. Vacant Lots – Maximum of two dwelling units.

**OPTION 3 - AFFORDABLE HOUSING LAW:  
MAXIMUM RESTRICTION ON HOUSING**

**ARTICLE 4: SPATIAL STANDARDS IN ZONING DISTRICTS**

**Section 4.1 DISTRICT REQUIREMENTS**

**A. Rural Residential & Agricultural District**

1. Minimum Lot Size – 90,000 sq. ft.
  - a. Minimum Buildable Area – Each lot must contain a contiguous 40,000 sq. ft. building envelope which does not contain areas in Resource Protection District, wetlands, or slopes greater than twenty (20%) percent.
2. Minimum Access to Lots – ~~Only one single family detached dwelling or two-family dwelling shall be permitted on a lot.~~ No dwelling shall be erected except on a lot that fronts on a street as defined, and the minimum street frontage, measured along the lot line at the street, shall be at least equal to the minimum lot width.
3. Minimum Road Frontage – 300 ft.
4. Minimum Setbacks
  - a. Front Lot Line Residential – 50 ft.
  - b. Front Lot Line Non-residential – 100 ft.
  - c. Side Lot Line Residential – 20 ft.
  - d. Side Lot Line Non-residential – 100 ft.
  - e. Rear Lot Line Residential – 20 ft.
  - f. Rear Lot Line Non-residential – 100 ft.
5. Maximum Structure Height – 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:
  - a. Lots with an Existing Dwelling on April 1, 2023 - Two additional dwelling units for a maximum of three units (subject to subdivision requirements).
  - b. Vacant Lots – Maximum of two dwelling units.
8. Minimum Lot Area Per Dwelling Unit – 90,000 sq. ft.

## Back Lot Access on Land Use Amendments Agenda?

George Theborge <townplanner@durhammaine.gov>

Wed 8/24/2022 11:38 AM

To: John Talbot <jtalbot@durhammaine.gov>

Cc: Kevin Nadeau <knadeau@durhammaine.gov>

 3 attachments (463 KB)

Planner Notes 6-8-22 Workshop.pdf; Draft LUO Revisions 2023 Sec. 5.7.pdf; Draft LUO Revisions 2023 Sec. 5.23.pdf;

John,

In recent communications, you seemed to question whether the Planning Board decided to look again at back lot access along with the affordable housing law requirements in the upcoming public discussions of Land Use Ordinance amendments for the 2023 Town Meeting.

I am attaching a copy of my notes from the June 8 Planning Board workshop at the Eureka Center. On the second page you will see that I made a note to include back lot access when that decision was made by the Board.

The attached draft amendments for changes to the back lot access requirements are the same as was presented at the last Town Meeting. Landowners could do a 16-foot driveway to access a single back lot rather than a 20-foot road. These amendments would also move the provisions for multiple-lot private roads out of the back lot provisions (Sec. 5.7) to the renamed provisions for approval of private roads outside of subdivisions (Sec. 5.23).

These proposed amendments keep all of the current standards in place for such private roads/ways, including the exception for paving of such roads. The debate over whether such roads should be gravel or paved was one of the "last minute" changes that derailed our efforts to fix these broken parts of the Land Use Ordinance last time.

Finally, in the attached draft amendments for Section 5.23, you will note that I added the highlighted statement clarifying that acceptance of private roads for public maintenance requires a Town Meeting vote, something that also caused confusion at the last Town Meeting and we were requested by the Select Board to clarify.

George

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

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022

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

## Section 5.7. BACK LOTS

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

- A. If a back lot is accessible only by a legally enforceable right-of-way, it may be used to create required road frontage for one single back lot ~~family dwelling~~ if the following conditions are met:
1. The right-of-way must be deeded in fee or by easement to the owner of the back lot and be a minimum of fifty (50') feet in width.
  2. Creation of the 50-foot right-of-way to serve the back lot shall not create a nonconforming front lot by reducing such lot's road frontage below the minimum for that district, or, if the front lot is already nonconforming, reduce its road frontage at all. ~~Where the right-of-way is given by easement or irrevocable license, or some grant less than a fee interest, t~~ The land over which the back lot access is created by deed or by easement such servitude is placed may not be counted toward meeting road frontage requirements for the front lot.
  3. No more than one right-of-way for back lot development may be created out of any lot fronting on a Town and/or state maintained road unless each subsequent right-of-way is created out of at least an additional three hundred and fifty (350') feet of Town road frontage, and the road entrances to such Town road are at least six hundred (600') feet apart.
  4. The dimension of the back lot which borders upon the right-of-way shall be at least three hundred (300') feet in length and the depth of the lot perpendicular to said frontage shall be at least two hundred (200') feet for at least three hundred (300') feet along the right-of-way. The back lot shall have a minimum of five (5) acres not including any land constituting the right of way.
  5. The driveway shall be required to be sixteen (16') ~~twenty (20')~~ feet wide with twelve (12") inches of aggregate subbase, six (6") inches of aggregate base, and appropriate drainage as shown in Appendix 1, Section 1.3, Figure 3 of this Ordinance, however no shoulders or pavement are required. A turn around adequate to serve public safety vehicles shall be constructed at the end of the back lot driveway. Prior to the issuance of a building permit for any structure on the back lot, written approval of the Fire Chief shall be required verifying that the driveway has been constructed to provide adequate access by emergency vehicles.



Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022

***NOTE: The following provisions for approval of “private ways” serving multiple back lots will be relocated to Section 5.23 to consolidate the existing provisions for approval of such developments, creating a clear division between single back lots served by a driveway and private ways serving multiple lots. Single back lots can be expanded into private ways in the future, but only if all requirements for private ways are followed, including upgrading the driveway to the private way standards of Section 5.23 for road width and maintenance agreement.***

- ~~B. A legally enforceable right-of-way may be used for more than one backlot or single-family dwelling if the following conditions are met:
 
  - ~~1. A street plan shall be prepared by a professional engineer, along with a cross section and drainage plan. The plan shall be labeled “Plan of a Private Way” and shall provide an approval block for the signatures of the Code Enforcement Office and Road Commissioner. The Plan shall delineate the proposed way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds prior to construction of the second or subsequent dwelling.
 
    - ~~a. The street plan shall bear notes: (1) The Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and (2) Further lot divisions utilizing the privately owned road are prohibited without prior approval of the Planning Board. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws.~~~~
  - ~~2. A maintenance agreement as described in Section 5.22 of this Article shall be recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.~~
  - ~~3. No residential building permit for a dwelling shall be issued for second and subsequent Back Lots until the requirements of this Ordinance have been met.~~
  - ~~4. The right-of-way and road must be brought up to subdivision road standards as found in Appendix 1, Section 1.3 of this Ordinance, with the exception of the paving requirement.~~~~

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022

**Section 5.23. ~~ROADS~~ PRIVATE WAYS**

*NOTE: Section 5.23 is intended to provide a mechanism for the creation of private ways outside of subdivisions that serve multiple exempt lots. The provisions for approval of such roads are split between Section 5.7 for “back lots” and this section for “roads,” creating confusion on the approval process for both. The proposed revisions will consolidate the private way provisions in this section, and the standards will remain those that are currently in effect except for the policy for paving such roads. At the 2022 Town Meeting, a proposal to allow such roads to be gravel regardless of the number of lots served (the current policy) was not approved. The draft proposal requires that private ways serving four or more lots must be paved, which is the same as in subdivisions. The Planning Board indicated that the approval of such private ways should be entirely done by Town staff rather than having the Planning Board review the maintenance agreement. Finally, the amendments clearly state that road acceptance requires a Town Meeting vote.*

- A. The Town shall not accept as a Town Road any private road or way that is not built to public road standards.
- B. After March 6, 2004 any person or persons, prior to:
  - 1. Developing a private road or way developed to provide access to two or more dwelling units or a structure intended for commercial, industrial or light industrial uses; or,
  - 2. Extending an existing private road or way which will thereafter serve two or more dwelling units, or a structure intended for commercial, industrial or light industrial uses; or,
  - 3. Putting to use for the first time an existing private road or way to serve two or more dwelling units or a structure intended for commercial, industrial or light industrial uses,

shall be required to seek and obtain approvals for a private way plan meeting the following requirements:

- C. A street plan shall be prepared by a professional engineer, along with a cross section and drainage plan. The plan shall be labeled “Plan of a Private Way” and shall provide an approval block for the signatures of the Code Enforcement Office and Road Commissioner. The Plan shall delineate the proposed way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds prior to construction of the second or subsequent dwelling.
  - 1. The street plan shall bear notes: (1) The Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and (2) Further lot divisions utilizing the privately owned road are prohibited without prior approval of the Road Commissioner. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws. Acceptance of any road for public maintenance requires a vote at Town Meeting.

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022

5. A maintenance agreement meeting the requirements of subsection D. below shall be recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.
  6. No residential building permit for a dwelling shall be issued for the second and subsequent lots until the requirements of this Ordinance have been met.
  7. The right-of-way and road must be brought up to subdivision road standards as found in Appendix 1. Section 1.3 of this Ordinance with the exception of the paving requirement.
- D. Applicants for private way approval shall submit for the approval of the ~~Planning Board~~ Road Commissioner a maintenance agreement or escrow agreement executed by the owners of the lots containing the dwelling units or structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such dwelling units or structures are located with respect to the maintenance, repair and snow plowing of such road or way. The applicant shall prepare and submit for approval of the ~~Planning Board~~ Road Commissioner a maintenance agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair, and plowing.
- E. The maintenance agreement shall also include:
1. A detailed statement of how the ownership interests in the private way will be structured (i.e., whether ownership will be single or joint, whether lot owners will own the fee or have easements, etc.).
  2. A statement that in the event any of the lots shown on the plan are divided or in the event any remaining land of the declarant is subsequently divided into lots which are served by the private way, then such resulting lot or lots shall become subject to the maintenance agreement and to any modifications to the maintenance agreement advisable to adjust the duties and responsibilities equitably among the owners of all the lots served by the private way.
  3. An acknowledgment by the declarant and any other persons signing the maintenance agreement that the Town of Durham is not responsible for the construction, maintenance, repair or plowing of the private way.
  4. A statement that the duties and obligations imposed by the maintenance agreement run with the land and shall be transferred to purchasers or other transferees of any portion of the real estate subject to the maintenance agreement and that, upon such transfer, the Planning Board shall be notified in writing and provided with a copy of any changes or amendments to the maintenance agreement.
  5. A requirement that the maintenance agreement be referenced in all deeds to any lots served by the private way.

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022

6. If the private way subject to the maintenance agreement is an extension of an existing private way which served lots created prior to March 6, 2004, a statement that the applicant for private way approval has contacted the owners of such lots, has offered them the opportunity to make their properties subject to the maintenance agreement and that they have either accepted or declined that offer; and that the Declarant has submitted to the Code Officer a notarized affidavit confirming the Declarant's compliance with this paragraph.
7. An agreement which permits the other signatories of the maintenance agreement to place a lien on the property of any signatory who has not paid the share of expenses allocated to them in the amount of the unpaid assessment for costs for the private way.
8. Upon approval of the agreement the person or persons submitting the agreement shall record it in the Androscoggin County Registry of Deeds so that the obligations therein shall be covenants that run with the land upon which the dwelling units or structures are located. No building permit or other approval for the second and subsequent lots required by this Ordinance for the dwelling units or structure to be served by such road or way, shall be issued or approved unless this provision has been complied with.